THE LAW SOCIETY OF BRITISH COLUMBIA

AGENDA

MEETING: Benchers

DATE: Friday, April 23, 2010

TIME: **7:30 a.m.** Continental breakfast
8:30 a.m. Meeting begins

PLACE: **Benchers Room, 9th Floor, Law Society Building**

BENCHERS' OATH OF OFFICE: At the next regular Benchers meeting attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office (in the form set out in Rule 1-1.2) before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Bencher (new Okanagan and Cariboo Benchers at April meeting).			
CONSENT AGENDA: The following matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. If any Bencher wishes to debate or have a separate vote on an item on the consent agenda, he or she may request that the item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Bill McIntosh) prior to the meeting.			
1	**Minutes of March 5, 2010 meeting**	Minutes of the regular session Minutes of the *in camera* session (Benchers only)	Tab 1 p. 1000
2	**Ethics Proposed Handbook Amendments: Firm Composition Change and Lawyer's Resulting Duty, Ch 11, Rules 16-21**	Memorandum from the Ethics Committee	Tab 2 p. 2000
3	**A&RS Proposed Rules Amendments: Mobility with Barreau du Québec, Rules 2-23.1, 2-23.2, 2-49.3, 3-25**	Memorandum from Mr. Hoskins	Tab 3 p. 3000
4	**External Appointments**	Memorandum from Appointments Subcommittee	Tab 4 p. 4000
5	**2010 Law Society Scholarship: Credentials Committee Recommendation**	Memorandum from Ms. Small (*In Camera*)	Tab 5 p. 5000
REGULAR AGENDA			
6	**President's Report**	Written report to be distributed electronically prior to meeting	

7	**CEO's Report**	Written report to be distributed electronically prior to meeting	
8	**Report on Outstanding Hearing & Review Reports**	Report to be distributed at the meeting	
GUEST PRESENTATIONS			
9	**Legal Services Society Update**	Speaking notes Presentation by LSS Board Chair Mayland McKimm, QC	Tab 9 p. 9000
10	**Attorney General's Update on Legislative Priorities for 2010-2011**	The Honourable Michael de Jong, QC to report	
11	**Federation Model Code: Future Harm Exception to Confidentiality**	Background material Presentation by Mona Duckett, QC, FLS Council member for the Law Society of Alberta	Tab 11 p. 11000
OTHER MATTERS FOR DISCUSSION AND/OR DECISION			
12	**Federation March Update: Semi-annual Conference / Council Meeting in Toronto**	Report from Mr. Treleaven (*In Camera*) Mr. Hunter to report	Tab 12 p. 12000
FOR INFORMATION ONLY			
13	**2010 Benchers Retreat Planning Update**	Draft Retreat Program	Tab 13 p. 13000
14	**Commemorative Certificate Luncheon Letter of Appreciation**	Letter from Brian Corbould, QC	Tab 14 p. 14000
15	**BC Court of Appeal Centenary: January 8, 2010 Special Sitting of the Court in Victoria**	Letter from Chief Justice Finch to Mr. Ridgway	Tab 15 p. 15000
16	**Event to Recognize and Support Aboriginal Leadership in the Legal Profession – Planning Update**	Memorandum from Ms. Tam	Tab 16 p. 16000
17	**2009 Annual Report of the LSBC Equity Ombudsperson Program**	Report from Anne Chopra, Equity Ombudsperson	Tab 17 p. 17000
IN CAMERA SESSION			
18	**Bencher Concerns**		

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday, March 5, 2010

PRESENT:

Glen Ridgway, QC, President	Barbara Levesque
Gavin Hume, QC, 1st Vice-President	Peter Lloyd, FCA
Bruce LeRose, QC, 2nd Vice-President	David Mossop, QC
Haydn Acheson	Suzette Narbonne
Rita Andreone	Thelma O'Grady
Kathryn Berge, QC	Lee Ongman
Joost Blom, QC	David Renwick, QC
Patricia Bond	Alan Ross
Robert Brun, QC	Catherine Sas, QC
E. David Crossin, QC	Richard Stewart, QC
Leon Getz, QC	Herman Van Ommen
Carol Hickman	Dr. Maelor Vallance
Patrick Kelly	Art Vertlieb, QC
Stacy Kuiack	Kenneth Walker

ABSENT: Jan Lindsay, QC

STAFF PRESENT:

Tim McGee	Michael Lucas
Andrea Brownstone	Bill McIntosh
Barbara Buchanan	Jeanette McPhee
Stuart Cameron	Doug Munro
Lance Cooke	Lesley Pritchard
Charlotte Ensminger	Susanna Tam
Su Forbes, QC	Adam Whitcombe
Jeffrey Hoskins, QC	Carmel Wiseman

GUESTS:

Dom Bautista, Executive Director, Law Courts Center
Mark Benton, QC, Executive Director, Legal Services Society
Johanne Blenkin, Executive Director, BCCLS
Dean Mary Ann Bobinski, Faculty of Law, University of BC
Ron Friesen, CEO, CLEBC
Dean Donna Greschner, Faculty of Law, University of Victoria
Stephen McPhee, Vice-President, CBABC
Jane Mundy, Reporter, Lawyers Weekly
Caroline Nevin, Executive Director, CBABC
Wayne Robertson, QC, Executive Director, Law Foundation of BC

BENCHER'S OATH OF OFFICE

President Glen Ridgway, QC administered Patricia Bond's affirming of the Bencher's Oath of Office, pursuant to Rule 1-1(2).

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on January 22, 2010 were approved as circulated.

Consent Resolutions

The following resolutions were **passed unanimously and by consent**.

2. *BE IT RESOLVED* to amend the Law Society Rules

1. *By rescinding Rule 2-2 and substituting the following:*

2-2 A member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under these Rules.

2. *By adding the following Rule:*

Extraordinary action to protect public

3-7.1 (1) This Rule applies to a lawyer or articled student who is

(a) the subject of an investigation or intended investigation under Rule 3-5, and

(b) not the subject of a citation in connection with the matter under investigation or intended to be under investigation.

(2) If they are satisfied that extraordinary action is necessary to protect the public, 3 or more Benchers may

(a) suspend a lawyer,

(b) impose conditions on the practice of a lawyer, or

(c) suspend the enrolment of an articled student.

(3) The Benchers referred to in subrule (2) must not include a member of the Discipline Committee.

(4) Before Benchers take action under this Rule, there must be a proceeding at which 3 or more Benchers and discipline counsel are present.

(5) The proceeding referred to in subrule (4) may take place without notice to the lawyer or articled student if the majority of the Benchers present are satisfied that notice would not be in the public interest.

(6) The lawyer or articled student and his or her counsel may be present at a proceeding under this Rule.

(7) All proceedings under this Rule must be recorded by a court reporter.

(8) Subject to the Act and these Rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.

(9) Unless the Benchers present order otherwise, the proceeding is not open to the public.

(10) The lawyer or articled student or discipline counsel may request an adjournment of a proceeding conducted under this Rule.

(11) Rule 4-29 applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.

(12) Despite subrule (11), the Executive Director is not required to notify a complainant of a request made under subrule (10).

(13) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, to a specified date, time and place.

(14) An order made or varied under this Rule is effective until the first of

(a) final disposition of a citation, or

(b) rescission, variation or further variation under subrule (15).

(15) An order made under this Rule may be rescinded or varied by the Benchers who made the order, or a majority of them, on the application of the lawyer or articled student or discipline counsel.

(16) On an application under subrule (15) to vary or rescind an order,

(a) both the lawyer or articled student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and

(b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.

(17) If, for any reason, any of the Benchers who made an order under this Rule is unable to participate in the decision on an application under subrule (15), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate,

3. In Rule 4-17:

(a) In subrule (1) by striking the phrase "with or without notice to the respondent***"; and***

(b) By adding the following subrule:

(1.111) The proceeding referred to in subrule (1.11) may take place without notice to the respondent if the majority of Benchers present are satisfied that notice would not be in the public interest.

3. *BE IT RESOLVED* to amend the *Professional Conduct Handbook* Chapter 4, Rule 5, footnote 2 as follows:

Errors and omissions

5. A lawyer must comply with the terms of each professional liability insurance policy.[2]

FOOTNOTES:

2. Under both the Lawyers' Compulsory Professional Liability Insurance Policy and any excess professional liability insurance policy in effect, a lawyer is contractually required to give written notice to the insurer immediately after the lawyer becomes aware of any actual or alleged error or any circumstances which could reasonably be expected to be the basis of a claim or suit covered under the policy. A lawyer who fails to comply with this contractual requirement risks having coverage denied, assuming personal liability for any damages awarded. Rule 5 imposes an ethical duty to report to the insurer. Imposing such an ethical obligation is necessary, in the public interest, to reduce the risk of coverage being denied.

4. *BE IT RESOLVED* to amend Section 1.3 of the Statement of Investment Policy and Procedures as follows:

Section 1.3 – Pooled Funds

The change authorizes the Finance Committee to review non-compliance issues reported by the investment managers of Pooled Funds, to accept the non-compliance, or take such further action as may be required, and to report any such action to the Bencher on a quarterly basis.

REGULAR AGENDA – for Discussion and Decision

5. President's Report

Mr. Ridgway referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President during the month of January (Appendix 1).

Mr. Ridgway also thanked Mr. Kuiack for his thoughtful reminder that all three of Canada's goals in the Olympic men's semi-final hockey game were scored by former residents of Saskatchewan.

6. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (Appendix 2), including the following matters:

- 2009 Annual Financial Statements
    - Ms. McPhee added details, reporting that
        - the Law Society's overall financial results for2009 were as forecast
        - the draft 2009 financial statements show a positive variance of $740,000, largely resulting from higher than projected revenues in the following areas:
            - Membership
            - Electronic filing
            - Interest revenue
            - Discipline costs recovered

- 2009 TAF revenue came in as expected at about $2.4 million, and about $860,000 was drawn from the TAF reserve to balance the budget for the Law Society's trust accounting and forensic audit operations over the past year.

- 2009 Report – Key Performance Measures (KPMs)

- Update – Core Processes Review Project

- Recent Senior Staff Appointments and Re-organization

Mr. McGee also thanked Ms. Hickman, Mr. Hume and Life Bencher Karl Warner for participating in the Professional Responsibility program of PLTC's 2010 Spring Session.

7. Report on Outstanding Hearing and Review Reports

The Benchers received a report on outstanding hearing decisions.

STRATEGIC PLANNING AND PRIORITIES MATTERS – for Discussion and/or Decision

8. 2009 AGM Members Resolutions on Participation of Aboriginal Lawyers in the Profession: Update

Mr. Lucas updated the Benchers on the progress of implementation of the three member resolutions passed at the 2009 annual general meeting:

- Resolution #1 has been implemented
- Resolution #2 has been substantially implemented
- Resolution #3 has not been implemented, pending further research by the Law Society

Mr. Lucas referred the Benchers to the staff memorandum at page 800 of the meeting materials (the Memorandum, attached as Appendix 3) for background on the resolutions, and for an outline of the approach he proposed for communication of the Benchers' decision regarding implementation of Resolution #3:

> The resolutions passed at the AGM directed that the Law Society:
>
> - Amend the 2009-2011 Strategic Plan so as to include the retention of Aboriginal lawyers as a priority at Strategy 1-3 on page 4;
>
> - Strike a working committee comprised of Benchers, Aboriginal lawyers and Aboriginal law students that will review and update the 2000 report on *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*; and
>
> - Establish a full-time staff lawyer position whose sole purpose is to support Aboriginal law students, articling students and lawyers.
>
> …

Resolution 3

Resolution 3 has not yet been implemented. The Equity & Diversity Advisory Committee plans to make recommendations to support Aboriginal lawyers and law students after considering the data currently being gathered and reports that have been released since the 2000 report. While a full-time staff lawyer position may be an effective response, it may also be only one of several responses that can be developed and considered. Alternatively, the data and research being gathered and developed through other equity and diversity activities may identify other, possibly more effective, solutions that would be a better use of resources.

…

Staff has already heard from members who are concerned about implementation of the resolutions, Resolution 3 in particular. If the Benchers choose to defer implementing Resolution 3 until recent research and potential responses are identified and considered as described above, then this decision and the reasons for it should be explained to the members.

Mr. Brun moved (seconded by Ms. O'Grady) that the Benchers approve the course of action proposed in the Memorandum, and direct the Law Society to proceed as recommended therein.

Several points were raised in the ensuing discussion, including:

- Importance of Aboriginal law students' involvement in the Equity and Diversity Advisory Committee's deliberations
- Importance of giving partner organizations time to complete their research militates against setting a firm deadline for decision on implementation of Resolution 3

The motion was **carried**.

9. Discipline Guidelines Task Force: Proposed Mandate

Mr. Van Ommen briefed the Benchers on the background of the formation of the Discipline Guidelines Task Force and on the issues underlying the task force's proposed mandate, as set out at page 900 of the meeting materials:

> (A) To review the function and processes of the Discipline Committee and to make recommendations regarding the guidance and information that may be provided to members of the Discipline Committee to assist them in reaching appropriate and consistent dispositions of the professional conduct matters before them; and
>
> (B) To review the Law Society's processes for professional conduct investigations, and the processes leading from directions to issue citations through to subsequent disciplinary hearings and results, and to make recommendations aimed at reducing the timelines currently required for these investigation and discipline processes, without sacrificing the Law Society's responsibility that its investigations and

adjudications be careful and thorough and observant of the legal requirements of fairness and natural justice.

Mr. Van Ommen advised that the task force intends to address Part A of its proposed mandate first, noting the dependence of the task force's Part B work on information to be derived from management's organization-wide review of the Law Society's operational processes.

Mr. Van Ommen moved (seconded by Ms. Berge) that the Benchers approve the Discipline Guidelines Task Force proposed mandate as set out at page 900 of the meeting materials.

There was discussion of the task force's proposed time lines for reporting to the Benchers, focusing on whether the task force might report with draft Discipline Committee policies and abeyance guidelines before September 2010. Mr. Van Ommen confirmed that the Discipline Guidelines Task Force will endeavor to report at the July 2010 Benchers meeting.

The motion was **carried**.

REGULAR AGENDA – Other Matters for Discussion and/or Decision

10. A&RS and Ethics Committee – Proposed Amendments: Ungovernability, R. 4-35 and *PCH* Ch 13 R. 3

Mr. Getz reported to the Benchers, referring them to the memorandum at page 1000 of the meeting materials, and particularly to the draft resolutions set out at pages 1012-1013:

BE IT RESOLVED to amend the Rule 4-35 by adding the following subrules:

(5) Regardless of the nature of the allegation in the citation, the panel may impose a penalty based on the ungovernability of the respondent by the Society.

(6) The panel must not impose a penalty under subrule (5) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the penalty hearing.

(7) The panel may adjourn the penalty hearing to allow compliance with the notice period in subrule (6).

BE IT RESOLVED to amend Chapter 13 of the Professional Conduct Handbook by rescinding rule 3 and substituting the following:

Regulatory compliance

3. A lawyer must

(a) reply promptly to any communication from the Law Society;

(b) file documents or reports with the Law Society as required;

(c) cooperate with Law Society investigations and audits;

(d) comply with orders of panels, committees or Benchers;

(e) not obstruct or delay or otherwise interfere with investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm; and

(f) otherwise comply with the Law Society's regulation of the lawyer's practice.

Mr. Getz advised that the Act and Rules Subcommittee decided not to define "ungovernability" in the draft amendment, deferring to hearing panels (in BC and in other jurisdictions) to develop that definition through jurisprudence.

Mr. Getz moved (seconded by Mr. Kelly) that the Benchers approve the resolution amending Rule 4-35 set out at page 1012 of the meeting materials.

Issues raised in the ensuing discussion included:

- Whether the policy requirements of flexibility and fairness have been met by the proposed amendment's
  - avoidance of a definition of "ungovernability"
  - use of an appropriate notice provision
- Whether the commission of chronic, low level offences offends the public interest and should, in itself, be a ground for disbarment
- Whether "ungovernability" should operate
  - as a distinct ground for penalty
  - quantitatively, as the aggregation of minor offences
  - qualitatively, as disregard for or defiance of the Law Society's discipline process
- Whether "ungovernability" requires a new Rules provision at all (i.e. whether the current Rule 4-35(4) is sufficient)

The motion was **carried** by a two thirds majority (18 for and 6 against).

Mr. Ridgway then asked for a motion to approve the proposed amendment of Section 3, Chapter 13 of the *Professional Conduct Handbook*. Discussion of the draft amendment's language followed, particularly subsection (e):

Regulatory compliance

3. A lawyer must …
   (e) not obstruct or delay or otherwise interfere with investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm

Mr. Getz moved (seconded by Mr. Hume) that the draft *Handbook* amendment be referred back to the Act and Rules Subcommittee for re-working the language of subsection (e).

The motion was **carried**.

11. Publishing Benchers Agenda Packages to Law Society Website

Mr. McGee briefed the Benchers on the background of this matter, noting that:

- The Benchers reached a consensus at the December 2009 meeting regarding the desirability of publishing the public portion of Benchers agenda packages to the Law Society website shortly before each meeting in question
- The Benchers made a contrary decision at the February 2006 meeting and passed the following resolution at that meeting
    - It was moved (Preston/Zacks) to publish information considered by the Benchers at a Benchers meeting in open session *after* the minutes of the meeting have been approved. (emphasis added).
- The Executive Committee has reviewed the materials considered by the Benchers before passing the February 2006 resolution, and has recommended that the current Benchers be asked re-consider that resolution.

Mr. Walker moved (seconded by Mr. Vertlieb) that the Benchers resolution passed at the February 2006 meeting be rescinded, and that effective immediately, the Law Society publish the public portion of each Benchers agenda and supporting materials to the Law Society website, with such publication generally to take place two or three days before the meeting during which that material is to be reviewed, but in any event after the Benchers have received it.

The motion was **carried**.

12. Other Business

a. Election of a New Law Society Representative on the Council of the Federation of Law Societies of Canada

Mr. Ridgway updated the Benchers on the proposed nomination of John Hunter, QC to replace Ian Donaldson, QC as the Law Society's representative on the Council and Executive Committee of the Federation of Law Societies of Canada. Mr. Ridgway advised that:

- The presidents of the other western law societies have approved the presentation of Mr. Hunter's nomination to the Federation Council at its March meeting
    - If Mr. Hunter's nomination to the Federation's Executive Committee is confirmed
        - on November 15, 2010 he will become the FLS First Vice President and cease to be the Law Society's representative on the FLS Council
        - before that date the Benchers will be asked to elect a new FLS Council representative

Mr. Ridgway asked that briefing material on the process to be followed in electing a new FLS Council representative be circulated to the Benchers. Mr. Treleaven undertook to do so.

b. UVic Faculty of Law Thanks Benchers Berge and Stewart

Dean Greschner thanked Victoria Benchers Berge and Stewart for their recent attendance at UVic Law to discuss the report and recommendations of the Retention of Women in Law Task Force.

FOR INFORMATION

13. Lawyers Insurance Fund Annual Review

Director of Insurance Su Forbes, QC presented the Benchers with a summary and analysis of the performance of the Lawyers Insurance Program in 2009.

15. Report on National CBA Council Conference

Mr. LeRose reported briefly, referring the Benchers to his written report at page 1500 of the meeting materials for details.

16. 2010 Benchers' Retreat Planning Update

Mr. McIntosh reported briefly, referring the Benchers to his memorandum at page 1600 of the meeting materials for details.

***IN CAMERA* SESSION**

The Benchers discussed other matters *in camera*.

WKM

2010-03-15

PRESIDENT'S REPORT
February, 2010

This is volume two of my report as to my activities as President, subsequent to the Benchers' meeting of Friday, January 22, 2010.

On the 22nd, after a rushed lunch, I walked down to the Yaletown/roundabout Canada Line Station and journeyed out to the Bridgeport Station aka the River Rock Casino. There I spent some time at the CBA BC Branch Local and County Bar Presidents' meeting. Disproving the theory that lightening never strikes twice, my presentation was cut short by the ringing of a fire alarm, requiring us to clear out of the building. You will recall that the night before, I spent an hour and a half sitting on the curb in front of my hotel as the Vancouver Fire Department dealt with a fire on the 17th floor of the fabulous Rosedale Hotel, apparently caused by someone from the Cariboo drying a towel in a microwave.

I then journeyed back on the Canada Line, along with James Bond of Canal Flats, British Columbia, and we both attended and were judges at the Robert Guile debate at the Law Courts Inn. This debate involves UBC students debating the proposition that essentially says, Is it better to get a decision or to get the right decision?

Hopefully, Benchers in 2010 will be able to get the right decision quickly.

I then journeyed home on the evening of Friday, January 22.

On January 26, I received a not unexpected but unwanted telephone call from Ian Donaldson indicating that he and his family had made certain decisions, the outcome of which is that he must resign as our member of the Federation Council and must leave the "ladder" of that organization. In other words, he will not be advancing through to be President of the Federation of Canadian Law Societies.

After consultation with members of the Executive Committee and staff, we wrote to the Law Societies of Alberta, Saskatchewan and Manitoba, and to the Federation, setting out this position and indicating that we proposed that our Council member to replace Ian would be John Hunter, Q.C., our former beloved President, and that we proposed that he would advance through to be President of the Federation of Canadian Law Societies. We are grateful to John for agreeing to do this on our behalf and on behalf of the lawyers and citizens of Canada.

We felt it was necessary to achieve a consensus between ourselves, Albert, Saskatchewan and Manitoba, as although we felt that British Columbia was "entitled" to the presidency, it was a regional decision. I can indicate to you that all three provinces have reacted positively to this approach, once again proving that there are wonderful people from the prairie provinces. Accordingly, a resolution will go forward at the Federation meeting proposing John Hunter in these capacities, which will be moved by our compatriots from the prairies.

I can indicate to you that I have expressed to Ian the regrets that all of us have with respect to his decision, but our understanding in his making the decision and our acceptance thereof.

We are hopeful to have John Hunter journey with us to the sophistication of Toronto in March for the next Federation meeting.

On January 28, I had my regular meeting with Mr. McGee, followed up by a Town Hall meeting of Law Society staff, where I said a few words about myself and what I felt the year would hold

for the Law Society. This reminds me—we have to get together and arrange for me, Mr. Hume and Mr. LeRose to tour the building in a fashion similar to a royal or papal tour, which has been put off become of some sporting event in Vancouver.

On February 3, I journeyed to the capital city to meet with Kimanda Jarzebiak at Ascent Public Affairs. Also in attendance were Mr. McGee and Mr. Whitcombe, and we discussed various matters with respect to our relationship with the Government, which I will report on in Benchers' Concerns, as will Mr. McGee. After that meeting, I had my regular update meeting with Mr. McGee in a remote location, namely the Ascent office in Victoria.

On February 4, I participated in a telephone call with Dean Bobinski of the UBC Law School. She is setting up a Dean's Advisory Committee and requested that the President of the Law Society be a member of that Advisory Committee. I, of course, accepted on my own behalf and on behalf of future Presidents.

In return, you will be pleased to know that I have been retroactively awarded the gold medal for the 1971 graduating class of UBC Law. We also took the opportunity of discussing some other issues, particularly Aboriginal students and their participation in the legal community, as well as the next steps in the accreditation process for Canadian Law Schools. I have indicated to Dean Bobinski that our Law Society's position is that in order for this to work, it is essential that there be significant involvement of the Law Faculties in the implementation process of the accreditation work.

On February 5, I commenced a journey to eastern BC by driving to the Victoria airport and boarding a plane, which went first to Vancouver and then on to Cranbrook. While waiting for the Cranbrook plane, I spent some quality time at Gate 34 with His Honour Judge Dev Dley of the Provincial Court in Kamloops and our esteemed colleague, Ken Walker. I then flew on to Cranbrook, arriving at approximately 11:30 at Rocky Mountain International Airport. I was met by Life Bencher, Gerry Kambeitz, and spent the time between then and a wonderful bowl of goulash at Frank's Restaurant touring Cranbrook, a community that has quite phenomenal house prices. I then wandered the streets of Cranbrook for awhile and paid a visit to the Cranbrook Courthouse. All I need to say is that Cranbrook needs a new Couthouse. While wandering the streets of Cranbrook, I came upon the LeRoses, who, after meeting with the in-laws, took me to Fairmont Hot Springs, where we spent most of the evening in the hot springs.

The Kootenay Bar Association meeting was held Saturday morning. In attendance were members from several generations. Both Bruce and I spoke.

They seemed to be content with the activities of the Benchers, but had some questions about continuing professional development, which did not appear to be fact-based. Bencher Bruce LeRose responded to that admirably. As is usual, the President of the Law Society heaps significant praise and credit on the local Bencher, and I, of course, did that with Bruce LeRose, indicating to the membership how much work Bruce does and that he is the person primarily responsible, at least according to him, for (1) the continuing professional development requirements and (2) the maintenance of the TAF fee levy at its present level, with the corresponding significant increase in fees to members.

The AGM included some CLE/CPD programs, including a presentation on the new family Rules and a presentation by Derek LaCroix of LAP. These were well-received, although I was not able to attend, as the aforesaid Mr. LeRose indicated that I did not need any professional development.

Since we could not snowshoe, the three of us headed up to Invermere for lunch and then went for a drive on frozen Lake Windermere. It was a bit like the TV show, "Ice Road Truckers";

however, you would not have caught me driving my own BMW X5 out on the ice—maybe my 2000 Chevy Venture, but not a Bimmer. There were a bunch of ice fishing huts on the lake, in addition to a road that apparently goes the length of the lake. Three or four parts of the lake were cleaned up and, I think, flooded to make skating rinks for people who wanted to skate or play hockey or whatever, and then there appeared to be a golf tournament being played on the lake. Most of the vehicles on the lake appeared to be pickup trucks, which there seemed to be many more of than "green" alternatives. There was even a couple walking across the lake, carrying their groceries home to the other side.

We then returned to Fairmont Hot Springs for another several hours in the hot springs and then the annual banquet. At the banquet we learned that James Bond of Canal Flats, BC, has a sister who was named "Miss Canal Flats." He regrets telling me that.

In the morning we got up and I was returned to Rocky Mountain International Airport to await my flight home. I sat down for a coffee at a table with three other participants in the Kootenay Bar meeting, who were returning home to the Lower Mainland. Unfortunately, a Liberal Party of Canada meeting broke out, and I had to leave to maintain my sanity. I got home to Vancouver Island in time to participate in the Super Bowl.

Nothing happened on February 8, 9 or 10.

On February 11, Gavin Hume and I spent some time with the two finalists for the position of Chief Legal Officer of our Law Society. In the afternoon I met with Diana Papove about events for our retreat. I then met with various people to deal with the issue before our Credentials Committee, followed by my weekly meeting with Mr. McGee late in the afternoon. I then returned to Vancouver Island and did nothing for the Law Society until February 18 when I again went to Vancouver for my meeting with Mr. McGee. That meeting was over at approximately 10 o'clock. I then set out to participate in Olympic activities by visiting the "pavilions" or buildings. There were huge lineups and I don't like waiting in line, be it for one of these events or a buffet. In particular, the lineup to get into the Saskatchewan pavilion appeared to have no end. The crowds were lining up to attend the hockey game between the USA and Norway. I saw our former leader, John Hunter, wearing a Norway jersey and heading to the game. Inspired by this, I located a small businessman on an adjoining street and as a result, was able to attend the hockey game between the USA and Norway. After the hockey game, I returned to the Law Society building for the Executive Committee meeting and was able to get the 8:15 ferry back to Duke Point.

On February 22, I attended a Call Ceremony in Duncan, BC. All those in attendance were very impressed that the President of the Law Society would attend ceremonies such as this in small communities.

On February 25, I had my regular meeting with Mr. McGee, followed by a meeting with the Justice Education Society and a further meeting with Diana Papove to finalize events for our retreat in fabulous Parksville.

On February 26, I was very pleased to journey up to Kamloops to attend the Welcoming Ceremony for Master Meg Shaw.

On March 1, I attended for the opening of the PLTC spring course, with some remarks to the class.

The Law Society of British Columbia

Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

March 5, 2010

Introduction

With the Vancouver 2010 Olympic Winter Games now successfully behind us we are back into our regular public office hours and focused on the busy year ahead. My report this month will cover the annual report to the Benchers on the 2009 financial statements, as well as our report on Key Performance Measures (KPMs) for 2009. Jeanette McPhee our CFO will present the financials at the March 5 Benchers' meeting and will address any questions you may have; members of the Management Board will be available to respond to any questions regarding the KPMs. I am also pleased in this report to provide details regarding the hiring of our new Chief Legal Officer and our new Manager, Communications and Public Affairs. Finally, there are several items which I will be covering in the *in camera* portion of Friday's meeting.

1. 2009 Annual Financial Statements

A copy of the draft 2009 Annual Financial Statements together with Management's report thereon is attached (see Appendix 1). The Audit Committee will be meeting later this month to receive the Report of the Auditors on the financial statements, and to formally approve the statements for publication and distribution. In accordance with our governance policies the draft financials are being presented to the Benchers for review and information.

2. 2009 Report – Key Performance Measures (KPMs)

The KPMs were approved by the Benchers in 2007 as the dashboard for measuring how we are doing in pursuing the goals we have set for regulating the legal profession in the public interest. The KPMs focus on what the Benchers and Management believe are the most important outcomes for each of our regulatory departments. The KPMs are not measuring everything we do, but rather whether what we are doing is achieving the desired results. For example, the KPMs in the complaints area measure whether complainants feel that the handling of their complaint was timely, thorough and fair.

2008 was the first full year of reporting under the KPMs and the results were included in our 2008 Annual Review which was distributed publically. The 2009 report attached hereto (see Appendix 2) includes some additional data that was not available in the past but is now incorporated into the results. Overall, we are tracking well to our desired outcomes and there are no major areas on concern. We look forward to reviewing the results with you and to your comments and questions.

The Audit Committee has been delegated the authority by the Benchers to work with Management to monitor and oversee the continuing development of the KPMs and to recommend modifications and changes

as may be desirable. Because of timing constraints in the first few months of 2010, the Audit Committee has not had an opportunity to meet to discuss the 2009 KPM results, however, an advance copy of the report attached as Appendix 2 has been shared with them. The Committee will be meeting later this year to review the KPMs generally, and at that time will also have the benefit of the results of the Core Processes Review (not available now) which is being undertaken by Management this year to identify opportunities to better support our regulatory departments.

3. Update – Core Processes Review Project

As reported at the January 22 Bencher meeting, we are undertaking a comprehensive operational review this year of each of our core regulatory areas. The purpose is to assess how our processes, resources, operational policies and budget allocations are supporting our efforts to achieve our KPMs and to identify opportunities where they are not. This type of review is a hallmark of well-run organizations and should be undertaken approximately every three to five years.

The key to a successful core process review is to engage and consult with the staff who are actually doing the work and to capture their insights and experiences in a meaningful and useful way. To do this, we need a dedicated project leader properly supported by expert help. I am pleased to report that Kensi Gounden will take on this project as a special assignment this year acting as Project Leader, and he will be assisted in this work by Marion McAdam of Fourthwall Consulting Inc. in Vancouver. Ms. McAdam was chosen over several competitive candidates because of her extensive experience in this area and her work with organizations of similar operational profiles to that of the Law Society.

The first stage of the Project, to be completed by April, will outline the scope of work and develop the consultation and engagement plan for the organization. The second stage will be conducting the consultations and performing the reviews and this is scheduled for completion by the Fall. We are targeting to have a final report including any recommendations available by year end.

We will be communicating with staff and Benchers regularly on plans and progress on the Core Processes Review as the year unfolds.

