

# The Law Society *of British Columbia*



## Annual Report



2003



### President and Vice-Presidents

William M. Everett, QC  
*President (Oct.-Dec.)*  
Howard R. Berge, QC  
*President (Jan.-Oct.)*  
Peter J. Keighley, QC  
*First Vice-President*  
Ralston S. Alexander, QC  
*Second Vice-President*

### Elected Benchers

Robert D. Diebolt, QC  
Ian Donaldson, QC  
Anna K. Fung, QC  
David W. Gibbons, QC  
Robert W. Gourlay, QC  
John J.L. Hunter, QC  
William F.M. Jackson  
Gerald J. Kambeitz, QC  
Robert W. McDiarmid, QC  
Margaret Ostrowski, QC  
G. Glen Ridgway, QC  
Patricia L. Schmit, QC  
William J. Sullivan, QC  
Grant C. Taylor  
G. Ronald Toews, QC  
Russell S. Tretiak, QC  
Ross D. Tunnicliffe  
Gordon Turriff, QC  
James D. Vilvang, QC  
Anne K. Wallace, QC  
David A. Zacks, QC

### Lay Benchers

Michael J. Falkins  
Patrick Kelly  
Patrick Nagle  
June Preston  
Lilian To  
Dr. Maelor Vallance

### Life Benchers

R. Paul Beckmann, QC  
Howard R. Berge, QC  
P. Michael Bolton, QC  
Robert W. Bonner, QC  
Darrell T.B. Braidwood, QC  
Hon. Mr. Justice Thomas R. Braidwood  
Cecil O.D. Branson, QC  
Trudi L. Brown, QC  
Hon. Mr. Justice Grant D. Burnyeat  
Hon. A. Brian B. Carrothers, QC  
Hon. Mr. Justice Bruce I. Cohen  
Robert M. Dick, QC  
Ujjal Dosanjh, QC  
Leonard T. Doust, QC  
Hon. Jack L.T. Edwards, QC  
Richard C. Gibbs, QC  
Hon. Dr. James J. Gow, QC  
Arthur M. Harper, QC  
Hon. David B. Hinds, QC  
John M. Hogg, QC  
H. Allan Hope, QC  
Ann Howard  
Hon. Henry E. Hutcheon, QC

Robert T.C. Johnston, QC  
Peter Leask, QC  
Gerald J. Lecovin, QC  
Hon. Hugh P. Legg, QC  
Hon. Charles C. Locke, QC  
James M. MacIntyre, QC  
Richard S. Margetts, QC  
Marjorie Martin  
Hon. Allan D. McEachern  
Hon. Meredith M. McFarlane, QC  
Hon. Lloyd G. McKenzie, QC  
Brian W.F. McLoughlin, QC  
Colin D. McQuarrie, QC  
Hon. Kenneth E. Meredith  
Hon. Peter J. Millward, QC  
Dennis J. Mitchell, QC  
Karen F. Nordlinger, QC  
Richard C.C. Peck, QC  
Emily M. Reid, QC  
Norman Severide, QC  
Jane S. Shackell, QC  
Donald A. Silversides, QC  
Gary L.F. Somers, QC  
Hon. Madam Justice Mary F. Southin  
Marvin R.V. Storrow, QC  
Benjamin B. Trevino, QC  
William M. Trotter, QC  
Alan E. Vanderburgh, QC  
Brian J. Wallace, QC  
Karl F. Warner, QC  
Warren T. Wilson, QC



## A profession ... honourable, competent and independent

*The Law Society of BC works to ensure that the public is well served by a legal profession that is honourable, competent and independent. The mandate of the Law Society is set out in section 3 of the Legal Profession Act:*

### **Public interest paramount**

#### **3 It is the object and duty of the society**

- (a) to uphold and protect the public interest in the administration of justice by
  - (i) preserving and protecting the rights and freedoms of all persons,
  - (ii) ensuring the independence, integrity and honour of its members, and
  - (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership, and
- (b) subject to paragraph (a),
  - (i) to regulate the practice of law, and
  - (ii) to uphold and protect the interests of its members.

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### Reflections

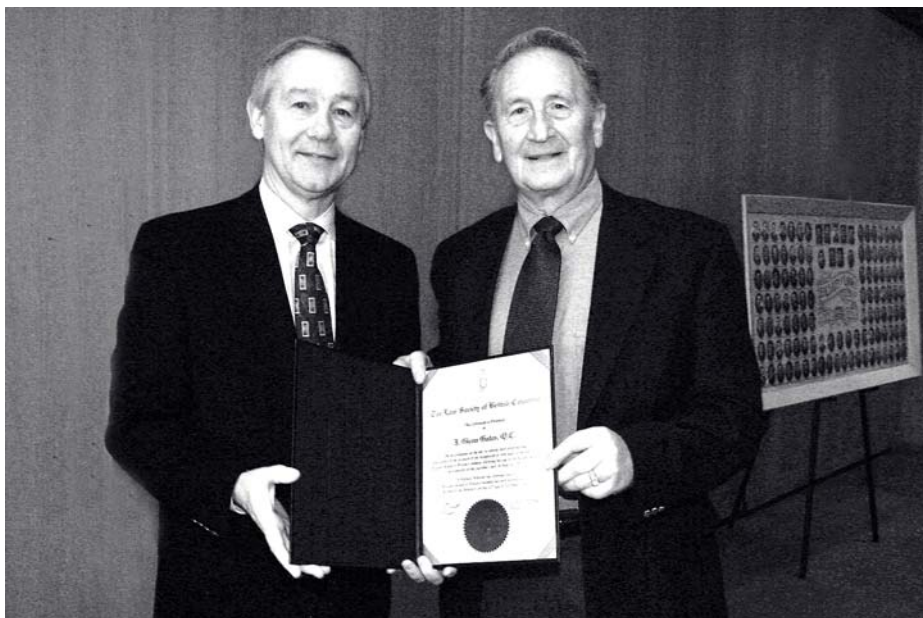
by William M. Everett, QC

Trust — like respect — must be earned. The legal profession has built public trust over many generations, and will strive to uphold it for generations to come. People need lawyers to help protect their rights when making life decisions, when facing life crises. Lawyers are respected for the skilled work they do, and trusted for the way in which they do it. Lawyers promise to work in the best interests of their clients, to keep their confidences and to safeguard their rights and property.

These are professional commitments lawyers make individually to their clients. But they are also a shared commitment of all lawyers. If one lawyer fails to live up to the standards of the profession, the legal profession as whole must take responsibility.

The Law Society's formal mission, as described in the *Legal Profession Act*, is to uphold and protect the public interest in the administration of justice by, in part, "ensuring the independence, integrity and honour" of its members. This means we set standards of professional responsibility, enforce those standards and maintain financial protections that benefit the public.

In 2003 the Law Society continued to shoulder the fall-out from the misappropriation and wrongful conversion of mortgage funds by former Vancouver lawyer Martin Wirick. After his mishandling of funds in various transactions came to light in 2002, Mr. Wirick resigned his membership and was subsequently disbarred. The Special Compensation Fund was busy throughout the rest of 2002 and 2003 assessing claims for compensation. It is to the credit of BC lawyers that they have supported the Law Society throughout the crisis. I believe



President **William M. Everett, QC** (left) presents a certificate to **J. Glenn Gates, QC** in commemoration of his 50 years at the BC Bar. The presentation took place at a special luncheon in Vancouver on November 13.

Also receiving 50-year certificates in 2003 were William Beckingham, QC, Harvey Bowering, Mervin Chertkow, Raymond Cocking, QC, Owen Dolan, QC, Dallas Gordon, Morley Koffman, QC and Milton Wylie. A 60-year certificate was presented to Darrell Braidwood, QC, a former Treasurer of the Law Society.

that we have all recognized the importance of a united front and of demonstrating our commitment to public protection.

The Benchers have since opted to create trust protection coverage, to be administered by the Lawyers Insurance Fund, that will cover claims of lawyer misappropriation or wrongful conversion discovered on or after May 1, 2004. The Special Compensation Fund will continue to process claims discovered prior to that date.

The Benchers have taken other steps to safeguard trust funds in real estate transactions. One is to require a lawyer to report to the Law Society the failure of a mortgagee to provide a registrable discharge of mortgage within 60 days — thus closing the window of opportunity for funds to be applied improperly.

For overall improvements in

financial accountability, we have adopted more effective trust accounting rules and approved a new form of Trust Report to collect more relevant information on an annual basis.

The Benchers have worked to show the public our commitment in other ways as well — by intervening in court cases in which solicitor-client privilege is threatened, by improving our admissions program through articling reforms and by adopting new disclosure standards that ensure greater openness and transparency in our regulatory processes.

We have also been sensitive to the fact that lawyers and law firms now have to do more for less. Through our own belt-tightening at the Law Society, we have managed to reduce the Law Society component of the practice fee.

I became Law Society President in mid-October — more than two

## The Benchers

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**The Benchers** (as of December, 2003)

(Front row) Anna K. Fung, QC, First Vice-President Peter J. Keighley, QC, President William M. Everett, QC, Second Vice-President Ralston S. Alexander, QC, June Preston

(Second row) Anne K. Wallace, QC, Michael J. Falkins, Margaret Ostrowski, QC, G. Ronald Toews, QC, Grant C. Taylor, Patricia L. Schmit, QC

(Third row) Second Vice-President-elect Robert W. McDiarmid, QC, Ian Donaldson, QC, Russell S. Tretiak, QC, James D. Vilvang, QC, William Jackson

(Fourth row) Robert W. Gourlay, QC, Gerald J. Kambeitz, QC, David A. Zacks, QC, G. Glen Ridgway, QC, Robert D. Diebolt, QC, Patrick Nagle

(Back row) John J.L. Hunter, QC, William J. Sullivan, QC, Ross D. Tunnicliffe, Dr. Maelor Vallance, Gordon Turriff, QC

(Not pictured) David W. Gibbons, QC, Patrick Kelly, Lilian To

months earlier than expected. I am indebted to my Vice-Presidents Peter J. Keighley, QC (as he then was) and Ralston S. Alexander, QC, and my Second Vice-President-elect, Robert W. McDiarmid, QC, for their full support in the transition. I also send a heartfelt thank you to all my other fellow Benchers, to the Law Society staff and to our cherished volunteers for their superb work in serving the profession and the public. As I continue as President in 2004, I realize how fortunate I am to be able to impart these words without having to say farewell. Rather, I am pleased to be looking ahead, urging us all to continue to earn and uphold the public trust. In that, I have full confidence.

### The Benchers

The Benchers are the board of directors of the Law Society. They govern the work of the Law Society in accordance with the *Legal Profession Act*. They establish the Law Society Rules, the *Professional Conduct Handbook* and board policies and they oversee the implementation and administration of programs carried out by the Executive Director and the Law Society staff.

There are 25 elected Benchers who are lawyers — chosen by other lawyers in regions across BC — and up to six non-lawyer (Lay) Benchers, appointed by the provincial Cabinet. Benchers serve two-year terms and can be re-elected or, in the case of Lay Benchers, reappointed. The senior Bencher is the President. The Attorney General of British Columbia is also a Bencher although, in practice, the Deputy Attorney General attends Benchers meetings on the Attorney's behalf.

The Benchers serve as volunteers and carry a substantial workload, including monthly meetings, committee and task force meetings, hearings and other meetings and events requiring



a Law Society presence.

In 2003 the Benchers, in recognition of the expertise of the most senior Benchers, proposed that BC lawyers have the option of electing Benchers for more than four full or partial terms. The proposal failed to win approval by two-thirds of members in a referendum in November, which would have been necessary for a rule change.

In that same referendum, members authorized the Benchers to amend the Law Society Rules for other purposes: to allow for webcasting of Law Society general meetings and to change the minimum number of members required to requisition a special general meeting from 150 members to 5% of members in good standing.

At the end of 2003 the Law Society bid farewell to several long-serving Benchers who had attained the status of Life Benchers: Robert D. Diebolt, QC, David W. Gibbons, QC, Robert W. Gourlay, QC, Gerald J. Kambeitz, QC and G. Ronald Toews, QC, all of whom have been Benchers since 1996, William J. Sullivan, QC, a Bencher since 1997, and Russell S. Tretiak, QC a Bencher since 1992.

In Bencher elections held November 17 for the 2004-2005 term, seven new Benchers were elected and 14 Benchers re-elected.

Newly elected for 2004-2005 in District 1 (Vancouver) were Joost Blom, QC, of the UBC Faculty of Law, Gavin H.G. Hume, QC, of Fasken Martineau DuMoulin, returning Bencher Terence E. La Liberté, QC, of La Liberté and Company and Arthur E. Vertlieb, QC, of Vertlieb Anderson MacKay. Re-elected in Vancouver were Ian Donaldson, QC, Anna K. Fung, QC, John J.L. Hunter, QC, Margaret Ostrowski, QC, Ross D. Tunnicliffe, Gordon Turriff, QC, James D. Vilvang, QC and David A. Zacks, QC. President William M.

Everett, QC also continues to serve as a Bencher for Vancouver to the end of 2004.

Anne K. Wallace, QC was re-elected a Bencher for District 2 (Victoria) by acclamation. Ralston S. Alexander, QC, Second Vice-President, also continues as a Bencher for the district. In District 3 (Nanaimo) G. Glen Ridgway, QC was re-elected by acclamation. Carol W. Hickman was elected and Grant C. Taylor was re-elected as Benchers for District 4 (Westminster). After First Vice-President Peter J. Keighley, QC was appointed a Supreme Court Master, lawyers in Westminster elected Greg Rideout in a by-election.

Bruce A. LeRose, of Thompson LeRose & Brown in Trail, was elected in District 5 (Kootenay).

Dirk Sigalet, QC, of Sigalet & Company in Vernon, was elected in an Okanagan by-election in early 2004 to represent District 6 (following a tie vote in the 2003 election). Re-elected in District 7 (Cariboo) were Patricia L. Schmit, QC and William Jackson. Darrell J. O'Byrne, of Peters & O'Byrne in Prince Rupert, was elected by acclamation in District 8 (Prince Rupert). Robert W. McDiarmid, QC was re-elected by acclamation in District 9 (Kamloops).

The Lay Benchers in 2003 were June Preston of Victoria, Michael J. Falkins of Victoria, Patrick Kelly of Vancouver, Patrick Nagle of Sooke, Dr. Maelor Vallance of Vancouver and Valerie MacLean of Vancouver, until her resignation in the spring when she was replaced by Lilian To of Vancouver. All were reappointed for the 2004-2005 term.

Lay Benchers are appointed by the provincial Cabinet and, like elected lawyer Benchers, are Law Society volunteers. They contribute fully to all work of the Society — on committees, at the Benchers table and on hearing

panels.