4. New Senior Staff Appointments

Chief Legal Officer

As reported earlier, I am very pleased that Deborah Armour has accepted our offer to become the new Chief Legal Officer of the Law Society effective April 8 2010. Deb brings to the Law Society more than 20 years

experience as lawyer in a variety of roles including 15 years of compliance leadership in regulated industries. Most recently, Deb has been the Director of Legal and Compliance Services for Powerex Corporation. Prior to joining Powerex, Deb worked as a Senior Vice President at Raymond James Ltd and as General Counsel at the Vancouver Stock Exchange, where she frequently acted as counsel in disciplinary hearings before the Securities Commission.

Deb is a graduate of Dalhousie Law School and was called to the British Columbia Bar in 1986. She began her legal career at Russell & DuMoulin and later practiced litigation at Ladner Downs.

In addition to her extensive professional background, Deb has a long record of service as a volunteer, and has been a member of the Audit Committee of the Law Society as well as a board member of the Canadian Corporate Counsel Association.

Deb's reputation is as a strong, positive, strategic and principled leader and communicator, all of which will be of benefit to the Law Society.

Manager, Communications and Public Affairs

After an extensive search, we have been fortunate to find Robyn Crisanti to fill the position of Manager, Communication and Public Affairs, effective March 8, 2010. Robyn brings solid experience in a variety of communications management roles at QLT Inc., Terasen Gas Inc. and the British Columbia Automobile Association. Most recently, Robyn has been working on a consulting basis with a variety of small to medium size businesses, developing strategic marketing and internal communication strategies, as well as web-based solutions for her clients.

Robyn has a Bachelor of Arts from UBC, and a Masters in Business Administration from McGill University. She has been described as having a passion for strategic solutions, being a good listener and mentor, as well as being very detail oriented and willing to roll up her sleeves and get the job done.

Please join me in welcoming both Deb and Robyn to the Law Society.

Timothy E. McGee
Chief Executive Officer

2009 FINANCIAL REPORT

Attached please find a copy of the **draft** financial highlights and statements for the 2009 fiscal year. The financial statements will be finalized during the upcoming PWC audit and Audit Committee meetings which occur in the March/April time period.

General Fund (No TAF Included)

The General Fund operating results for the year had a positive variance to budget of $482,000.

Revenue for the year was $17,916,000, $962,000 (5.7%) ahead of budget. Membership numbers for 2009 tracked slightly ahead of budget, with an average of 10,213 members for the year. Interest revenue was ahead of budget due to higher than expected cash balances during the year. There were a total of 400 PLTC students this year, another record year. Electronic filing revenue was received at a similar level to 2008.

The operating expenses were $480,000 (3.0%) over budget, which is fully offset by the revenue gains noted above.

External counsel fees were $250,000 over budget due to both the number and size of professional conduct, intervention and legal defense files. Custodianships included $130,000 in non-recurring staffing costs, plus additional file storage costs of $70,000 transferred from Special Fund.

Education and Practice was under budget in PLTC supplies, the number of practice review conducted and on-line course expenditures. The IS off-site server decision was delayed, resulting in savings of $70,000. 845 Cambie results were positive by $120,000, due to additional lease revenue of $30,000 and savings of $90,000 in building operating expenses.

TAF-Related Revenue and Expenses

TAF revenue was $2,436,000, very close to our projection, but less than the original TAF budget. This is a 7% decrease from 2008 levels, compared to a 23% increase in real estate unit sales for the same period. We expect this difference may be due to a time lag in TAF transactions.

TAF operating expenses were $3,288,000, $238,000 under budget. The savings were related to the timing of staff hiring and reduced travel costs.

The shortfall between TAF revenue and costs was funded by $852,000 of the TAF reserve, leaving the TAF reserve at $127,000 at the end of the 2009 year.

General Fund Reserve

At the end of 2009, the General Fund Reserve is $5,575,000, consisting of a General Fund operating reserve of $4,492,000, a TAF reserve of $127,000, and a Capital Allocation reserve of $956,000.

General Fund Operating Reserve

As directed by the Benchers in November 2009, beginning January 1, 2010, the Forensic Audit department costs will no longer funded by TAF. As the 2010 practice fee budget did not include the Forensic Audit department costs (approximately $1.3 million), these costs will need to be funded by the General Fund operating reserve during 2010. During the 2011 fee and budget process in June/July of this year, the Finance Committee will need to consider this funding issue and adjust the General Fund Practice Fee as necessary.

TAF Reserve

Assuming current TAF revenue levels, it is expected that the 2010 TAF revenue will fund the Trust Assurance department during the year, and no use of reserve should be necessary.

Capital Allocation Reserve

The General Fund practice fee includes an allocation for the 10-year capital plan, with the balance of this reserve related to planned building maintenance and renovation capital projects.

Special Compensation Fund

With the Special Compensation Fund winding up, the operating results for the year were on track. Assessment revenue and expected recoveries came in as expected, and the LIF loan was paid down. For the 2010 year, there are a few outstanding claims to be reviewed, and a small reserve is expected at the end of the year.

Lawyers Insurance Fund (LIF)

The draft LIF financial results are being presented prior to the finalization of the Provision for Settlement of Insurance Deductibles. This provision will be adjusted by the actuarial valuation during the upcoming audit. For presentation purposes, the provision is assumed to equal budget.

Excluding investment income, the operating results had a positive variance for the year. Annual assessment revenues were $10.4 million, very close to budget. Operating expenses were $5.1 million, $440,000 below budget. Staffing costs, office expenses and investment manager fees came in below budget.

The investment income shows a loss of $1,449,000 for the year. With the transfer of the investments to new investment managers during March/April 2009, the realized market loss on transfer of $3.5 million is included in this figure and recognized through the income statement. Offsetting this, there is a $13.7 million unrealized gain on investments for the remainder of the year. According to accounting standards, this unrealized gain is recognized only through the statement of net assets/balance sheet, and is not recorded on the income statement until realized. If this gain was recorded on the income statement, the net investment gain for the year would be approximately $12 million.

We are pleased that the overall investment return for 2009 was 14.7%, compared to a benchmark of 12.8%.

The Law Society of British Columbia

Summary of Draft Financial Highlights - 2009
($000's)

2009 General Fund Draft Results

	Actual	Budget	$ Var		% Var
Revenue					
Membership fees	14,581	14,423	158	*	1.1%
PLTC and enrolment fees	999	906	93		10.3%
Electronic filing revenue	648	484	164		33.9%
Interest income	419	141	278		197.2%
Other revenue	1,269	1,000	269	**	26.9%
	17,916	16,954	962		5.7%
Expenses including 845 Cambie	16,548	16,068	(480)	***	-3.0%
	1,368	886	482		

* Membership numbers are 10,213
Includes Capital Allocation of $1,797k (budget = $1,778k)
** Discipline fines and recoveries over $119
*** External counsel fees overage offset by other operating expense savings

2009 General Fund

Practice Fee Revenue	Ave # of Members	Variance
2008 Actual	10,035	
2009 Budget	10,100	
2009 Actual	10,213	
Revenue		
Membership Practice Fee revenue slightly ahead of budget		156
PLTC Fee Revenue - Student attendance at 400 students, versus 360 budget		93
Electronic Filing Revenue - Revenue ahead of budget		164
Interest revenue ahead of budget due to larger cash balances		278
Higher discipline fines and recoveries than budgeted		119
Other revenue		152
		962
Operating Expenses		
REG + P&L: Additional counsel fees		(250)
REG: Custodianships - non-recurring salaries and storage		(200)
BG: Bencher meeting/event expenses		(63)
FLS Special Levy		(40)
CS: Recruiting Fees		(50)
ED & PRAC: PLTC/Practice reviews/On-line courses		150
IS & COMM: Elections		(35)
Juricert off-site server		72
845: 845 Cambie building results than budget		120
Net savings/additional accruals		(184)
		(480)
2009 General Fund - Positive Variance to Budget		482

Trust Assurance Program Draft Results

	2009 Actual	2009 Budget	Variance
TAF Revenue	2,436	3,045	(609)
TAP Expenses:			
Trust Administration	2,054	2,311	257
Forensic Audit	1,234	1,215	(19)
Total TAP Expenses	3,288	3,526	237
Trust Assurance Program	(852)	(481)	(371)
Use of TAF Reserve*	(852)	(481)	(371)
Net Trust Assurance Program	-	-	-

* TAF Reserve at December 31, 2009 = $127k

2009 Lawyers Insurance Fund Long Term Investments

The market declined significantly during the first couple of months of the year, but the subsequent months have seen positive returns. The overall investment performance for 2009 finished at 14.7% compared to a benchmark performance of 12.8%.

Market Value		
	December 31, 2009	95,359,569
	December 31, 2008	83,151,337
Performance		14.7%
Benchmark Performance		12.8%

The Law Society of British Columbia
General Fund
Results for the Year ended December 31, 2009
($000's)

	2009 Actual	2009 Budget	$ Var	% Var
Revenue				
Membership fees (1)	14,581	14,223		
PLTC and enrolment fees	999	906		
Electronic filing revenue	648	484		
Interest income	419	141		
Other revenue	1,269	1,200		
Total Revenues	17,916	16,954	962	5.7%
Expenses				
Regulation	5,841	5,442		
Education and Practice	2,950	3,106		
Corporate Services	2,496	2,528		
Bencher Governance	1,525	1,413		
Communications and Information Services	1,840	1,887		
Policy and Legal Services	1,830	1,481		
Depreciation	318	344		
Total Expenses	16,800	16,201	(599)	-3.7%
General Fund Results before 845 Cambie and TAP	1,116	753	363	
845 Cambie net results	252	133	119	
General Fund Results before TAP	**1,368**	**886**	**482**	
Trust Administration Program (TAP)				
TAF revenues	2,436	3,045	(609)	-20%
TAP expenses	3,288	3,527	239	7%
TAP Results	**(852)**	**(482)**	**(370)**	
General Fund Results including TAP	**516**	**404**	**112**	

(1) Membership fees include capital allocation of $1.797m (YTD capital allocation budget = $1.776m).

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The Law Society of British Columbia
General Fund - Balance Sheet
As at December 31, 2009
($000's)

	Dec 31 2009	Dec 31 2008
Assets		
Current assets		
Cash and cash equivalents	3	77
Unclaimed trust funds	1,440	1,286
Accounts receivable and prepaid expenses	1,373	822
B.C. Courthouse Library Fund	724	625
Due from Lawyers Insurance Fund	16,303	16,157
Due from Special Compensation Fund	-	2
	19,843	18,969
Property, plant and equipment		
Cambie Street property	11,886	12,148
Other - net	1,439	1,320
	33,168	32,437
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	4,306	4,258
Liability for unclaimed trust funds	1,440	1,286
Current portion of building loan payable	500	500
Deferred revenue	14,893	14,490
Deferred capital contributions	93	103
B.C. Courthouse Library Grant	724	625
Due to Special Compensation Fund	9	-
Deposits	28	16
	21,993	21,278
Building loan payable	5,600	6,100
	27,593	27,378
Net assets		
Operating Results	4,619	4,602
Capital Allocation	956	457
	5,575	5,059
	33,168	32,437

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
For the Year ended December 31, 2009
($000's)

	Operating Results	Capital Allocation	Total
	$	$	$
Net assets - December 31, 2008 (1)	4,602	457	5,059
Net (deficiency) excess of revenue over expense for the period	(1,282)	1,797	516
Repayment of building loan	500	(500)	-
Purchase of capital assets:			
LSBC Operations	542	(542)	-
845 Cambie	256	(256)	-
Net assets - December 31, 2009 (2)	4,619	956	5,575

(1) The remaining capital allocation for 2008 (capital allocation collected less capital purchases) has been separated out from the operating results.

(1) Includes TAF reserve of $127k.

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The Law Society of British Columbia
Special Compensation Fund
Results for the Year ended December 31, 2009
($000's)

	2009 Actual	2009 Budget	$ Var	% Var
Revenue				
Annual assessment	1,552	1,515		
Total Revenues	1,552	1,515	37	2.4%
Expenses				
Claims and costs, net of recoveries	(2,646)	(3,872)		
Administrative and general costs	309	269		
Loan interest expense	1	60		
Total Expenses	(2,336)	(3,543)	1,207	-34.1%
Special Compensation Fund Results	**3,888**	**5,058**	**(1,170)**	

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The Law Society of British Columbia
Special Compensation Fund - Balance Sheet
As at December 31, 2009
($000's)

	Dec 31 2009	Dec 31 2008
Assets		
Current assets		
Cash and cash equivalents	1	1
Due from Lawyers Insurance Fund	2,753	1,771
Due from General Fund	9	-
	2,763	1,772
	2,763	1,772
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	8	49
Current portion of claims payable	1,886	1,886
Deferred revenue	505	1,473
Due to General Fund	-	2
	2,399	3,410
Claims payable	-	1,886
	2,399	5,296
Net assets		
Unrestricted net assets	364	(3,524)
	364	(3,524)
	2,763	1,772

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The Law Society of British Columbia
Special Compensation Fund - Statement of Changes in Net Assets
For the Year ended December 31, 2009
($000's)

	Unrestricted $
Net deficit - December 31, 2008	(3,524)
Net excess of revenue over expense for the period	3,888
Net assets - December 31, 2009	364

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The Law Society of British Columbia
Lawyers Insurance Fund
Results for the Year ended December 31, 2009
($000's)

	2009 Actual	2009 Budget	$ Var	% Var
Revenue				
Annual assessment	10,407	10,517		
Investment income (1)	(1,449)	5,773		
Other income	70	17		
Total Revenues	9,028	16,307	(7,279)	-44.6%
Expenses				
Insurance Expense				
Provision for settlement of insurance deductibles (2)	15,720	15,720		
Salaries and benefits	1,988	2,105		
Contribution to program and administrative costs of General Fund	1,389	1,342		
Office	589	630		
Actuaries, consultants and investment brokers' fees	389	624		
Allocated office rent	116	116		
Premium taxes	9	10		
	20,200	20,547		
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	638	731		
Total Expenses	20,838	21,278	440	2.1%
Lawyers Insurance Fund Results before 750 Cambie	(11,810)	(4,971)	(6,839)	
750 Cambie net results	270	296	(26)	
Lawyers Insurance Fund Results	**(11,540)**	**(4,675)**	**(6,865)**	

(1) Investment income includes loss of $3.5m realized on transfer of long-term investment portfolio to new investment managers. Offsetting this, there is an unrealized gain of $13.7m for the year recognized through net assets (not through income statement). See Statement of Changes in Net Assets.

(2) Actuarial valuation outstanding.

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The Law Society of British Columbia
Lawyers Insurance Fund - Balance Sheet
As at December 31, 2009
($000's)

	Dec 31 2009	Dec 31 2008
Assets		
Cash and cash equivalents	20,573	20,945
Accounts receivable and prepaid expenses	457	220
Due from members	40	52
Due from Special Compensation Fund	-	-
General Fund building loan	6,100	6,600
Investments	105,082	94,137
	132,252	121,954
Liabilities		
Accounts payable and accrued liabilities	1,758	648
Deferred revenue	6,076	5,302
Due to General Fund	16,303	16,157
Due to Special Compensation Fund	2,753	1,772
Provision for claims **(1)**	61,192	56,232
Provision for ULAE **(1)**	8,087	7,881
	96,169	87,992
Net assets		
Unrestricted net assets	18,583	16,462
Internally restricted net assets	17,500	17,500
	36,083	33,962
	132,252	121,954

(1) Actuarial valuation outstanding.

The Law Society of British Columbia
Lawyers Insurance Fund - Statement of Changes in Net Assets
For the Year ended December 31, 2009
($000's)

	Unrestricted $	Internally Restricted $	Total $
Net assets - December 31, 2008	16,462	17,500	33,962
Net deficiency of revenue over expense for the period	(11,540)	-	(11,540)
Unrealized gains on available-for-sale financial assets arising during the period	13,661	-	13,661
Net assets - December 31, 2009	18,583	17,500	36,083

The Law Society of British Columbia

Key Performance Measures

Report on 2009 Performance

The Law Society of British Columbia

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The Law Society of British Columbia

Background

This is the third time that the organization has reported on the entire set of key performance measures.

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

The Law Society of British Columbia

Professional Conduct and Discipline

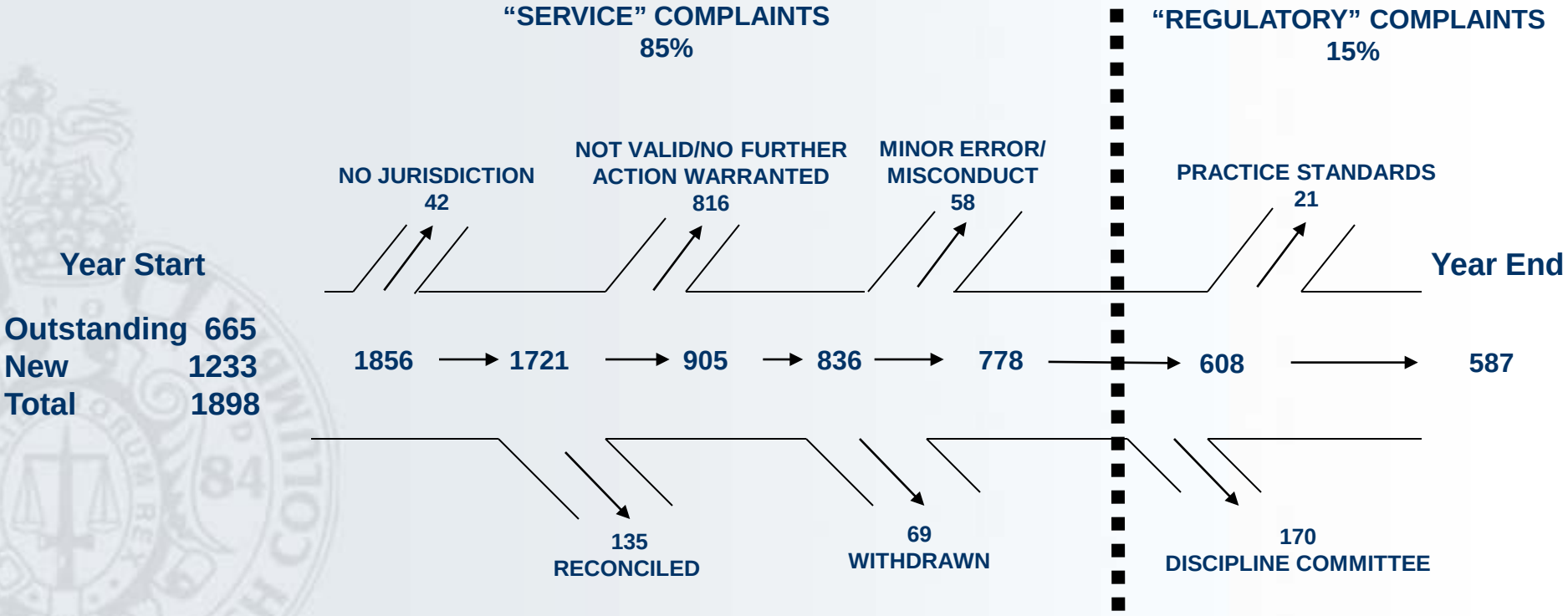
The Law Society of British Columbia

Department Highlights

- In 2009, the Professional Conduct Department closed more complaints than were opened, with 1,233 complaints opened and1,316 complaints closed during the year.
- Although we received over 100 more complaints in 2009 than we did in 2008, there were 78 fewer open files at year end than at the start of the year.
- For 2009, the frequency of complaints did increase to 12.1% reflecting the increase in the number of complaints in 2009. Analysis of the complaints we received in 2009 does not show any change in the nature or types of complaints, and the increased frequency may be an anomaly.
- The Department met or exceeded the Key Performance Measures for thoroughness, courtesy, fairness, and whether a complainant would recommend our process to someone else.
- We continue to work on improving timeliness and during the year we reduced the number of open files older than one year by 60% compared with 2008
- Over the last two years, the number of files open at any given time has been reduced by approximately 18%
- Both the CRC and the Ombudsman continue to be satisfied with our complaints handling process and procedure

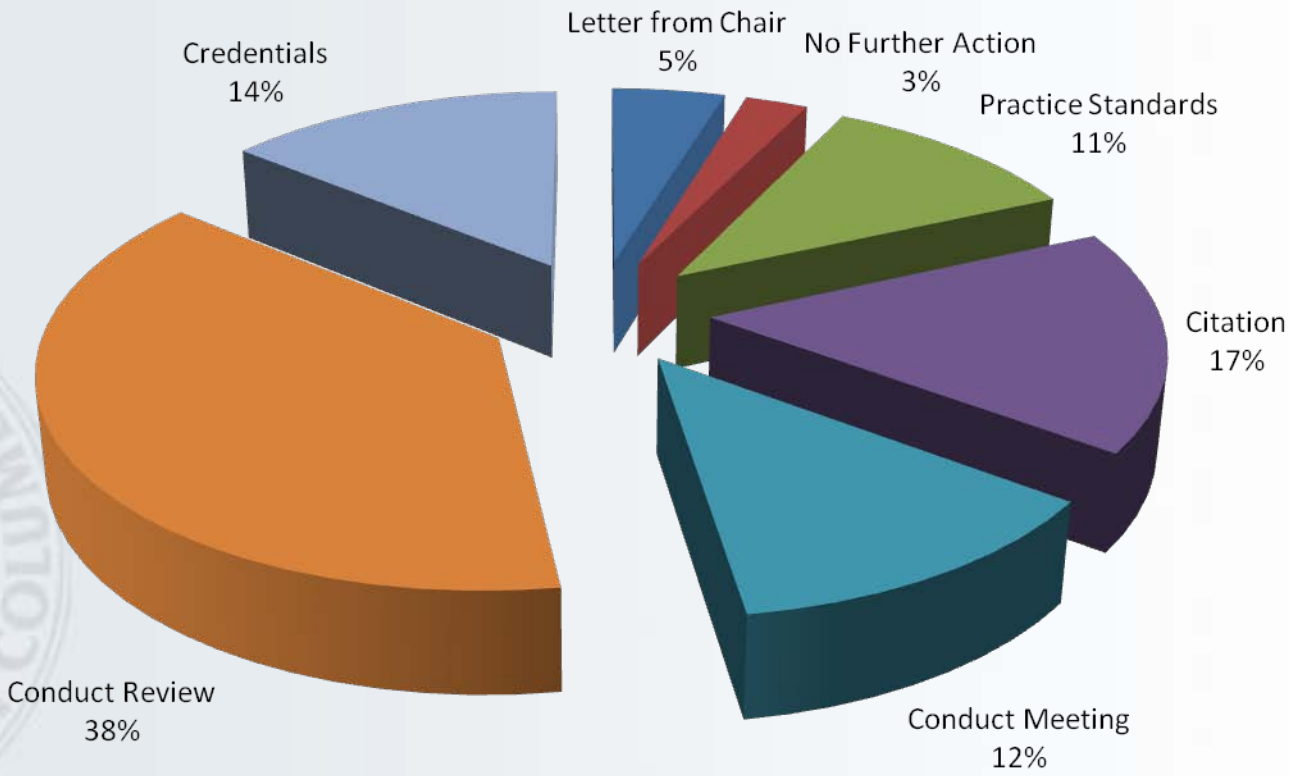
The Law Society of British Columbia

2009 Complaints Results



The Law Society of British Columbia

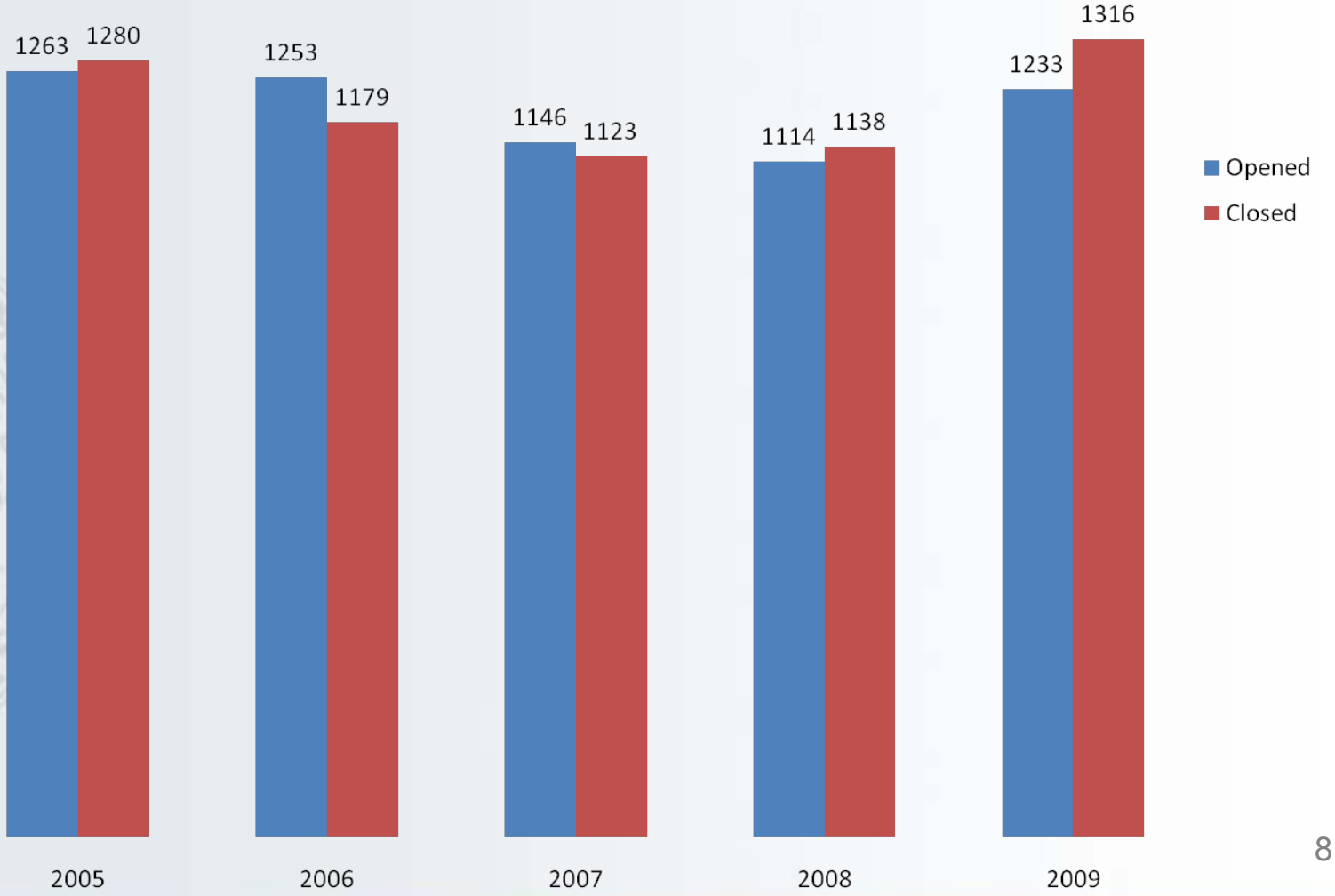
2009 Discipline Results



The Law Society of British Columbia

Key Activities

Number of Member Complaints Opened and Closed Each Year



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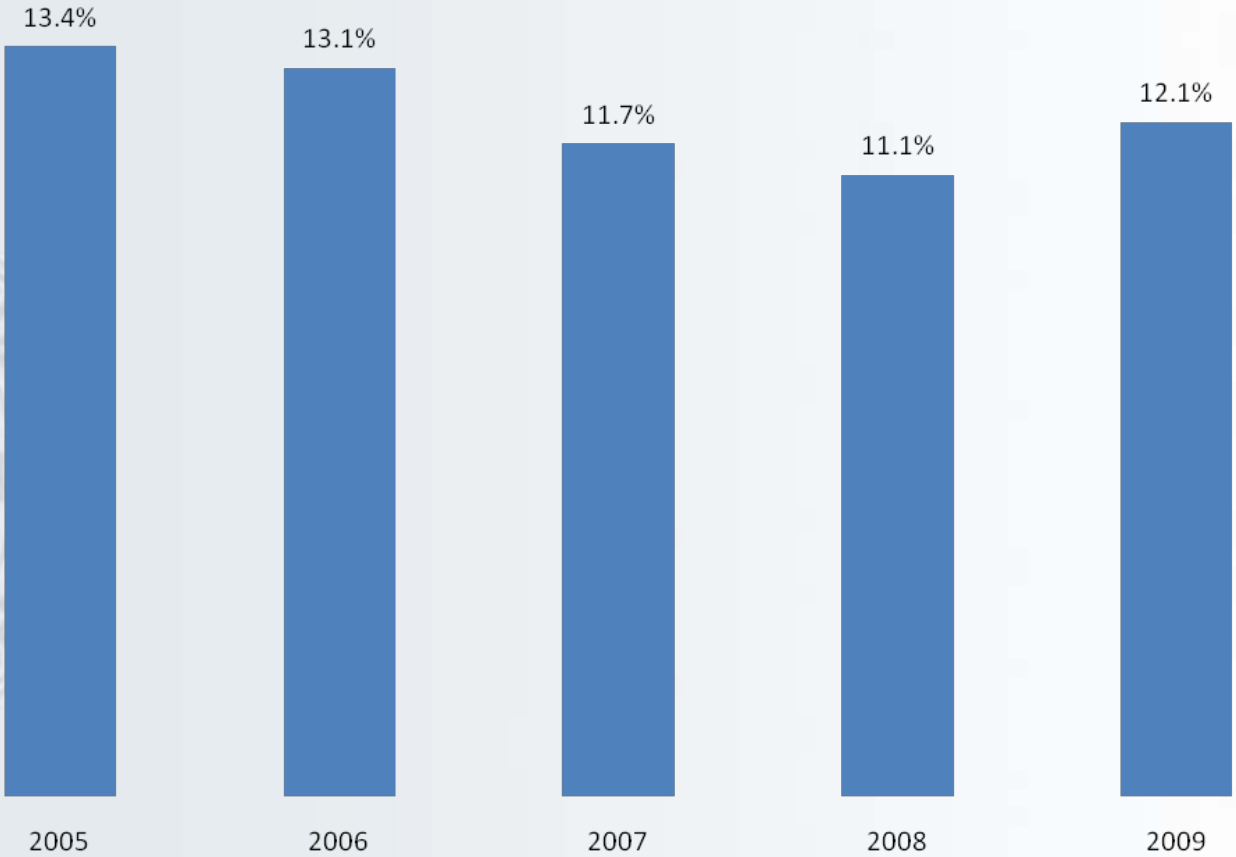
Key Performance Measures