In 2003 Ms. Preston chaired and Mr. Nagle served as a member of the Complainants' Review Committee, and Lay Benchers participated on the Executive, Access to Justice, Credentials, Discipline, Equity and Diversity, Practice Standards, Special Compensation Fund, Technology and Unauthorized Practice Committees, and on the Conduct Review, Disclosure and Privacy, Lawyer Education and Paralegals Task Forces.

## Highlights of the year

It was a year of reflection, and of reform. The Law Society took responsibility to meet its core obligations to the public and the profession. And the Society took new steps to maintain the trust of all those it serves and represents.

### Lawyers gain new freedom under national mobility

Canada Day, 2003. Canadians gathered coast to coast to celebrate the freedoms they enjoy. For Canadian lawyers, and their clients, there was another reason to toast the day — a new national mobility agreement was in effect, allowing lawyers to travel and work across provincial boundaries with greater ease.

In fulfilling this agreement, the Law Society of BC and five other provincial law societies passed rules to give lawyers in those provinces greater scope to practise law temporarily in another province without the need to obtain an inter-jurisdictional practice permit. The rules also eased the call and admission requirements for lawyers who wish to move permanently from one province to another.

Under the new national mobility regime, a BC lawyer is generally entitled to practise temporarily in another reciprocating jurisdiction for a cumulative period of up to 100 days

### Lay Benchers ... bringing a public voice

The Lay Benchers bring a public voice to issues affecting the Law Society. Here are a few perspectives on the experience of being a Lay Benchers in a profession of lawyers:

*I would like to contribute some thoughts about acceptance of Lay Benchers by the elected Benchers. When originally approached about accepting this position, my biggest concern was how the elected Benchers would react to the "forced imposition" of six lay people at the Benchers table.*

*In my career as a professional commercial insurance broker, I have been around lawyers (mostly corporate) all my life. I was aware of what an honour it is for a lawyer to be selected by his or her peers to be a Benchers — and I questioned why we would be treated anything other than an "annoyance." What a revelation! The acceptance level has been nothing short of overwhelming — we have been listened to, sought out for advice and used as sounding boards — and when we speak, I'm struck by the attentiveness of the audience.*

*It has been nothing short of a real pleasure to feel that we make a contribution to the well-being of the Law Society. I'm honoured to be part of this.*

— Mike Falkins, Lay Benchers

*After a career watching public business as a reporter and editor, I joined the Benchers table two years ago, determined to make participation as open as possible. I have made several requests for more open meetings, some successful, some not. More importantly I have learned to respect the real power of the table. A scrupulous regard for due process and fairness are the hallmarks of all*

*deliberations, open or in camera.*

— Patrick Nagle, Lay Benchers

*Lay Benchers are well integrated on all the committees and task forces of the Law Society. Our contributions in committee discussions can make a difference, and our votes do count! We also serve as members of discipline hearing panels and on conduct reviews. These are serious deliberations, impacting on the careers of lawyers, and Lay Benchers often can improve the quality of regulatory decisions by bringing a broader and sometimes alternative perspective.*

*Through these meetings, I meet the elected Benchers and Law Society members who are dedicated volunteers, who respect and value their profession enough to give time from their busy law practices and private lives. I have come to know and admire lawyers who are concerned about addressing issues in the "best interest of the public" and who worry about the image and reputation of lawyers. They feel great concern when a member of the Law Society is in conflict with the Law Society Rules or is found to be doing harm to the public. Benchers strive to keep members of the profession and the general public informed about activities of the Law Society.*

*I encourage lawyers to consider how they can make a contribution to their profession and to the public by volunteering in some capacity with the Law Society.*

— June Preston, Lay Benchers

within a calendar year, without requiring a permit and without needing to apply or register for the privilege. In 2003 the reciprocating provinces were BC, Alberta, Saskatchewan, Manitoba, Ontario and Nova Scotia, with Newfoundland expected to join in the near future. For more, see "Credentials" on page 8.

### BCCA extends protection of privilege in searches

The Law Society remains alert to any and all threats to solicitor-client privilege and seeks court protection when necessary, sometimes through the Federation of Law Societies of Canada. On February 25, the BC Court of Appeal ruled that, for the purpose of searches of law offices authorized by a search warrant (and the protections for privilege that apply), a "law office" must be taken to mean "any place where privileged documents may reasonably be expected to be located": *Festing v. Attorney General (Canada)* 2003 BCCA 112. The Law Society was an intervenor in the case.

The BCCA had reconsidered its earlier decision in the case, in light of the Supreme Court of Canada decision in *Lavallee*. In that case the Supreme Court of Canada struck down section 488.1 of the *Criminal Code* (which set out a process for claiming privilege in law office searches) as unconstitutional. The section inadequately protected solicitor-client privilege in searches of law offices, resulting in an unreasonable search and seizure that infringed section 8 of the *Charter of Rights* and could not be justified under section 1. The Federation of Law Societies of Canada was an intervenor before the Supreme Court of Canada on behalf of the Canadian law societies.

When police and other investigative authorities seek warrants to search law offices in BC, there are now two critical points to note. First, the

s. 488.1 *Criminal Code* process for claiming privilege over documents seized in law office searches is unconstitutional and, as a result, law office searches must be governed in accordance with the guidelines articulated by the Supreme Court of Canada in *Lavallee*. Second, a “law office” must be broadly defined, as stipulated in *Festing*.

“The legal protection afforded solicitor-client privilege does not begin and end at the door of a law office,” the Court of Appeal stated in its decision. Accordingly, the expanded definition of “law office” for the purpose of protecting privileged documents in searches would include, for example, a lawyer’s home, the office of in-house counsel for a business and facilities where lawyers store files.

The Supreme Court of Canada articulated general principles that, as a matter of common law, will govern the searches of law offices unless and until Parliament re-enacts legislation on the issue.

### Constitutional challenge on money laundering adjourned

During 2003 the Federation of Law Societies and the Law Society of British Columbia consented to an adjournment of their constitutional challenge of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* to November 1, 2004. The adjournment followed the federal government’s decision in March to repeal several regulations that purported to subject Canadian lawyers to the recording and reporting requirements of Part 1 of the *PCMLTFA*.

The Law Society of BC, along with other law societies in the country, have resisted a federal move to have lawyers report clients to the state. In the view of the profession, this would amount to an unconstitutional violation of a client’s fundamental right to

solicitor-client privilege and confidentiality.

BC lawyers have been exempt from recording and reporting on suspicious and large cash transactions under Part 1 since November, 2001 when the BC Supreme Court granted interlocutory relief in the constitutional challenge brought by the Federation and the Law Society of BC. In granting its interlocutory order, the BC Supreme Court noted that the requirements on lawyers to report on clients under Part 1 constituted “an unprecedented intrusion into the traditional solicitor-client relationship.”

After several Canadian courts followed BC’s lead in granting interlocutory orders, the federal Attorney General reached agreement with the Federation (on behalf of the provincial and territorial law societies) in May, 2002 to exempt all Canadian lawyers and Quebec notaires from Part 1. It was agreed this exemption would remain in effect until the constitutional challenge was heard in BC Supreme Court and the Court had decided the case on the merits.

With the adjournment of the constitutional challenge, the Attorney General agreed to reimburse the parties for all costs “thrown away” in relation to proceedings for interlocutory relief across the country, including all appeal processes.

Despite relieving lawyers from Part 1 of the *PCMLTFA*, the federal government announced that it intends for Canada’s anti-money laundering and anti-terrorist financing regime to cover all entities that act as “financial intermediaries,” including lawyers and law firms. The government has, however, agreed to consult with the Federation of Law Societies before enacting new regulations.

Canadian lawyers remain subject to the provisions on cross-border

movement of currency and monetary instruments under Part 2 of the *PCMLTFA*, which took effect on January 6, 2003. However, those reporting requirements typically fall on clients, as the exporters of currency, not on their lawyers.

### Trust reforms given priority

In December the Benchers adopted reforms to modernize and streamline the trust account reporting requirements of BC lawyers through new trust accounting rules and a new form of Trust Report. The new Trust Report, which is designed to collect more relevant information, will be phased in as a replacement for the current Accountant’s Report (Form 47) and Statutory Declaration (Form 48), beginning in 2004.

These reforms were recommended by the Society’s Trust Assurance Reform Task Force as necessary first steps to improving trust assurance standards, streamlining administrative requirements and minimizing the cost of compliance for law firms.

From a regulatory perspective, the Form 47 Accountant’s Report, filed annually by law firms, has presented several problems. First, the form is not designed to detect theft or fraud. It is primarily a report by a public accountant to help confirm that a law firm has properly maintained its books and records and has performed monthly reconciliations. Second, these reports seldom provide the Law Society with sufficient information to pursue an audit of a firm. Third, accountants are not necessarily trained or sufficiently instructed to detect activities that may be harmful to clients or the general public.

The new form of Trust Report contains sections that a law firm completes and a section that an accountant retained by the firm completes. The Trust Report is designed to provide better information to the Law



## Highlights of the year

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Society. It is supported by new rules that firms will find more modern and in step with their procedures and the Law Society expects to find more effective from a regulatory standpoint.

In the view of the Trust Assurance Reform Task Force, the Law Society should be able to use this information to better assess what other steps, if any, need to be pursued with a particular firm.

In addition, the Trust Report should yield data on the profession as a whole to help the Society determine whether certain lawyers or firms are likely to present a greater risk of trust account irregularities. Such risk analysis could show whether greater risk attaches to such factors as the number of trust transactions a firm conducts, the size of those transactions, the size of a firm, the nature or volume of practice or the experience of lawyers.

### Reforms in the wake of Wirick

The Benchers introduced other reforms in 2003, in the wake of the Wirick misappropriations.

One of these reforms demands that lawyers pay greater attention to mortgage discharges.

For real property transactions closing March 1, 2003 or later, the Law Society Rules require a lawyer to report to the Law Society a mortgagee's failure to provide a registrable discharge of mortgage within 60 days. The rules also oblige a lawyer to report to the Law Society the failure of another lawyer or a notary to provide satisfactory evidence that he or she has filed a registrable discharge of mortgage as a pending application at the Land Title Office within that 60-day period. In addition to ordinary mortgages, the reporting rules apply to debentures and trust deeds containing a fixed charge on land or an interest in land.

The Society is collecting this information to learn more about the business

processes of financial institutions, whether there are certain institutions unable to discharge mortgages within a given timeframe and whether there are situations that require Law Society assistance or intervention.

The profession was also reminded that the CBA standard undertakings in real estate transactions include "transparency provisions" respecting mortgage discharges. Specifically, clause 8.4 of the undertakings requires that the vendor's lawyer provide to the purchaser's lawyer (within five business days of the completion date) copies of specified documents that demonstrate that the vendor's lawyer has made payments to existing chargeholders.

The Vancouver Real Property Section incorporated this step into the CBA standard undertakings in response to an earlier recommendation of the Law Society's Conveyancing Practices Task Force. The Task Force had recommended prompt verification by a vendor's lawyer to a purchaser's lawyer of a mortgage repayment in conveyancing transactions.

Finally, the Benchers approved a plan in December, 2003 for the Lawyers Insurance Fund (through the LSBC Captive Insurance Company Ltd.) to provide insurance coverage for

claims arising from the misappropriation of money or property by any BC lawyer. This trust protection coverage covers claims discovered on or after May 1, 2004. The Special Compensation Fund will continue to cover claims discovered prior to that date. For more information, see Lawyers Insurance Fund on page 19.

### Profile of the profession

As can be seen from the table *Law Society members*, there were 9,101 practising lawyers at year-end, 1,296 non-practising members and 217 retired members — a total of 10,614. Of lawyers with practising status in BC during the year, over three-quarters were in private practice. There were 3,450 women lawyers, 32.5% of the profession.

Looking at geographic distribution, 55.6% of lawyers were located in Vancouver district, 12.3% in Westminster, 9.4% in Victoria, 3.6% in Nanaimo, 3.5% in Okanagan district, 2.1% in Kamloops district, 2.1% in Cariboo, 1.2% in Kootenay and .7% in Prince Rupert. Another 9% lived out of province.

Of the 375 people called to the BC bar in 2003, most were new law school graduates — 210 (56%) were graduates from BC law schools, 93 (24.8%) were from other Canadian law schools and 9 (2.4%) were from

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#### Law Society members (as at December 31, 2003)

Practising members	9,101	(85.8%)
Non-practising members	1,296	(12.2%)
Retired members	<u>217</u>	(2.0%)
<b>Total</b>	<u><u>10,614</u></u>	

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foreign law schools. There were also 63 lawyers from other Canadian jurisdictions who transferred to BC (16.8% of all calls). A further 42 people were reinstated as members: see *Lawyers called and reinstated in BC (2001-2003)*.

## Programs

### Credentials

The Credentials Committee and staff oversee the enrolment, education and call to the bar of articulated students, the transfer of lawyers from other provinces and other countries and the reinstatement of former lawyers. In every case, the Credentials Committee must be satisfied that an applicant for enrolment, admission or readmission is of good character and fit to be a barrister and solicitor. To this end, the Committee may approve an application, with or without conditions, or may order a formal credentials hearing. The Committee is also responsible for reviewing applications relating to a student's failed standing in PLTC and for considering any matters arising from articles.

The focus of 2003 was on implementing articling reforms and promoting

the national mobility of lawyers.

### Articling reforms

New articling reforms came into effect mid-year. Each principal and articulated student must now enter into and file an approved form of articling agreement before articles begin and submit mid-term and final reports to certify completion of their respective obligations under the agreement.

The agreement is intended to bring about greater consistency in articles. The agreement, and an incorporated *Articling Skills and Practice Checklist*, place emphasis on a student learning lawyering skills and gaining experience in at least three areas of practice. The articling checklist sets standards against which the progress of a student can be measured during the course of articles, and specifies mentoring, ethics and practice management requirements.

Other new provisions also came into place. Rule 2-32 provides that, if a student does not live up to his or her obligations under the agreement, such as by failing to complete the articling checklist requirements, the Credentials Committee may extend

### PLTC comes in-house

On January 1, 2003 the Professional Legal Training Course became a department of the Law Society. Prior to this change, the Continuing Legal Education Society of BC administered PLTC for the Law Society.

Bringing PLTC in-house is the first step toward implementing an Admission Program Task Force recommendation calling on the Law Society to "combine PLTC and articling into a single admission program." It is also a move toward achieving greater administrative and cost efficiencies within the Law Society and PLTC.

the student's articling term for up to two years. A principal in such circumstances may also be referred to the Credentials Committee before any future articles are approved.

Rule 2-44(6) extends the circumstances in which the Credentials Committee may exercise its discretion to exempt an articulated student from the Professional Legal Training Course. The Committee retains discretion to exempt, with or without conditions, an articulated student who has successfully completed a bar admission course in another Canadian province, and now may also exercise that discretion for a student who has engaged in the active practice of law for at least five full years in a common law jurisdiction outside Canada.

Finally, a change to Rule 2-30, in effect

## Lawyers called and reinstated in BC (2001 – 2003)

	2001	2002	2003
<b>Calls and admissions</b>			
Recent graduates of BC law schools	211	188	210
Recent graduates of other Canadian law schools	88	109	93
Graduates of foreign law schools	16	14	9
Lawyers transferring from other jurisdictions	<u>29</u>	<u>56</u>	<u>63</u>
Total	344	367	375
<b>Reinstatements</b>	30	25	42

## Ethics

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May 1, 2004, increases from four to seven years the practice experience necessary to become a principal to an articulated student and limits the principal to two students at a time.

### Post-call education reforms

A Lawyer Education Task Force, chaired by Cariboo Benchers Patricia Schmit, QC, was struck mid-year for the next phase of reforms — to promote the excellence and competence of lawyers through post-call learning and information support and to probe the continuing education needs of newly called lawyers and sole practitioners.

### National mobility agreement

The new national mobility agreement, to which the Law Society of BC is a signatory, took effect on July 1, 2003. Any lawyer wishing to practise temporarily in another reciprocating province under the new mobility regime may do so without applying for a permit, provided he or she:

- carries professional liability insurance that is reasonably comparable in coverage and limits to that required by the host law society and extends to the lawyer's practice in the host jurisdiction;
- has defalcation compensation coverage that extends to the lawyer's practice in the host jurisdiction;
- is not subject to conditions or restrictions imposed as a result of discipline or competency proceedings;
- is not the subject of criminal or disciplinary proceedings in any jurisdiction;
- has no disciplinary record in any jurisdiction; and
- has not established an economic nexus with the host jurisdiction.

If a lawyer from one reciprocating

province wishes to practise temporarily in another reciprocating province, but cannot meet these criteria, the lawyer must apply to the law society in the jurisdiction the lawyer intends to visit for an inter-jurisdictional practice permit.

A lawyer who has established an "economic nexus" in a province must apply for membership with the local law society. A lawyer establishes an "economic nexus" in another province by doing something that is inconsistent with practising in that province on only an occasional basis, as described in the Rules.

Lawyers who practise temporarily in another province are subject to the provisions of the governing legislation, law society rules and professional conduct handbook (or code of ethics) in that province in so far as applicable.

A visiting lawyer may not open a trust account or handle trust funds in the host province and may not hold out as qualified or willing to practise in the province, other than on an occasional basis under the mobility rules. Any trust funds involved in the visiting lawyer's practice of law must accordingly be handled by another lawyer who is a member of the local law society or, alternatively, handled through the visiting lawyer's trust account in the home jurisdiction (Rule 2-16(1)(a)).

Lawyers who apply for call and admission in another reciprocating province no longer need write transfer examinations, but must instead comply with a prescribed reading requirement. Lawyers coming to BC must accordingly certify that they have read and understood the *Legal Profession Act*, Law Society Rules, *Professional Conduct Handbook* and specified parts of the Professional Legal Training Course materials, including statutory provisions.



### Achieving excellence ... the 2003 gold medallists

One pleasure of welcoming the next generation of lawyers is in honouring their academic achievements. During the year the Benchers presented Law Society gold medals to the top BC law school graduates, **Amy Jennifer Davidson** of UBC (above) and **Ben Blackmore** of UVic, who each achieved the highest cumulative grade point average over their three years of study. The \$12,000 Law Society scholarship for graduate legal studies was awarded to **Benjamin Lyle Berger**, who was previously honoured in 2002 as the Law Society gold medallist for UVic.

## Ethics

The Ethics Committee provides support to the Benchers in setting ethical standards for the profession. The Committee does this in several respects:

- identifying current professional responsibility issues;
- developing policy recommendations and possible changes to the *Professional Conduct Handbook*;
- interpreting existing rules for individual lawyers or Law Society committees; and





*A moment never to be forgotten. New lawyers join together at the September, 2003 call and admission ceremony to reflect on their chosen profession and to envision their career in law.*

- publishing ethical opinions of interest to the profession as a whole.

Chaired by G. Ronald Toews, QC, the 2003 Committee devoted considerable time to assisting lawyers in meeting their ethical obligations.

The Committee also studied whether some parts of the *Professional Conduct Handbook* were in need of change. A number of issues were flagged for consideration: Should the *Handbook* allow law firms to use screening devices to overcome imputed conflicts, not only when lawyers move from firm to firm, but in other situations? Should the *Handbook* be clarified to reinforce that the Law Society's rules on disclosure by Crown Counsel are not intended to interfere with prosecutorial discretion? Should the *Handbook* reflect the right of BC lawyers to form partnerships with other Canadian lawyers and share fees? Should the right extend to foreign lawyers?

Several issues moved to the Benchers

table in 2003, with recommendations from the Committee for amendments to the *Handbook*.

In March, at the Committee's recommendation, the Benchers amended the *Handbook* to guide lawyers when a client becomes incapable of giving instructions or when an incapacitated person who is not yet a client is in need of assistance. Chapters 3 and 5 of the *Handbook* specify that, if a client cannot, as a result of incapacity, adequately instruct his or her lawyer, the lawyer must maintain a normal client-lawyer relationship to the extent reasonably possible. If the lawyer reasonably believes that the client cannot adequately instruct counsel, the lawyer may seek the appointment of a guardian or take other protective action the lawyer reasonably believes is necessary to protect the client's interests and may disclose the minimum amount of the client's confidential information necessary to take that

action.

Pending appointment of a representative of the client, the lawyer may continue to act for the client to the extent that instructions are implied or as otherwise permitted by law: see Chapter 3, Rules 2.1 to 2.3 and Chapter 5, Rule 16. A lawyer may also provide reasonable and necessary minimal assistance to a person who, because of incapacity, is prevented from entering into a client-lawyer relationship: see Chapter 3, Rule 2.4.

The *Handbook* was also revised to permit BC lawyers to take shares in their corporate clients in lieu of fees in certain circumstances. The Ethics Committee had recommended this step, in recognition that some new companies require legal services, but may lack the resources to pay their lawyers unless they can pay in kind. A lawyer may accordingly accept such a retainer, provided the lawyer's professional judgement is not compromised and the client receives independent legal advice.

With the new national mobility agreement coming into effect mid-year, the Benchers agreed to study the potential for a code of conduct, such as a model code, for all of Canada.

### Practice advice

With the goal of helping lawyers to practise competently, ethically and in a way that is financially viable, and to avoid complaints and insurance claims, the Law Society offers both practice advice and personal support services.

2003 was a busy year for the Law Society Practice Advisor, Practice Management Advisor and Ethics staff lawyer who answered over 4,000 practice enquiries from BC lawyers, and prepared practice advice articles for the *Benchers' Bulletin* and practice and precedent material for the Law Society website.

## Professional conduct and discipline

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These online practice resources have proved very popular. In 2003 lawyers downloaded over 40,000 practice checklists (up 153% over 2002) and 22,826 other practice materials (up 156% over 2002).

Following its successful debut in 2002, the Pacific Legal Technology Conference returned in November 2003 under the banner of *Vision, Application and Results*. Presented by the Law Society, the CBA, BC Branch, the Trial Lawyers Association of BC and the ABA Law Practice Management Section, the conference offered a full day of multi-track educational sessions by acclaimed speakers who focused on the practical results of technology, including the latest in wireless devices, voice recognition and document automation.

There was a strong turnout, with the number of paid conference registrants up 4% in 2003 over 2002, despite an increase in the cost of registration. Overall attendance revenues increased 59%.

The Electronic Trial proved a favourite attraction, featuring the latest technologies for courtroom presentation — from trial opening, to direct and cross-examination, to jury summation. It was presented live before a real BC Supreme Court judge, with Canadian and American lawyers as counsel and law students as the jury.

The conference achieved an overall rating of 1.7 on a scale of 1 to 5, with 1 being “Excellent” and 5 being “Poor.” In the written conference evaluation forms, attendees agreed, without exception, that “they would recommend this conference to their colleagues.”

### Professional conduct and discipline

High ethical standards are a hallmark of the legal profession, and the Law Society must uphold these standards



*Benchers demonstrate their support to new members of the profession by offering a welcome and sharing in a celebration of their accomplishments.*

in a manner that ensures ongoing public confidence in lawyers.

Staff lawyers and paralegals in the Law Society’s Professional Conduct Department are responsible for the initial assessment of all complaints about lawyers. Complaints are most frequently made by clients, by opposing parties or by lawyers, but a complaint is defined in the Law Society Rules to include information from any source that suggests a disciplinary violation.

In 2003, the Law Society received 1,588 complaints and enquiries, close to the same number as in 2002 (1,590). As noted in *2003 complaint files by area of practice*, 28.1% of complaints for which an area of law was identified related to family law and 29.2% to civil litigation, including motor vehicle. 12.6% of complaints related to real estate and 7.4% to wills and estates.

In most cases, the Professional

Conduct Department closes files within six months, although complex or serious matters can take longer to investigate and assess. By year-end, staff completed their review and assessment of 1,602 files.

In 2003 almost 12% of complaints were resolved or reconciled, sometimes with the assistance of Law Society staff. Informal resolutions are most often successful in matters involving unpaid debts, the return of files, general dissatisfaction, simple delay and rudeness. When fees are in dispute, lawyers and clients can opt to participate in a voluntary fee mediation program offered by the Society or may instead choose to have the matter resolved in a fee review before a BC Supreme Court Registrar.

The department referred 160 files (10% of files closed) to the Discipline Committee for consideration in 2003, up from the 149 files referred in 2002. It referred another 35 complaints

(2.2% of files closed) to the Practice Standards Committee. A referral to the Discipline Committee may result in such disciplinary action as a letter to the lawyer from the Committee chair, a conduct review or a citation for a formal hearing before a panel.

Of the complaints closed in 2003, 43.1% did not establish a conduct or competency problem or were unprovable or unfounded. Almost 24% were assessed as outside the Law Society's jurisdiction: see *Disposition of complaints and public enquiries closed in 2003* on page 14.

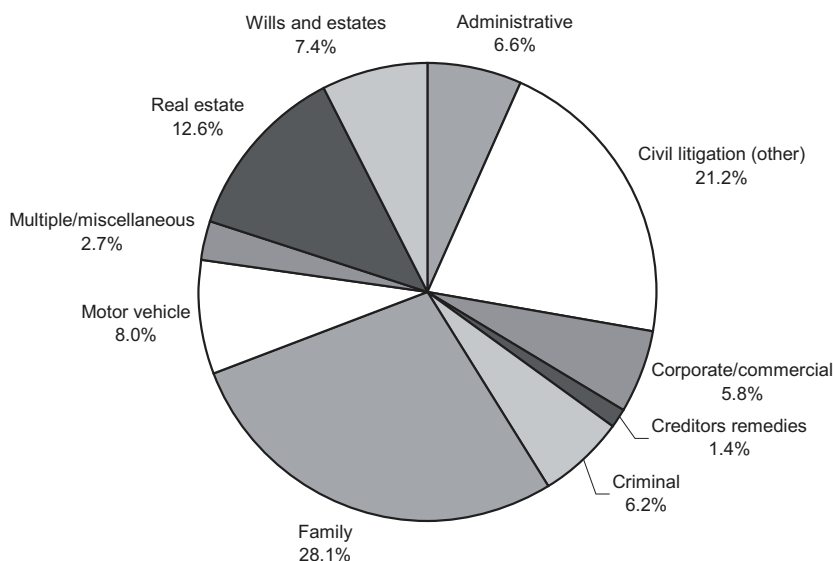
A complainant who is unhappy with a staff decision to take no further action on a complaint may, in some circumstances, request a review before the Complainants' Review Committee: see *Disposition of 2003 reviews by Complainants' Review Committee* on page 14.

During the year the Discipline Committee ordered 54 citations, recommended 30 letters of admonishment from the Chair and ordered 47 conduct reviews.

A conduct review is not a hearing, but rather an informal review carried out by a Conduct Review Subcommittee composed of one or two Benchers or of a Bencher and a non-Bencher practitioner. This subcommittee considers any conduct issues and prepares a report and recommendations. It may recommend that the Discipline Committee take no further action on a complaint against a lawyer (although the Subcommittee may recommend that the lawyer take certain steps to rectify a matter or prevent future problems in practice). If the matter is more serious, it may instead recommend that the Discipline Committee issue a citation or refer the lawyer to the Practice Standards Committee.

In 2003 a new Conduct Review Task Force, chaired by Peter J. Keighley,

2003 complaint files by area of practice\*



\* This chart reflects the percentage of complaint files by area of law for all 2003 complaints in which the area of law is identified.

QC, was struck to study three main issues: What works in the conduct review process? What doesn't work? What changes or improvements are needed? The Task Force, chaired by Ian Donaldson, QC in 2004, intends to make a report and recommendations to the Benchers.

As noted in "Highlights of the year," the Law Society's Disclosure and Privacy Task Force is engaged in a review of all the Law Society Rules, with a view to greater transparency in Law Society regulatory processes and appropriate protections for privacy interests. In 2002 and 2003 the Task Force reviewed the complaints and discipline process and recommended a number of rule changes that were approved by the Benchers.