Frequency of complaints does not increase over time



The Law Society of British Columbia

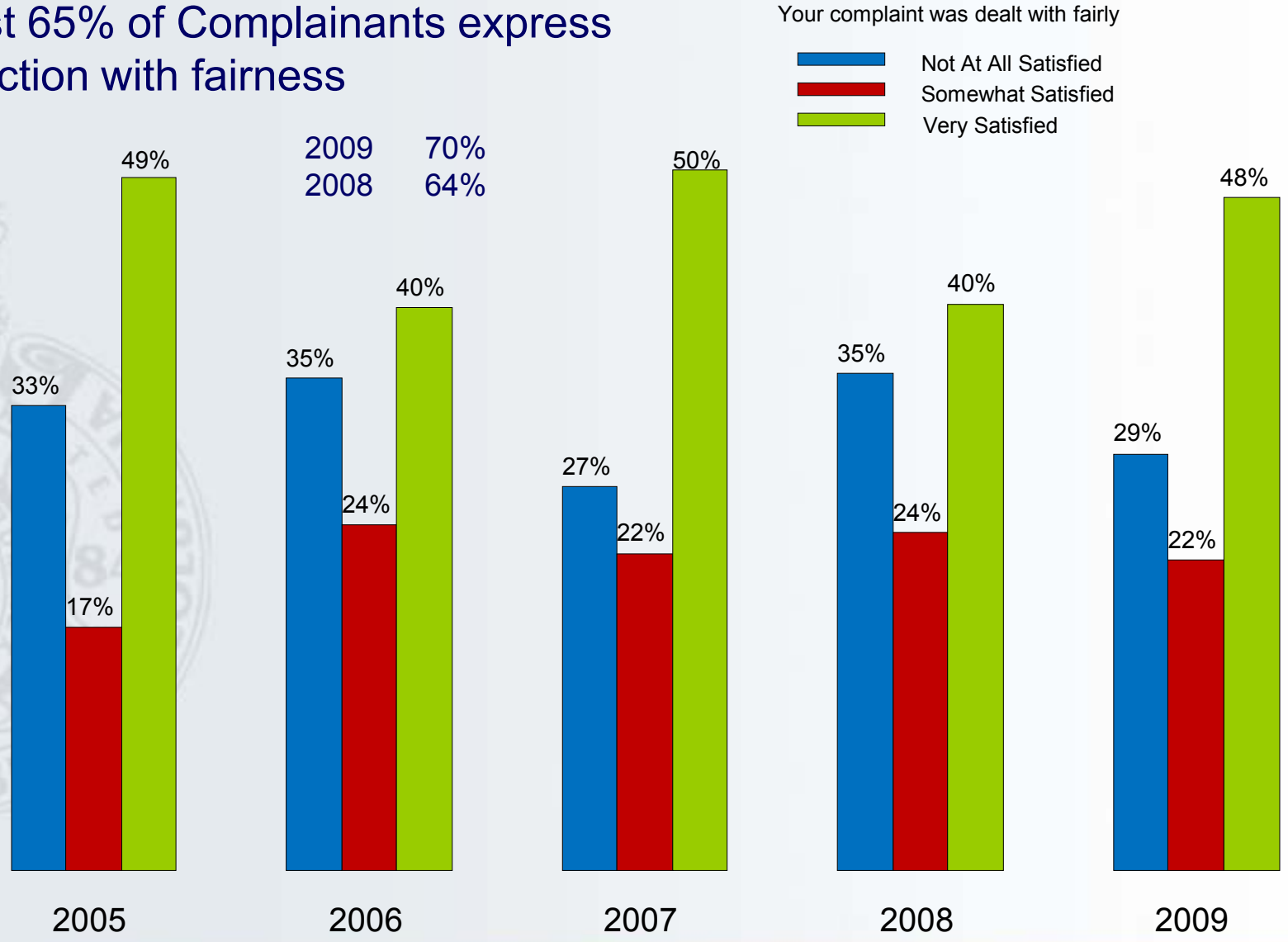
Key Performance Measures

At least 75% of Complainants express satisfaction with timeliness

The Law Society of British Columbia

Key Performance Measures

At least 65% of Complainants express satisfaction with fairness

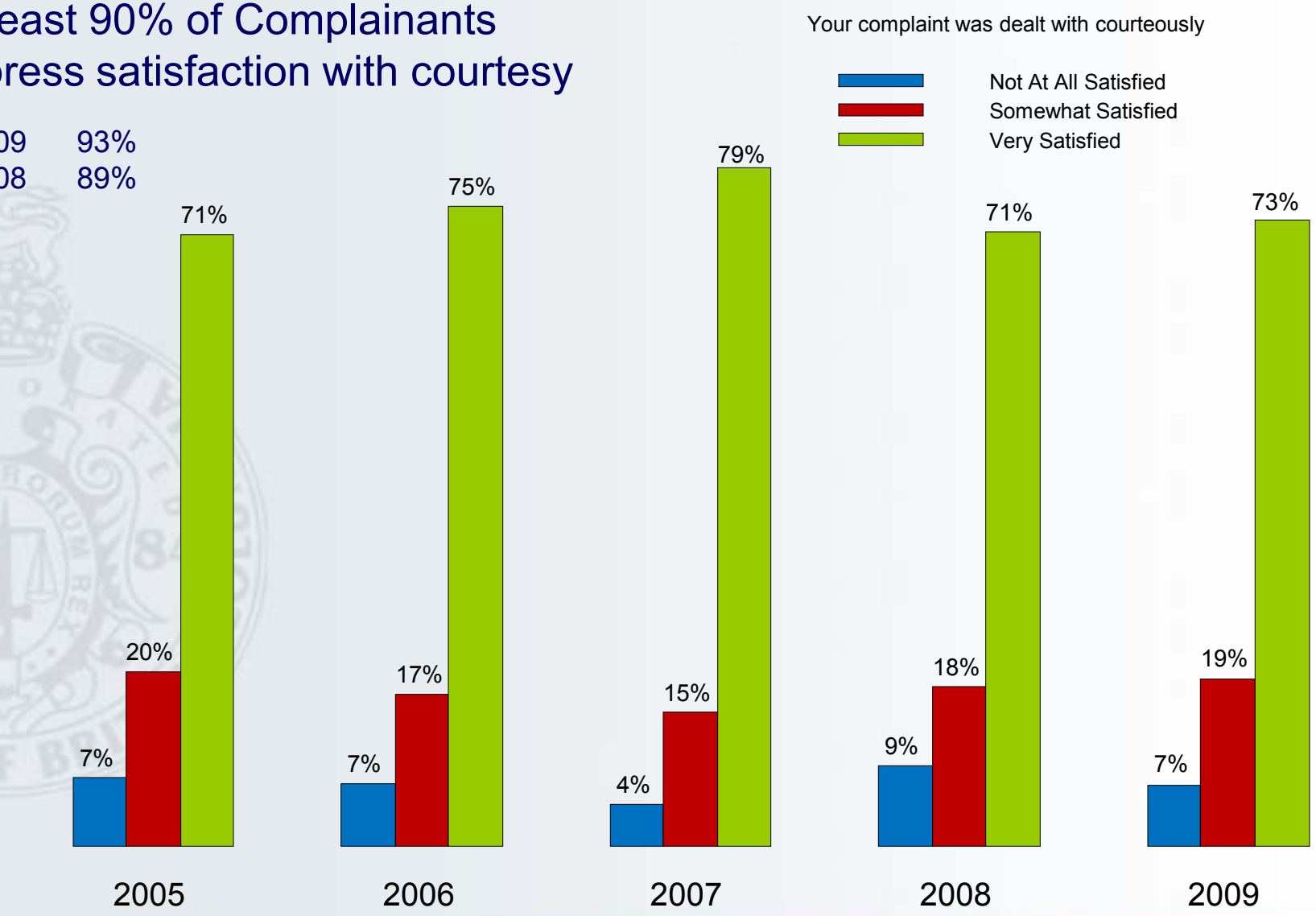


The Law Society of British Columbia

Key Performance Measures

At least 90% of Complainants express satisfaction with courtesy

2009 93%
2008 89%

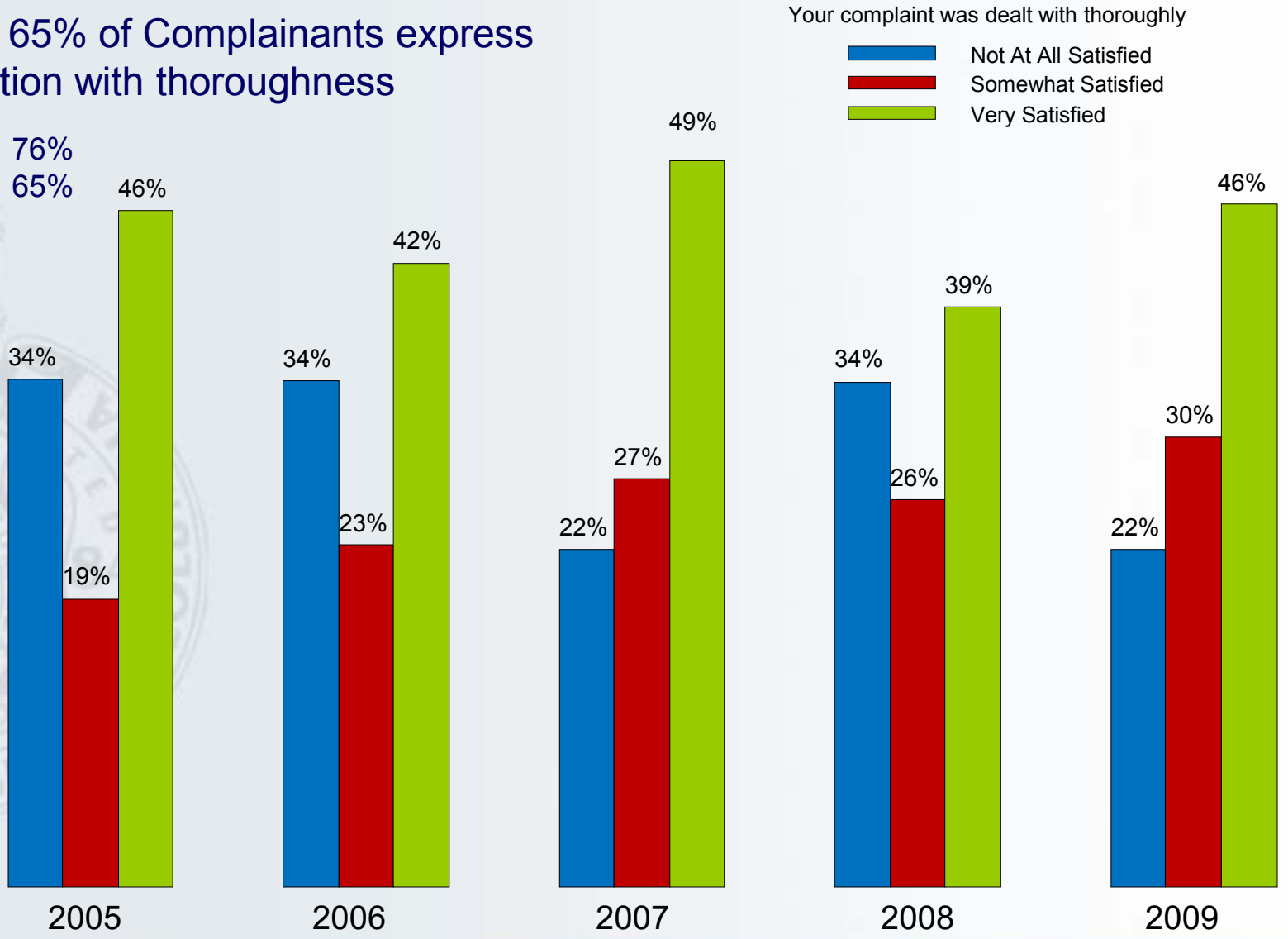


The Law Society of British Columbia

Key Performance Measures

At least 65% of Complainants express satisfaction with thoroughness

2009 76%
2008 65%

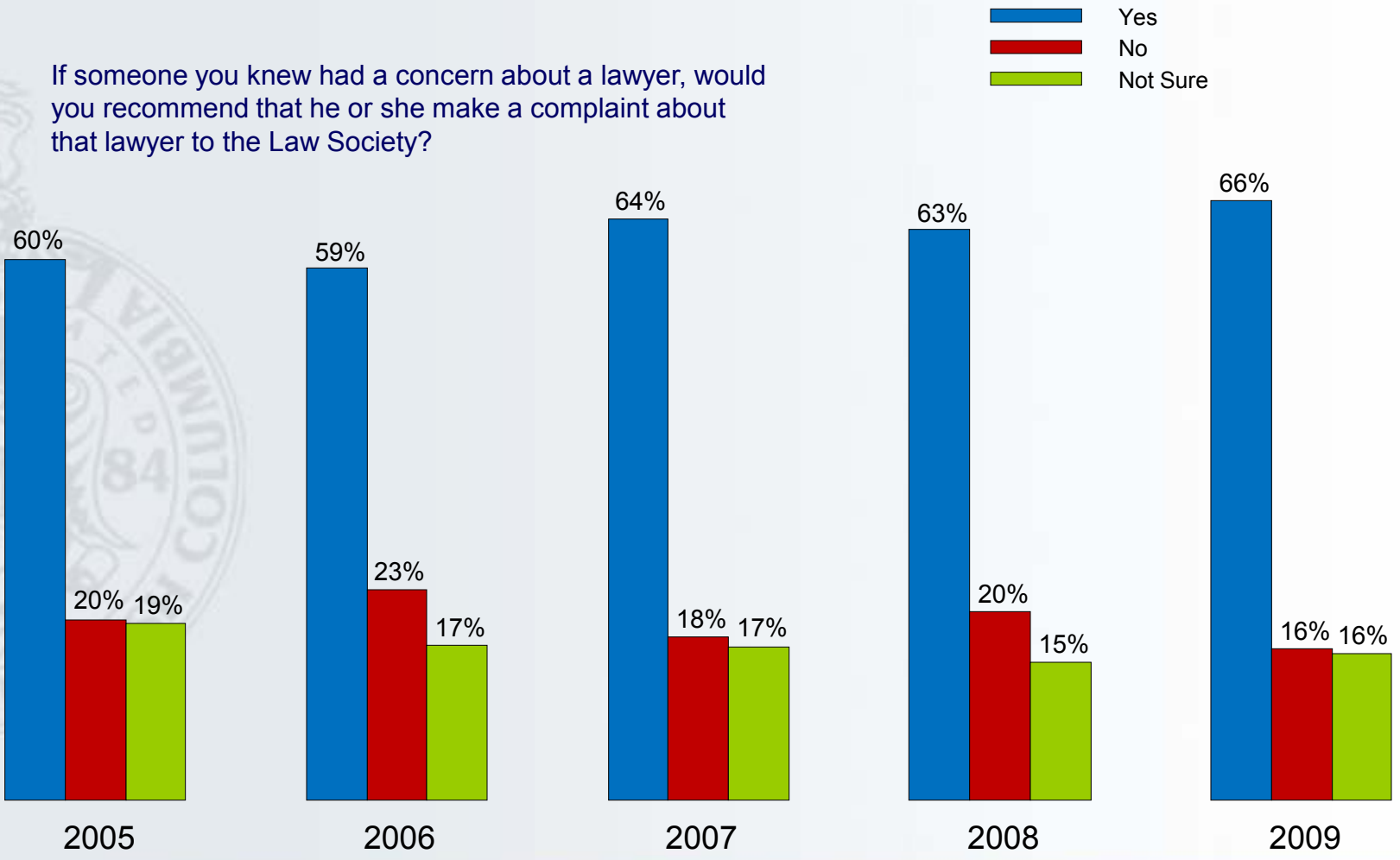


The Law Society of British Columbia

Key Performance Measures

At least 60% of Complainants would recommend someone make a complaint

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



The Law Society of British Columbia

Key Performance Measures

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

In 2009, a total of 5 enquiries were received from the Office of the Ombudsperson concerning our complaint investigation process, compared with the 6 enquiries received in 2008. In each instance, the Law Society satisfactorily addressed the issues raised.

In 2009, the Complainants' Review Committee considered 73 complaints, resolving to take no further action on 70 of them on the basis the staff assessments made were appropriate in the circumstances. While no referrals to the Discipline or Practice Standards Committees were made in 2009, the Complainants' Review Committee did seek further information on 3 files before satisfying itself that no further action was required.

In 2009, the Committee expressed no concerns about the fairness or due process followed in the investigation of complaints.

The Law Society of British Columbia

Custodianships

The Law Society of British Columbia

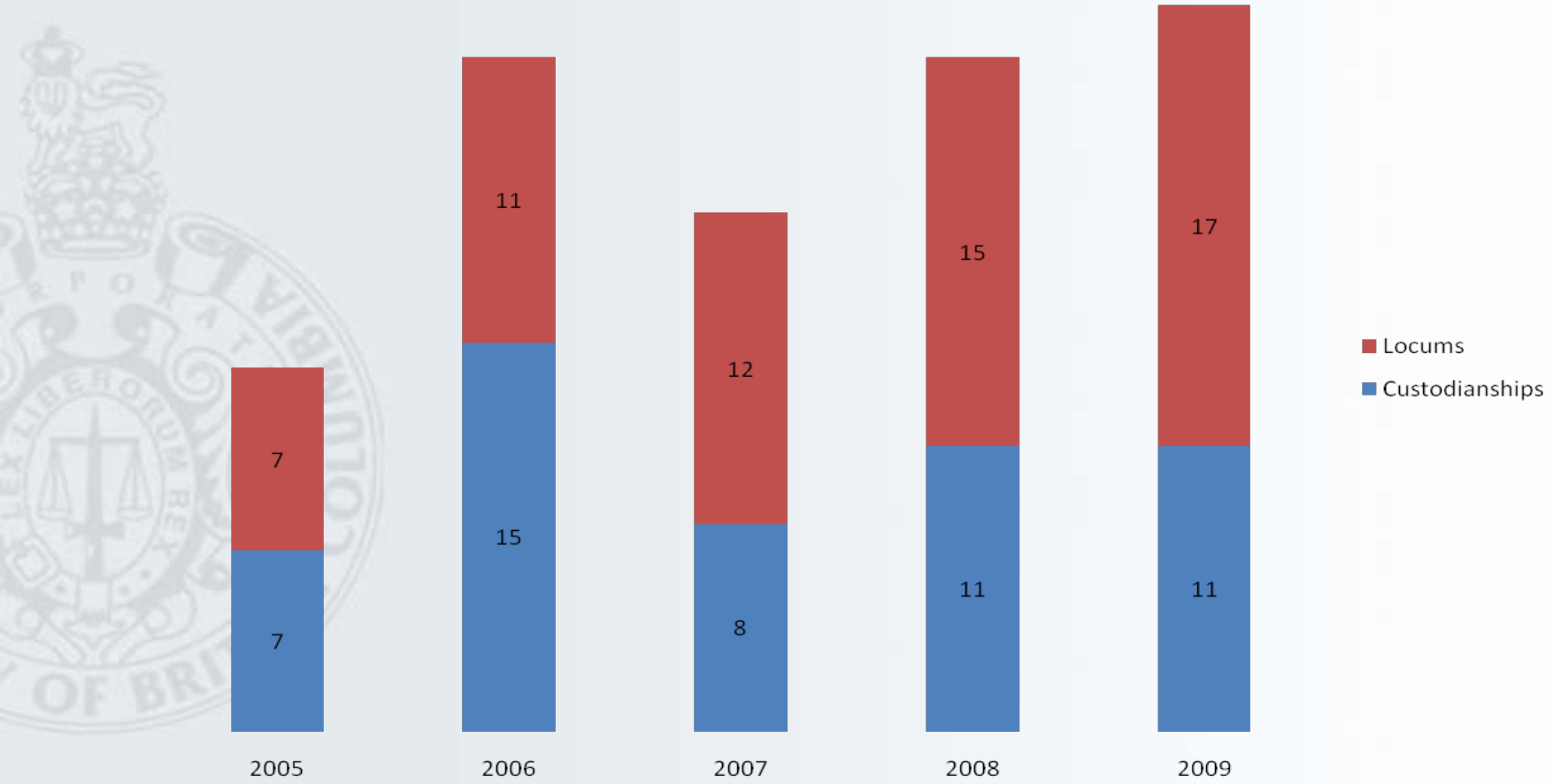
Departmental Highlights

- In 2009, the Law Society was appointed as a custodian for 11 practices and staff coordinated 17 locum placements, eliminating the need for the appointment of the Law Society as a custodian.
- There were 39 custodianships under administration at year end compared with 43 at the end of 2008.
- We discharged 15 custodianships in 2009, 9 in-house custodianships and 6 outside custodianships.
- Overall, the total number of practices requiring the appointment of a custodian or placement of a locum has been growing fairly consistently since 2005.
- The average time to complete a custodianship decreased significantly in 2009 due to the more timely resolution of in-house custodianships compared with outsourcing.
- The average cost of custodianships increased in 2009 compared with 2008 and was higher than the comparable historical average, even when adjusted for inflation. The increase was largely due to about $130,000 of non-recurring costs in 2009 relating to staffing and $70,000 in file storage costs that did not form part of the historical average.
- If we factored in the use of locums in 2009 to manage practices in place of custodianships, the average cost in 2009 would be $54,615 compared with an historical average of $84,968.

The Law Society of British Columbia

Key Activities

New Custodianships and Locums By Year



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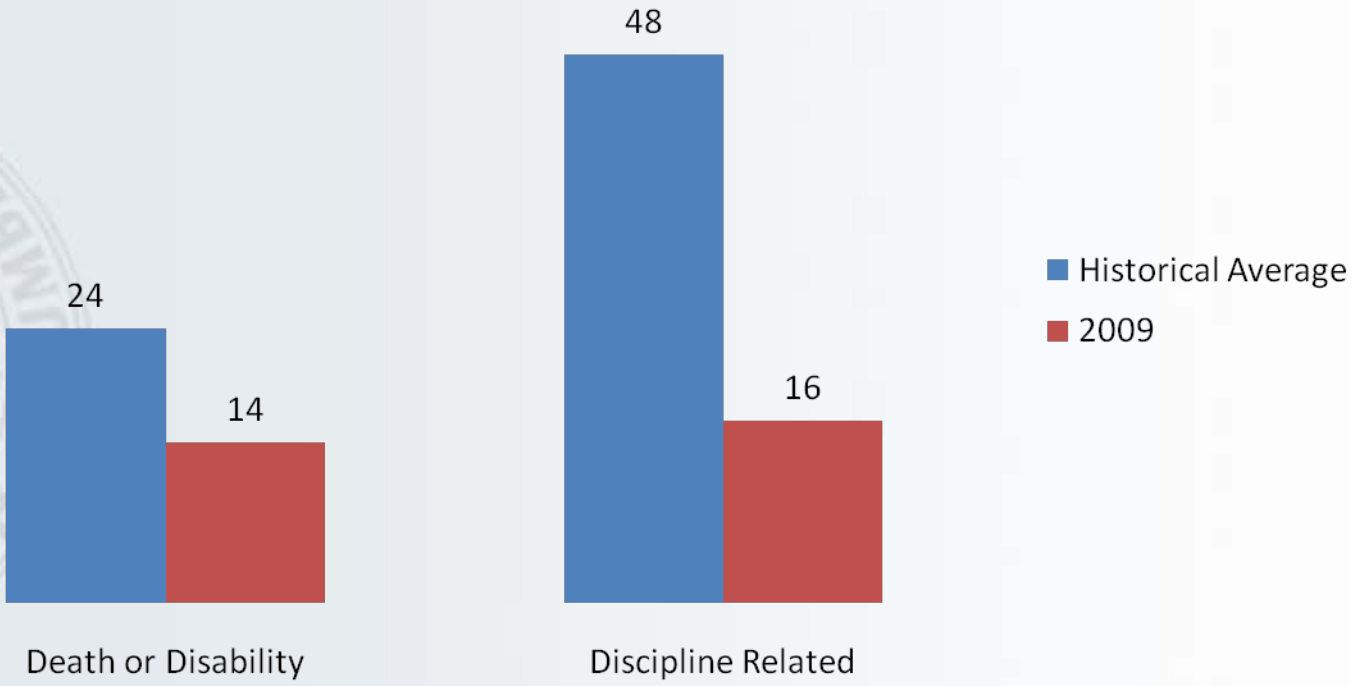
Key Performance Measures

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



* Duration in months

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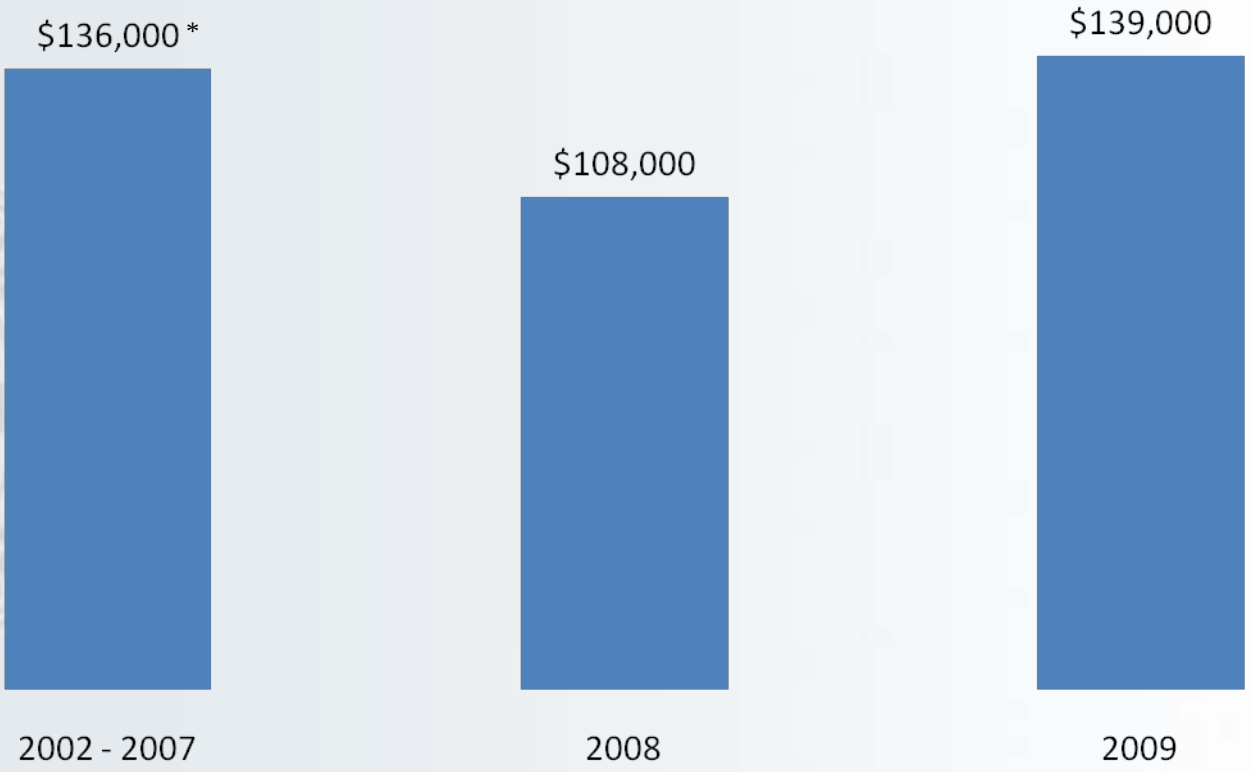
Key Performance Measures

The average cost of a custodianship will decrease under the new program based on comparable historic averages



* Adjusted for inflation

The Law Society of British Columbia

Trust Assurance

The Law Society of British Columbia

Department Highlights

- Reviewed 3,258 trust reports in 2009, approximately the same as in 2008.
- Completed almost 1000 compliance audits since the inception of the trust assurance program and on target to complete a compliance audit for each firm every six years.
- Although there was no reduction in 2009 in the number of financial suspensions issued by the Trust Assurance department, the absolute number has remained very low and stable over the last 3 years.
- After an initial increase in 2008 following the full implementation of new trust assurance program, increased compliance with the trust accounting rules meant that only 29 referrals in 2009 compared with 49 in 2008
- Performance on key compliance questions improved in 2008 (the last complete year for trust reports) over 2007 as measured by the percentage increase in the number self-reports allowed compared with those who had to provide an accountant's report.
- Development of a Trust Assurance course, to be delivered in 2010.
- Collected over $400,000 in unremitted interest for the Law Foundation, through compliance audit follow-up of exceptions.