The Law Society's complaints process is confidential, and the Society

reports out only to the complainant and lawyer to ensure the integrity of an investigation, fairness to the lawyer's reputation and privacy of the complainant. This confidentiality, however, is untenable for matters that have already become known to the public, such as through media reports. In those instances, it is important the Society not be put in the position of refusing to comment on what is already publicly known and what could be vulnerable to misinterpretation. In such situations, Rule 3-3 permits the Society to comment publicly on the existence and status of a complaint. The Rule has been amended to clarify that the Society, in explaining the status of a publicly known complaint, may say if a matter is under investigation and if a file has been opened or closed and



## Professional conduct and discipline

### Complaint files by type of conduct alleged

Type of file	2001	2002	2003
<b>Complaints:</b>			
Abuse of process	30	21	21 (1.5%)
Advertising	6	7	13 (.9%)
Breach of Act or rules	52	33	44 (3.2%)
Breach of confidentiality	15	11	18 (1.3%)
Breach of undertaking	27	50	53 (3.9%)
Conduct unbecoming	14	25	23 (1.7%)
Conflict of interest	85	56	77 (5.7%)
Counselling/engaging in unlawful conduct	5	5	7 (.5%)
Court: missed limitation/disrespect	11	7	7 (.5%)
Criminal/quasi-criminal conduct	6	11	16 (1.2%)
Delay/inactivity	50	64	72 (5.3%)
Discrimination	4	4	1 (.1%)
Dissatisfaction with legal service	228	253	224 (16.4%)
Error/negligence/incompetence	61	55	57 (4.2%)
Failure to communicate/respond	112	130	129 (9.5%)
Failure to follow /obtain client instructions	19	15	35 (2.6%)
Fees	60	63	71 (5.2%)
Miscellaneous/unclassifiable	33	64	47 (3.5%)
Misleading/dishonest conduct	93	74	71 (5.2%)
Office management/employee supervision	14	13	8 (.6%)
Opposing party: direct contact/dissatisfaction	162	159	136 (10.0%)
Personal problems affecting practice	4	4	7 (.5%)
Rudeness	36	32	30 (2.2%)
Sharp practice	42	20	24 (1.8%)
Threatening	24	25	35 (2.6%)
Trust defalcation	30	15	26 (1.9%)
Unpaid creditor/disbursement	58	94	64 (4.7%)
Withdrawal from case	17	10	14 (1.0%)
Withholding file/funds	<u>50</u>	<u>56</u>	<u>32</u> (2.3%)
<b>Total complaint files opened</b>	<b>1,348</b>	<b>1,376</b>	<b>1,362</b>
<b>Public enquiry files opened*</b>	<b><u>213</u></b>	<b><u>214</u></b>	<b><u>226</u></b>
<b>Total complaints and public enquiries</b>	<b><u>1,561</u></b>	<b><u>1,590</u></b>	<b><u>1,588</u></b>
<b>Files closed</b>	<b>1,733</b>	<b>1,655</b>	<b>1,602</b>

\* In addition to complaint files, the Law Society opens files for all written public enquiries about lawyer conduct (in which no particular lawyer is identified) or enquiries that do not relate to lawyer competency or conduct, but to some aspect of the legal system. The Professional Conduct Department staff also routinely offer information by telephone about lawyers in general, the Law Society and justice system.

may explain the basis for closing a file.

Once a complaint is in the public eye, the Society will disclose information on any subsequent steps taken, if requested. If the Discipline Committee orders a conduct review respecting such a complaint, the order can be disclosed along with any action taken with respect to the conduct review report.

The profession can be proud that the Law Society has maintained a public discipline process for more than 20 years. Citations against lawyers (formal charges that can lead to a hearing) are disclosable, discipline hearings are open to the public and hearing panel reports are publicly available. Following changes in 2003, the Rules not only maintain this transparency, but improve accessibility.

Citations, including a description of the counts at issue, are now posted on the Society's website, as are hearing reports. If a lawyer applies not to be named in a report, a panel may order anonymous publication of the report only if the lawyer has not been suspended or disbarred and if publication of the matter will result in grievous harm to the respondent or another identifiable individual that outweighs the interest of the public and the Society in full publication. There is no longer scope for a respondent lawyer to apply for non-publication of a hearing report.

The Task Force addressed the protection of privileged, confidential and private information in several respects, and a new rule requires that these matters be raised at pre-hearing conferences.

The rules, as amended, are set out in Parts 3, 4 and 5 of the Law Society Rules.

*continued on page 15*

## Disposition of complaints and public enquiries closed in 2003

	# of files	% of all files
Reconciled/resolved <sup>1</sup>	187	11.7%
Minor misconduct	43	2.7%
Minor error	66	4.1%
Referred to Discipline Committee	160	10.0%
Referred to Practice Standards Committee	35	2.2%
Misconduct not established after investigation <sup>2</sup>	690	43.1%
Complaint withdrawn/abandoned	37	2.3%
Outside Law Society jurisdiction: complainant advised of possible civil remedies <sup>3</sup>	<u>384</u>	23.9%
Total	<u>1,602</u>	

**Note 1:** Almost 12% of all complaints were reconciled or resolved between the lawyer and client, sometimes with Law Society assistance, such as through telephone complaint reconciliation. When there was minor misconduct or a minor error, this was often acknowledged by the lawyer and the acknowledgement conveyed to the client, without need for a discipline referral. 12.2% of complaints were sufficiently serious to warrant a referral to either the Discipline or Practice Standards Committee.

**Note 2:** After investigation, the Professional Conduct Department may determine that a complaint is invalid or that there is insufficient evidence to substantiate the allegation. When a complainant finds a staff determination unsatisfactory, he or she may in some circumstances have the matter reviewed by the Complainants' Review Committee.

**Note 3:** The Law Society frequently receives complaints that fall outside its jurisdiction, most commonly complaints of dissatisfaction over a lawyer's fees or services that do not amount to a conduct or competency concern for the Society. The Society explains the difference between its regulatory jurisdiction over lawyers and the complainant's legal options, which may include a fee review before a registrar.

### Actions taken by Discipline Committee

	2001	2002	2003
Citations	33	33	54
Admonishments from Discipline chair	17	16	30
Conduct reviews	<u>42</u>	<u>33</u>	<u>47</u>
Total	<u>92</u>	<u>82</u>	<u>131</u>

Note: For Practice Standards Committee statistics, see page 15.

### Disposition of citations

	2001	2002	2003
Admissions of guilt (Rule 4-21)	6	4	1
Resignations	—	—	—
Disbarments	2	2	1
Suspensions	7	4	9
Fines	5	7	8
Reprimands	5	6	6
Citation rescissions by Discipline Committee*	8	5	5
Citation dismissals by hearing panels	<u>3</u>	<u>—</u>	<u>—</u>
Total citations completed	<u>36</u>	<u>28</u>	<u>30</u>

\* May include matters referred for conduct review.

### Disposition of 2003 reviews by Complainants' Review Committee

No further action	70
Referred to Practice Standards Committee	2
Referred to Discipline Committee	<u>8</u>
Total	<u>80</u>

Note: A complainant who is dissatisfied with the staff's disposition of a complaint may ask the Complainants' Review Committee, which is chaired by a Lay Benchers, to reconsider the disposition. The Committee could find no grounds for further action on 87.5% of the 80 matters reviewed.

# Practice standards

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## Practice standards

Lawyers sometimes encounter problems in meeting the needs of their clients and the demands of practice, and may need help to get back on the right track.

The Practice Standards Committee, chaired by Gerald J. Kambeitz, QC in 2003, and the Practice Standards Department staff address competency issues in two ways:

- by assisting lawyers whose competency is in question achieve competency; and
- by restricting from practice incompetent lawyers who pose a danger to present or future clients.

When a lawyer is referred to the Practice Standards Committee by the Professional Conduct Department staff, the Complainants' Review Committee or the Discipline Committee, it is usually as a result of complaints. In other instances, a lawyer may be

referred by the Credentials Committee or may voluntarily self-refer.

Once the referral is made, the Practice Standards Committee may have the lawyer meet one-on-one with a senior practitioner to review files, have the lawyer undertake remedial work, review the lawyer's office systems or order a full practice review, which is conducted by a volunteer practitioner and a Law Society staff lawyer. Of the 24 new referrals to the Committee in 2003 that were reviewed by year-end, 13 resulted in a direction for a practice review and five resulted in a direction for the lawyer to meet one-on-one with a senior lawyer. As reflected in *2003 referrals to the Practice Standards Committee*, some lawyers agreed to practice restrictions and others to practice supervision arrangements. In two cases, the Committee referred the lawyers to the Discipline Committee.

Through practice reviews and recommendations, as well as follow-up

measures in the program, the focus is on remediation where possible and economically feasible for the lawyer. Lawyers who are struggling in practice may need to overcome, not only the shortcomings in their work, but any number of underlying problems — from financial difficulties, to depression, to personal or psychiatric problems. The Committee may find it necessary to ask a lawyer to restrict practice to certain areas or to work only under the supervision of another lawyer. For many lawyers, these steps have proved effective in stabilizing their practices and protecting clients.

In 2003 the Practice Standards Committee canvassed options for better follow-up on its recommendations. At present, the Committee can refer to the Discipline Committee those lawyers who are unwilling to make changes in their practice. The Committee cannot require a lawyer to follow its recommendations or penalize a lawyer who first agrees to the recommendations but later fails to comply with them.

During the year, the Committee reviewed its processes to ensure that, when any lawyers are referred to the Discipline Committee, the referral is supported by all the information necessary for the Discipline Committee to take further steps, including proceeding to a citation if that is warranted.

The Practice Standards Committee also contemplated legislative changes to strengthen the effectiveness of its work. In November, at the Committee's recommendation, the Benchers resolved to seek an amendment to the *Legal Profession Act*. The amendment would allow the Benchers, through the Practice Standards Committee, to impose on a lawyer any practice restrictions or conditions that have been recommended in a practice review — if the lawyer

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### 2003 referrals to the Practice Standards Committee

Lawyers referred	24
Results of referrals:	
Practice review ordered	13
Meeting with senior lawyer	5
Referred to Discipline Committee	–
Disposition of ongoing files:	
New practice restrictions	11
Practice supervision put in place	15
Referred to Discipline Committee	2
Matter completed to satisfaction of Practice Standards Committee (file closed)	21
Costs ordered	\$63,000

*The Practice Standards Committee considers referrals from Professional Conduct Department staff, the Discipline Committee or other sources, and takes remedial, rather than disciplinary, action to assist a lawyer who is having difficulty in practice.*

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### Help for lawyers

To serve clients effectively and practise law competently, lawyers have to commit to their own health and well-being, and that of their families. The Law Society funds two independent, confidential personal assistance programs to ease the burden on lawyers who are facing personal problems — Interlock and the Lawyers Assistance Program (LAP).

Interlock offers professional counselling and referrals for lawyers and their families on a range of personal or work-related problems, including relationship difficulties and stress — on a self-referral basis. Interlock has registered psychologists, social workers, clinical counsellors and addiction specialists available in many BC communities. In 2003 Interlock provided services to 461 new clients — 368 lawyers and students and 93 family members (a sharp increase over 2002). The most common consultation involved couples and family concerns (27%), followed by workplace stress (10%) and other personal/emotional issues (18%). A 2003 survey revealed a high level of satisfaction with Interlock services.

The Lawyers Assistance Program relies on a network of over 225 volunteers in the profession, reflecting the program philosophy of “lawyers helping lawyers.” LAP takes self-referrals and organizes some interventions. The program helped 317 new people in 2003. Just over 73% were lawyers, 10% were family members, 7% were firm employees and 3% were articulated students. LAP also hosted two conferences, AA retreats, volunteer training, “healthy living” workshops, ongoing support groups and career planning workshops.

refuses the recommendations or fails to comply with them. The Law Society has since requested a legislative amendment that it hopes will move forward in 2005, and the Benchers intend to pass rules to ensure there are procedural safeguards for lawyers who appear before the Committee.

Overall responsibility for the accreditation of family law mediators falls as one of the Committee’s responsibilities. In 2003 the Committee approved a new course of study in family law mediation, including some Justice Institute courses, as an alternative to the 40-hour (five-day) Family Law Mediation Course offered by the Continuing Legal Education Society of BC. Until now, the CLE course was the only one approved by the Law Society for the accreditation of family law mediators. This change offers lawyers additional flexibility.

A lawyer seeking to have other courses approved as equivalents must make application to the Practice Standards Committee.

Finally, the Committee asked one of its members, Benchers Ross Tunnicliffe, to assist the Lawyer Education Task Force in reviewing post-call education that could assist in the remediation of lawyers.

### Equity and diversity

The Equity and Diversity Committee, chaired by Anne K. Wallace, QC in 2003, assists the Benchers in developing policy on diversity issues, including multiculturalism, gender equality, disability and sexual orientation.

During the year, the Committee’s Women in the Legal Profession Working Group, chaired by Benchers Margaret Ostrowski, QC, contemplated updating its research on gender equality in the profession to compare with research undertaken a decade earlier. The working group is looking at several initiatives, including

confidential exit surveys for lawyers leaving the profession, to ascertain the reasons for the departure and whether discrimination is a concern.

In an effort to encourage and support aspiring lawyers, Ms. Ostrowski, along with lawyer Michiko Sakamoto-Senge and Equity Ombuds-person Anne Chopra, organized panel presentations and round table discussions with students at UBC and UVic law schools in the spring of 2003. Senior women lawyers led the discussion, and students (both men and women) turned out in large numbers. They embraced the opportunity to learn more about the realities of practice and to raise questions about career expectations, working hours and mentoring in law firms and other legal workplaces.

On another front, the Disability Research Working Group, chaired by lawyer Halldor Bjarnason, completed the second phase of its study in 2003. The working group canvassed different approaches to overcoming the attitudinal and physical barriers that challenge people with disabilities who seek a legal education and a career in law. The working group looked at the legal obligations of law firms and other employers, including the duty not to discriminate and the duty to make accommodations. Through a federal funding grant, the working group hosted a forum in October for senior practitioners to find ways to raise awareness about barriers to practice, strategies to address those barriers and help for firms in implementing new approaches. What became clear was the importance of dispelling fears or presumptions that lawyers may have about practising with other lawyers who have disabilities. Not only are lawyers with disabilities capable and talented, but often the accommodations they require are quite straightforward and not necessarily expensive.

## Unauthorized practice

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The working group's report and recommendations will be released in the fall of 2004.

An ongoing priority for the Committee is to support BC lawyers and articulated students through services and education. The Equity Ombuds-person, Anne Chopra, assists anyone in a law firm who has a complaint of discrimination or harassment, such as by canvassing options to address the problem. She has also assisted law firms in preventing discrimination and promoting a healthy work environment. Funded by the Law Society, Ms. Chopra's services are independent and confidential.

2003 was the second year of a three-year project of the Law Society to fund Aboriginal law modules for course curricula at the UBC and UVic law schools. Through the work of summer student researchers, UBC and UVic have prepared new course modules on criminal law, real property law, constitutional law, administrative law, contracts, torts, evidence, civil procedure, family law and succession. Education within the Law Society on equity and diversity issues is also important, and Aboriginal issues were a focus in 2003. Lay Benchers and Committee Vice-Chair Patrick Kelly made presentations to the Benchers and staff to help them gain a better understanding of the historical, social and political framework that influences Aboriginal perspectives.

### Unauthorized practice

The Law Society is responsible under the *Legal Profession Act*, not only for setting and upholding regulatory standards for lawyers, but for ensuring that unqualified people do not illegally offer legal services or misrepresent themselves as lawyers. This responsibility exists to protect the public from a loss of rights, money or both, which are often at

stake in legal matters.

The Society investigates complaints of unauthorized practice and takes the steps necessary to stop it. If the facts bear out a complaint, the Society will explain the restrictions that apply to law practice and will ask the non-lawyer to refrain from the activity. Usually this step is sufficient. When it is not, the Society has statutory authority to seek a court injunction, which may proceed by consent.

Through the work of the 2003 Unauthorized Practice Committee, chaired by Gerald J. Kambeitz, QC, the Law Society obtained 26 undertakings and covenants from non-lawyers to refrain from unauthorized practice, two consent injunctions and two other injunctions.