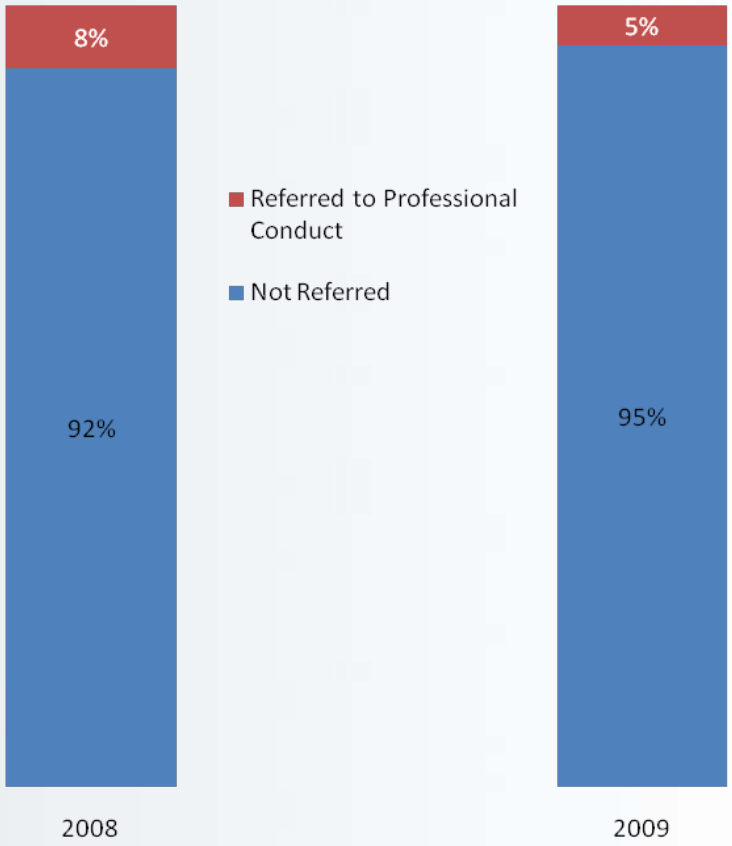
The Law Society of British Columbia

Number of Trust Reports

The Law Society of British Columbia

Compliance Audits

In 2009, we performed approximately 450 compliance audits



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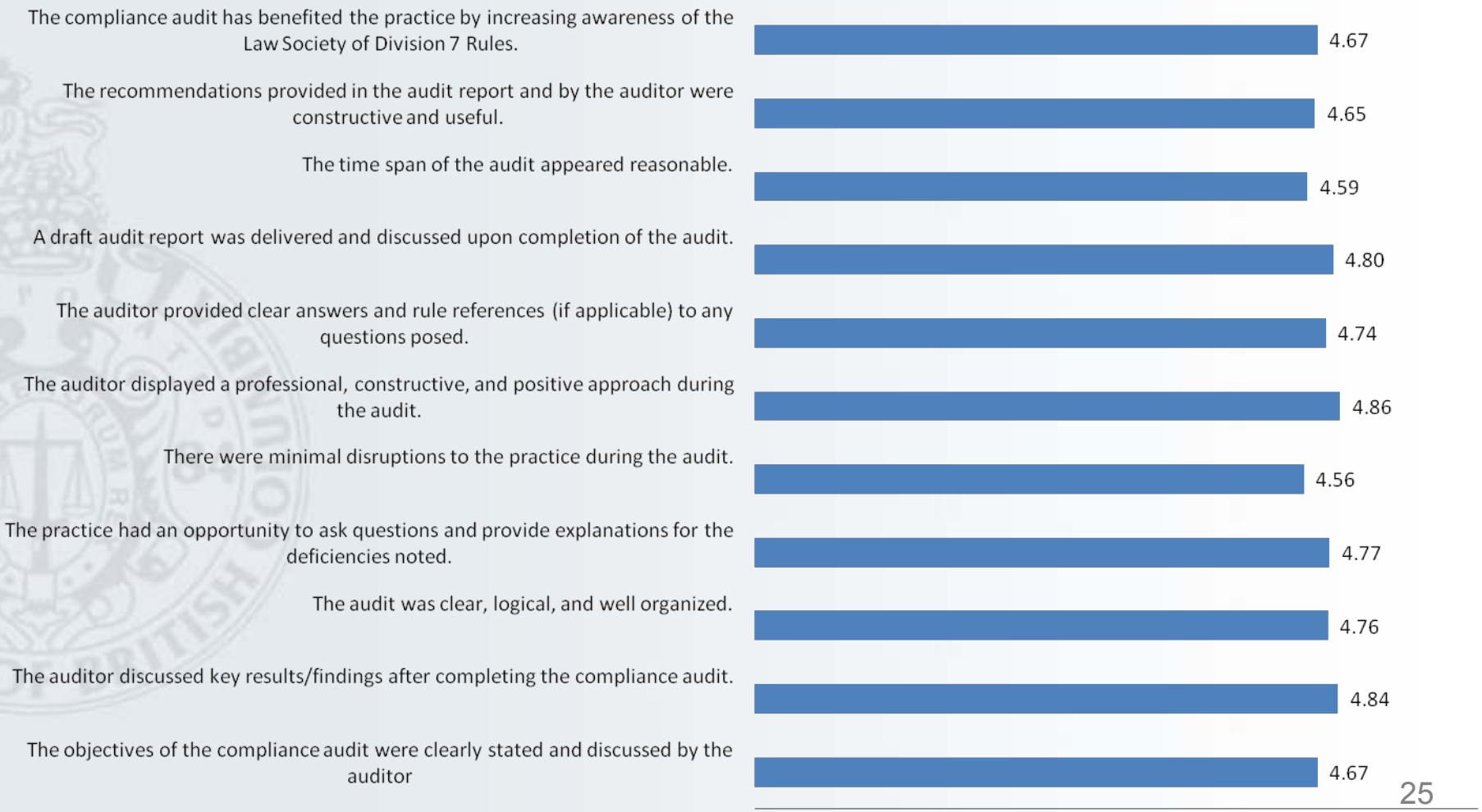
Key Activities

Trust Audit Survey Results (Average rating based on 5 point scale)



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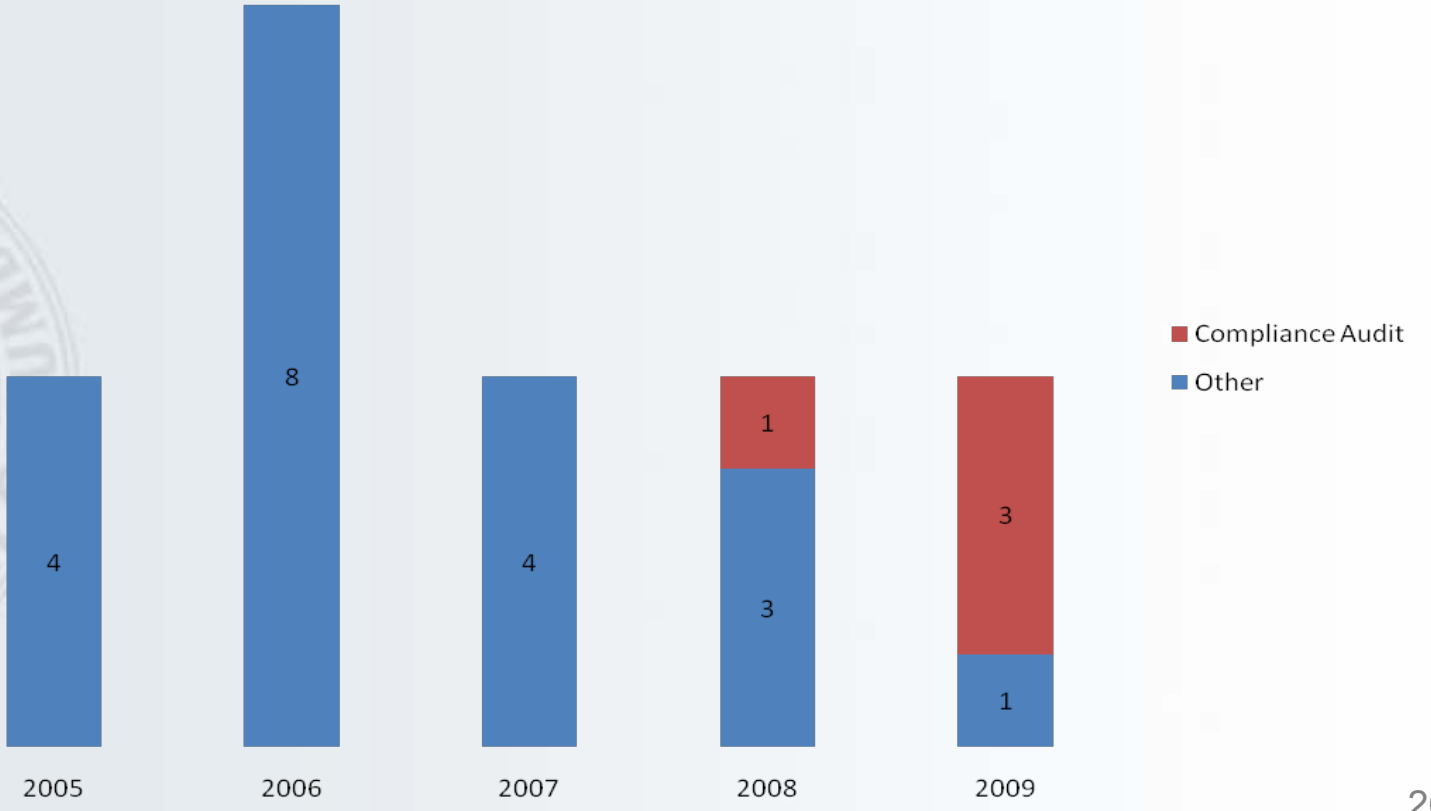
Key Performance Measure

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



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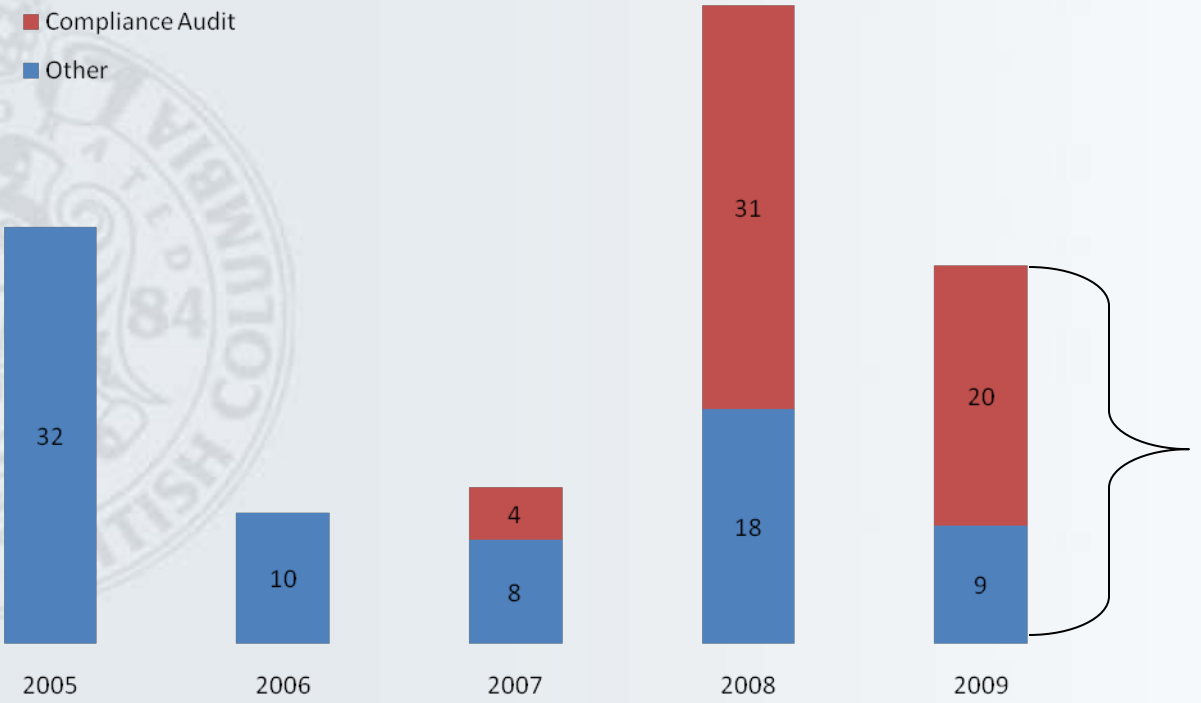
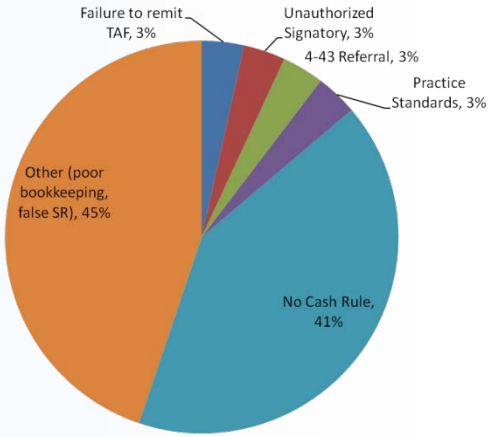
Key Performance Measure

Long term reduction of referrals to Professional Conduct





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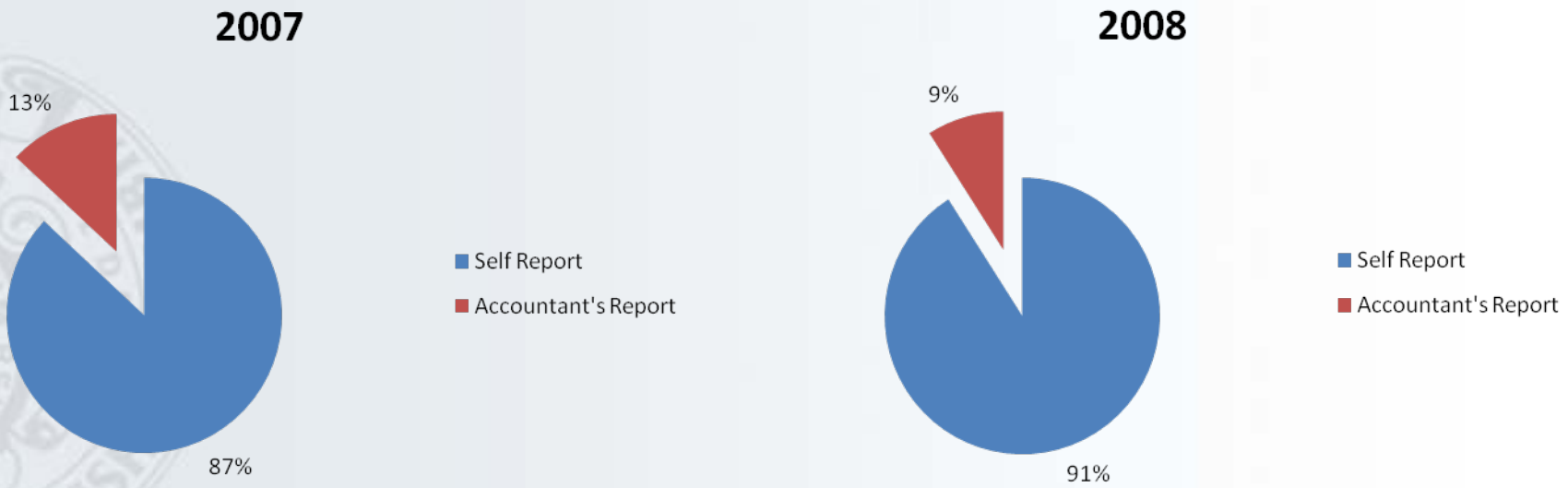
Key Performance Measure

Improved performance on key compliance questions from lawyer trust report filings

Increase in Self Reported Trust Report filings allowed



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Credentials, Articling and PLTC

The Law Society of British Columbia

Department Highlights

- Between 2004 and 2009, the number of PLTC students increased steadily from 311 to 410.
- Early registration figures show that 2010 will likely be the first year in seven that the number of students declines; approximately 380 students are expected.
- The number of students achieving an initial pass exceeded the key performance measure of 85% in each of the last five years.
- While students rated PLTC's value at an average of 3.5 or higher this year, principals rated PLTC's value less than 3.5 on three questions out of four.
- Both students and principals rated the value of articles at an average of 3.5 or higher this year and last, and 100% of the principals declared that their students were fit to practice law in 2009.

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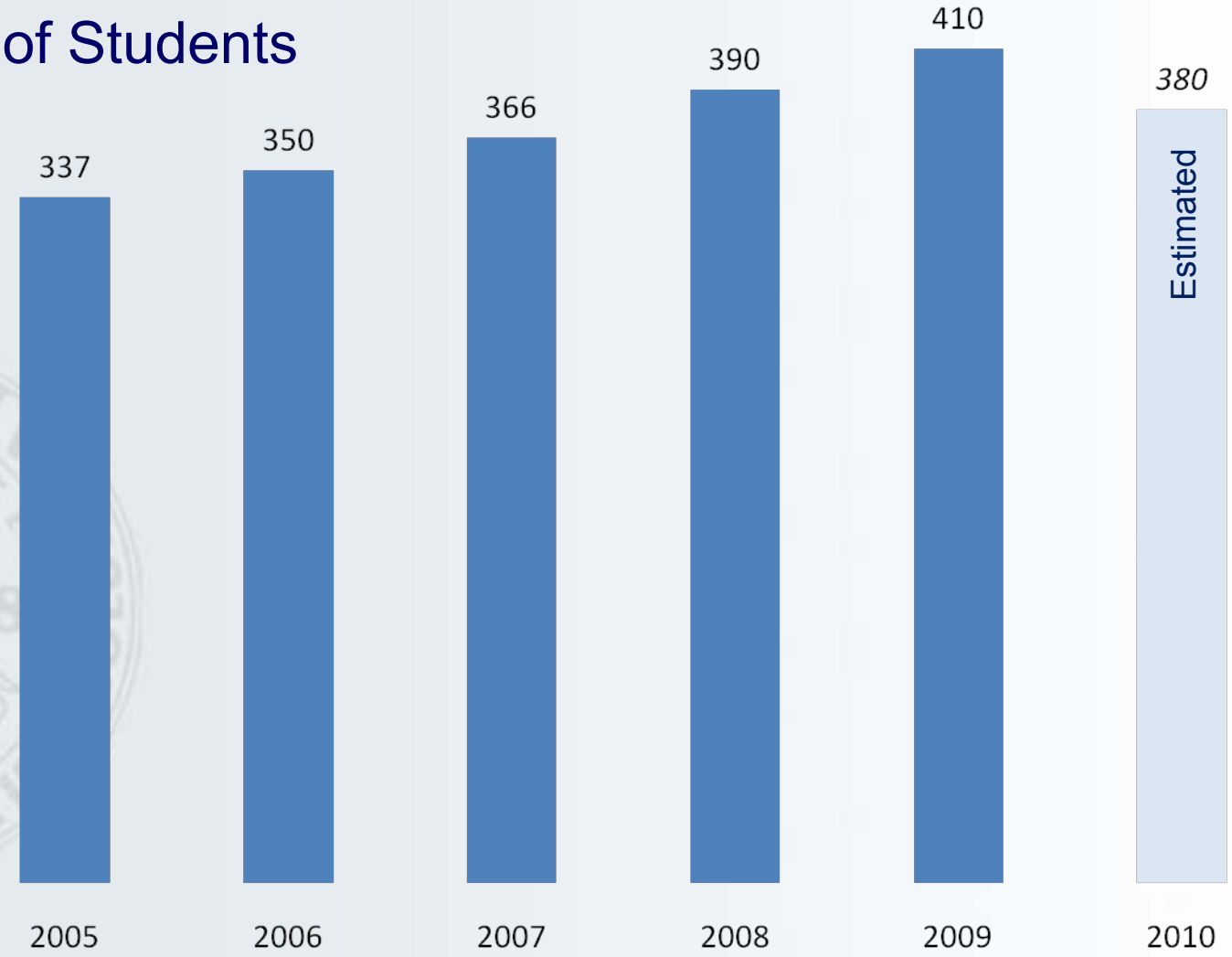
Key Activities

Number of Students



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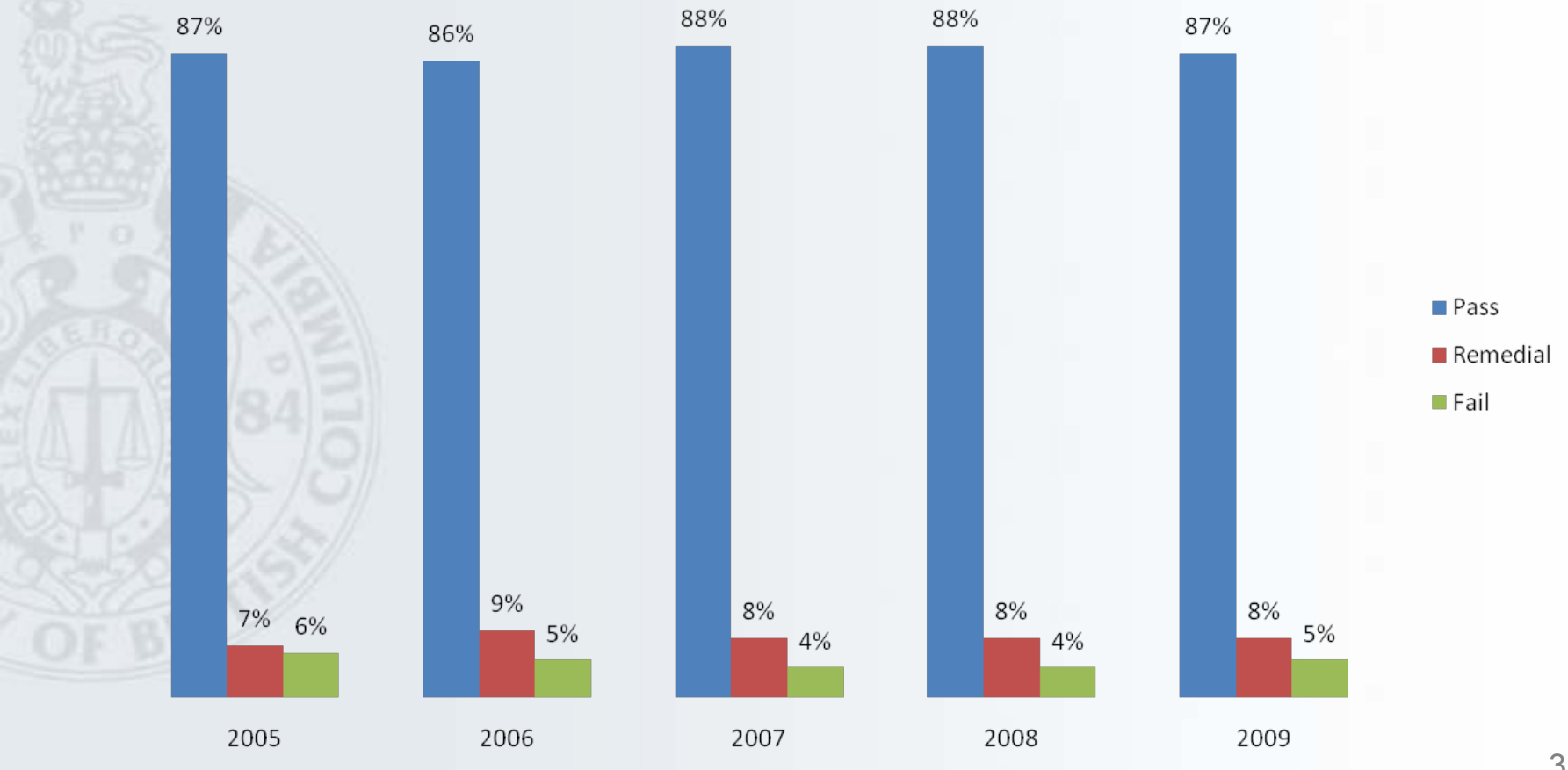
Key Performance Measures

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



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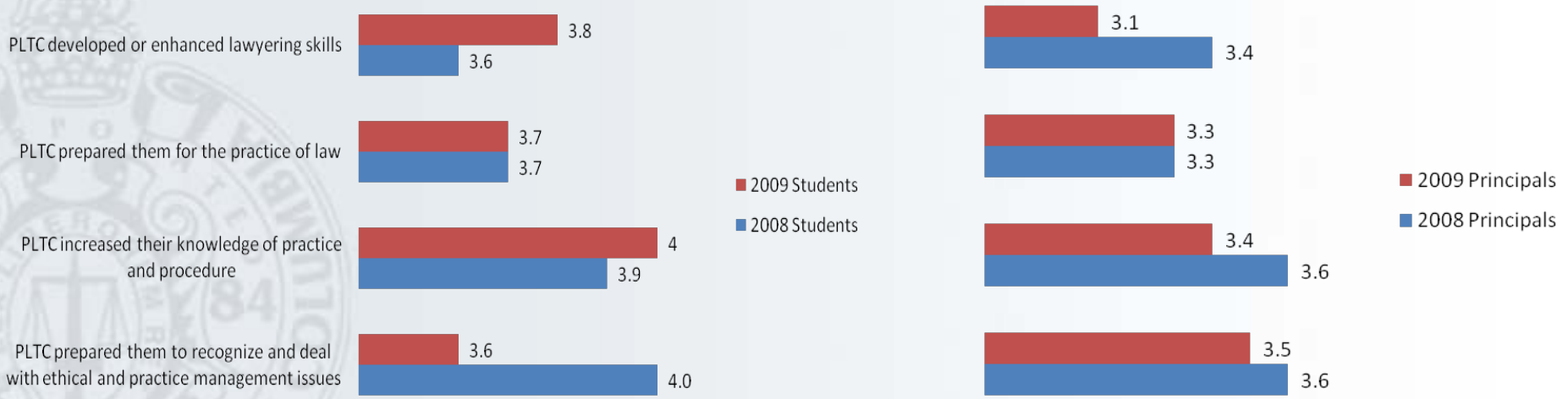
Key Performance Measures

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



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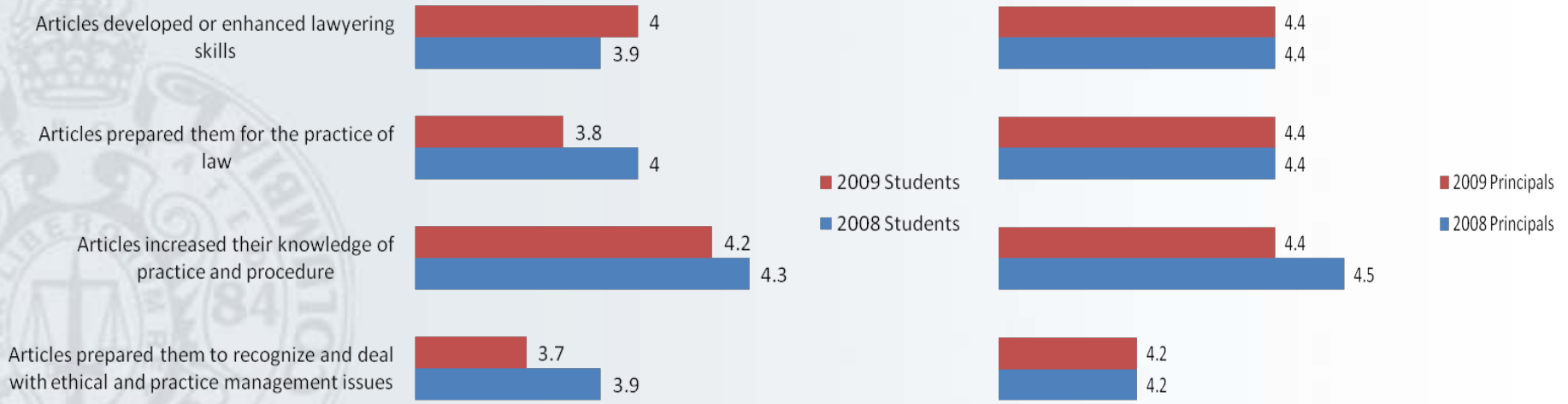
Key Performance Measures

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



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Key Performance Measures

98% of principals declare their student fit to practice law at the end of the Admission Program

In 2007, 99.8% of the principals declared their students fit to practice law.

In 2008, 100% of the principals declared their students fit to practice law.

In 2009, 100% of the principals declared their students fit to practice law.

The Law Society of British Columbia

Practice Advice

The Law Society of British Columbia

Departmental Highlights

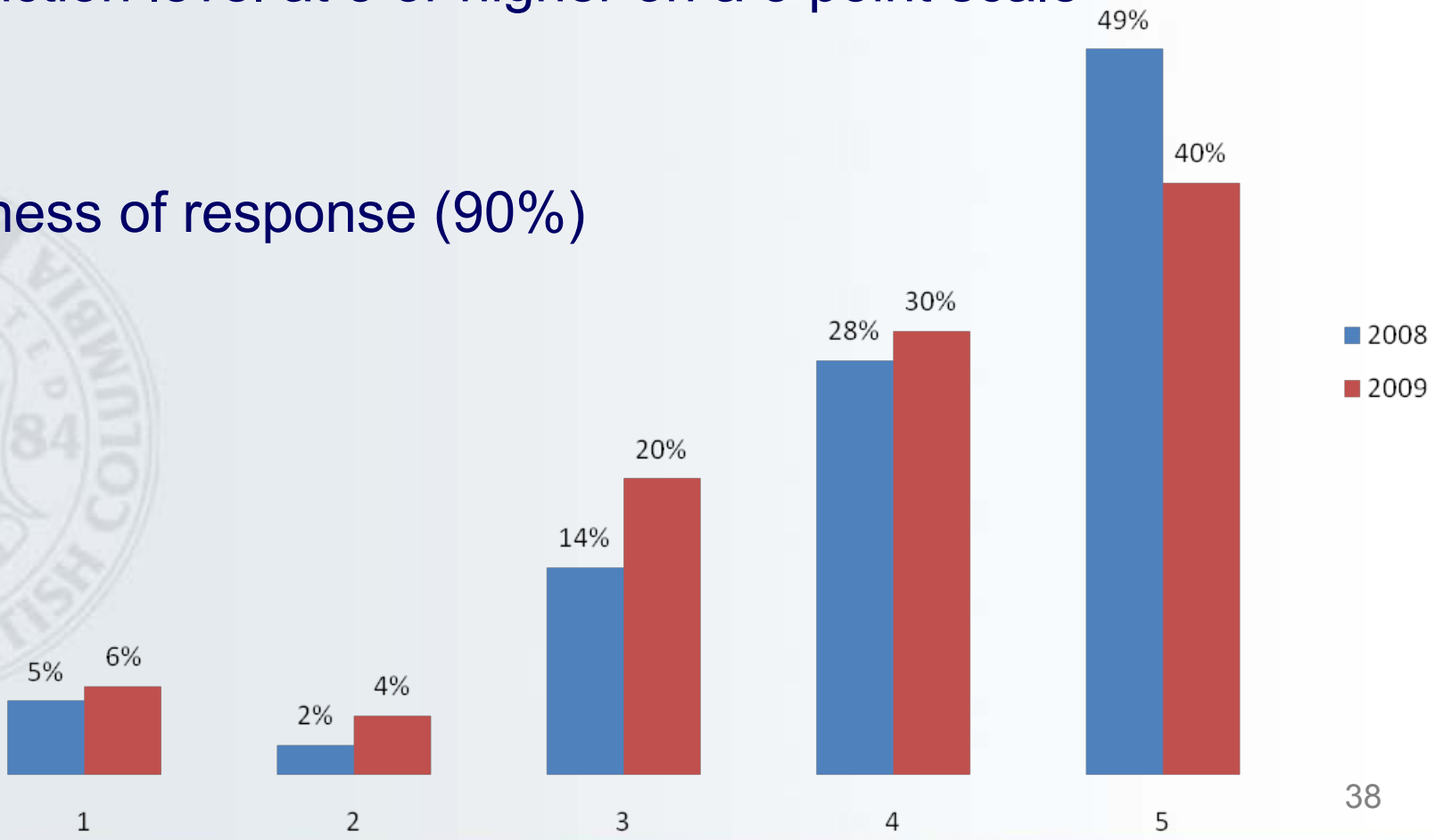
- The three Practice Advisors, and occasionally other staff lawyers, handled a total of 6,122 (5,996 by the Practice Advisors and 126 by other staff lawyers) telephone and email inquiries in 2009, an increase of 15% over the 5,322 in 2008.
- Although 90% of the lawyers who responded to our survey indicated rated timeliness of response at 3 or better, fewer rated it a 5 this year compared with last year.
- In rating the quality of advice, quality of resources and overall satisfaction with the advice, nearly 90% of the lawyers who responded provided ratings of 3 or better, a slight decline from the numbers for 2008.
- The significant increase in telephone and email inquiries handled in 2009 may have contributed to the decline in ratings for timeliness and overall satisfaction this year.