The Law Society publicizes undertakings and court actions to ensure the community understands this aspect of the Society's mandate, and also to gain the assistance of lawyers and members of the public in recognizing new or recurring unauthorized practice.

In 2003 the Committee reviewed a range of complaints, such as those of non-lawyers preparing separation agreements or divorce papers, incorporation documents and wills or probate documents. In some cases the non-lawyers offered counsel services before a court or administrative tribunal or were representing themselves as lawyers.

During the year, the Law Society heard complaints that some ICBC adjusters had discouraged claimants from seeking the assistance of lawyers. According to that information, the adjusters had told claimants that, if they sought the assistance of lawyers, any payments being made on their behalf (such as those for chiropractic treatment or physiotherapy) would be discontinued until their claims were settled.

The Law Society immediately expressed concern to ICBC. In response, the President of ICBC acknowledged that, while ICBC would prefer to settle claims without litigation, claimants are entitled to legal representation if they wish it and adjusters should not be discouraging claimants from seeking legal advice. ICBC asked that any lawyers or clients who have concerns about an adjuster bring these to the attention of that adjuster's manager. The Law Society, in turn, has asked lawyers to copy the Society with any correspondence, if the client consents.

Another point of concern for the Unauthorized Practice Committee in 2003 was non-lawyers appearing on behalf of employers or employees on workers' compensation matters. Following intensive government lobbying efforts by lay representatives, and despite public protection concerns raised by the Law Society, lay persons were given scope to appear before the Workers Compensation Board, an officer or employee of the Board or the appeal tribunal and to give advice on WCB matters under the *Skills Development and Labour Statutes Amendment Act No. 2 (Bill 37)*. The Bill passed Third Reading in October and came into effect at the end of 2003.

Lay representatives are unregulated and uninsured, and the Law Society no longer has jurisdiction to prevent them from offering services in workers' compensation cases. As a result, the public is now at risk. This risk is particularly acute for individual workers or small business people who may entrust their rights and money to individuals who prove incompetent or unscrupulous.

The Law Society has urged the provincial government to regulate lay representatives in some manner to ensure the public has a minimum of protection. The Society took a similar position with the federal government

when government decided that lay immigration consultants should be accorded a scope of practice.

### Special Compensation Fund

The Special Compensation Fund Committee, chaired by Peter J. Keighley, QC, was extremely busy in 2003 assessing and paying out claims, primarily those relating to the practice of former lawyer Martin Wirick.

The Committee found that Mr. Wirick had misappropriated or wrongfully converted funds in real estate transactions and applied those funds to other purposes, in breach of his undertakings. Mr. Wirick resigned as a member of the Law Society in May, 2002, and the Society immediately began an investigation and audit. Following a discipline hearing, Mr. Wirick was disbarred. The Benchers changed the Law Society Rules to remove the \$17.5 million cap on the amount of compensation that the Committee could authorize in a calendar year. As a further initiative, the Law Society retained a lawyer to assist innocent homeowners who might face foreclosure because of

Mr. Wirick's misappropriations or wrongful conversions.

The Special Compensation Fund, which is financed entirely by BC lawyers, has compensated people for loss suffered through theft by a lawyer acting in that capacity since its inception in 1949. Payment from the Fund is discretionary and determined by the Special Compensation Fund Committee.

Although instances of misappropriation are rare, the legal profession believes that clients who lose money because of the actions of a few dishonest lawyers should not suffer financial hardship. Lawyers value the public's trust and do not want to see the integrity and reputation of the profession stained by the dishonest actions of a few. It is for this reason that the Law Society provides compensation to people who lose money through a lawyer's misappropriation.

As at December 31, 2003, the Special Compensation Fund Committee reviewed 165 of the Wirick claims, in which a total of \$30 million was claimed (including various duplicate

or overlapping claims in the transactions at issue). The Committee had approved the payment of \$15 million of these claims and denied \$7 million, since this latter amount related to duplicate or overlapping claims. The Committee adjourned for further consideration claims totalling \$8 million.

The Special Compensation Fund holds an insurance bond for 2002 under which a commercial insurer reimburses the Fund for all claims relating to that year that exceed \$2.5 million (to a maximum reimbursement of \$15 million for the period). All of the Wirick claims fall into the 2002 bond period, regardless of when they were assessed or paid.

The Special Compensation Fund assessment paid by all practising lawyers was \$250 in 2002, which the Benchers resolved to increase to \$600 in 2003 and 2004. That increase was needed to cover audit and investigation costs, to pay claims and to increase the Special Compensation Fund reserves.

For more information and the financial statements of the Fund, see pages 27 to 29.

As in all matters in which lawyer integrity comes into question, the Benchers have recognized that the Wirick case could have a devastating effect on public confidence in the profession. The Society shouldered its responsibilities on behalf of BC lawyers. In addition to maintaining the Fund, the Society continued to reinforce its preventive programs. As noted in "Highlights of the year" on page 4, this included working on more rigorous and effective trust review requirements and greater accountability and transparency in the conveyancing process, in particular over mortgage discharges.

In December the Benchers approved a plan for the Lawyers Insurance

### Special Compensation Fund claims paid (1999 – 2003)

Year	\$ Paid	No. of paid claims involved	No. of lawyers
1999	45,692	2	2
2000	363,022	10	5
2001	1,035,959	10	4
2002	5,326,205	36	8
2003	10,150,562	37	7

*Of the \$10,150,562 paid in 2003, \$9,760,745 related to claims against former lawyer Martin Wirick's practice and \$389,817 related to claims against six other lawyers.*



## Lawyers Insurance Fund

Fund (through the LSBC Captive Insurance Company Ltd.) to provide insurance coverage to the legal profession to cover claims arising from the misappropriation of money or property by any BC lawyer.

The trust protection coverage is in effect for claims discovered on or after May 1, 2004. The Special Compensation Fund will continue to process claims discovered prior to that date.

### Lawyers Insurance Fund

All BC lawyers in private practice are required to carry liability insurance for legal malpractice — an important financial protection for the profession and, in turn, the members of the public they serve. Under the compulsory professional liability insurance program, an insured lawyer carries \$1 million of coverage for each error, to an annual maximum of \$2 million for all errors reported during the year.

In 2003 the Lawyers Insurance Fund (LIF) continued to meet its objective of managing claims in a cost-effective manner, balancing the interests of the public, members of the profession and the Law Society. Crawford Adjusters Canada examined LIF's success in this regard by conducting an independent claims audit and presenting its report to the Benchers in September. The results of the audit were extremely positive: LIF was accorded an overall score of 2.9 out of a maximum of 3.0 points. The auditors found that LIF was highly effective at managing and resolving claims within its mandate. The overall results of the audit are aptly summarized by this statement from the report:

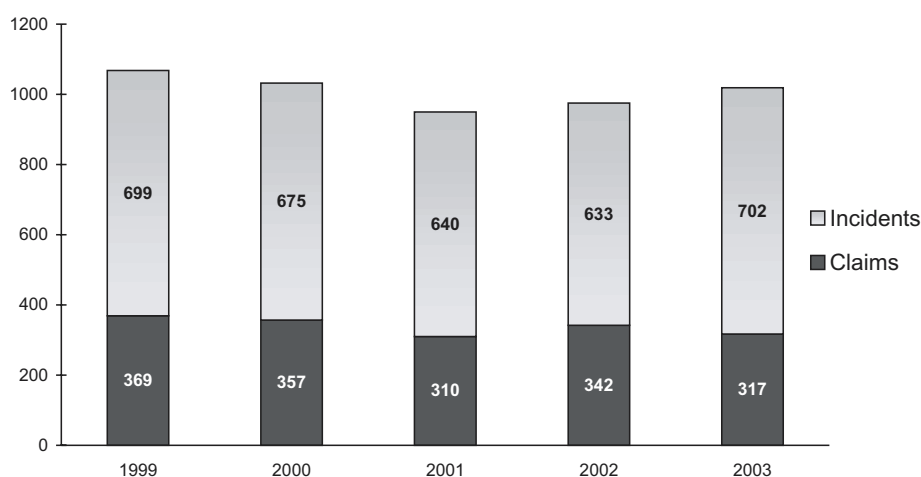
*... The Lawyers Insurance Fund has attained a level of quality and consistency that should be the envy of the insurance industry.*

LIF receives approximately 1,000 reports annually: see *Claim and incident reports 1999–2003*. BC lawyers remain

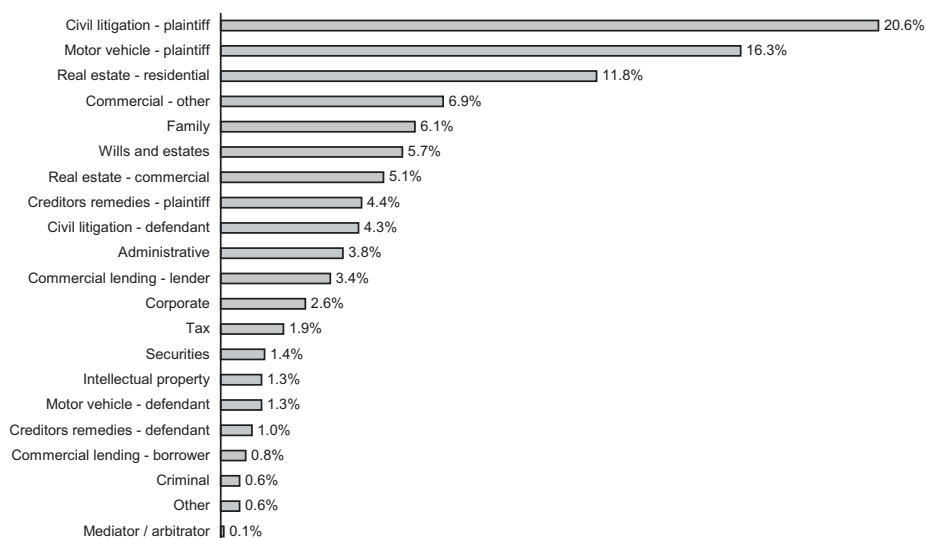
diligent about reporting potential claims early. Roughly one-third of all reports are categorized as actual claims and the balance as incidents, or potential claims. Early reporting has allowed for better management of the program and, over the past five years, at least 70% of all reports were

closed without payment of either settlement funds or defence costs. Of the reports closed in 2003, no claims developed in 43%, claims were abandoned or the claimant dissuaded in 23% and claims were dismissed pre-trial in 5%. Claims Counsel again made concerted efforts to repair

Claim and incident reports 1999 – 2003



Insurance reports by area of law – 2003



claims and successfully resolved the problem in 13% of the files closed.

The chart *Insurance reports by area of law – 2003* sets out the percentage of reports received in 2003, broken down by area of practice. Plaintiff civil actions constituted the two leading areas of claims at nearly 37% (including motor vehicle claims at 16% and other civil actions at 21%). Residential real estate followed at 12% and commercial matters at 7%.

Insufficient review by lawyers and poor client communication continued as the leading causes of loss to the program, together accounting for nearly half of the reports to LIF. Inadequate office procedures and systems followed at 12%.

The survey of insured lawyers, conducted at the time files are closed, continues to show a high level of satisfaction with LIF's claims handling. In 2003, 96% of survey respondents gave a high approval rating (4 or 5 on a scale of 1 to 5) on the handling of their claims, 93% on the outcome of their claims, 97% on the work of LIF Claims Counsel and 92% on the services provided by defence counsel.

When the new national mobility agreement took effect on July 1, 2003 (see "Highlights of the year" on page 4), new insurance implications also came into play. Although BC's insurance program already satisfied the requirements of the new regime in most respects, minor changes were made to comply fully with the agreements reached with the other insurers. As a result, BC's compulsory policy satisfies the insurance requirements for a BC lawyer who is eligible to practise temporarily in another jurisdiction. In addition, while lawyers who are members of more than one Canadian law society have always been entitled to claim an exemption from the requirement to buy insurance in BC in certain circumstances, there is now an exemption tailored specifically for

lawyers who are members of more than one reciprocating law society.

LIF continued with its implementation of two initiatives from 2002: insurance for those employed lawyers who provide public legal services and free insurance for lawyers not otherwise insured (generally, retired, non-practising and in-house counsel) for certain pro bono services.

Two *Alert!* bulletins, intended to encourage preventive action to avoid professional liability claims, were published by LIF and distributed to the profession in 2003. One was directed at lawyers avoiding allegations of "bad faith" and professional negligence in defending third-party liability claims. The other flagged a recent court decision that found a special resolution authorizing legal action by a strata corporation is required before an action is commenced.

In December, 2003, the Benchers approved a plan for the Lawyers Insurance Fund (through the LSBC Captive Insurance Company Ltd.) to provide insurance coverage to the legal profession to cover claims arising from the misappropriation of money or property by any BC lawyer. That plan has since been implemented and, as of May 1, 2004, Part B of the policy provides "trust protection" coverage.

The profession as a whole can have confidence in the integrity of the Lawyers Insurance Fund and in the Fund's sound financial position, both to compensate the public and to provide reasonable protection for lawyers from malpractice. For detailed financial information, see the Lawyers Insurance Fund financial statements on pages 30 to 33 and also "Finances" below.

### Finances

The Society carries out its duties through three funds, which are

financed by BC lawyers through annual assessments and other fees:

- General Fund — the primary source of funding for Society regulation, programs and services;
- Liability Insurance Fund — a fund to provide errors and omissions insurance coverage for lawyers for professional services;
- Special Compensation Fund — a fund to reimburse those who suffer a loss as a result of lawyer theft.

The 2003 audited financial statements for these funds are set out on pages 22 to 33 of this report. These statements reflect the presentation and disclosure standards of the Canadian Institute of Chartered Accountants respecting not-for-profit organizations.

All funds are financed and accounted for separately. The Lawyers Insurance Fund and Special Compensation Fund both make a proportionate contribution to the General Fund for Law Society facilities, administrative services and some program expenses. These expenses are incurred within the General Fund budget and recovered from the other two Funds.

The Audit Committee, chaired by Robert W. McDiarmid, QC in 2003, assists the Benchers in determining that the financial affairs of the Society are properly managed by Law Society staff. This includes reviewing financial statements of the General, Liability Insurance and Special Compensation Funds prior to submission to the Benchers, providing an annual Audit Committee report to the Benchers and reviewing with the Law Society auditors their approach, the scope of the their audit and the audit results.

The General Fund provides the resources for most programs of the Society and receives a majority of its

## Finances

revenue from the Law Society fee paid by practising lawyers.

The pie chart *2003 General Fund expenditures* shows the gross program costs of the main Law Society programs as a percentage of the General Fund's total cost. The cost of each program includes all related space and staffing costs.

Although practice fee revenues were slightly lower than budgeted in 2003, overall revenues in the General Fund exceeded budget projections. This increase resulted from interest and other income as well as various filing fees, fines, penalties and cost recoveries. Expenses were under budget in a number of program areas, including general administration and operations, Law Society building

operations, policy and planning, communications, discipline, trust review and audit and legal expenses.

As a result of strong revenues and expenses remaining under budget in several areas, the General Fund recorded a budget surplus of \$2.14 million in 2003, which left the Fund with a reserve of just over \$3.5 million at year-end. This result allowed the Benchers to propose a reduction in the Law Society component of the practice fee.

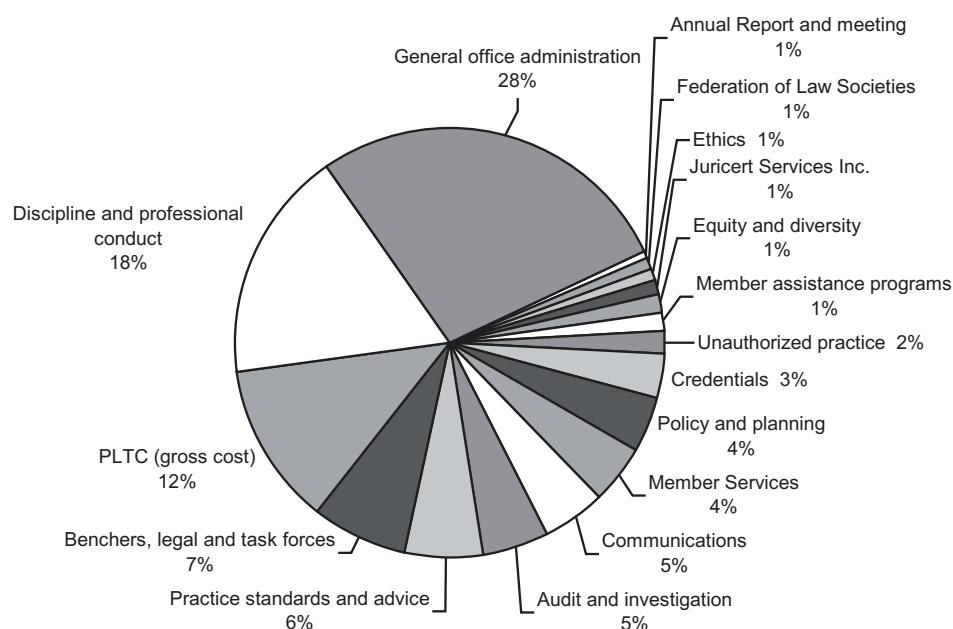
The Special Compensation Fund reserve was just over \$4 million at the end of 2003, slightly higher than at the end of 2002. The Wirick claims, described in the Special Compensation Fund section of this report, have resulted in increased custodianship,

counsel and investigations expenses. Primarily as a result of the Wirick matter, a significant claims inventory remains for consideration, although good progress has been made in the processing of these claims.

In 2003 the Lawyers Insurance Fund had revenues of \$13.7 million and expenses of \$13.8 million (including just under \$10.2 million as provision for claims). The Fund ended the year with a reserve of just under \$17 million, down slightly from 2002. The financial strength of this Fund is reflected in the stability of insurance assessments that BC lawyers have enjoyed over the past several years.

All funds of the Society remain financially sound.

### 2003 General Fund expenditures



*This chart shows gross program expenditures as a percentage of total 2003 General Fund expenditures.*



**GENERAL FUND  
SPECIAL COMPENSATION FUND  
LAWYERS INSURANCE FUND**

## **AUDITORS' REPORT**

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

We have audited the statements of financial position of **The Law Society of British Columbia – General Fund, Special Compensation Fund and Lawyers Insurance Fund** as at December 31, 2003 and, for each of these Funds, the statements of revenue and expense, changes in net assets and cash flows for the year then ended. These financial statements are the responsibility of the Funds' management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and

disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Funds as at December 31, 2003 and the results of their operations, the changes in their net assets and their cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

*PricewaterhouseCoopers LLP*

Vancouver, B.C.  
April 30, 2004

Chartered Accountants

# Consolidated Financial Statements

For the year ended December 31, 2003

## CONSOLIDATED STATEMENT OF FINANCIAL POSITION as at December 31, 2003

	2003 \$	2002 \$
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	979,704	6,858,077
Unclaimed trust funds	522,420	538,919
Accounts receivable and prepaid expenses	523,905	360,289
B.C. Courthouse Library Fund (note 2)	311,677	385,824
Due from Lawyers Insurance Fund (note 6)	6,697,498	1,921,772
Due from Special Compensation Fund (note 6)	<u>1,759,029</u>	<u>3,972,084</u>
	10,794,233	14,036,965
<b>Property, plant and equipment</b>		
Cambie Street property – net (note 3)	12,806,965	12,824,862
Other – net (note 3)	<u>1,251,546</u>	<u>1,246,429</u>
	<u>24,852,744</u>	<u>28,108,256</u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Accounts payable and accrued liabilities	7,033,516	9,803,500
Liability for unclaimed trust funds	522,420	538,919
Current portion of building loan payable (note 5)	500,000	500,000
Deferred revenue	4,277,798	6,307,978
B.C. Courthouse Library Grant (note 2)	311,677	385,824
Deposits	<u>83,466</u>	<u>92,306</u>
	12,728,877	17,628,527
<b>Long-term debt</b>		
Building loan payable (note 5)	<u>8,600,000</u>	<u>9,100,000</u>
	<u>21,328,877</u>	<u>26,728,527</u>
<b>Net assets</b>		
Invested in property, plant and equipment – net	4,958,512	4,471,290
Unrestricted	<u>(1,434,645)</u>	<u>(3,091,561)</u>
	<u>3,523,867</u>	<u>1,379,729</u>
	<u>24,852,744</u>	<u>28,108,256</u>

## CONSOLIDATED STATEMENT OF CHANGES IN NET ASSETS

	2003		2002
	Invested in property, plant and equipment – net of associated debt	Unrestricted	Total
	\$	\$	\$
<b>Net assets – beginning of year</b>	4,471,290	(3,091,561)	1,379,729
Net (deficiency) excess of revenue over expense for the year	(729,626)	2,873,764	2,144,138
Repayment of associated debt	500,000	(500,000)	–
Purchase of property, plant and equipment	<u>716,848</u>	<u>(716,848)</u>	<u>–</u>
<b>Net assets – end of year</b>	<u>4,958,512</u>	<u>(1,434,645)</u>	<u>3,523,867</u>

Approved by



President



Chair of Audit Committee

**Consolidated Financial Statements**

For the year ended December 31, 2003

**CONSOLIDATED STATEMENT OF  
REVENUE AND EXPENSE**

	2003 \$	2002 \$
<b>Revenue</b>		
Practice fees	8,628,295	9,791,895
Enrolment fees	812,128	844,230
Application fees	362,943	342,320
Fines and penalties	315,398	193,008
Interest and other income	<u>1,041,609</u>	<u>588,185</u>
	<u>11,160,373</u>	<u>11,759,638</u>
<b>Expense</b>		
Amortization of other property, plant and equipment	332,359	252,556
Annual report and meeting	83,030	139,432
Audit and investigation	632,940	629,377
Benchers and other committee meetings	776,850	969,213
British Columbia Courthouse Library Society	—	1,144,000
Communications and publications	602,752	518,768
Credentials	407,911	477,945
Discipline and complaints	2,204,305	2,166,872
Equity and diversity	183,928	196,562
Ethics	118,083	119,478
Federation of Law Societies' contribution	82,483	114,303
General office administration	3,173,733	2,928,188
Member information group	563,565	516,481
Membership assistance programs	184,780	432,460
Non-program legal	148,888	267,772
Policy and planning	532,871	388,331
Practice advice	498,851	555,780
Practice standards	207,766	189,641
Professional Legal Training Course	1,526,456	1,480,065
Unauthorized practice	<u>194,662</u>	<u>199,998</u>
	<u>12,456,213</u>	<u>13,687,222</u>
Costs recovered from Special Compensation and Lawyers Insurance Funds		
Co-sponsored program costs	(1,536,282)	(1,727,384)
Administrative	<u>(1,603,744)</u>	<u>(1,448,251)</u>
	<u>9,316,187</u>	<u>10,511,587</u>
<b>Excess of revenue over expense before the following</b>	<u>1,844,186</u>	<u>1,248,051</u>
<b>Juricert expenses</b> (note 1)	<u>(129,758)</u>	<u>(502,118)</u>
<b>Cambie Street property operating costs – net</b> (note 4)	<u>429,710</u>	<u>(22,964)</u>
<b>Net excess of revenue over expense for the year</b>	<u><u>2,144,138</u></u>	<u><u>722,969</u></u>

**CONSOLIDATED STATEMENT OF  
CASH FLOWS**

	2003 \$	2002 \$
<b>Cash flows from operating activities</b>		
Net excess of revenue over expense for the year	2,144,138	722,969
Items not affecting cash		
Amortization of Cambie Street building and tenant improvements	397,269	654,606
Amortization of other property, plant and equipment	<u>332,359</u>	<u>252,556</u>
	<u>2,873,766</u>	<u>1,630,131</u>
Decrease (increase) in current assets		
Unclaimed trust funds	16,499	(74,842)
Accounts receivable and prepaid expenses	(163,616)	93,219
B.C. Courthouse Library Fund	74,147	45,026
Due from Lawyers Insurance Fund	(4,775,726)	7,649,543
Due from Special Compensation Fund	2,213,055	(3,205,708)
Increase (decrease) in current liabilities		
Accounts payable and accrued liabilities	(2,769,984)	3,047,577
Liability for unclaimed trust funds	(16,499)	66,537
Deferred revenue	(2,030,180)	(2,541,232)
B.C. Courthouse Library Grant	(74,147)	(45,026)
Deposits	<u>(8,840)</u>	<u>(4,448)</u>
	<u>(4,661,525)</u>	<u>6,660,777</u>
<b>Cash flows from financing activities</b>		
Decrease in long-term debt – net	(500,000)	(500,000)
<b>Cash flows from investing activities</b>		
Property, plant and equipment additions – net	<u>(716,848)</u>	<u>(355,449)</u>
<b>(Decrease) increase in cash and cash equivalents</b>	<u>(5,878,373)</u>	<u>5,805,328</u>
<b>Cash and cash equivalents – beginning of year</b>	<u>6,858,077</u>	<u>1,052,749</u>
<b>Cash and cash equivalents – end of year</b>	<u><u>979,704</u></u>	<u><u>6,858,077</u></u>
<b>Represented by</b>		
Cash	<u>979,704</u>	<u>6,858,077</u>



# Consolidated Financial Statements

For the year ended December 31, 2003

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### 1. Nature of operations and basis of presentation

#### Description of the Fund

The General Fund (the Fund) comprises the assets, liabilities, net assets, revenue and expense of the operations of The Law Society of British Columbia (the Society) other than those designated to the statutory Special Compensation and Lawyers Insurance Funds. The Society is a not-for-profit organization and the Fund is considered to be non-assessable under current income tax legislation.

The Society, as the initial shareholder, incorporated a company called Juricert Services Inc. (Juricert) in September 1999 for the purpose of establishing a process of electronic authentication of lawyers. Juricert commenced initial operations in 2000. As at December 31, 2003, the Society remained the sole shareholder of Juricert.

#### Basis of presentation

These financial statements include the accounts of the company's wholly owned subsidiary, Juricert.

### 2. Significant accounting policies

#### Allocated administrative expenses

Administrative expenses are recovered by the Fund from both the Lawyers Insurance and Special Compensation Funds. Recoveries are based on budgeted amounts derived either on a percentage of use or the percentage of the Fund's staff as compared to the Society's total direct program staff.

#### Allocated rental revenue

The Cambie Street property is treated as a separate cost centre. Allocated rental revenue represents rent allocated to each of the Funds. Rental revenue allocated to the Fund has not been eliminated in the preparation of these financial statements.

#### Amortization

Amortization is provided on a straight-line basis as follows:

Buildings	2½% per annum
Computer hardware	20% per annum
Computer software	10-20% per annum
Furniture and fixtures	10% per annum
Leasehold improvements	10% per annum

Tenant improvements are amortized over the term of the lease to which they relate. The Society recognizes a full year's amortization expense in the year of acquisition.

#### B.C. Courthouse Library Fund

The Society administers funds held on behalf of the B.C. Courthouse Library. Such funds are held in trust and the use of the funds is not recorded in the statement of revenue and expense of the Fund. Beginning 2003, the Society grants money to the B.C. Courthouse Library by fees per lawyer assessment.

#### Cash and cash equivalents

Cash and cash equivalents comprise cash on hand, demand deposits, and short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of change in value.

#### Revenue recognition

The Society follows the deferral method of accounting for annual fees. Fees are billed and received in advance on a calendar-year basis. Accordingly, fees for the next fiscal year received prior to December 31 have been deferred 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.

#### Unclaimed trust funds

The Fund recognizes a liability for unclaimed trust funds on the 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 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 statement of revenue and expense. Unclaimed funds outstanding for more than five years are transferred to the Law Foundation.

#### Use of estimates

The preparation of financial statements in conformity with Canadian generally accepted accounting principles 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 financial statements and revenues and expenses for the period reported. Actual results could differ from those estimates.

### 3. Property, plant and equipment – Cambie Street property and other

#### Cambie Street property

	2003		2002	
	Cost	Accumulated amortization	Net	Net
	\$	\$	\$	\$
Land	4,189,450	–	4,189,450	4,189,450
Buildings	11,340,812	3,305,098	8,035,714	8,259,321
Leasehold improvements	3,318,833	2,890,375	428,458	259,785
Tenant improvements	<u>1,085,930</u>	<u>932,587</u>	<u>153,343</u>	<u>116,306</u>
	<u>19,935,025</u>	<u>7,128,060</u>	<u>12,806,965</u>	<u>12,824,862</u>

(continued on page 26)

**Consolidated Financial Statements**

For the year ended December 31, 2003

**3. Property, plant and equipment – Cambie Street property and other (continued)****Other property, plant and equipment**

	2003		2002	
	Cost	Accumulated amortization	Net	Net
	\$	\$	\$	\$
Furniture and fixtures	1,806,486	1,351,415	455,071	388,828
Computer hardware	1,206,036	981,039	224,997	253,810
Computer software	1,378,417	806,940	571,477	603,790
Law libraries – at nominal value	<u>1</u>	<u>–</u>	<u>1</u>	<u>1</u>
	<u>4,390,940</u>	<u>3,139,394</u>	<u>1,251,546</u>	<u>1,246,429</u>

**4. Cambie Street property operating costs – net**

	2003	2002
	\$	\$
Rental revenue	470,842	437,272
Allocated rental revenue	<u>1,142,468</u>	<u>1,033,229</u>
	<u>1,613,310</u>	<u>1,470,501</u>
Expense		
Amortization	397,269	654,606
Insurance	62,936	43,380
Net loan interest	205,053	305,281
Property management salaries	156,334	151,589
Property taxes	278,376	275,917
Repairs and maintenance	260,559	253,045
Utilities	115,979	103,882
Recovery from tenants	<u>(292,906)</u>	<u>(294,235)</u>
	<u>1,183,600</u>	<u>1,493,465</u>
Net operating costs	<u>429,710</u>	<u>(22,964)</u>

**5. Building loan payable**

In 1992, the Benchers authorized the lending of monies from the Lawyers Insurance Fund to fund the capital development of the

Society's buildings at 839 and 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 yield to maturity earned on the Lawyers Insurance Fund bond investment portfolio. It is the intention of the Fund to repay a minimum of \$500,000 of the principal each year. During 2003, principal of \$500,000 (2002 – \$500,000) was repaid.