The Law Society of British Columbia

Key Performance Measures

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

Timeliness of response (90%)

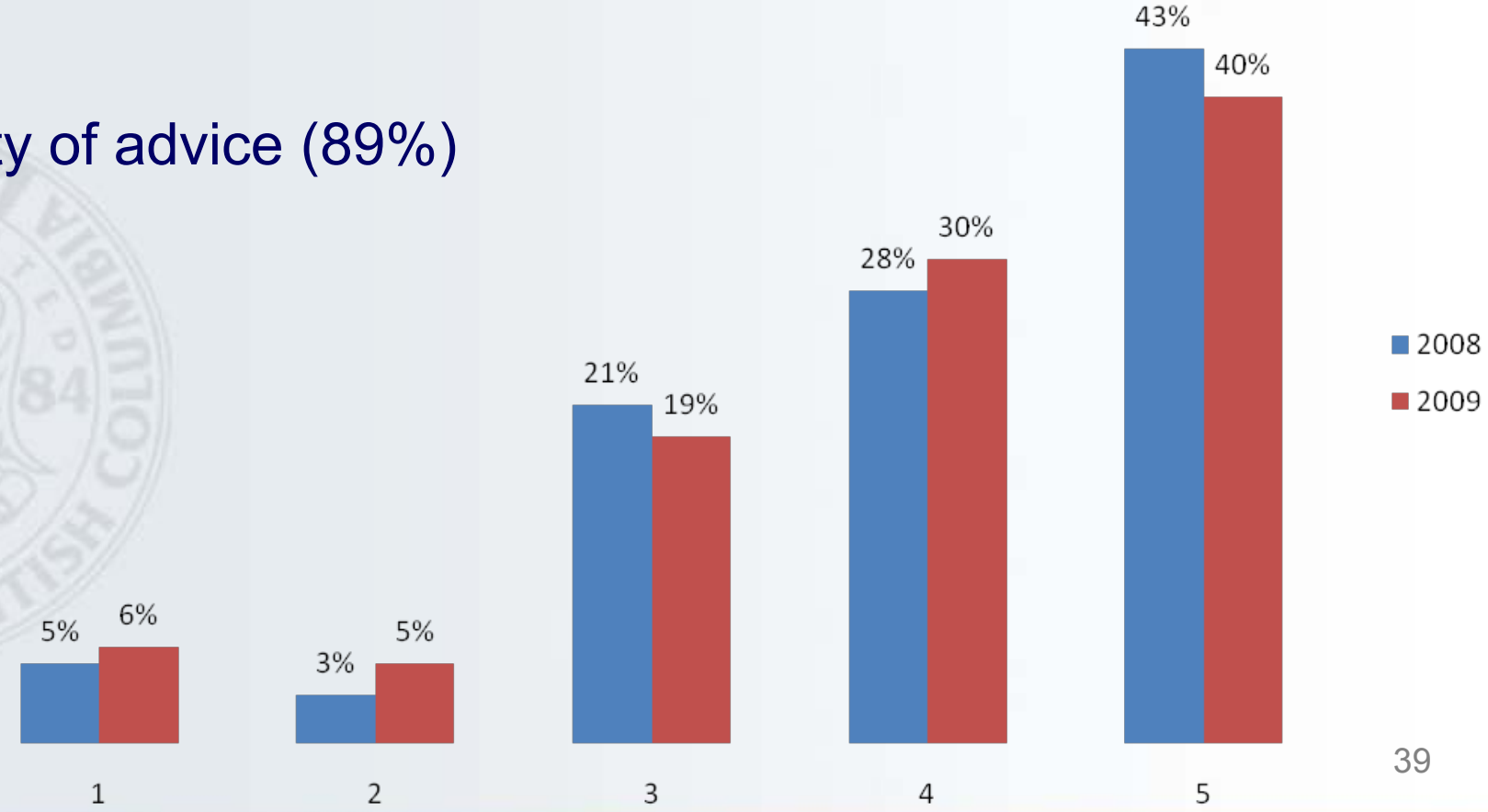


The Law Society of British Columbia

Key Performance Measures

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

Quality of advice (89%)

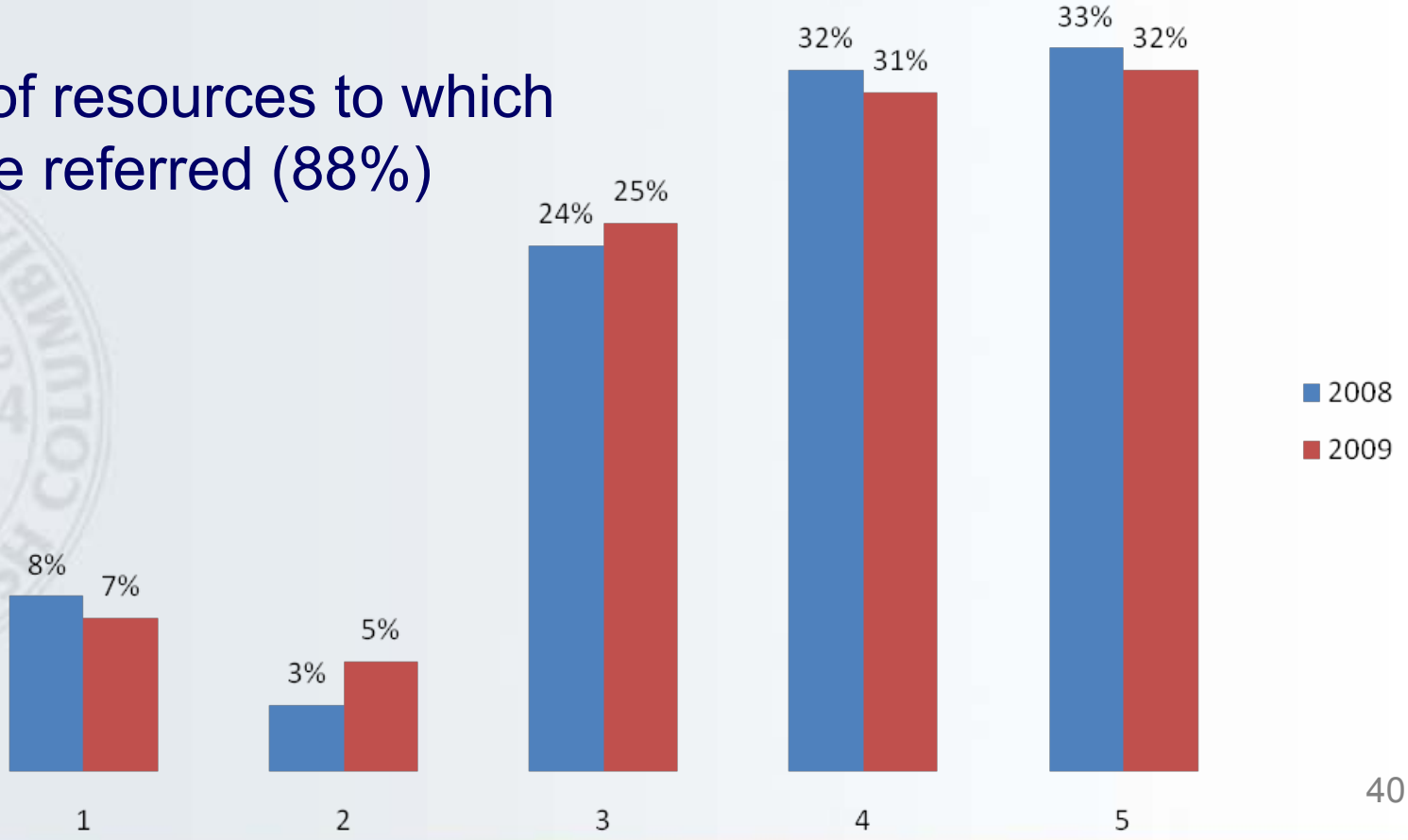


The Law Society of British Columbia

Key Performance Measures

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

Quality of resources to which you were referred (88%)



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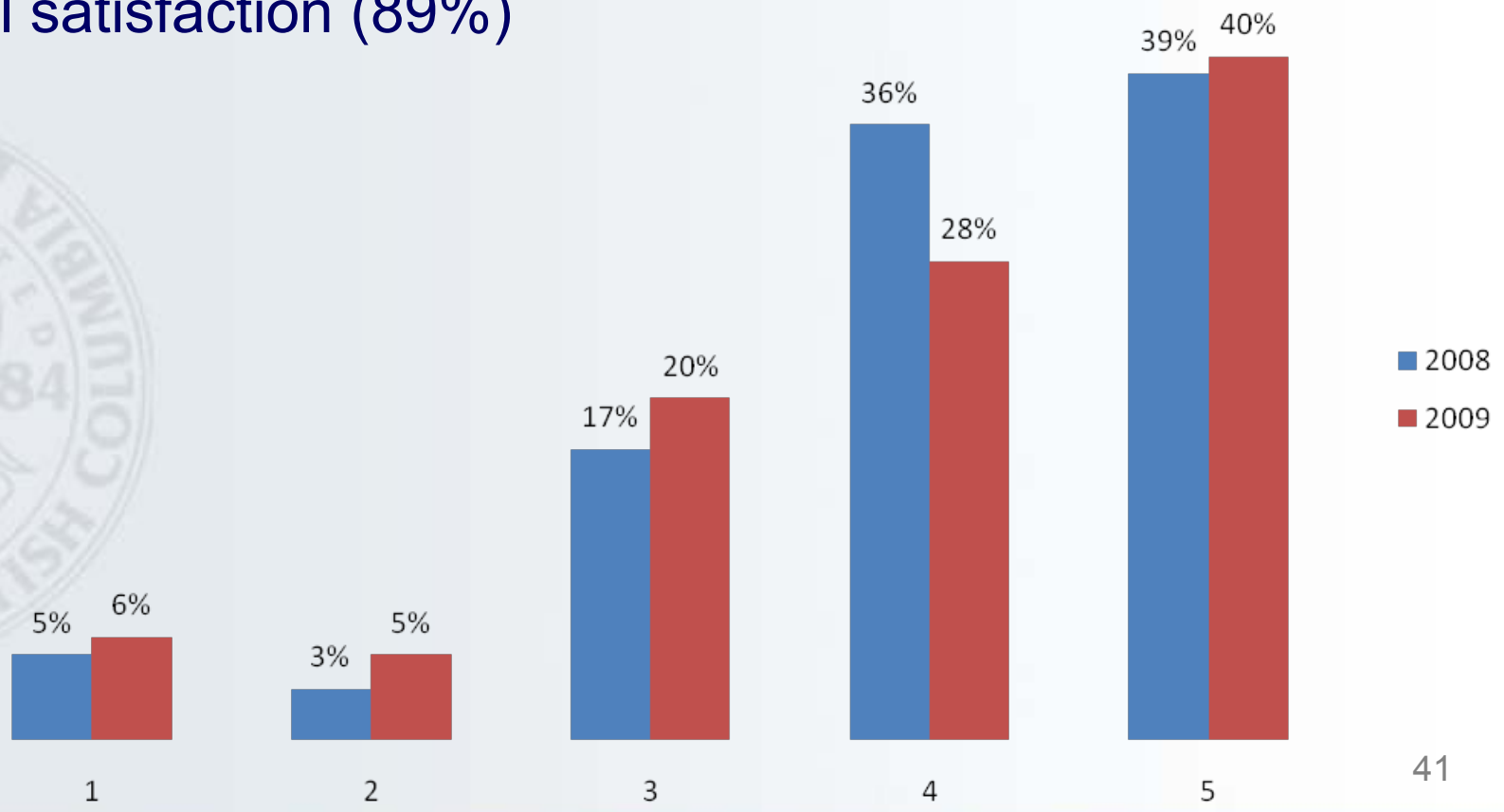
Key Performance Measures

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

Overall satisfaction (89%)



The Law Society of British Columbia

Practice Standards

Departmental Highlights

- The Practice Standards Department conducts practice reviews , and then advises the Practice Standards Committee on whether lawyers referred to the program meet accepted standards in their law practices. Where lawyers do not meet accepted standards, the Department monitors remedial measures directed by the Committee.
- The Department also oversees the continuing operation and enhancement of several online support programs, including the Small Firm Practice Course and the Practice Refresher Course.
- The 17 lawyers who completed their referrals in 2009 all did so with an improvement of at least one point in their overall evaluation and an efficiency rating of 3 or higher.
- The ratings for the Succession and Emergency Planning Program, the Practice Refresher Course, the Practice Locums program and the Bookkeeper Support Program all improved in 2009 over 2008, although the percentage who rated these programs at 3 or higher was less than 90% threshold set for the key performance measures.

The Law Society of British Columbia

Key Performance Measures

At least two thirds of the lawyers who complete their referral demonstrate an improvement of at least 1 point on a 5 point scale

There were 17 lawyers whose Practice Standards files were completed and closed in 2009. All 17 lawyers improved by at least one point.

The Law Society of British Columbia

Key Performance Measures

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

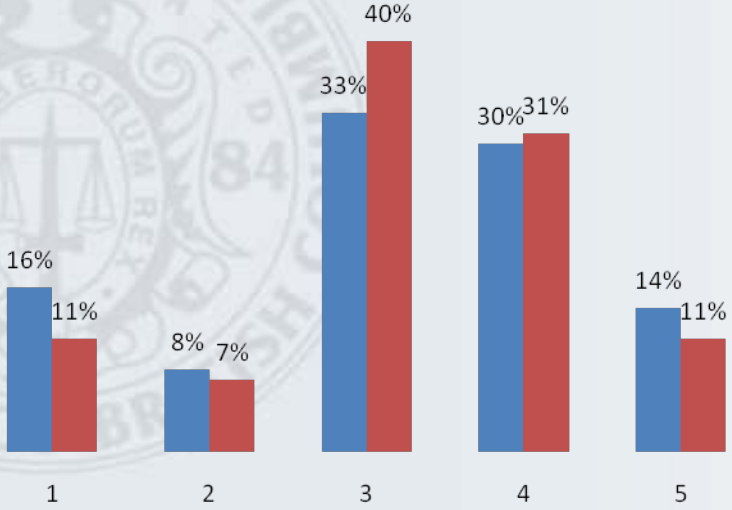
17 of the 17 lawyers finished at a rating of 3 or higher. The minimum threshold for a successful closure was a 3.

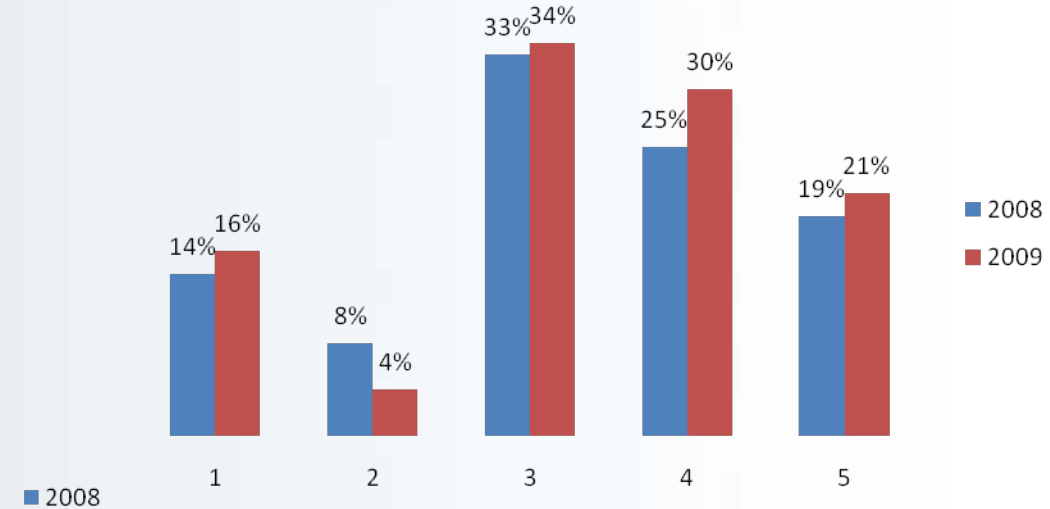
The Law Society of British Columbia

Key Performance Measures

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

Succession and Emergency Planning Assistance (82%)





Practice Refresher Course (85%)

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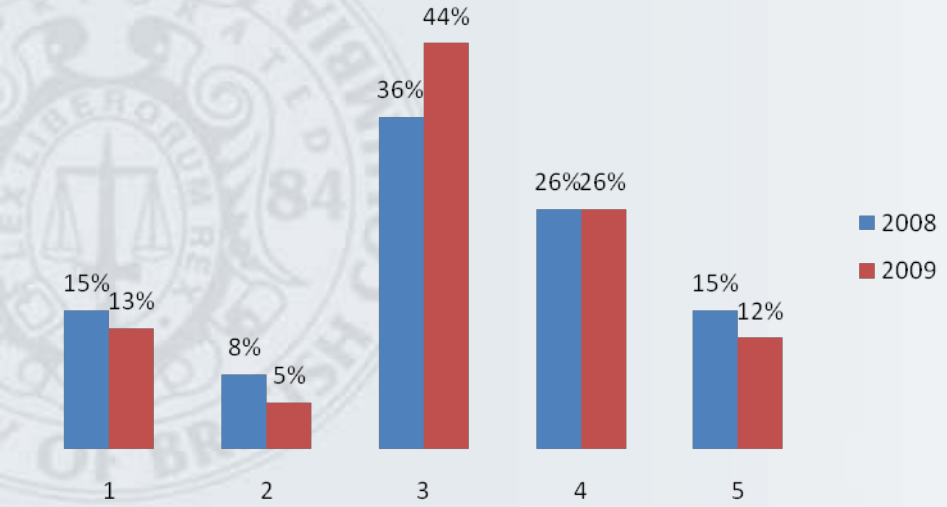
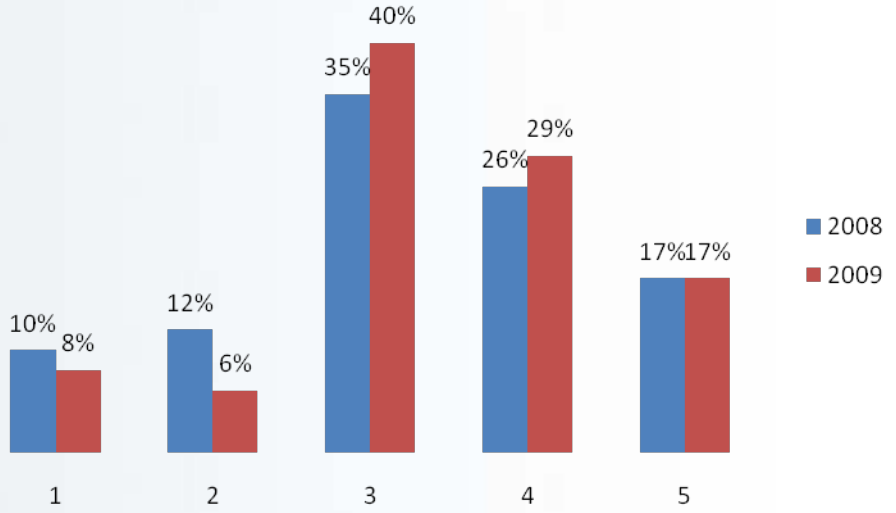
Key Performance Measures

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

Practice Locums Program (82%)





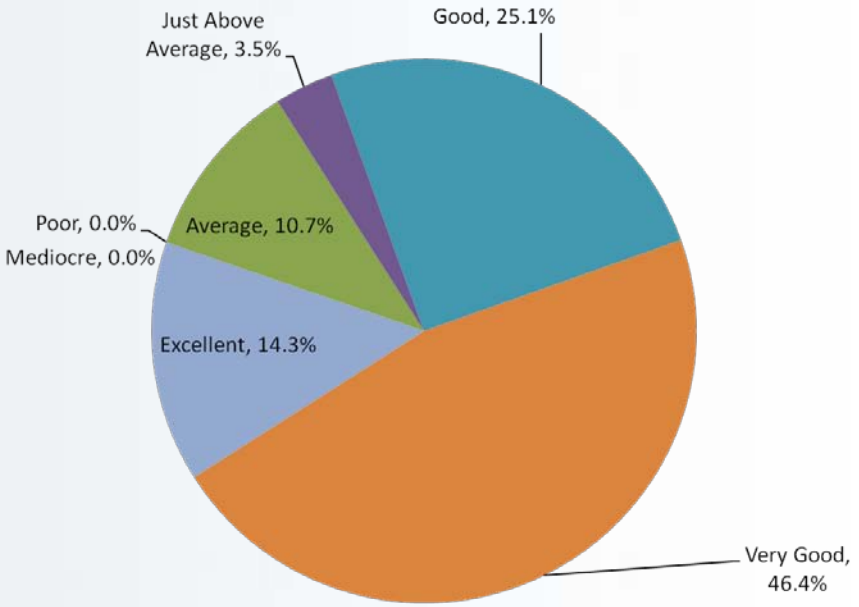
Bookkeeper Support Program (86%)

The Law Society of British Columbia

Key Performance Measures

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

Small Firm Practice Course*
(89.2% above average)



The Technology Support Program is being held in abeyance by the Practice Standards Committee while it assesses the uptake and response to Clio, a free web-based practice management tool targeted at the sole practitioners and small firms, accessed through the Law Society website.

* Evaluation has been conducted on a 7 point scale

The Law Society of British Columbia

Policy & Legal Services

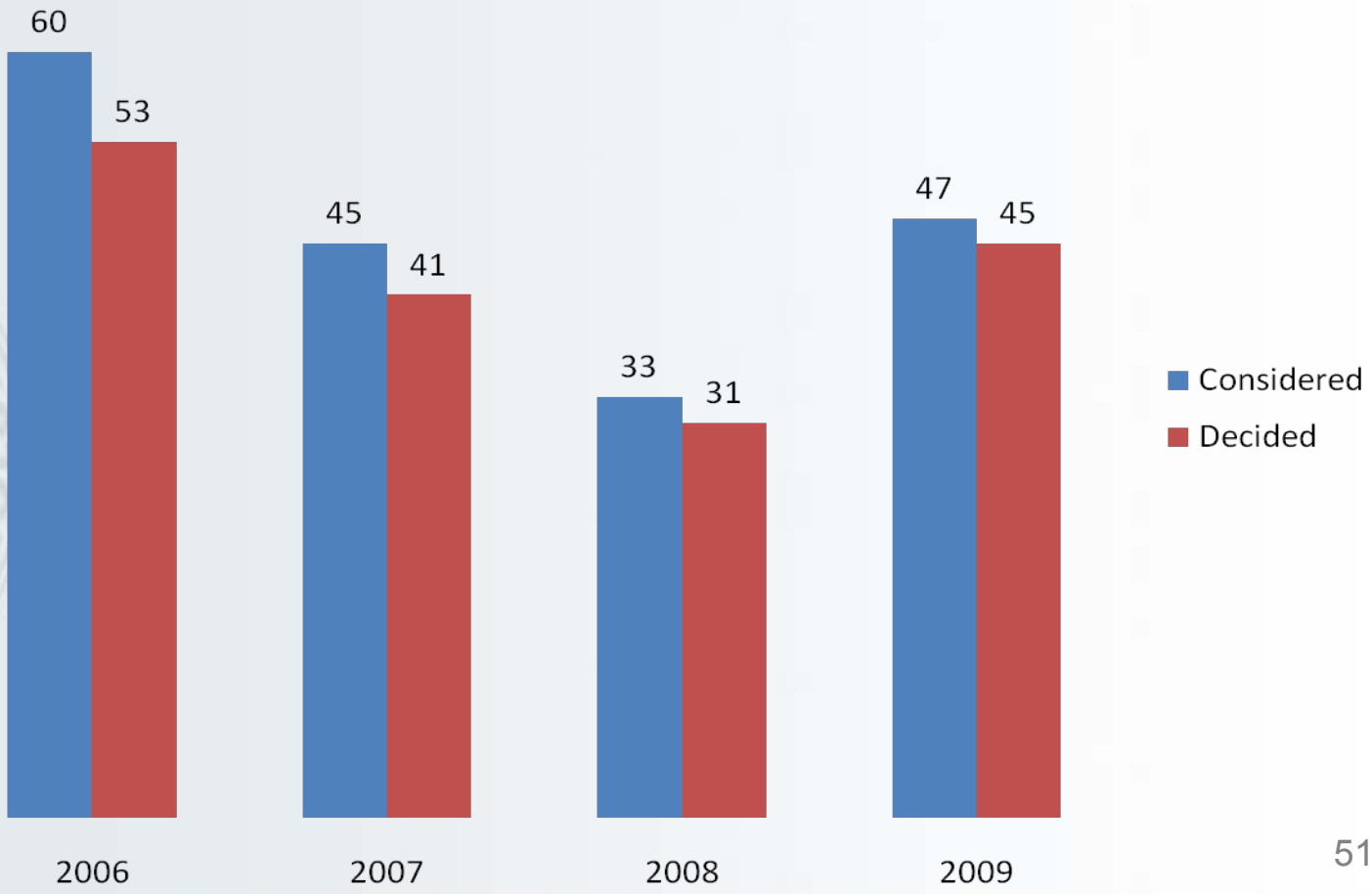
Departmental Highlights

- The Policy and Legal Services Department's principal function is to provide the Benchers with the information necessary for them to make informed policy decisions on matters important to the effective performance of the Law Society's mandate.
- If the Department has been successful, the Benchers will have been able, in the majority of cases, to make policy decisions without referring the matters back to staff for further information or analysis.
- The key performance measures used by the Department rely on a review of the Bencher minutes to determine whether the Benchers were able to make policy decisions on the information before them, and on the basis of an analysis of survey questions asked of the Benchers, which reflects their opinion, which may be different from objective fact.
- In 2009 the Department appears to have met the needs of the Benchers in the discharge of its responsibilities. The Benchers made a policy decision on the basis of the information before them 95 percent of the time.
- The survey questions also indicate that the Department has met its targets in connection with whether or not the Benchers believe that they have adequate information to fulfill their roles as adjudicator, that they have sufficient and timely information to keep them abreast of key issues, and that they have a full and common understanding of the rules and responsibilities, understand their mandate, and receive appropriate orientation and training.

The Law Society of British Columbia

Key Performance Measures

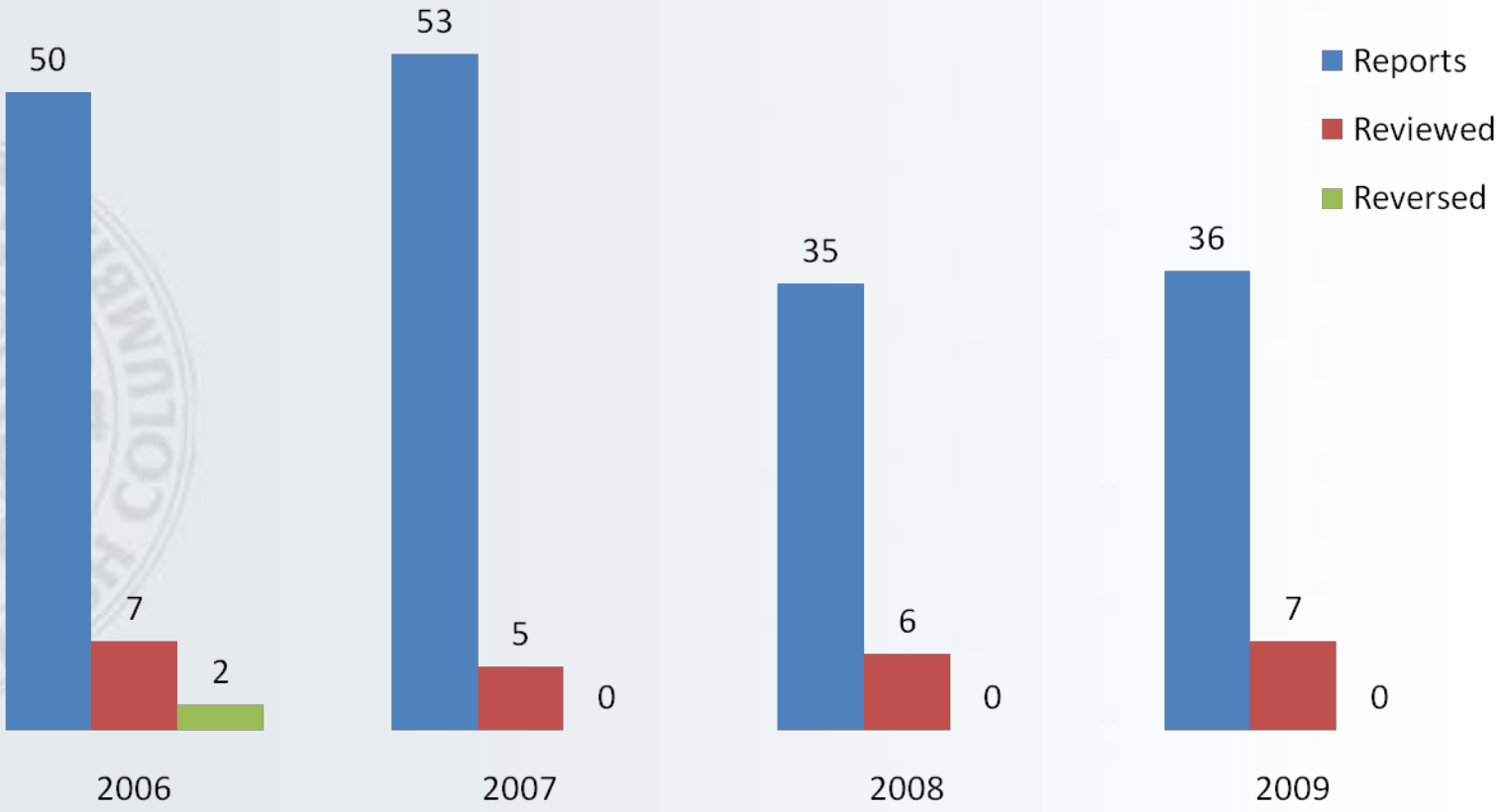
Ratio of policy matters prepared by or with the assistance of policy staff and considered by the Benchers to policy decisions made by the Benchers in respect of those matters. (Target 1:1)



The Law Society of British Columbia

Key Performance Measures

Ratio of the number of hearing reports issued to the number of times the decision of a hearing panel is reviewed to the number of times the decision of a hearing panel is reversed on review (Target 1 : 0 : 0)



The Law Society of British Columbia

Key Performance Measures

On the annual appraisal questionnaire, Bencher responses of 4 or greater (on 5 point scale) to questions concerning facilitation of planning and decision-making

The Benchers have adequate information and resources to effectively fulfill their roles as:

	2009	2008	2007
Directors of the Law Society	4.2	4	4.8
Policy makers and rule makers for the profession	4.6	4.5	4.8
Advisors to individual lawyers	3.8	4	4
Adjudicators in Discipline and Credentials matters	4.2	4.25	4.5

The Law Society of British Columbia

Key Performance Measures

On the annual appraisal questionnaire, Bencher responses of 4 or greater (on 5 point scale) to questions concerning orientation, training and timely information

	2009	2008	2007
The Benchers have a full and common understanding of their roles and responsibilities	4.33	4.4	4.8
The Benchers understand the Law Society's statutory mandate, its mission and objectives	4.72	4.4	4.8
The Benchers receive appropriate orientation and training	3.23	3.6	3.9
Benchers receive sufficient, timely information to keep them abreast of key issues	4.16	N/A	4.2

The Law Society of British Columbia

Lawyers Insurance Fund

The Law Society of British Columbia

Departmental Highlights

LIF's Goal

Our goal is to maintain a professional liability insurance program for BC lawyers that provides reasonable limits of coverage and protection for the public, and exceptional service, at a reasonable price. The Key Performance Measures indicate that we are achieving this goal.

Key Performance Measures

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

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

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

   At $1,600, our premium compares very favourably, especially considering that ours alone includes the risk of theft claims. All others charge a separate fee for this.

The Law Society of British Columbia

Departmental Highlights

Key Performance Measures cont.

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

Claimants have an unfettered right to proceed to court for a decision on the merits of their claim. However, if they obtain a judgment against a lawyer for which the policy should respond but does not due to a policy breach by the lawyer, we are failing to reasonably protect them. If that occurred, the claimant would sue the Captive directly under the Insurance Act, for compensation. There were no suits by claimants against the Captive in 2009. All meritorious claims were settled with the consent of the claimant or paid after judgment.

.

3. Every five years, third party auditors provide a written report rating LIF's claims management as effective.

Third party auditors declared that LIF is "doing an excellent job, even by its own high standards", and the Canadian Bar Excess Liability Association opined that "The lawyers in BC are being well-served by this group."