	2003	2002
	%	%
Weighted average rate of interest	<u>2.78</u>	<u>4.12</u>

**6. Interfund transactions**

The operations of the Fund, the Lawyers Insurance Fund and the Special Compensation Fund are controlled by the management of the Society. Transactions between the Funds are recorded at fair values at the dates of the transactions.

Amounts due to and from the Lawyers Insurance and Special Compensation Funds arise from transactions of an operating nature, and have no fixed terms of repayment. The amounts due to and from the Special Compensation Fund are non-interest bearing.

Monthly interest on the Fund's net loan position with the Lawyers Insurance Fund is paid by the Fund at a rate equal to the stated monthly bond yield to maturity earned on the Lawyers Insurance Fund investment portfolio. The Fund's net loan position includes the Fund's building loan and other operating balances with the Lawyers Insurance Fund. This net loan position fluctuates during the year as amounts are transferred between the Fund and the Lawyers Insurance Fund to finance ongoing operations.

During the year, interest paid to the Lawyers Insurance Fund totalled \$205,053 (2002 – \$305,478) after deduction of approximately \$61,539 (2002 – \$110,945) of interest revenue received from Fund cash balances held by the Lawyers Insurance Fund.

Other interfund transactions are disclosed elsewhere in these financial statements.

**7. Related parties**

The Benchers are drawn from law firms across the province. These law firms may at times be engaged by the Society in the normal course of business.

# Financial Statements

For the year ended December 31, 2003

## STATEMENT OF FINANCIAL POSITION as at December 31, 2003

	2003 \$	2002 \$
<b>Assets</b>		
<b>Current assets</b>		
Cash and cash equivalents	977,403	2,332,395
Accrued interest receivable	—	1,969
Insurance recoverable (note 4)	5,978,376	2,445,622
Assets held for resale	<u>346,751</u>	<u>—</u>
	7,302,530	4,779,986
<b>Investments</b> (note 2)	<u>1,313,912</u>	<u>6,898,514</u>
	<u>8,616,442</u>	<u>11,678,500</u>

### Liabilities

#### Current liabilities

Accounts payable and accrued liabilities	9,979	20,976
Deferred revenue	2,760,600	3,708,000
Due to General Fund (note 3)	<u>1,759,029</u>	<u>3,972,083</u>
	4,529,608	7,701,059

#### Net assets

Unrestricted net assets	<u>4,086,834</u>	<u>3,977,441</u>
	<u>8,616,442</u>	<u>11,678,500</u>

### Claims (note 4)

### Subsequent event (note 5)

### Approved by



President



Chair of Audit Committee

## STATEMENT OF CHANGES IN NET ASSETS

	2003 \$	2002 \$
<b>Unrestricted net assets – beginning of year</b>	3,977,441	7,204,257
Excess (deficiency) of revenue over expense for the year	<u>109,393</u>	<u>(3,226,816)</u>
<b>Unrestricted net assets – end of year</b>	<u>4,086,834</u>	<u>3,977,441</u>
	* * *	

## STATEMENT OF REVENUE AND EXPENSE

	2003 \$	2002 \$
<b>Revenue</b>		
Annual assessments	5,496,650	2,266,375
Investment and interest income	<u>(86,716)</u>	<u>724,713</u>
	<u>5,409,934</u>	<u>2,991,088</u>
<b>Expense</b>		
Allocated office rent	39,258	38,340
Audit	16,851	10,000
Claims and costs (note 4)	389,816	2,878,379
Contribution to costs of General Fund		
Administrative	603,785	549,809
Co-sponsored program costs	829,027	785,771
Counsel costs	172,819	170,013
Custodians' fees – net of recoveries	1,028,031	494,288
Insurance premium	297,793	148,333
Investment brokers' fee	6,161	16,407
Miscellaneous	146,101	123,546
Salaries, wages and benefits	999,144	538,928
Spot audits and related costs	<u>771,755</u>	<u>464,090</u>
	<u>5,300,541</u>	<u>6,217,904</u>
<b>Excess (deficiency) of revenue over expense for the year</b>	<u>109,393</u>	<u>(3,226,816)</u>



## Financial Statements

For the year ended December 31, 2003

## STATEMENT OF CASH FLOWS

	2003 \$	2002 \$
<b>Cash flows from operating activities</b>		
Excess (deficiency) of revenue over expense for the year	109,393	(3,226,816)
Item not affecting cash – amortization of premium on bonds	<u>–</u>	<u>47,742</u>
	109,393	(3,179,074)
Decrease (increase) in current assets		
Accrued interest receivable	1,969	61,543
Insurance recoverable	(3,532,754)	(2,445,622)
Assets held for resale	(346,751)	–
Increase (decrease) in current liabilities		
Accounts payable and accrued liabilities	(10,997)	10,976
Deferred revenue	(947,400)	1,761,000
Due to General Fund	<u>(2,213,054)</u>	<u>3,205,707</u>
	(6,939,594)	(585,470)
<b>Cash flows from investing activities</b>		
Sale of investments – net	<u>5,584,602</u>	<u>1,977,331</u>
<b>(Decrease) increase in cash and cash equivalents</b>	(1,354,992)	1,391,861
<b>Cash and cash equivalents – beginning of year</b>	<u>2,332,395</u>	<u>940,534</u>
<b>Cash and cash equivalents – end of year</b>	<u><u>977,403</u></u>	<u><u>2,332,395</u></u>

## NOTES TO FINANCIAL STATEMENTS

## 1. Significant accounting policies and description of the Fund

## Description of the Fund

The Special Compensation Fund (the Fund) is maintained by The Law Society of British Columbia (the Society) pursuant to section 31 of the *Legal Profession Act* to reimburse persons who sustain a pecuniary loss as a result of the misappropriation or wrongful conversion by a member of the Society of money or other property entrusted to or received by the member in his or her capacity as a barrister or solicitor. The Fund is financed by members' annual assessments, and claims are recorded net of recoveries from the Fund's insurers when they have been approved for payment by the Special Compensation Fund Committee as delegated by the Benchers.

At the December 2003 meeting, the Benchers approved, to be effective May 1, 2004, a Part B amendment to the B.C. Lawyers' Compulsory Professional Liability Insurance Policy (as provided through the Lawyers Insurance Fund) that provides defined insurance coverage for dishonest appropriation of money or other property entrusted to and received by insured lawyers in their capacity of barrister and solicitor and in relation to the provision of professional services.

The Society is a not-for-profit organization and the Fund is considered to be non-assessable under current income tax legislation.

## Allocated administrative expenses

Administrative expenses are recovered by the General Fund of the Society from the Fund. Recoveries are based on budgeted amounts derived either on a percentage of use or the percentage of the Fund's staff as compared to the Society's total direct program staff.

## Cash and cash equivalents

Cash and cash equivalents comprise cash on hand, demand deposits, and short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of change in value.

## Financial instruments

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

## Investments

Bonds are carried at amortized cost, providing for the amortization of the discount or premium on a straight-line basis to maturity. When an investment has experienced a loss in value that is other than temporary, the investment is written down to its estimated net realizable value. Realized gains and losses are included in the determination of excess (deficiency) of revenue over expense for the year.

## Revenue recognition

The Society follows the deferral method of accounting for annual assessments. Assessments are billed and received in advance on a

# Financial Statements

For the year ended December 31, 2003

calendar-year basis. Accordingly, assessments for the next fiscal year received prior to December 31 have been deferred 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 Canadian generally accepted accounting principles 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 financial statements and revenues and expenses for the period reported. Actual results could differ from those estimates.

## 2. Investments

	2003 \$	2002 \$
Investments (market value: \$1,373,422; 2002 – \$6,665,587)	<u>1,313,912</u>	<u>6,898,514</u>

Investments consist primarily of domestic government treasury bills, government bonds, and high grade corporate bonds, having a maturity of up to 26 years.

The effective yield to maturity on the total portfolio is 2.36% (2002 – 3.00%).

## 3. Interfund balances

Amounts due to the General Fund are current and non-interest bearing.

## 4. Special Compensation Fund claims

### a) Outstanding claims

Pursuant to section 31(6) of the *Legal Profession Act*, the payment of Fund claims is at the discretion of the Special Compensation Fund Committee as delegated by the Benchers. No provision has been made in these financial statements for claims not resolved by the Special Compensation Fund Committee. As at December 31, 2003, 590 claims or potential claims (2002 – 743 claims) were known but not yet determined. These claims amounted to approximately \$72,230,336 (2002 – \$72,554,565). If all claims were approved for payment, \$50,887,594 (2002 – \$51,164,606) would be payable by the Fund and \$21,342,742 (2002 – \$21,389,959) by the Fund's insurers. These amounts do not include an estimate for claims attributable to 2002 or prior years that have not as yet been filed. In addition, these amounts include potential duplicate claims with respect to the Wirick case.

The insurance bond provides that total claims attributable to the period in excess of \$2,500,000 are 100% reimbursed by a commercial insurer up to a maximum of \$15,000,000 for claims against one lawyer and in total.

### b) Wirick case

In May 2002, the Discipline Committee ordered an audit investigation, pursuant to Rule 4-43, of Martin Keith Wirick's practice. Since then, the Society has continued to investigate the various claims attributed to Mr. Wirick's practice activities. Information continues to be received from financial institutions and other lenders to assist in the investigation of claims. At each Benchers' meeting since May 2002, the Benchers have been given a detailed update of the status of the outstanding claims, investigation costs and any relevant information concerning possible recoveries. This will continue until the file is closed.

### As of December 31, 2003

Number of claims received	470 statutory declarations
	\$
Amount claimed	55,000,000
Amount reviewed (number of claims – 165)	30,000,000
Amount denied due to duplication (number of claims – 40)	7,000,000
Amount adjourned (number of claims – 76)	8,000,000
Total approved for payment	15,000,000
Total paid	12,000,000

### As of December 31, 2002

Number of claims received	479 statutory declaration
	\$
Amount claimed	65,000,000
Amount reviewed (number of claims – 31)	9,000,000
Amount denied due to duplication (number of claims – 13)	4,000,000
Total approved for payment	5,000,000
Total paid	5,000,000

The Fund carries 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 will fall into the 2002 bond period and as such, the Fund has claims greater than its level of insurance. 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.

Of the \$76,000,000 total outstanding claims as of December 31, 2003, the insurers would cover only \$15,000,000 of this total amount. In accordance with the absolute discretionary nature of the Fund arrangements, the claims become a liability only when approved by the Special Compensation Fund Committee.

## 5. Subsequent event

Effective May 1, 2004, the Special Compensation Fund has ceased to accept new claims as the Lawyers Insurance Fund has extended its professional coverage to encompass the role of the Special Compensation Fund.

**Consolidated Financial Statements**

For the year ended December 31, 2003

**CONSOLIDATED STATEMENT OF  
FINANCIAL POSITION  
as at December 31, 2003**

	2003 \$	2002 \$
<b>Assets</b>		
Cash and cash equivalents	7,575,628	5,855,593
Accounts receivable	50,482	32,611
Accrued interest receivable	343	848
Income tax recoverable	4,909	—
Reinsurers' share of provision for claims	4,888,650	6,163,000
Due from members	1,908,573	1,907,418
General Fund building loan (note 5)	9,100,000	9,600,000
Investments (note 3)	<u>88,689,752</u>	<u>87,907,705</u>
	<u>112,218,337</u>	<u>111,467,175</u>

**Liabilities**

Accounts payable and accrued liabilities	621,068	568,776
Income taxes payable	—	9,000
Deferred revenue	2,800,760	3,783,250
Due to General Fund (note 7)	6,697,499	1,921,772
Provision for claims (note 6)	78,195,385	81,038,519
Provision for ULAE (note 6)	<u>6,914,000</u>	<u>6,997,000</u>
	95,228,712	94,318,317

**Net assets**

Unrestricted net assets	<u>16,989,625</u>	<u>17,148,858</u>
	<u>112,218,337</u>	<u>111,467,175</u>

**Subsequent event** (note 9)**Approved by**


President



Chair of Audit Committee

**CONSOLIDATED STATEMENT OF  
CHANGES IN NET ASSETS**

	2003 \$	2002 \$
<b>Unrestricted net assets – beginning of year</b>	17,148,858	12,812,273
(Deficiency) excess of revenue over expense for the year	<u>(159,233)</u>	<u>4,336,585</u>
<b>Unrestricted net assets – end of year</b>	<u>16,989,625</u>	<u>17,148,858</u>

\* \* \*

**CONSOLIDATED STATEMENT OF  
REVENUE AND EXPENSE**

	2003 \$	2002 \$
<b>Revenue</b>		
Annual assessments	10,024,260	9,994,181
Investment income (note 3)	3,535,582	7,752,366
Other income	<u>94,242</u>	<u>26,135</u>
	<u>13,654,084</u>	<u>17,772,682</u>

**Insurance expense**

Actuary, consultant and investment broker fees	315,154	221,656
Allocated office rent	97,021	87,966
Audit	33,665	36,000
Contribution to costs of General Fund		
Administrative	1,002,759	900,957
Office	240,450	199,131
Premium taxes	9,666	9,983
Provision for settlement of claims (note 6)	10,178,000	10,041,000
Provision for ULAE (note 6)	(83,000)	(328,000)
Salaries, wages and benefits	<u>1,305,256</u>	<u>1,307,842</u>
	13,098,971	12,476,535

**Loss prevention expense**

Contribution to costs of General Fund		
Co-sponsored program costs	<u>707,255</u>	<u>941,613</u>
	<u>13,806,226</u>	<u>13,418,148</u>

<b>(Deficiency) excess of revenue over expense before the following</b>	(152,142)	4,354,534
<b>Provision for income taxes</b>	<u>(7,091)</u>	<u>(17,949)</u>
<b>(Deficiency) excess of revenue over expense for the year</b>	<u>(159,233)</u>	<u>4,336,585</u>