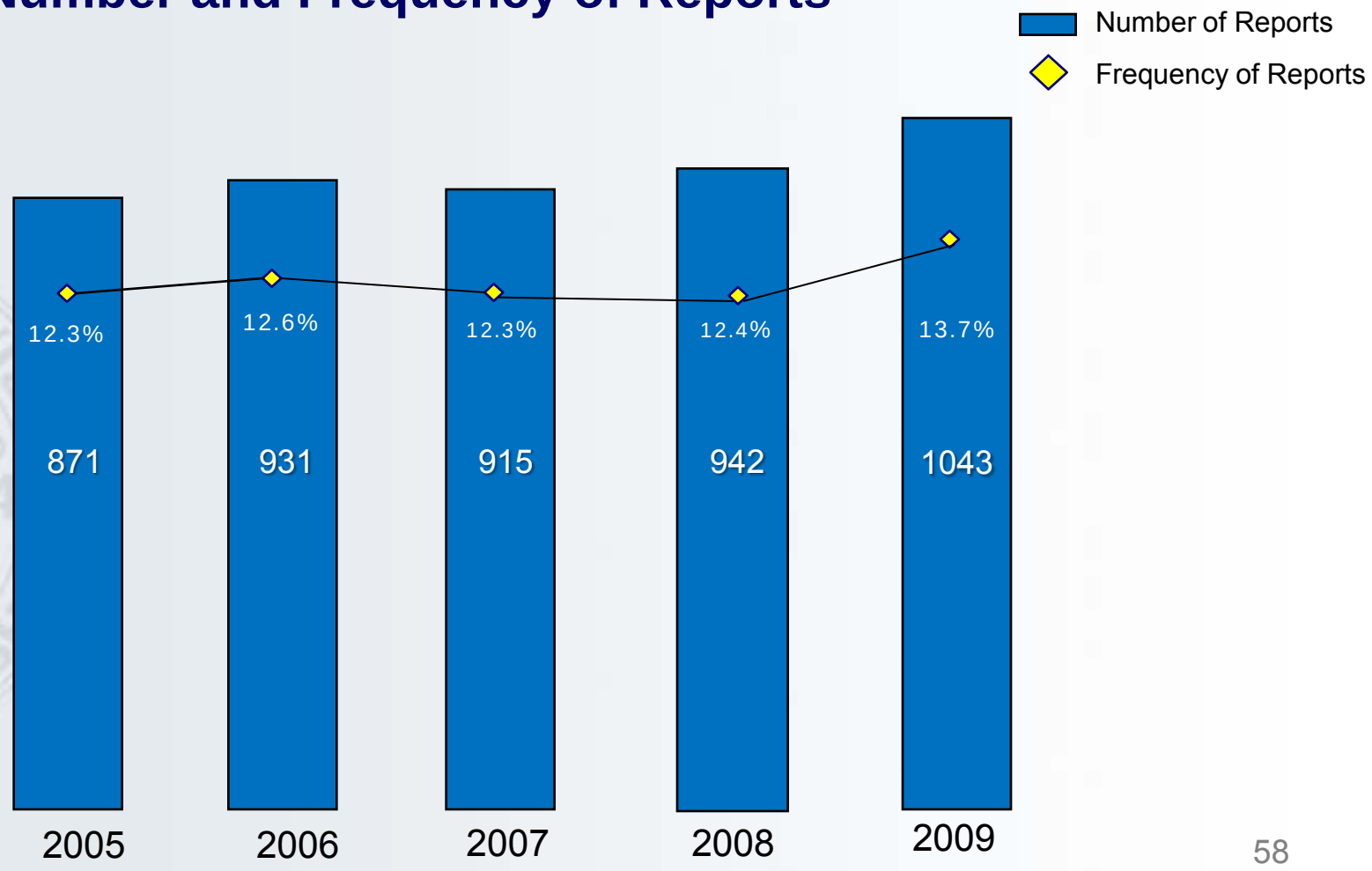
4. Insureds lawyers demonstrate a high rate of satisfaction (80% choose 4 or 5 on a 5 point scale) in Service Evaluation Forms.

In 2009, 97% of insureds selected 4 or 5.

The Law Society of British Columbia

Key Activities

PART A – Number and Frequency of Reports



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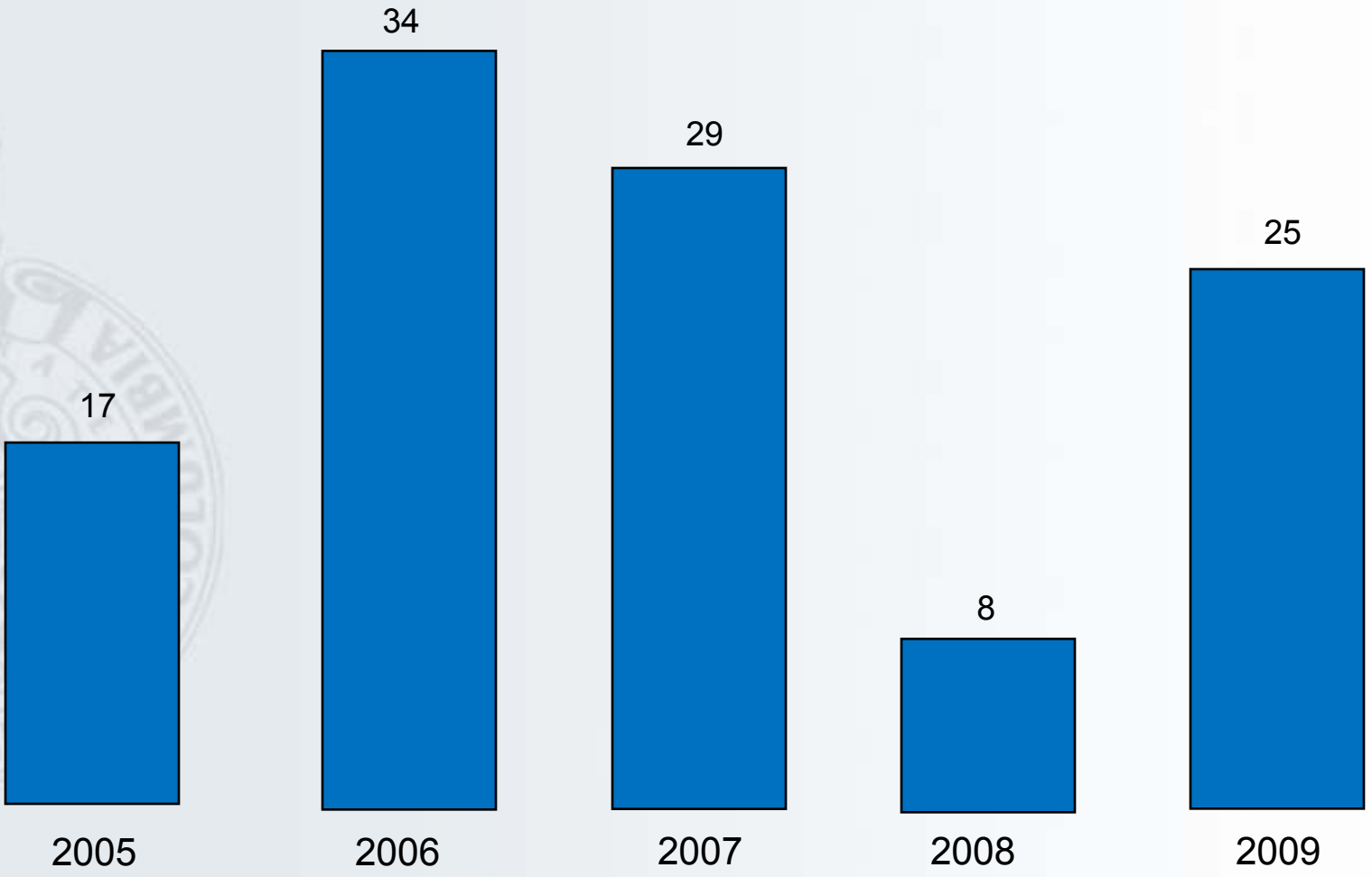
Key Activities

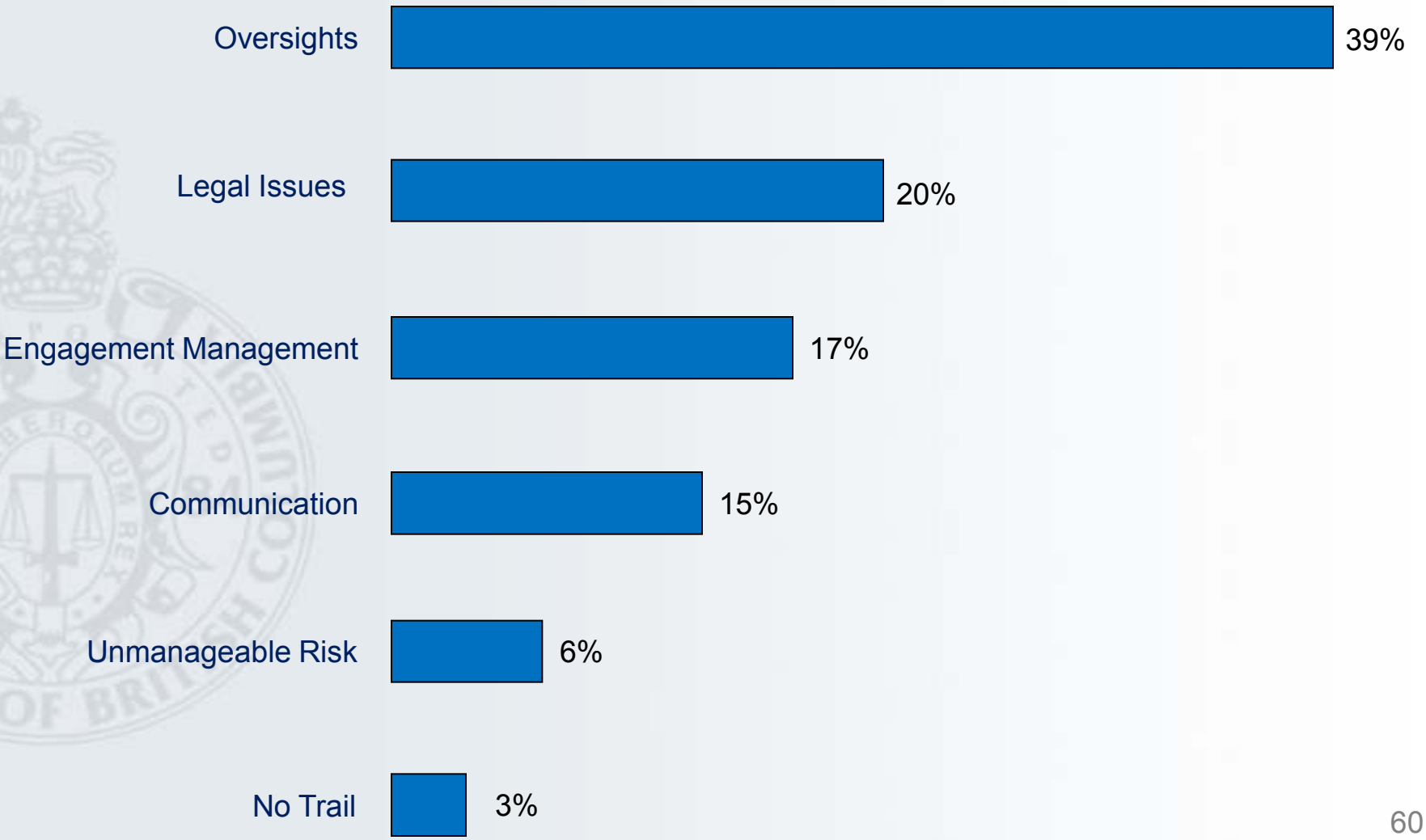
PART B – Number of Reports



Key Activities

The Law Society of British Columbia

Causes of Reports



The Law Society of British Columbia

Key Performance Measures

Part A – Comparable Limits

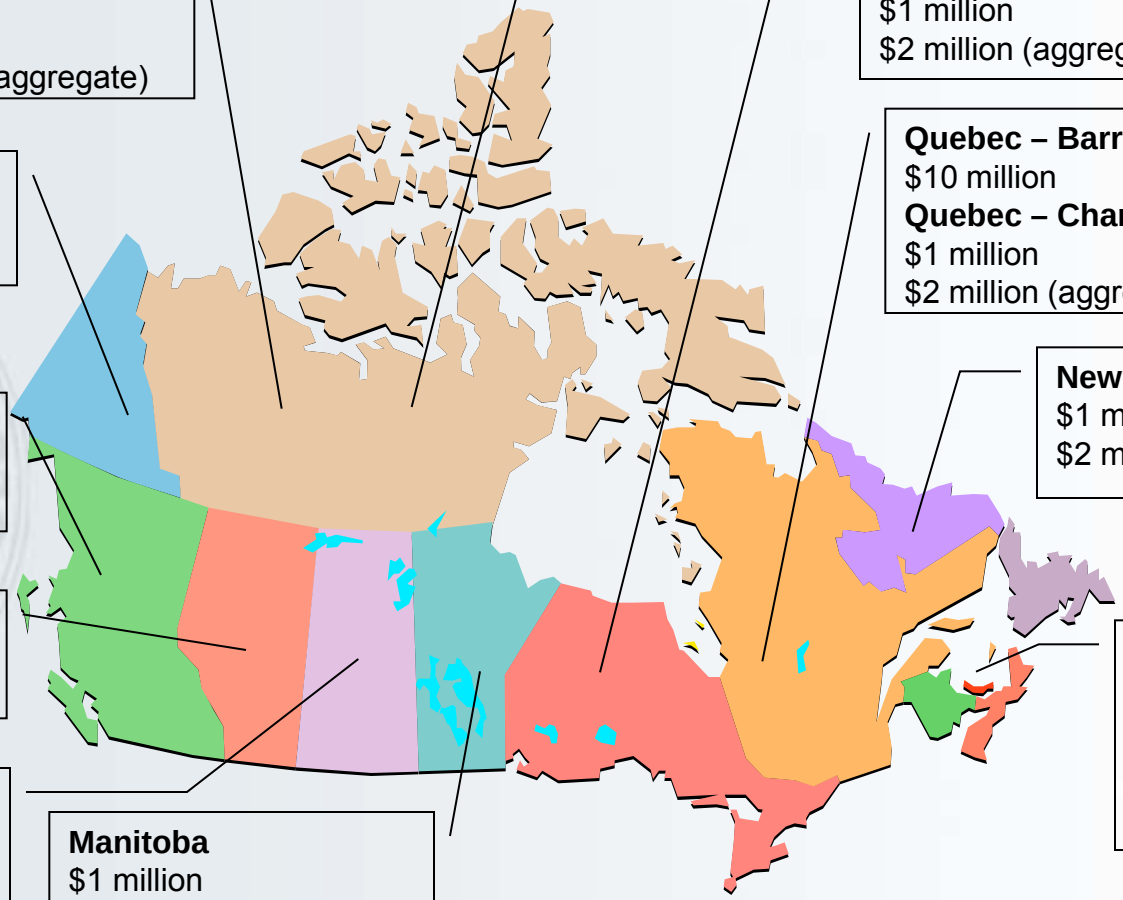
Nunavut
$1 million
$2 million (aggregate)

NWT
$1 million
$2 million (aggregate)

Ontario
$1 million
$2 million (aggregate)

Yukon
$1 million
$2 million (aggregate)

Quebec – Barreau
$10 million
Quebec – Chambre
$1 million
$2 million (aggregate)



BC
$1 million
$2 million (aggregate)

Newfoundland
$1 million
$2 million (aggregate)

Alberta
$1 million
$2 million (aggregate)

New Brunswick
Nova Scotia
PEI
$1 million
$2 million (aggregate)

Saskatchewan
$1 million
$2 million (aggregate)

Manitoba
$1 million
$2 million (aggregate)

The Law Society of British Columbia

Key Performance Measures

Part B – Comparable Limits

NWT
$50,000 per claim subject to an annual aggregate of $300,000 per claim
Discretionary

Yukon
No limit
Discretionary

BC
$300,000 per claim
$17.5 million total limit
Contractual right

Alberta
No limit
Discretionary

Saskatchewan
$250,000 per lawyer
Discretionary

Manitoba
$300,000 per claim
Discretionary

Nunavut
No limit
Discretionary

Ontario
$150,000 per claim
Discretionary

Quebec – Barreau
$ 50,000 per claimant – discretionary
$250,000 per lawyer – discretionary
Quebec – Chambre
$100,000 per claim

Newfoundland
$ 50,000 per transaction
$ 50,000 per claim
$150,000 per lawyer

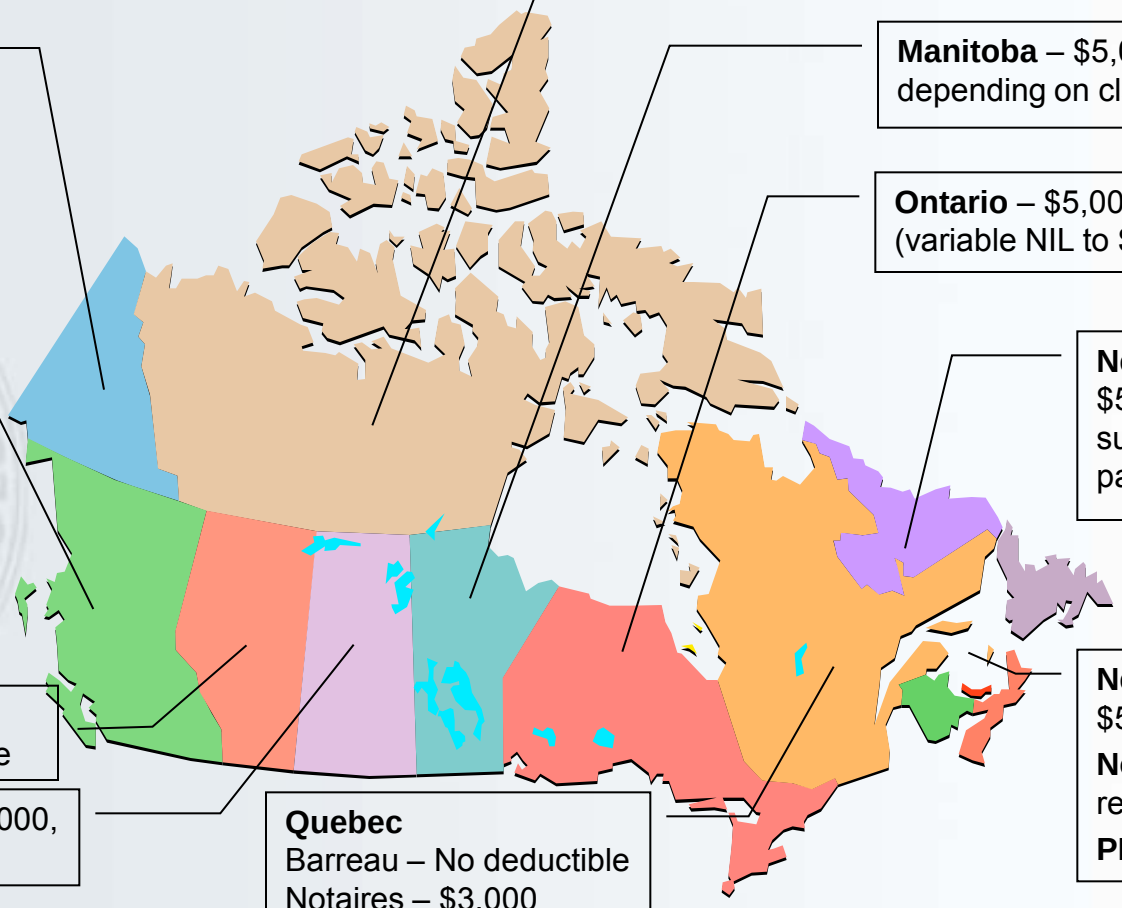
Nova Scotia
No limit
Discretionary

New Brunswick & PEI
No limit
Discretionary

The Law Society of British Columbia

Key Performance Measures

Comparable Member Deductible



NWT – $5,000
Nunavut – $5,000

Yukon – $5,000 with graduated deductible for successive paid claims in 5-year period.

Manitoba – $5,000 to $20,000 depending on claims history

Ontario – $5,000 standard (variable NIL to $25,000)

BC – $5,000 first paid claim and $10,000 each subsequent paid claim within 3 years

Newfoundland – $5,000 with graduated surcharge after second paid claim in 5 years

Alberta – Waived replaced by surcharge

New Brunswick – $5,000 to $10,000
Nova Scotia – Waived replaced by surcharge
PEI – $5,000

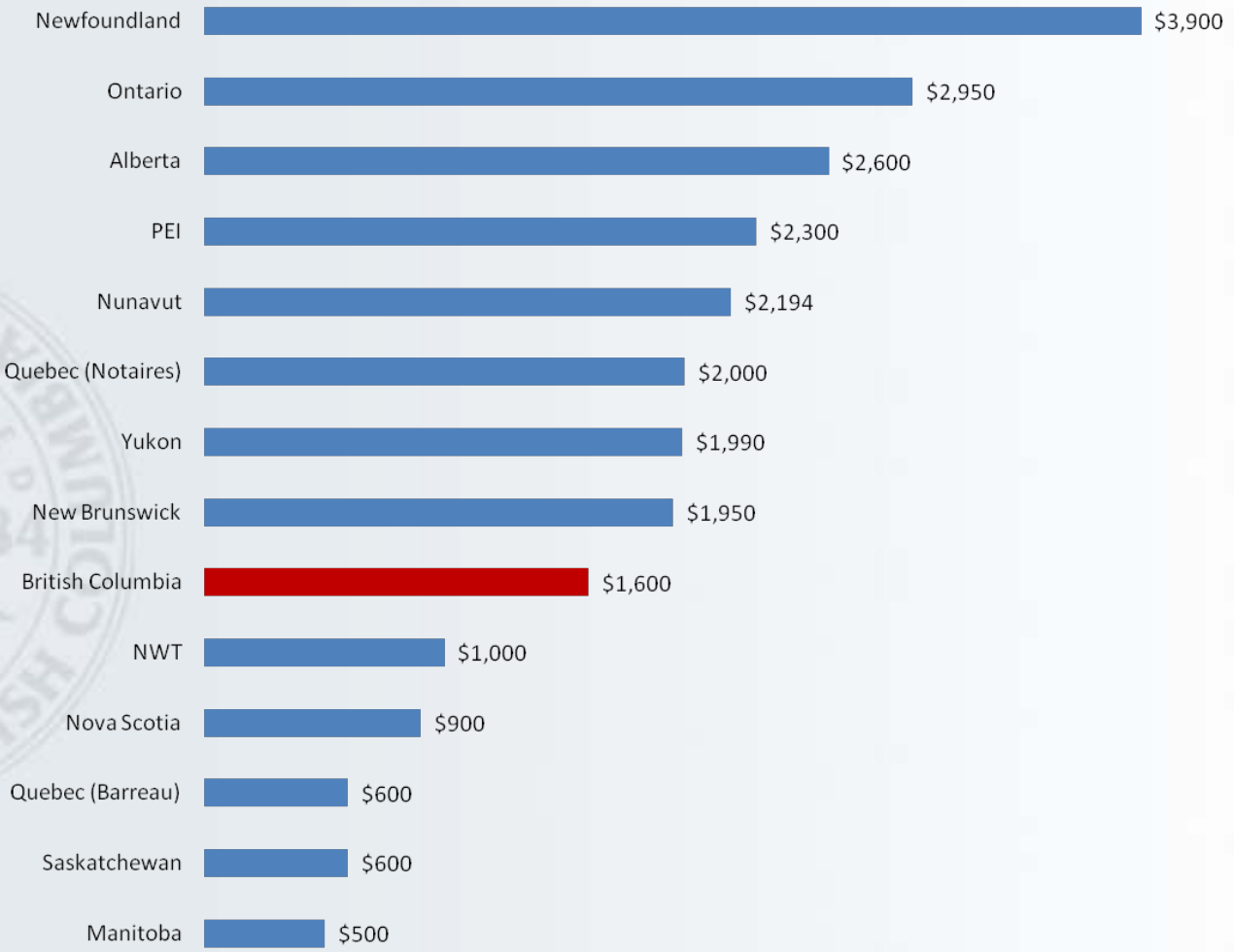
Saskatchewan – $5,000, $7,500 and $10,000

Quebec
Barreau – No deductible
Notaires – $3,000

The Law Society of British Columbia

Key Performance Measures

Comparable Current Insurance Premium



The Law Society of British Columbia

Key Performance Measures

Outside claims audit every 5 years: obtain opinion

2006 Nicholl Paskell-Mede Audit Findings

"We are also satisfied that LIF's management of its files balances the interests of the public, the members and the Society, in the sense that claims counsel evidently give careful consideration in good faith to all claims against LSBC members, and consistently 'take the high road' in approaching both coverage and liability issues."

"...the Lawyers Insurance Fund is in a class of its own among Bar mutual organizations ...the level of professionalism and sense of mission achieved by staff remains unique."

"In our opinion, LIF is doing an excellent job, even by its own high standards."

Key Performance Measures

Outside claims audit every 5 years: obtain opinion

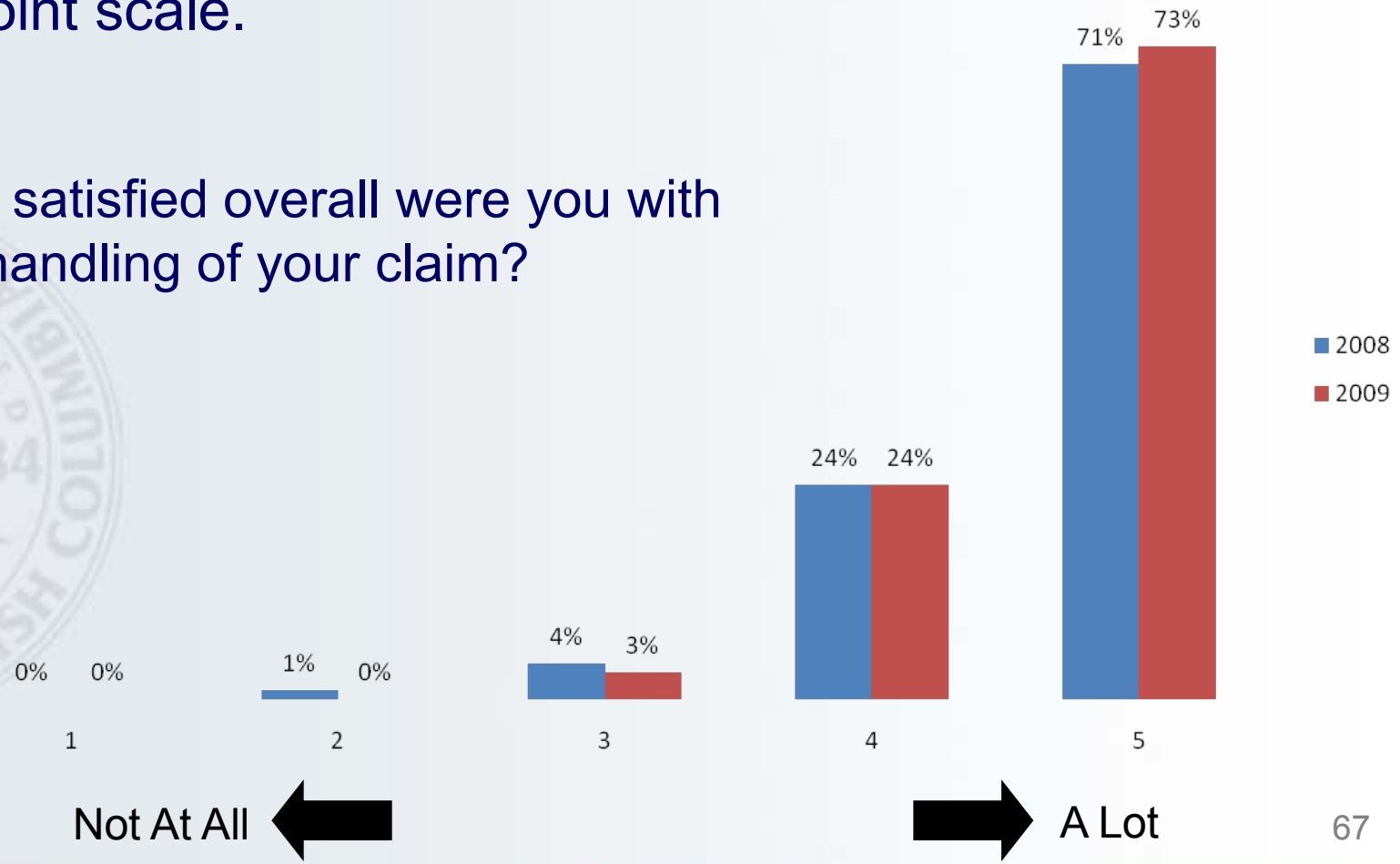
2006 CBELA Audit Findings

"The Insurance program continues to be managed and staffed with a knowledgeable and passionate group, who work in a highly co-operative atmosphere, due in part to excellent leadership. File loads are on the high side given the complexity of these types of claims and the fact that most Claims Counsel are also conducting in-house defence of many claims themselves. Even with their heavy file loads, Claims Counsel appropriately and consistently apply both the Fund's reserving strategy along with the checks and balances employed by management. The lawyers in B.C. are being well served by this group."

Key Performance Measures

Results of Service Evaluation Forms: 80% choose 4 or 5 on a 5 point scale.

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



Memo

The Law Society of British Columbia

To Benchers

From Michael Lucas & Susanna Tam

Date February 22, 2010

Subject **2009 AGM Resolutions Related to Aboriginal Lawyers in the Profession - Update and Time Constraints**

This memo provides a progress update regarding three resolutions passed at the 2009 AGM related to the participation of Aboriginal lawyers in the profession. While resolutions passed at general meetings are not binding on the Benchers, members can attempt to compel a referendum on a resolution if it has not been substantially implemented within six months following the AGM; in this case, March 29, 2010. The Benchers should discuss these resolutions and communicate to the profession about any decisions made in connection with the resolutions in advance of March 29.

The Resolutions

A majority voting at the Law Society's 2009 AGM passed three resolutions regarding improving the representation and participation of Aboriginal lawyers in the profession. These resolutions arose out of the perceived lack of implementation of recommendations made in the Law Society's report from the Aboriginal Law Graduates Working Group in 2000, *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*.

The resolutions passed at the AGM directed that the Law Society:

- Amend the 2009-2011 Strategic Plan so as to include the retention of Aboriginal lawyers as a priority at Strategy 1-3 on page 4;
- Strike a working committee comprised of Benchers, Aboriginal lawyers and Aboriginal law students that will review and update the 2000 report on *Addressing Discriminatory Barriers Facing Aboriginal Law Students and Lawyers*; and
- Establish a full-time staff lawyer position whose sole purpose is to support Aboriginal law students, articling students and lawyers.

Implementing Resolutions

Section 13 of the *Legal Profession Act* provides:

13 (1) A resolution of a general meeting of the society is not binding on the benchers except as provided in this section.

(2) A referendum of all members must be conducted on a resolution if

(a) it has not been substantially implemented by the benchers within 6 months following the general meeting at which it was adopted, and

(b) the executive director receives a petition signed by at least 100 members in good standing of the society requesting a referendum on the resolution.

(3) Subject to subsection (4), the resolution is binding on the benchers if at least
(a) 1/3 of all members in good standing of the society vote in the referendum, and
(b) 2/3 of those voting vote in favour of the resolution.

(4) The benchers must not implement a resolution if to do so would constitute a breach of their statutory duties.

Progress Update

Resolution 1

Resolution 1 has been implemented. The Law Society's revised strategic plan includes the strategy of improving the retention rate of lawyers in the legal profession including, in particular, Aboriginal lawyers. This strategy, aimed at advancing the goal of enhancing access to legal services, includes an initiative to develop a business case for increasing diversity in the profession and retaining Aboriginal lawyers in particular.

Resolution 2

With respect to Resolution 2, rather than striking a new working group whose only purpose would be to review and update the 2000 report, the Equity & Diversity Advisory Committee plans to:

- Review the 2000 report;
- Examine the forthcoming results of the current demographic project;
- Review recent research regarding lawyer retention; and
- Consider recent reports from other jurisdictions.

The Advisory Committee (a Committee that includes the participation of Aboriginal lawyers) will review this material in order to develop a more comprehensive strategy to support Aboriginal lawyers and law students. This action plan meets the intent and purpose of Resolution 2, and therefore Resolution 2 should be viewed as having been substantially implemented.

Resolution 3

Resolution 3 has not yet been implemented. The Equity & Diversity Advisory Committee plans to make recommendations to support Aboriginal lawyers and law students after considering the data currently being gathered and reports that have been released since the 2000 report. While a full-time staff lawyer position may be an effective response, it may also be only one of several responses that can be developed and considered. Alternatively, the data and research being gathered and developed through other equity and diversity activities may identify other, possibly more effective, solutions that would be a better use of resources.

If the Benchers support this approach, their decision should be communicated to the membership in advance of the March 29, 2010 deadline.