**Consolidated Financial Statements**

For the year ended December 31, 2003

**CONSOLIDATED STATEMENT  
OF CASH FLOWS**

	2003 \$	2002 \$
<b>Cash flows from operating activities</b>		
(Deficiency) excess of revenue over expense for the year	(159,233)	4,336,585
Items not affecting cash		
Amortization of premium on bonds	–	451,021
Realized gain on disposal of investment	(73,989)	(2,924,842)
	(233,222)	1,862,764
Decrease (increase) in assets		
Accounts receivable	(17,871)	22,427
Accrued interest receivable	505	480,191
Reinsurers' share of provision for claims	1,274,350	(817,000)
Due from members	(1,155)	(7,974)
Due to/from General Fund	4,775,727	(7,649,543)
Income taxes (recoverable) payable	(13,909)	31,700
Increase (decrease) in liabilities		
Accounts payable and accrued liabilities	52,292	(158,365)
Deferred revenue	(982,490)	(633,120)
Provision for claims	(2,843,134)	(1,657,729)
Provision for ULAE	(83,000)	(328,000)
	<u>1,928,093</u>	<u>(8,854,649)</u>
<b>Cash flows from investing activities</b>		
Purchase of investments – net	(708,058)	(2,384,020)
Decrease in General Fund building loan	<u>500,000</u>	<u>500,000</u>
	<u>(208,058)</u>	<u>(1,884,020)</u>
<b>Increase (decrease) in cash and cash equivalents</b>	1,720,035	(10,738,669)
<b>Cash and cash equivalents – beginning of year</b>	<u>5,855,593</u>	<u>16,594,262</u>
<b>Cash and cash equivalents – end of year</b>	<u><u>7,575,628</u></u>	<u><u>5,855,593</u></u>

\* \* \*

**NOTES TO CONSOLIDATED  
FINANCIAL STATEMENTS****1. Significant accounting policies and description of the Fund****Description of the Fund**

The Lawyers Insurance Fund (the Fund) is maintained by The Law Society of British Columbia (the Society) pursuant to section 30 of the *Legal Profession Act*. The Society is a not-for-profit organization, and only the subsidiary LSBC Captive Insurance Company Ltd. (the Captive) is considered assessable for income tax under current legislation.

**Allocated administrative expenses**

Administrative expenses are recovered by the General Fund of the Society from the Fund. Recoveries are based on budgeted amounts derived either on percentage of use or the percentage of the Fund's staff as compared to the Society's total direct program staff.

**Basis of consolidation**

These consolidated financial statements include the accounts of the Fund and the Captive, a wholly owned subsidiary.

**Cash and cash equivalents**

Cash and cash equivalents comprise cash on hand, demand deposits, and short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of change in value.

**Investments**

Bonds and treasury bills are carried at amortized cost, providing for the amortization of the discount or premium on a straight-line basis to maturity. When an investment has experienced a loss in value that is other than temporary, the investment is written down to its estimated net realizable value. Realized gains and losses are included in the determination of excess (deficiency) of revenue over expense for the year.

**Investment income**

Investment income is 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.

**Provision for claims**

The provision for claims represents an estimate for all costs of investigating and settling claims incurred prior to the balance sheet date. The provision is adjusted as additional information on the estimated amounts becomes known during the course of claims settlement. All changes in estimates are expenses in the current period. The company presents its claims on a discounted basis.

**Reinsurance**

The Society reflects reinsurance balances on the statement of financial position on a gross basis to indicate the extent of credit risk related to reinsurance and its obligations to policy holders, and on a net basis on the statement of revenue and expense to indicate the results of its retention of assessments retained.

**Revenue recognition**

The Society 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 deferred 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.

(continued on page 32)

## Consolidated Financial Statements

For the year ended December 31, 2003

**1. Significant accounting policies and description of the Fund (continued)****Use of estimates**

The preparation of financial statements in conformity with Canadian generally accepted accounting principles 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 financial statements and revenues and expenses for the period reported. Actual results could differ from those estimates.

**2. Change in accounting policy**

Effective January 1, 2003, the Society has reported claims liabilities on a discounted basis. Previously, claims liabilities were presented on a non-discounted basis.

**3. Investments**

	2003	2002
	\$	\$
Investments – at book value (market value – \$92,878,903; 2002 – \$85,429,223)	<u>88,689,752</u>	<u>87,907,705</u>

The effective yield to maturity on the total portfolio is 2.35% (2002 – 3.11%).

	2003			
	Carrying value	Gross unrealized gains	Gross unrealized losses	Estimated fair value
	\$	\$	\$	\$
Bonds				
Pooled Funds	<u>46,759,304</u>	<u>586,595</u>	<u>—</u>	<u>47,345,898</u>
Equity				
Canadian Pooled Funds	<u>19,177,247</u>	<u>4,412,088</u>	<u>—</u>	<u>23,589,335</u>
U.S. Pooled Funds	<u>12,448,775</u>	<u>—</u>	<u>(399,906)</u>	<u>12,048,869</u>
Non-North America Pooled Funds	<u>9,933,902</u>	<u>—</u>	<u>(54,124)</u>	<u>9,879,778</u>
	<u>41,559,924</u>	<u>4,412,088</u>	<u>(454,030)</u>	<u>45,517,982</u>
Short-term investments	<u>370,524</u>	<u>—</u>	<u>—</u>	<u>15,023</u>
	<u>88,689,752</u>	<u>4,998,683</u>	<u>(454,030)</u>	<u>92,878,903</u>

	2002			
	Carrying value	Gross unrealized gains	Gross unrealized losses	Estimated fair value
	\$	\$	\$	\$
Bonds				
Pooled Funds	<u>55,108,814</u>	<u>—</u>	<u>(196,610)</u>	<u>54,912,204</u>
Equity				
Canadian Pooled Funds	<u>18,957,710</u>	<u>—</u>	<u>(269,861)</u>	<u>18,687,849</u>
U.S. Pooled Funds	<u>6,711,469</u>	<u>—</u>	<u>(955,678)</u>	<u>5,755,791</u>
Non-North America Pooled Funds	<u>6,681,539</u>	<u>—</u>	<u>(1,069,421)</u>	<u>5,612,118</u>
	<u>32,350,718</u>	<u>—</u>	<u>(2,294,960)</u>	<u>30,055,758</u>
Short-term investments	<u>461,261</u>	<u>—</u>	<u>—</u>	<u>461,261</u>
	<u>87,920,793</u>	<u>—</u>	<u>(2,491,570)</u>	<u>85,429,223</u>

The estimated fair value of equity share and debt securities is based on quoted market value.

Management has reviewed currently available information regarding all investments whose estimated fair value is less than carrying value, and ascertained that the carrying values are expected to be recovered. Debt securities whose carrying value exceeds market value can be held until maturity.

**Liquidity and interest rate risk**

The maturity profile based on the market value as at December 31, 2003 is as follows:

	Within 1 year	1 to 5 years	5 to 10 years	Over 10 years	Total
Bonds					
Pooled	<u>2,130,565</u>	<u>16,713,102</u>	<u>16,192,297</u>	<u>12,309,934</u>	<u>47,345,898</u>
				2003	2002
				\$	\$
Investment income					
Cash and treasury bills				13,117	74,350
Bond interest				—	2,666,291
Amortization of premium on bonds				—	(451,021)
PH&N Pooled Distribution Income				3,220,729	—
Net interfund loan interest (note 7)				205,053	305,478
Dividends				22,694	2,232,426
Gain on sale of investments				<u>73,989</u>	<u>2,924,842</u>
Net investment income				<u>3,535,582</u>	<u>7,752,366</u>

**4. Errors and omissions insurance claims**

Effective January 1, 1990, the Fund began underwriting the program by which errors and omissions insurance is provided to members of the Society. The Society's members have coverage as follows:

	2003	2002
	\$	\$
Deductible – member	5,000 or 10,000	5,000 or 10,000
Deductible – the Fund	995,000 or 990,000	995,000 or 990,000
Total coverage per occurrence	<u>1,000,000</u>	<u>1,000,000</u>
Annual aggregate per member	<u>2,000,000</u>	<u>2,000,000</u>

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 1996 and previous years, the Captive entered into reinsurance contracts under which all risks in excess of the inner aggregate retentions, which are borne by the Captive, were ceded to reinsurers. The policy of ceding reinsurance does not relieve the Captive of primary liability as the originating insurer.

Since January 1, 1997, the Captive has not renewed its annual reinsurance contracts, and therefore all losses on claims since 1997 will be fully borne by the Captive as primary insurer and reimbursed by the Society under agreement.

# Consolidated Financial Statements

For the year ended December 31, 2003

## 5. General Fund building loan

In 1992, the Benchers authorized the lending of monies from the Fund to fund the capital development of the Society's buildings at 839 and 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 yield to maturity earned on the Fund investment portfolio. It is the intention of the General Fund to repay a minimum of \$500,000 on the principal each year. During 2003, principal of \$500,000 (2002 – \$500,000) was repaid.

	2003	2002
	%	%
Weighted average rate of return	<u>2.78</u>	<u>4.12</u>

## 6. Provision for claims and unallocated loss adjustment expenses (ULAE)

The changes in unpaid claims recorded in the consolidated statement of financial position as at December 31, 2003 and 2002 and their impact on claims for the year are as follows:

	2003	2002
	\$	\$
Provisions for claims – beginning of year	81,038,519	82,696,248
Provision for losses and expenses for claims occurring in the current year	16,800,000	17,396,000
Decrease in estimated losses and expenses for losses occurring in prior years	<u>(6,622,000)</u>	<u>(7,355,000)</u>
Provision for claims liability	<u>91,216,519</u>	<u>92,737,248</u>
Less:		
Payments on claims incurred in the current year	(676,577)	(511,565)
Payments on claims incurred in prior years	(10,001,221)	(12,124,103)
Recoveries on claims	183,664	131,940
Change in reinsurers' share of provision for claims	(2,520,000)	817,000
Change in due from members	<u>(7,000)</u>	<u>(12,001)</u>
Claims payments – net of recoveries	<u>(13,021,134)</u>	<u>(11,698,729)</u>
Provisions for claims – end of year	<u>78,195,385</u>	<u>81,038,519</u>

The determination of the provision for unpaid claims, and adjustment expenses and the related reinsurers' share requires the estimation of three major variables or quanta, being development of claims, reinsurance recoveries 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 and related reinsurers' share 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 the receipt of additional information, changes in judicial interpretation of contracts, significant changes in severity or frequency of claims from historical

trends, the timing of claims payments, the recoverability of reinsurance, and future rates of investment return. 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 Society's future costs relating to the administration of claims incurred up to the statement of financial position date.

The Society discounts its best estimate of claims provisions at a rate of interest of 5%. The Society 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.

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 Society includes Provisions for Adverse Deviations (PFADs) in some assumptions relating to claims development, reinsurance recoveries and future investment income. The PFADs selected are in the mid range of those recommended by the Canadian Institute of Actuaries.

## 7. Interfund transactions

The operations of the Fund, the General Fund and the Special Compensation Fund are controlled by the management of the Society. Transactions between the Funds are recorded at fair values at the dates of the transactions.

Amounts due to and from the General Fund arise from transactions of an operating nature and have no fixed terms of repayment.

Monthly interest on the Fund's net loan position with the General Fund is paid to the Fund at a rate equal to the stated monthly yield to maturity earned on the Fund investment portfolio. The Fund's net loan position includes the General Fund building loan and other operating balances with the General Fund. This net loan position fluctuates during the year as amounts are transferred between the General Fund and the Fund to finance ongoing operations.

Interest received by the Fund totalled \$205,053 (2002 – \$305,478) after deduction of approximately \$61,539 (2002 – \$110,945) of interest revenue paid to the General Fund on General Fund cash balances held by the Fund during the year.

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

## 8. Regulatory requirements

The Captive is licensed under the *Insurance (Captive Company) Act* of B.C. The regulations of this Act require the Captive to maintain certain minimum reserves. The Captive was in compliance with those regulations as at December 31, 2003.

## 9. Subsequent event

Effective May 1, 2004, the professional coverage has been extended to encompass the role previously performed by the Special Compensation Fund.

## 2003 committees and task forces



W.M. Everett, QC,  
*Executive and  
Discipline Chair*



P.L. Schmit, QC,  
*Access to Justice  
Chair*



R.W. McDiarmid,  
QC,  
*Audit Chair*



J. Preston,  
*Complainants'  
Review Chair*



R.S. Tretiak, QC,  
*Credentials Chair*



A.K. Fung, QC,  
*Discipline Chair*

### Committees

#### Executive

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## 2003 committees and task forces

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Futures and Special  
Compensation Fund  
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Board	Appointee(s)	Board	Appointee(s)
BC Courthouse Library Society	R.W. McDiarmid, QC P.L. Schmit, QC W.T. Wilson, QC	Federation of Law Societies ( <i>con't</i> )	Director (B.C. and Yukon): T.L. Brown, QC
BC Law Institute	James MacIntyre, QC D. Peter Ramsay, QC	Hamber Foundation	John Leathley G.J. Lecovin, QC
BC Medical Services Foundation	Mark Skorah	Law Foundation	Ian Caldwell Barbara Cromarty Dev Dley Christine Elliott Grant Gray Sholto Heberton, QC Madam Justice Pamela Kirkpatrick Paul Love Heather Raven D.A. Silversides, QC Peter Warner, QC W.T. Wilson, QC
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CBA, National and Provincial Councils	J.J.L. Hunter, QC G.C. Taylor		
CBA (BC) Benevolent Society	J.S. Shackell, QC		
CLE Society	<b>Benchers:</b> A.K. Fung, QC A.K. Wallace, QC <b>Practitioners:</b> <sup>1</sup> James Baird Danielle Byres David E. Jones Robert Kasting Linda Locke William McNaughton Timothy Schober Ronald Smith Charles Stein Ken Walker	Legal Services Society <sup>2</sup>	Brent Adair Gregory Bowden, QC Barbara Fisher J.M. Hogg, QC
		Provincial Judicial Council	Peter Wilson, QC
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		UBC Faculty of Law, Curriculum Committee	Alan Treleaven
		UBC Faculty of Law, Faculty Council	Alan Treleaven
Federal Judicial Appointments Advisory Committee	Jo Ann Carmichael, QC	UVic Faculty of Law, Faculty Council	R.S. Alexander, QC
Federation of Law Societies	<b>Delegates:</b> W.M. Everett, QC R.S. Alexander, QC	Vancouver International Airport Authority	J. Thomas English, QC

<sup>1</sup> appointed jointly with the CBA, B.C. Branch

<sup>2</sup> appointed after consultation with the CBA, B.C. Branch

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