Current Initiatives

The Equity & Diversity Advisory Committee continues to make progress on current initiatives and to identify opportunities to support Aboriginal lawyers. The demographic project is well underway; this project was initiated in response to the need for information regarding the representation and participation of Aboriginal lawyers in the profession. Data from the demographic project will also provide the foundation for the business case for diversity and advancing Aboriginal lawyers in particular.

In addition, Law Society staff is currently planning an event to celebrate and support Aboriginal lawyers, and to connect young Aboriginal lawyers, law students and those interested in the profession with senior, leading Aboriginal lawyers from various regions around the province. This event will be held either in June, to coincide with National Aboriginal Day (June 21), or in September, to maximize student participation. Staff will keep Benchers updated regarding this event.

With the support of a policy staff lawyer specifically responsible for equity issues, these current initiatives related to Aboriginal lawyers will comprise a considerable amount of the Equity & Diversity Advisory Committee's work for the year. Other tasks, of course, will include matters (such as follow up to the Report of the Retention of Women in the Law Task Force) that fall to the Committee as identified in the Strategic Plan.

Conclusion

The resolutions passed at the AGM were based on the perceived lack of action on the part of the Law Society to support Aboriginal lawyers and law students. It is important for the Benchers to communicate clearly the Law Society's commitment to increasing the participation of Aboriginal people in the profession.

Staff has already heard from members who are concerned about implementation of the resolutions, Resolution 3 in particular. If the Benchers choose to defer implementing Resolution 3 until recent research and potential responses are identified and considered as described above, then this decision and the reasons for it should be explained to the members.

The Law Society of British Columbia

Chapter 11, Rules 16 to 21 of *Professional Conduct Handbook*: Duty of lawyer where firm changes its composition

March 12, 2010

Purpose of Report: **Policy Discussion and Decision by Benchers**

Prepared by: **Ethics Committee**

Memo

The Law Society of British Columbia

To Benchers

From Ethics Committee

Date March 12, 2010

Subject **Chapter 11, Rules 16 to 21 of *Professional Conduct Handbook* : Duty of lawyer where firm changes its composition**

These rules do not currently take account of a number of important situations or issues that may arise when a law firm changes its composition. We propose the changes set out in the attached materials which we believe accomplish the following:

- Draft Rule 6 expands the rules to expressly cover situations where a law firm is winding up or dividing, not just situations where a lawyer is leaving a firm.

- Draft Rule 10 places an obligation on lawyers to protect client information, files and other client property and to minimize any adverse effect on the interests of clients. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

We propose, as well, moving these rules to Chapter 3 of the *Professional Conduct Handbook*. Chapter 3 is titled "Competence, Quality of Service and Relationship to Client" and, in our view, is a more appropriate place for these rules than in Chapter 11, which is titled "Relationship to Other Lawyers." These rules primarily describe lawyers' duties to clients, rather than their duties to one another.

Attachment:

- Draft changes to Chapter 11, Rules 16 to 21 (which becomes Chapter 3, Rules 6 to 12).

(c11depart10benchers/10)

PROFESSIONAL CONDUCT HANDBOOK

~~CHAPTER 11~~

~~RESPONSIBILITY TO OTHER LAWYERS~~

CHAPTER 3

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

Duty of lawyer and law firm when a change affects clients~~on termination of employment~~

~~1~~6. When a lawyer ~~departs from~~leaves a law firm to practise alone or to join another law firm, ~~there is a duty upon~~ the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter ~~of the clients~~ that the clients have a right to choose who will continue to represent them. The same duty may arise when a firm is winding up or dividing into smaller units.

~~1~~7. This duty does not arise if the ~~departing lawyer and the law firm~~lawyers affected by the changes, acting reasonably, ~~both~~ conclude that the circumstances make it obvious that a client will continue as a client of ~~the~~a particular lawyer or law firm ~~notwithstanding the departure of the lawyer~~.

~~1~~8. When ~~these Rules~~this Chapter requires a notification to clients, each client ~~for whom the departing lawyer is the responsible lawyer in a legal matter~~ must receive a letter ~~informing them of the right to choose his or her lawyer~~ as soon as practicable after the effective date of the ~~departure~~ changes is determined, informing the client of the right to choose his or her lawyer.

~~1~~9. It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes~~the departing lawyer and the law firm~~. However, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send letters in substantially the form set out in Appendix 4~~either the departing lawyer or the law firm~~.

10. Lawyers whose clients are affected by changes in a law firm have a continuing obligation to protect client information and property, and must minimize any adverse effect on the interests of clients.[1]

~~20~~11. The right of a client to be informed of changes to a law firm and to choose his or her lawyer cannot be curtailed by any contractual or other arrangement.

~~21~~12. With respect to communication other than that required by these Rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

FOOTNOTE

1. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

PROFESSIONAL CONDUCT HANDBOOK

CHAPTER 3

COMPETENCE, QUALITY OF SERVICE AND RELATIONSHIP TO CLIENTS

Duty of lawyer and law firm when a change affects clients

6. When a lawyer leaves a law firm to practise alone or to join another law firm, the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter that the clients have a right to choose who will continue to represent them. The same duty may arise when a firm is winding up or dividing into smaller units.

7. This duty does not arise if the lawyers affected by the changes, acting reasonably, conclude that the circumstances make it obvious that a client will continue as a client of a particular lawyer or law firm.

8. When this Chapter requires a notification to clients, each client must receive a letter as soon as practicable after the effective date of the changes is determined, informing the client of the right to choose his or her lawyer.

9. It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes. However, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send letters in substantially the form set out in Appendix 4.

10. Lawyers whose clients are affected by changes in a law firm have a continuing obligation to protect client information and property, and must minimize any adverse effect on the interests of clients.[1]

11. The right of a client to be informed of changes to a law firm and to choose his or her lawyer cannot be curtailed by any contractual or other arrangement.

12. With respect to communication other than that required by these Rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

FOOTNOTE

1. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

Memo

The Law Society of British Columbia

To Benchers

From Jeffrey G. Hoskins, QC

Date April 9, 2010April 9, 2010

Subject **Implementation of Québec Mobility Agreement**

The Benchers are asked to approve the implementation of the Québec Mobility Agreement. A copy of the Agreement is attached, along with Model Rules intended to assist Law Societies in implementation.

The Benchers have previously approved the Agreement in principle and directed that the Law Society of British Columbia's vote on the Federation of Law Societies Council be cast in favour of adopting the Agreement. At the recent Federation Conference in Toronto, Mr. Ridgway signed the Agreement on behalf of this Law Society.

At the January 2010 meeting the Benchers adopted the following resolution:

> Mr. Stewart moved (seconded by Ms. Hickman) that that the Benchers direct the Law Society's Federation Council delegate to vote in favour of the draft motion of the Federation Executive which provides:
>
> > **WHEREAS** the Barreau du Québec (the "Barreau") has established a special category of membership known as the Canadian Legal Advisor to permit members of other Canadian law societies to practise law in Quebec on a restricted basis;
> >
> > **WHEREAS** the other Canadian law societies have indicated a desire to establish reciprocal mobility for members of the Barreau on a similar basis;
> >
> > **RESOLVED THAT** the Quebec Mobility Agreement attached as Appendix "A" be approved by Council for submission to member law societies for their execution.

A minute extract outlining that discussion and decision is attached.

The Agreement fulfills the commitment of Law Societies outside Québec to reciprocating with the Barreau du Québec in mobility matters. That commitment was made in the National Mobility Agreement of 2002. The Barreau has created a new category of membership called a Canadian Legal Advisor ("CLA"), who is authorized to practise the law of Canada (federal jurisdiction) and of a province in which the CLA is a full member, in the Province of Québec. CLA status is required to engage in the practice of law as restricted, on a temporary or permanent basis.

The Act and Rules Subcommittee has considered the attached draft Rule amendments to give effect to the QMA, and recommend them to the Benchers for adoption. There is a suggested resolution attached as the last document in this package. It is drawn to make the changes effective July 1, 2010, which would give the Member Services & Credentials department sufficient time to develop new procedures and forms and implement the changes.

JGH
E:\POLICY\JEFF\BENCHERS\QMA memo to Benchers Apr 10.docx

Attachments: Québec Mobility Agreement
QMA Model Rules
minute extract
draft rule amendments
resolution

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

Appendix "A"

Quebec Mobility Agreement

Quebec Mobility Agreement

FEDERATION OF LAW SOCIETIES OF CANADA

October 15, 2009
Winnipeg, Manitoba

Introduction

The purpose of this Agreement is to extend the scope of the National Mobility Agreement (the "NMA") in facilitating reciprocal permanent mobility between the common law jurisdictions and the Barreau du Québec ("the Barreau"). Clause 40(b) of the NMA provides that "a signatory governing body, other than the Barreau, will admit members of the Barreau as members on one of the following bases:...(b) as permitted by the Barreau in respect of members of the signatory governing body."

The Barreau has implemented a scheme under which members of the law societies of the other provinces and the territories may become members of the Barreau and practise federal law and the law of their home jurisdictions as Canadian Legal Advisors. It is the intention of the signatories to this Agreement that the other provincial and territorial law societies will reciprocate with the Barreau by implementing provisions that will permit members of the Barreau to become members of other law societies and practise federal and Quebec law in other jurisdictions.

The signatories recognize that,

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil jurisdictions, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Quebec Mobility Agreement

Background

In August 2002 the Federation of Law Societies of Canada (the "Federation") accepted the report of the National Mobility Task Force for the implementation of full mobility rights for Canadian lawyers.

Eight law societies, including the Barreau, signed the NMA on December 9, 2002. The Agreement recognized that special circumstances applicable to the Barreau would necessitate additional provisions to implement mobility between the Barreau and the common law jurisdictions. The signatories also recognized that the requirement for the Barreau to comply with regulations applicable to all professions in Quebec would delay implementation of the NMA with respect to the Barreau.

In 2006, the law societies of all 10 provinces, including the Barreau, signed the Territorial Mobility Agreement, along with the law societies of all three territories. Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces, for a five-year period ending January 1, 2012.

Quebec Mobility

In June 2008 Quebec enacted a "Regulation respecting the issuance of special permits of the Barreau du Québec", which is stated to be "made in order to facilitate the mobility of advocates." The Regulation provides, *inter alia*, that a member in good standing of a bar of another Canadian province or territory may apply for a "special Canadian legal advisor permit" in Quebec. A person granted such a permit may engage in the following activities on behalf of another person:

(1) give legal advice and consultations on legal matters involving the law of the Canadian province or territory where he or she is legally authorized to practise law or involving matters under federal jurisdiction;

(2) prepare and draw up a notice, motion, proceeding or other similar document intended for use in a case before the courts, but only with respect to matters under federal jurisdiction;

(3) give legal advice and consultations on legal matters involving public international law; and

(4) plead or act before any tribunal, but only with respect to matters under federal jurisdiction.

Quebec Mobility Agreement

Recognizing the provisions of the Quebec Regulation, the signatories to this Agreement agree to enter into an arrangement with the Barreau to enable its members to exercise mobility in the common law jurisdictions on a reciprocal basis. It is recognized that members of other governing bodies will not be able to exercise the reciprocal right to practise public international law unless they have professional liability insurance coverage that specifically includes such practice.

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

1. In this Agreement, unless the context indicates otherwise:

"Advisor" means a Canadian Legal Advisor;

"Barreau" means the Barreau du Québec;

"Canadian Legal Advisor" means a member of agoverning body who holds a current Canadian Legal Advisor certificate issued by another governing body;

"governing body" means the Law Society or Barristers' Society in a Canadian common law jurisdiction, and the Barreau;

"home governing body" means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and **"home jurisdiction"** has a corresponding meaning;

"lawyer" means a member of a signatory governing body;

"liability insurance" means compulsory professional liability errors and omissions insurance required by a governing body;

"National Mobility Agreement" or **"NMA"** means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada;

"permanent mobility provisions" means clauses 32 to 36, 39 and 40 of the NMA;

General

2. The signatory governing bodies will

   (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;

   (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;

   (c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and

   (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.

3. Signatory governing bodies will subscribe to this Agreement and be bound by means of the signature of an authorized person affixed to any copy of this Agreement.

4. A signatory governing body will not, by reason of this agreement alone,

   (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or

   (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

Canadian Legal Advisor

6. The Barreau will continue to issue Canadian Legal Advisor certificates to qualifying members of governing bodies, and the other signatories will establish and maintain an equivalent program in order to issue Canadian Legal Advisor certificates to qualifying members of the Barreau.

7. Members of the Barreau whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted as equivalent by the Barreau are not qualifying members of the Barreau for the purpose of clause 6.

8. The permanent mobility provisions of the NMA apply with respect to requirements and qualifications to obtain a Canadian Legal Advisor Certificate, except that a signatory governing body must require that an Advisor continue to maintain practising membership in the home governing body.

9. A signatory governing body that has adopted regulatory provisions giving effect to the requirements of clauses 6 and 8 of this Agreement is a reciprocating governing body for the purposes of this Agreement, whether or not the signatory governing body has adopted or given effect to the NMA or any provision of the NMA.

Liability Insurance

10. A governing body will continue to make available to its members who are also Advisors in another jurisdiction ongoing liability insurance as required in the governing body's jurisdiction that provides occurrence or claim limits for indemnity of $1,000,000 and $2,000,000 annual per member aggregate.

11. If a member of more than one governing body becomes an Advisor member of a third governing body, the governing body that makes ongoing liability insurance available to the member at the time or did so most recently, will continue to do so or resume doing so, whether or not the member continues to be a resident of that jurisdiction.

12. On application, a signatory governing body will exempt an Advisor member from liability insurance requirements if the Advisor maintains, in another signatory jurisdiction, ongoing liability insurance that provides occurrence or claim limits for indemnity of $1,000,000 and $2,000,000 annual per member aggregate.

Transition Provisions

13. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.

14. This Agreement is intended to implement clauses 39 and 40 of the NMA. It does not affect the obligations of any party under others provision of the NMA or other agreements in effect.

15. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect

(a) until this Agreement is implemented, and

(b) when this Agreement is implemented, except to the extent modified by this Agreement.

Dispute Resolution

16. Signatory governing bodies adopt and agree to apply provisions in the Inter-Jurisdictional Practice protocol in respect of arbitration of disputes, specifically Clause 13 and Appendix 5 of the Protocol.

Withdrawal

17. A signatory governing body may cease to be bound by this agreement by giving each other signatory governing body written notice of at least one clear calendar year.

18. A signatory governing body that gives notice under clause 17 will immediately notify its members in writing of the effective date of withdrawal.

Quebec Mobility Agreement

SIGNED as of the dates indicated below.

LAW SOCIETY OF ALBERTA

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF BRITISH COLUMBIA

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF MANITOBA

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF NEW BRUNSWICK

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: _____ _____
Authorized Signatory Date

Quebec Mobility Agreement

NOVA SCOTIA BARRISTERS' SOCIETY

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF THE NORTHWEST TERRITORIES

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF NUNAVUT

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF UPPER CANADA

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: _____ _____
Authorized Signatory Date

BARREAU DU QUÉBEC

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF SASKATCHEWAN

Per: _____ _____
Authorized Signatory Date

LAW SOCIETY OF YUKON

Per: _____ _____
Authorized Signatory Date

Federation of Law Societies of Canada

Fédération des ordres professionnels de juristes du Canada

APPENDIX "B"

Model Rule To Implement the Quebec Mobility Agreement

MODEL RULE — QUEBEC MOBILITY AGREEMENT

Introduction

To assist jurisdictions to implement the provisions of the Quebec Mobility Agreement (the "QMA") the Federation of Law Societies of Canada (the "Federation") has prepared a model rule.

The QMA does not, in and of itself, confer any rights. It sets out the terms upon which the signatory jurisdictions will base mobility between the Barreau du Québec and the common law jurisdictions. A jurisdiction that signs the QMA will then be in a position to prepare and approve whatever rules, regulations or other provisions are necessary to implement the terms within that jurisdiction.

Reciprocity is an important feature of the QMA. To facilitate the effective and coherent implementation of the QMA across Canada, the model rule addresses the substantive issues arising from the QMA. Jurisdictions are not required to use the language of the model rule to implement the QMA, provided they are consistent with its substance. Its content can be adapted to accommodate specific legislative or other governance language in each jurisdiction.

It is important to remember the difference between the QMA and the model rule. The QMA articulates the commitment jurisdictions make, by signing the document, to establish a particular type of mobility regime. The model rule specifies rights, responsibilities, acceptable behaviour and penalties that govern individual lawyers who seek to avail themselves of mobility. These different purposes may have an impact on whether certain language in the QMA appears differently or in more detail in the model rule than it does in the QMA.

MODEL RULE — QUEBEC MOBILITY AGREEMENT

Categories of membership

1 The following are the categories of members of the Society:

(a) practising lawyers;

(b) retired members;

(c) non-practising members

(d) Canadian legal advisors.

Comment [JH1]: Add CLA to the list of existing membership categories.

Certificates and permits

2 The Executive Director may approve the form of

(a) practising certificate,

(b) retired membership certificate,

(c) non-practising membership certificate,

(d) Canadian legal advisor certificate,

(e) foreign legal consultant permit, and

(f) inter-jurisdictional practice permit.

Comment [JH2]: Add new certificate form to list, if applicable.

Transfer as Canadian Legal Advisor

3 (1) Subject to subrule (3), a member of the Barreau du Québec may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:

(a) a completed application for call and admission as a Canadian legal adviser in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;

(b) a certificate of character;

(c) a certificate of standing from the Barreau du Québec and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or as been a member of the legal profession;

(d) an errors and omissions insurance application or exemption form;

(e) the following fees:

(i) the investigation fees and call and admission fees;

(ii) a prorated practice fee;

(iii) a prorated annual insurance fee, unless exempt under Rule YY;

(iv) a prorated Special Compensation Fund assessment;

(f) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.

(2) Subject to subrule (1), Rules [Transfer general provision; In-house counsel rule; Transfer under NMA and TMA; Consideration of transfer application] apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal adviser.

Comment [JH3]: This is meant to import by reference procedures for transfers that apply to lawyers from other provinces and territories. For example, a hearing on character and fitness, imposition of conditions of practice where appropriate, etc.

(3) This Rule does not apply to a member of the Barreau of Québec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau.

Canadian legal advisors

4 (1) A Canadian legal advisor may

(a) give legal advice on

(i) the law of Quebec and matters involving the law of Quebec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law,

(b) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

(c) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

(2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1).

(3) A member of the Society in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the *Professional Conduct Handbook*.

(4) A Canadian legal advisor must

(a) be a member in good standing of the Barreau du Québec authorized to practise law in that Province,

(b) undertake to comply with subrule (2), and

(c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practise law in Quebec.

Exemption from liability insurance

5 (1) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee

(2) On an application under subrule (1), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Barreau that extends to the lawyer's practice in [this province/territory].

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

MEETING: Benchers

DATE: Friday, January 22, 2010

PRESENT:

Glen Ridgway, QC, President
Gavin Hume, QC, 1st Vice-President
Bruce LeRose, QC, 2nd Vice-President
Haydn Acheson
Rita Andreone
Kathryn Berge, QC
Joost Blom, QC
Robert Brun, QC
E. David Crossin, QC
Leon Getz, QC
Carol Hickman
Patrick Kelly
Stacy Kuiack
Barbara Levesque
Jan Lindsay, QC
Peter Lloyd, FCA
David Mossop, QC
Suzette Narbonne
Thelma O'Grady
Lee Ongman
David Renwick, QC
Alan Ross
Catherine Sas, QC
Richard Stewart, QC
Dr. Maelor Vallance
Herman Van Ommen
Art Vertlieb, QC
Kenneth Walker

ABSENT:

Patricia Bond
Ronald Tindale

STAFF PRESENT:

Tim McGee
Stuart Cameron
Lance Cooke
Su Forbes, QC
Jeffrey Hoskins, QC
Michael Lucas
Bill McIntosh
Jeanette McPhee
Doug Munro
Lesley Pritchard
Susanna Tam
Adam Whitcombe
Carmel Wiseman

14. Quebec Mobility Agreement

Mr. Stewart briefed the Benchers as Chair of the 2009 Credentials Committee. He reported that there is a proposal presently before the Council of the Federation of Law Societies of Canada to vote on the Quebec Mobility Agreement ("QMA") which would allow reciprocity with members of the Barreau du Quebec.

Mr. Stewart outlined the background and purpose of the QMA:

- Background
  - In August 2002 the Federation of Law Societies of Canada accepted the report of the National Mobility Task Force for the implementation of full mobility rights for Canadian lawyers

- Eight law societies, including the Barreau du Quebec ("the Barreau"), signed the National Mobility Agreement ("NMA") on December 9, 2002

- The NMA recognized that special circumstances applicable to the Barreau would necessitate additional provisions to implement mobility between the Barreau and the common law jurisdictions

    - The signatories also recognized that the requirement for the Barreau to comply with regulations applicable to all professions in Quebec would delay implementation of the NMA with respect to the Barreau

- In 2006, the law societies of all 10 provinces, including the Barreau, signed the Territorial Mobility Agreement, along with the law societies of all three territories

    - Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces, for a five-year period ending January 1,2012

- Purpose

    - The purpose of the Mobility Agreement ("QMA") is to extend the scope of the NMA in facilitating the reciprocal permanent mobility between the common law jurisdictions and the Barreau

Mr. Stewart noted that the Credentials Committee considered and endorsed the Quebec Mobility Agreement at its December 11, 2009 meeting for referral to the Benchers.

Mr. Stewart moved (seconded by Ms. Hickman) that that the Benchers direct the Law Society's Federation Council delegate to vote in favour of the draft motion of the Federation Executive which provides:

> **WHEREAS** the Barreau du Quebec (the "Barreau") has established a special category of membership known as the Canadian Legal Advisor to permit members of other Canadian law societies to practise law in Quebec on a restricted basis;
>
> **WHEREAS** the other Canadian law societies have indicated a desire to establish reciprocal mobility for members of the Barreau on a similar basis;
>
> **RESOLVED THAT** the Quebec Mobility Agreement attached as Appendix "A" be approved by Council for submission to member law societies for their execution.

The motion was carried.

LAW SOCIETY RULES

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Categories of membership

2-1 The following are the categories of members of the Society:

(a) practising lawyers, as defined in section 1 of the Act;

(b) retired members;

(c) non-practising members;

(d) Canadian legal advisor.

Certificates and permits

2-5 The Executive Director may approve the form of

(a) practising certificate issued under section 23 of the Act,

(b) retired membership certificate issued under Rule 2-4,

(c) non-practising membership certificate issued under Rule 2-3,

(d) practitioner of foreign law permit issued under Rule 2-18, and

(e) inter-jurisdictional practice permit issued under Rule 2-12, and

(f) Canadian legal advisor certificate issued under Rule 2-51.

Canadian legal advisors

Scope of practice

2-23.1 (1) A Canadian legal advisor may

(a) give legal advice on

(i) the law of Québec and matters involving the law of Québec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law,

(b) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

(c) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

(2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1).

LAW SOCIETY RULES

Requirements

2-23.2 (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the *Professional Conduct Handbook*.

(2) A Canadian legal advisor must

(a) be a member in good standing of the Barreau du Québec authorized to practise law in that Province,

(b) undertake to comply with Rule 2-23.1, and

(c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practise law in Québec.

Call and admission

Transfer as Canadian legal advisor

2-49.3 (1) Subject to subrule (3), a member of the Barreau du Québec may apply for call and admission on transfer as a Canadian legal advisor by delivering to the Executive Director the following:

(a) a completed application for call and admission as a Canadian legal adviser in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;

(b) a certificate of character;

(c) a certificate of standing from the Barreau du Québec and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;

(d) an errors and omissions insurance application or exemption form;

(e) the following fees:

(i) the investigation fees and call and admission fees;

(ii) a prorated practice fee;

(iii) a prorated annual insurance fee, unless exempt under Rule 3-25;

(iv) a prorated Special Compensation Fund assessment;

(f) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.

(2) Subject to subrule (1), Rules 2-49 to 2-51 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal adviser.

LAW SOCIETY RULES

(3) This Rule does not apply to a member of the Barreau du Québec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau.

Barristers and solicitors' roll and oath

2-51 (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.

(2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,

(a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and

(b) be presented in open court before one or more of the judges of the Supreme Court.

(3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.

(4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2)(a), the Executive Director must issue to the applicant a practising certificate, ~~or~~ a non-practising certificate or a Canadian legal advisor certificate, as the case may be.

(5) The Executive Director must not renew a practising certificate or a Canadian legal advisor certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2)(b).

(6) As an exception to subrule (5), the Executive Director may renew a certificate issued under subrule (2)(b) within four months of its expiry date.

PART 3 – PROTECTION OF THE PUBLIC

Division 4 – Professional Liability Insurance

Exemption from liability insurance

3-25 (5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.

LAW SOCIETY RULES

(6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Barreau du Québec that extends to the Canadian legal advisor's practice in British Columbia.

LAW SOCIETY RULES

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(c) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

(2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1).

LAW SOCIETY RULES

Requirements

2-23.2 (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the *Professional Conduct Handbook*.

(2) A Canadian legal advisor must

(a) be a member in good standing of the Barreau du Québec authorized to practise law in that Province,

(b) undertake to comply with Rule 2-23.1, and

(c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practise law in Québec.

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(b) a certificate of character;

(c) a certificate of standing from the Barreau du Québec and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;

(d) an errors and omissions insurance application or exemption form;

(e) the following fees:

(i) the investigation fees and call and admission fees;

(ii) a prorated practice fee;

(iii) a prorated annual insurance fee, unless exempt under Rule 3-25;

(iv) a prorated Special Compensation Fund assessment;

(f) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.

(2) Subject to subrule (1), Rules 2-49 to 2-51 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal adviser.

LAW SOCIETY RULES

(3) This Rule does not apply to a member of the Barreau du Québec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau.

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(b) be presented in open court before one or more of the judges of the Supreme Court.

(3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.

(4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2)(a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.

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PART 3 – PROTECTION OF THE PUBLIC

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LAW SOCIETY RULES

(6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Barreau du Québec that extends to the Canadian legal advisor's practice in British Columbia.

QUÉBEC MOBILITY AGREEMENT

SUGGESTED RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules effective July 1, 2010 as follows:

1. ***In Rule 2-1, by rescinding paragraph (c) and substituting the following:***

(c) non-practising members;

(d) Canadian legal advisor.

2. ***In Rule 2-5, by rescinding paragraphs (d) and (e) and substituting the following:***

(d) practitioner of foreign law permit issued under Rule 2-18,

(e) inter-jurisdictional practice permit issued under Rule 2-12, and

(f) Canadian legal advisor certificate issued under Rule 2-51.

3. ***By adding the following rules:***

Canadian legal advisors

Scope of practice

2-23.1 (1) A Canadian legal advisor may

(a) give legal advice on

(i) the law of Québec and matters involving the law of Québec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law,

(b) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

(c) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

(2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1).

Requirements

2-23.2 (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the Professional Conduct Handbook.

(2) A Canadian legal advisor must

(a) be a member in good standing of the Barreau du Québec authorized to practise law in that Province,

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(b) a certificate of character;

(c) a certificate of standing from the Barreau du Québec and each other body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;

(d) an errors and omissions insurance application or exemption form;

(e) the following fees:

(i) the investigation fees and call and admission fees;

(ii) a prorated practice fee;

(iii) a prorated annual insurance fee, unless exempt under Rule 3-25;

(iv) a prorated Special Compensation Fund assessment;

(f) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.

(2) Subject to subrule (1), Rules 2-49 to 2-51 apply, with any necessary changes, to an application for call and admission on transfer as a Canadian legal adviser.

(3) This Rule does not apply to a member of the Barreau du Québec unless he or she has earned a bachelor’s degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau.

4. ***In Rule 2-51, by rescinding subrules (4) and (5) and substituting the following:***

(4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2)(a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.

(5) The Executive Director must not renew a practising certificate or a Canadian legal advisor certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2)(b).

5. ***In Rule 3-25, by adding the following subrules:***

(5) A Canadian legal advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee.

(6) On an application under subrule (5), the Executive Director must grant the exemption, provided the Canadian legal advisor maintains the full mandatory professional liability insurance coverage required by the Barreau du Québec that extends to the Canadian legal advisor's practice in British Columbia.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Memo

The Law Society of British Columbia 4000

To Benchers

From Appointments Subcommittee

Date April 14, 2010

Subject **Legal Services Society (LSS): Request to Extend Term of Board Chair Mayland McKimm, QC**

Background

On September 2, 2010 Mayland McKimm, QC will complete his second three-year term as a Law Society-appointed director of LSS, and his second one-year term as Board Chair. LSS Executive Director Mark Benton, QC has written to request the Law Society to defer its appointment of a replacement director for Mr. McKimm until May 2011 (attached). The Benchers appoint four directors to the LSS board, after consultation with the CBABC Executive Committee.

As Mr. Benton notes, the *Legal Services Society Act* limits a LSS director's term of office to six consecutive years (ss. 4(6)), and allows a director whose term has expired to continue to hold office until a successor is appointed (ss. 4(7)).

Mr. Benton advises that "Mr. McKimm is prepared to continue to serve on the board for that extended period and would be prepared to serve as Chair for the 2010-11 year", and concludes:

> … These are turbulent times for the Society and the LSS Board strongly feels that continuity of board leadership is very important to the Society's ability to weather its current circumstances. For this reason and given Mr. McKimm's reputation as senior counsel, his substantial experience as a legal aid lawyer, and his status as a past president of the CBA, I have every reason to believe that the Law Society's support for this request would be well received in the justice community.

The Subcommittee believes that honouring this request to delay the appointment of Mr. McKimm's replacement on the LSS board by eight months would support LSS governance by enabling continuity of board leadership during a challenging period.

Recommendation

The Subcommittee recommends that the Benchers defer appointment of Mr. McKimm's replacement on the Board of Directors of the Legal Services Society until May 2011, upon consultation with the CBABC Executive Committee.

Legal Services Society

Providing legal aid in British Columbia since 1979

Suite 400
510 Burrard Street
Vancouver, BC V6C 3A8

Tel: (604) 601-6000
Fax: (604) 682-0914
www.lss.bc.ca

Office of the Executive Director

March 17, 2010

Mr. B. McIntosh
Manager, Executive Support
THE LAW SOCIETY OF BRITISH COLUMBIA
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Sir:

Re: Deferral of appointment of a successor to Mayland McKimm, QC

I write at the direction of the Board of Directors of the Legal Services Society ("LSS") to request the Law Society's assistance in supporting greater board continuity at LSS by deferring the appointment of a successor to Mr. Mayland McKimm, QC until May 2011.

As your records will indicate Mr. Mckimm QC was appointed to the LSS Board by the Law Society in September of 2004. He is currently completing his second term as Chair of the Board of Directors.

LSS has nine board members; five appointed by government, four by the Law Society. Section 4 of the LSS Act specifies that a director must not hold office for more than 6 consecutive years but also says that a director whose term of office has expired may continue to hold office until a successor is appointed. In 2009 three board members served more than 6 consecutive years while awaiting appointment of their successors. Mr. McKimm will reach the six year horizon this coming September.

The past 18 months have been a time of significant change for the Legal Services Society. As revenues have dropped and demand has increased the Society has shifted its strategic focus and made radical changes to its infrastructure in an effort to ensure the continued provision of essential legal services to low income people. In addition to these organizational changes six of the nine members of the LSS board were new appointments in 2009.

At recent board meetings a number of board members have spoken in favour of examining options to extend Mayland McKimm's service to the board beyond September 2010 in order to enhance the continuity of the board's leadership of LSS. The board was unanimous in directing that I approach the Law Society to ask for its support in this regard. The specific request from the LSS Board is that the Law Society's appointment of a successor to the Director position currently held by Mayland McKimm, QC be deferred until May 2011. The board appreciates that this is an unusual request but believes it is reasonable given the challenges the Society faces.

Mr. McKimm has indicated that he would be prepared to continue to serve on the board for that extended period and would be prepared to serve as Chair for the 2010/11 year.

These are turbulent times for the Society and the LSS Board feels strongly that continuity of board leadership is very important to the society's ability to weather its current circumstances. For this reason and given Mr. McKimm's reputation as senior counsel, his substantial experience as a legal aid lawyer, and his status as a past president of the CBA, I have every reason to believe the Law Society's support for this request would be well received in the justice community.

I would be pleased to discuss this request with you or other representatives of the Law Society as may be interested, and trust that you will not hesitate to contact me if further detail would be helpful.

Yours truly,

Mark Benton, QC
Executive Director

Cc: Timothy McGee, CEO, Law Society of British Columbia
David Crossin, QC, Vice-Chair, LSS Board of Directors

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LEGAL AID FUNDING AND THE LAW SOCIETY OF BC
Mayland McKimm, QC, Chair, Legal Services Society
Friday, April 23, 2010

ISSUES

Increased funding for legal aid is not likely in the short term. Therefore, how can the Legal Services Society best position itself for increased funding when the provincial economy improves? How can the Law Society assist?

BACKGROUND

LSS has 33 offices providing services at more than 50 locations.

The Society's statutory mandate is "to assist individuals to resolve their legal problems and facilitate their access to justice." We do this in three different ways: free legal information (websites, publications, outreach workers), legal advice (duty counsel, Brydges Line), and representation.

Revenues in 2010 – 2011 from government will be $2 million less than the previous year for large criminal cases. Law Foundation revenues will remain unchanged; revenues from the Notary Foundation are expected to remain at historic lows for another year

In 2009 LSS had expenditures of $82 million dollars, of which 69 per cent ($56 million) went to lawyers. In 2001, LSS had expenditures of $89 million of which 58 per cent ($52 million) went to lawyers. LSS would need an additional $45 million dollars (based on population growth and inflation) to return the level of per capita government funding we received in 2002; there is no likelihood government will provide that level of additional resources in the current environment.

LSS does not have adequate funding to deliver the services the board of directors believe are necessary to serve the society's clients. Nor does the society have adequate funding to pay lawyers what they deserve to be paid for the work they do.

LSS has restructured its operations to make more money available for services. LSS announced in December 2009 that several services that were previously cut will be reinstated and that several new services will be introduced. These include extended services for clients in particularly difficult family law matters, and enhanced duty counsel programs for both family and criminal law.

LSS has also made minor improvements to the tariffs paid to lawyers and is simplifying the tariffs to reduce the administrative burden on lawyers.

POSITIONING LSS FOR FUTURE FUNDING

LSS believes in outcomes-based legal aid. In any legal dispute the ideal outcome is a timely and lasting resolution that allows people to get on with their lives.

Legal aid clients are no different, but achieving the ideal outcome for them often involves helping them address non-legal issues such as homelessness, poverty, or addiction that have an impact on their legal problems.

Legal advice and representation are of pre-eminent importance in ensuring both fairness in, and proper functioning of, the justice system, and many BC lawyers provide exemplary service to the poor and disadvantaged through the legal aid program. More can be accomplished, however, when legal aid and multiple government ministries integrate their services and make them available early in the legal process or, better still, before the legal process is even needed.

Examples of how this might work include lawyers providing advice outside court at native friendship centres, women's agencies, welfare offices, or hospitals.

HOW THE LAW SOCIETY CAN HELP

1. Communications

Assist LSS to get consistent and accurate messages to the public, the legal profession and justice system partners. This can be done through LSBC publications and meetings with Law Society stakeholders.

2. Develop a Law Society vision for publicly funded legal aid services

The Law Society's public interest mandate will bring a unique perspective to this issue and may well be different from other law-related organizations.

One issue you may wish to consider is what legal aid services the province must provide as a matter of law, what services are desirable on social justice and other policy grounds, and what services, if not provided, end up costing the citizens and taxpayers more.

3. Promote lawyer involvement in legal aid

This could be done by building on the Law Society's success in encouraging lawyers to provide pro bono services.

4. Leadership and strategy development

Continue to champion initiatives that make justice more accessible such as the work of the Unbundling of Legal Services Task Force, the Delivery of Legal Services Task Force, and the Access to Legal Services Advisory Committee. Work collaboratively with LSS on initiatives where we share common goals.

Future Harm Exception to Confidentiality

Discussion Background

Lawyers owe clients an ethical duty of confidentiality, and are legally and ethically bound to safeguard solicitor-client privilege. But what should happen when a lawyer obtains privileged or confidential information that includes a threat of serious bodily harm or death that could be averted if the information is disclosed?

Should lawyers be under an ethical duty to disclose such information, or should disclosure be the choice of the individual lawyer? Should it make a difference if the threat involves a crime? Does it matter if violence is threatened, or should the threat of the commission of any crime be sufficient to permit a lawyer to disclose confidential information?

In *Smith v Jones* (1999), the Supreme Court of Canada recognized a "public safety" or "future harm" exception to solicitor-client privilege. The Court's pronouncement, however, endorsed a discretionary exception to the privilege.

The Federation of Law Societies is developing a proposed rule on future harm for the Model Code of Conduct. What should the rule on future harm be for the purposes of the Model Code? The rules adopted by Canada's law societies differ. Some law societies have created rules mandating disclosure of privileged information in certain circumstances, while others have created permissive disclosure in different circumstances.

For Bencher Discussion

The Bencher discussion will survey approaches that might be taken, by reference to a series of scenarios. Mona Duckett, QC, Chair of the Federation's Model Code Committee, and non-Bencher members of the Ethics Committee will participate in the discussion.

Benchers will not make decisions during this session. At a future Bencher meeting, the Ethics Committee will report to the Benchers on recommendations that will be developed by the Federation, and Benchers will be asked to make decisions at that time.

The agenda package includes the following information:

1. chart: Future Harm / Public Safety Exception Provisions
2. Inventory of Future Harm / Public Safety Exception Provisions
3. excerpt from case comment by Professor Adam Dodek
4. letter from John Hunter to the Federation (excerpts)
5. future harm scenarios (for discussion at the Bencher meeting).

Jurisdiction	Mandatory	Crime of Death/ Bodily Harm	Crime of Violence	Imminent Risk of Death/ Bodily Harm to an Identifiable Group	Permissive	Imminent Risk of Death/Bodily Harm or an Act of Violence to Identifiable Group	Crime of Death/ Bodily Harm	All Crimes
B.C.					X		X	
Ontario					X	X		
Barreau					X	X		
Chambre					X	X		
Alberta	X	X			X			X
Sask.	X		X		X			X
Manitoba	X		X		X			X
N.B.	X		X		X			X
P.E.I.	X		X		X			X
NFLD.	X		X		X			X
N.S.	X		X					
Yukon	X			X				
N.W.T.	X			X				
Nunavut	X			X				
Total	10	1	6	3	10	3	1	6

TAB 3

Inventory of Future Harm / Public Safety Exception Provisions

British Columbia
12. A lawyer may disclose information received as a result of a solicitor-client relationship if the lawyer has reasonable grounds to believe that the disclosure is necessary to prevent a crime involving death or serious bodily harm to any person.

Alberta
Chapter 7
8(c) A lawyer must disclose confidential information when necessary to prevent a crime likely to result in death or bodily harm, and may disclose confidential information when necessary to prevent any other crime;

Saskatchewan
11. Disclosure of information necessary to prevent a crime will be justified if the lawyer has reasonable grounds for believing that a crime is likely to be committed and will be mandatory when the anticipated crime is one involving violence against the person.

Manitoba
11. Disclosure of information necessary to prevent a crime will be justified if the lawyer has reasonable grounds for believing that a crime is likely to be committed and will be mandatory when the anticipated crime is one involving violence.

Ontario
2.03 (3) Where a lawyer believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the lawyer may disclose, pursuant to judicial order where practicable, confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required.

Barreau
3.06.01.01. An advocate may communicate information that is protected by professional secrecy, in order to prevent an act of violence, including a suicide, where he has reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons.

However, he may only communicate the information to a person exposed to the danger or that person's representative, and to the persons who can come to that person's aid.

3.06.01.02. An advocate who decides to communicate information that is protected by professional secrecy may only communicate such information as is necessary to achieve the purposes for which the information is communicated. He shall, in connection with such

TAB 3

(1) his identity and the fact that he is a member of the Barreau du Québec ;
(2) that the information he will communicate is protected by professional secrecy ;
(3) that he is availing himself of the possibility offered to him at law to set aside professional secrecy in order to prevent an act of violence, because he has reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or group of persons ;
(4) the nature of the threats or act of violence he intends to prevent ;
(5) the identity and, if possible, the contact information for the person or group of persons exposed to the danger ; and
(6) the imminence of the danger in question.

3.06.01.03. An advocate who decides to communicate information that is protected by professional secrecy may, if necessary to achieve the purposes of the communication contemplated in section 3.06.01.02, communicate the identity and contact information of the person who prompted him to communicate the information.

3.06.01.04. Where circumstances permit, an advocate may consult the syndic of the Barreau before communicating the information protected by professional secrecy in order to assess the appropriate course of action.

Chambre des Notaires
Notaries Act :
14.1. A notary must keep absolutely secret the confidences made to him or her by reason of his or her profession.

Exception:
Such obligation, however, shall not apply when the notary is expressly or implicitly relieved therefrom by the person who made such confidences or where so ordered or expressly provided by law.

Communication:
A notary may, in addition, communicate information that is protected by professional secrecy, in order to prevent an act of violence, including a suicide, where the notary has reasonable cause to believe that there is an imminent danger of death or serious bodily injury to a person or an identifiable group of persons. However, the notary may only communicate the information to a person exposed to the danger or that person's representative, and to persons who can come to that person's aid. The notary may only communicate such information as is necessary to achieve the purposes for which the information is communicated.

TAB 3

Nova Scotia

5.12 A lawyer has a duty to disclose information necessary to prevent a crime where(a) the lawyer has reasonable grounds for believing that the crime is likely to be committed; and

(b) the anticipated crime involves violence.

New Brunswick

8. The lawyer shall disclose confidential information pertaining to the affairs of the client in, inter alia, the following situations:

. . .

(b) when necessary to prevent a crime that involves violence;

9. The lawyer may disclose confidential information pertaining to the affairs of the client in, inter alia, the following situations:

. . .

(c) when the lawyer has reasonable grounds to believe that a crime is likely to be committed other than a crime that involves violence .

10. When making disclosure of confidential information pertaining to the affairs of the client pursuant to this Code the lawyer shall divulge only such information as is specifically required in the circumstances and shall assert the privilege of confidentiality of the client .

PEI

11. Disclosure of information necessary to prevent a crime will be justified if the lawyer has reasonable grounds for believing that a crime is likely to be committed and will be mandatory when the anticipated crime is one involving violence.

Newfoundland and Labrador

11. Disclosure of information necessary to prevent a crime will be justified if the lawyer has reasonable grounds for believing that a crime is likely to be committed and will be mandatory when the anticipated crime is one involving violence.

Yukon, NWT, Nunavut:

2. Where a lawyer believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that would substantially interfere with health or wellbeing, the lawyer shall disclose confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required.

TAB 3

Model Code:

Mandatory Disclosure

2.03 (4) A lawyer must disclose confidential information when necessary to prevent a crime that the lawyer has reasonable grounds to believe will be committed if the crime involves violence or is likely to result in death or bodily harm, but the lawyer must not disclose more information than is required.

Justified or Permitted Disclosure

Commentary

This rule prohibits disclosure of confidential information because confidentiality and loyalty are fundamental to the relationship between a lawyer and a client and because legal advice cannot be given and justice cannot be done unless clients have a large measure of freedom to discuss their affairs with their lawyers. However, in some very exceptional situations identified in the following subrules, disclosure without the client's permission might be warranted because the lawyer is satisfied that truly serious harm of the types identified is imminent and cannot otherwise be prevented. These situations will be extremely rare, and, even in these situations, the lawyer should not disclose more information than is required.

2.03 (5) *In the following circumstances, a lawyer may disclose confidential information, but must not disclose more information than is required:*

- when a lawyer believes on reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, if disclosure of the confidential information is necessary to prevent the death or harm; and
- when a lawyer believes on reasonable grounds that a crime that does not involve violence and is not likely to result in death or bodily harm is likely to be committed, if the lawyer believes that disclosure could prevent the crime,
- but, in either case, the lawyer should obtain a judicial order if practicable.

A lawyer advised of a prospective crime by a client must first assess whether it is reasonable to assume that the clientt will carry out the expressed intention. In doing so, the lawyer must evaluate factors such as the client's history and the nature and extent of the lawyer/client relationship. If the crime seems reasonably likely to be effected and is likely to result in death or serious bodily harm, disclosure should be made to the extent necessary to prevent the crime.

TAB 3

Following disclosure of the information pursuant to 2.03 (4) and 2.03 (5), the lawyer should prepare a written note as soon as possible, which should include:

- the date and time of the communication
- the grounds in support of the lawyer's decision to communicate the information, including the harm he or she intended to prevent, the identity of the person who prompted him to communicate the information as well as the identity of the person or group of persons exposed to the harm; and
- the content of the communication, the method of communication used and the identity of the person to whom the communication was made

A lawyer employed or retained to act for an organization, including a corporation, confronts a difficult problem about confidentiality when he or she becomes aware that the organization may commit a dishonest, fraudulent, criminal, or illegal act. This problem is sometimes described as the problem of whether the lawyer should "blow the whistle" on his or her employer or client. Although the Code of Professional Conduct makes it clear that the lawyer must not knowingly assist or encourage any dishonesty, fraud, crime, or illegal conduct (Rule 2.02 (7)) and provides a rule for how a lawyer should respond to conduct by an organization that was, is or may be dishonest, fraudulent, criminal or illegal (Rule 2.02 (8)), it does not follow that the lawyer should disclose to the appropriate authorities an employer's or client's proposed misconduct.

Rather, the general rule, as set out above, is that the lawyer must hold the client's information in strict confidence, and this general rule is subject to only a few exceptions. Even if the exceptions do not apply, there are, several steps that a lawyer should take when confronted with the difficult problem of proposed misconduct by an organization. The lawyer should recognize that his or her duties are owed to the organization and not to the officers, employees or agents of the organization (Rule 2.02 (5)) and the lawyer should comply with Rule 2.02 (10), which sets out the steps the lawyer should take in response to proposed, past or continuing misconduct by an organization.

American Bar Association

Model Rules of Professional Conduct

Client-Lawyer Relationship

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

TAB 3

1) to prevent reasonably certain death or substantial bodily harm;

2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

4) to secure legal advice about the lawyer's compliance with these Rules;

5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

6) to comply with other law or a court order.

EXCERPT FROM: “The Public Safety Exception to Solicitor-Client Privilege: Smith v. Jones” by Adam M. Dodek. (2000) 34 U.B.C. L. Rev. 293 – 315.

*Please note that the article pre-dates rule amendments in some jurisdictions. The current rules are summarized in a separate document.

…

VI. DECISION OF THE SUPREME COURT OF CANADA

A. INTRODUCTION

19 For the most part, the decision of the Court was unanimous. The entire Court agreed on the existence of a public safety exception to solicitor-client privilege, on the test for determining the exception, and on the application of the test to this case. The sole source of disagreement related to the scope of permissible disclosure. The majority, in an opinion written by Cory J., sanctioned the scope of disclosure in the trial judge's order that included the complete confession of the accused. The minority, in an opinion authored by Major J., in which he was joined by Lamer C.J.C. and Binnie J., asserted that the immediate concerns of public safety could properly be satisfied by a limited exception to solicitor-client privilege, not including conscriptive evidence against the accused. As the epilogue to the case shows, the disagreement between the majority and the minority would prove to have important ramifications.

B. SOLICITOR-CLIENT PRIVILEGE AS A SUBSTANTIVE RIGHT

20 Historically, solicitor-client privilege was a rule of evidence derived from judicial respect for the "oath and honour" of the lawyer who was duty-bound to guard a client's secrets. In operation, it was restricted to an exemption from testimonial compulsion.[40] In time, the privilege grew to encompass communications occurring during litigation, those made in contemplation of litigation, and also to any consultation for legal advice whether related to litigation or not.[41] The modern principle of solicitor-client privilege endorsed by the Supreme Court of Canada was framed by Wigmore as follows: "Where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications related to the purpose, made in confidence by the client, are at his instance permanently protected from disclosures by himself or by the legal adviser, except the protection be waived."[42]

21 Over the past three decades, the doctrine of solicitor-client privilege has extended beyond the witness stand[43] and has come to be characterized as a fundamental civil and legal right.[44] Thus, solicitor-client privilege has developed from a rule of evidence into a substantive right -- the right to confidentiality -- which can be invoked by a client at any stage of the proceedings to protect the disclosure of confidential communications with

one's solicitor.[45] The Supreme Court formulated the substantive rule in the following terms:

> 1. The confidentiality of the communications between solicitor and client may be raised in any circumstances where such communications are likely to be disclosed without the client's consent.
>
> 2. Unless the law provides otherwise, when and to the extent that the legitimate exercise of a right would interfere with another person's right to have his communications with his lawyer kept confidential, the resulting conflict should be resolved in favour of protecting the confidentiality.
>
> 3. When the law gives someone the authority to do something which, in the circumstances of the case, might interfere with that confidentiality, the decision to do so and the choice of means of exercising that authority should be determined with a view to not interfering with it except to the extent absolutely necessary in order to achieve the ends sought by the enabling legislation.
>
> 4. Acts providing otherwise in situations under paragraph 2 and enabling legislation referred to in paragraph 3 must be interpreted restrictively.[46]

22 As a result of the expansion of the notion of solicitor-client privilege, the gap between the ethical duty of confidentiality and what was formerly described as the evidentiary rule of solicitor-client privilege has narrowed considerably. Thus, while it is often stated that the ethical rule is wider than the privilege,[47] the two doctrines now largely overlap and in some cases the ethical duty of confidentiality may be narrower than the substantive rule of solicitor-client privilege.[48]

C. THE PUBLIC SAFETY EXCEPTION

23 Upon reflection, there was nothing particularly novel or earth shattering in the Supreme Court's recognition of a public safety exception to solicitor-client privilege in this case. The Court acknowledged various instances where solicitor-client privilege must yield to other imperatives: when the innocence of the accused is at issue,[49] or when

communications are criminal in themselves or are intended to obtain legal advice to facilitate criminal activities.[50] Turning to the public safety exception, the Court reviewed Solosky[51] and concluded that in certain circumstances "when the safety of the public is at risk the solicitor-client privilege may be set aside."[52]

24 The existence of a public safety exception has long been recognized in Anglo-Canadian law.[53] The Supreme Court first recognized a public safety exception in Solosky, although it did not formulate the exception in these precise words. Rather, the Court stated that it was placed in the position of "having to balance the public interest in maintaining the safety and security of a penal institution, its staff and its inmates, with the interest represented by insulating the solicitor-client relationship."[54]

25 The Court examined various American and English cases dealing with public interest exceptions to doctor-patient privilege in order to buttress the case for the existence of a public safety exception to solicitor-client privilege.[55] The Court examined the leading American case of Tarasoff v. Regents of University of California[56] where the California Supreme Court held that therapists have a duty to warn potential victims of serious threats made by patients.[57] These cases led Cory J. to conclude that the duty to warn may be engaged when a class of victims is clearly identified and that it is appropriate to speak of the prospective assailant "making known" his or her intentions by speech or other means.[58]

26 Cory J. then examined the English Court of Appeal's decision in Egdell.[59] This case should be described with some detail because it was the most important case relied upon in all three courts, strongly influencing the decision of each. In that case, W was detained indefinitely in a mental hospital upon pleading guilty to manslaughter after killing seven people in one day. He was diagnosed as a paranoid schizophrenic after the shooting spree that occurred ten years prior to the commencement of the case. The solicitors acting for W instructed Dr. Egdell to report on W's mental state, for use at a forthcoming mental health review tribunal. Dr. Egdell's report stated that W continued to represent a danger because of his general interest in making bombs. His report did not support W's discharge or transfer to a regular secure unit. Dr. Egdell contacted the tribunal directly to ask them if they had received his report. He was informed that they had not and that solicitors for W had withdrawn their interim application. Dr. Egdell then spoke with the assistant medical director at the secure hospital where W was confined, who recommended that the doctor contact W's solicitors to obtain their consent in order to disclose his report to the assistant medical director. Dr. Egdell did so, but W's solicitors refused to authorize disclosure of the report. Nevertheless, Dr. Egdell forwarded the report to the hospital and to the Home Office.

27 When W's solicitors learned that the report had been sent to the hospital, W began proceedings seeking an injunction to prevent the mental health review tribunal from disclosing or considering the information. He also sought the return of all copies of the report to him, and damages for breach of the duty of confidence. The court held that the displacing of doctor-patient confidentiality was justified under the circumstances because the harm that could result if W's mental illnesses were not adequately recognized and

treated was serious. The court placed great emphasis on the fact that W had already committed several murders.

28 Although the Supreme Court recognized that factual differences existed between the case at bar and Egdell,[60] it did not address them. Egdell dealt with doctor-patient privilege; the Court of Appeal did not consider the case one of legal professional privilege.[61] As well, an important factual distinction exists between the two cases: the patient in Egdell had already been found to be dangerous, and was serving an indeterminate sentence until such time as he was adjudged to no longer be so. A crucial legal distinction exists between the two cases: the burden of proof in Egdell was reversed. In Smith, Cory J. explicitly held that the burden lies on the party seeking to overcome the privilege.[62] In Egdell, although the court stated that the burden lay on the party attempting to overcome the privilege, it also noted that the statutory regime mandated that as a result of the determination that W constituted a danger to the public, his confinement to a public hospital could be ordered to continue until such time as the home secretary considered it safe to release him or relax the conditions of his confinement.[63] Thus, in Egdell, unlike the case at bar, "dangerous" was to be presumed until proven to the contrary. Despite these important differences, Egdell strongly influenced the decision of the Supreme Court and the test it articulated for the public safety exception.

D. SCOPE OF THE PUBLIC SAFETY EXCEPTION: CLEAR, SERIOUS, AND IMMINENT DANGER

29 When determining if public safety outweighed solicitor-client privilege, the Supreme Court held that three factors must be considered: "First, is there a clear risk to an identifiable person or group of persons? Second, is there a risk of serious bodily harm or death? Third, is the danger imminent? Clearly, if the risk is imminent, the danger is serious."[64] In defining clear risk, the Court offered a number of criteria. "Is there evidence of long range planning? Has a method for effecting the specific attack been suggested? Is there a prior history of violence or threats of violence? Are the prior assaults or threats of violence similar to that which was planned? If there is a history of violence, has the violence increased in severity? Is the violence directed to an identifiable person or group of persons?"[65] The Court emphasized the requirement that a group or person be ascertainable.[66] Regarding the seriousness of the risk, the Court held that this factor requires that the intended victim is in danger of being killed or of suffering serious bodily harm (including psychological harm).[67] The third prong of the test requires imminence defined so that "[t]he nature of the threat must be such that it creates a sense of urgency. This sense of urgency may be applicable to some time in the future."[68]

30 The Court noted that each of the criteria must be defined in the context of an individual situation and that different weights may be given to each factor in any particular case.[69] As a result, the test is a flexible one, which is certainly appropriate when outlining the circumstances under which a person has the discretion to disclose a threat to public safety. However, the final factor is the most elastic and problematic of the three. The requirements of clarity and seriousness establish measurable factors. In contrast, imminence is problematic both conceptually as a requirement and in application as defined by the Court.

31 Given the weight accorded by the Court to the interests of public safety, it is not readily apparent why a threat adjudged to constitute a serious risk of bodily harm or death to an identifiable person or group need also be imminent. If public safety is an overriding concern, no apparent benefit exists in waiting until the threat is near its execution before permitting its revelation. Such a policy risks waiting until it is too late to prevent the harm. Perhaps cognizant of this problem, the Court embraced a watered-down notion of imminence where "a sense of urgency" can extend indefinitely into the future.[70] The result is the creation of a criterion problematic in application[71] and unnecessary given the detailed exposition of the clarity factor which addresses concerns of what most people would consider imminence: "Is there evidence of long range planning? [And h]as a method for effecting the specific attack been suggested?"[72]

E. THE APPLICATION OF THE TEST TO MR. JONES

32 In applying the public safety exception to solicitor-client privilege in Smith, the Court concluded that the test of a clear, serious, and imminent danger had been met. It stated that clarity was evidenced by the specific identification of the victim group (skid row prostitutes), the specificity of the method (forcing a prostitute to become his "sex slave" before killing her), evidence of planning (arranging for vacation time, modifying his basement apartment, taking rope and duct tape, and his intention to shoot the victim to obliterate her identity), and the prior attempted or actual acts that mirrored the potential act of threatened future harm (Mr. Jones termed the initial assault to which he pleaded guilty a "trial run").[73] With regard to seriousness, the Court found that the intended sexually sadistic murder obviously sufficed.[74] By recognizing that imminence was the most difficult factor in this case, the Court acknowledged that no evidence was presented as to whether Dr. Smith considered that a future attack was imminent.[75] The Court balanced Dr. Smith's failure to take any action for a three-month period and the lack of evidence that he believed it likely Mr. Jones would commit a serious attack in the near future with Dr. Smith's actions in contacting Mr. Jones' counsel and initiating these proceedings.

33 In positing "two important factors that indicate that the threat of serious bodily harm was indeed imminent," the Court cited Mr. Jones' admission that he had breached his bail conditions by continuing to visit the area of Vancouver where prostitutes were located.[76] The Court also stated that "common sense would indicate that after Mr. Jones was arrested, and while he was awaiting sentence, he would have been acutely aware of the consequences of his actions. This is of particular significance in light of his fear of being attacked while he was in jail."[77] As Cory J. acknowledged,[78] these two factors in support of a finding of imminence are problematic. The "common sense" point is undermined by the Court's acceptance of Dr. Smith's opinion that Mr. Jones suffered from some serious mental disorders that would persist if left untreated. Mr. Jones is supposedly dangerous because of his inability to control his sexual fantasies. It is precisely because he allegedly cannot process the consequences of his actions that Dr. Smith and the Court accepted that he posed a threat to public safety. Moreover, common experience would indicate that offenders do indeed commit crimes while out on bail.[79] The conceptual weakness of the imminence factor is demonstrated by the Court's struggle with it, and indicates problems that will arise when imminence is required in a test for public safety.

F. THE EXTENT OF DISCLOSURE

34 Cautioning that the disclosure of privileged communications should generally be limited as much as possible, the majority sanctioned the scope of disclosure in the trial judge's order[80] -- including the complete confession of the accused to the psychiatrist as well as the details of his plans to commit future attacks.[81] On this issue, Major J. dissented (with Lamer C.J.C. and Binnie J.), expressing the concern that if the privilege is overridden to the extent of allowing disclosure of self-incriminating evidence, the result might endanger the public more than the public safety exception would protect them.[82] He emphasized the "chilling effect of completely breaching the privilege,"[83] claiming that it would produce the undesired effect of discouraging individuals in need of treatment for serious and dangerous conditions from consulting professional help.

35 On one hand, its sanctioning a breach of privilege in the first place undermines the position of the dissent. Having accepted an exception to the privilege, it is difficult to measure the marginal and speculative additional "chilling effect" that would result from breaching the privilege completely, as opposed to a partial breach. On the other hand, the continuing saga of the case strengthens Major J.'s concerns. As a result of information received by the Crown from Jones' confession to Dr. Smith, the Crown withdrew from its original plea agreement recommending that Jones be sentenced to two years' imprisonment and sought to classify him as a dangerous offender.[84] Finally, Jones was sentenced to 14 years' incarceration.[85] The dissent may be merited in making a distinction between breaching privilege to prevent the occurrence of a future harm and breaching privilege to turn over a complete confession to the Crown as an aid to criminal prosecution and sentencing.

36 The dissent raises self-incrimination concerns that result from using conscriptive evidence against an accused that was attained through privileged communications. "Our jurisprudence does not allow the conscription of an accused's own words against him."[86] Section 7 of the Canadian Charter of Rights and Freedoms[87] clearly applies to the pre-trial phase[88] and the Supreme Court has stated that the exclusion of a pre-trial evaluation may be acceptable while the guilt of an accused is in question but not at the sentencing stage, which includes dangerous offender proceedings.[89] It is one thing to use the words of the accused to thwart his pending crimes and prevent serious harm; it is quite another matter to use his confession, made in a confidential and privileged setting, to convict him. None of the values behind the public safety exception support the use of an accused's confession obtained in this matter. If, as reported, Dr. Smith is to take the stand in a new criminal prosecution against Mr. Jones,[90] the Supreme Court may yet be forced to address this issue head on.

G. THE PROCEDURE FOR DISCLOSURE

37 Neither the majority nor the minority chose to establish guidelines as to how an expert faced with information posing a threat to public safety should proceed. As a precursor, it must be reiterated that nowhere does the decision of the Court impose any duty or responsibility on the expert or the solicitor to disclose the information or take any action

whatsoever to address the threat to public safety. Thus, the first available option for the "potential discloser"[91] is to do nothing. This option may prove very attractive to the expert/lawyer, especially since the Court raises the spectre of "legal consequences" arising from disclosure.[92] Presumably, the Court is speaking of an action in tort for breach of confidence. However, professional sanctions may also be possible in such circumstances.

38 The second available option is disclosure. Here, the "potential discloser" may elect to follow the route taken by Dr. Smith in this case: initiate a legal action for a declaration that she or he is entitled to disclose the information. The Court explicitly sanctions this procedure.[93] However, both the majority and the minority state that this is not the only option available to the "potential discloser," noting that there may not always be time for such an action. The Court declines to outline how the "potential discloser" should proceed. "It is not appropriate in these reasons to consider the precise steps an expert might take to prevent the harm to the public. It is sufficient to observe that it might be appropriate to notify the potential victim or the police or a Crown prosecutor, depending on the specific circumstances."[94] It is unfortunate that the Court elected not to provide more concrete guidelines for "potential disclosers" faced with such difficult decisions. Given the importance of the issue -- the possible existence of a clear, serious and imminent threat to public safety -- greater guidance on the issue is needed. There seems to be some degree of cognitive dissonance between the Court's test and rationale on the one hand, and its posture towards procedures on the other. It is understandable that the Court desired to give "potential disclosers" flexibility in how to proceed. However, the line between flexibility and uncertainty is a very fine one in such circumstances.

39 If the test of clear, serious, and imminent danger and the Court's explanation are taken earnestly, then the situation described is one of emergency where normal, even expedited judicial process would be inappropriate. However, given the spectre of professional and/or legal sanctions, some judicial oversight is necessary to protect a "potential discloser," not because of the concern to protect personal liability per se, but because the judicial system values disclosure where a threat to public safety exists.

40 Thus, it is suggested[95] that a "potential discloser" appear ex parte before a judicial officer for an order authorizing disclosure to the police (who can then investigate the matter or provide protection to the intended victim). In less urgent situations (which arguably may not fall within the exception), the "potential discloser" and defence counsel can appear at an in camera hearing for a determination of the issue.[96] In the rarest of cases, those "true emergencies" where time is literally of the essence,[97] the "potential discloser" should/may[98] warn the appropriate authorities.

VII. FURTHER ISSUES

A. THE NATIONALIZATION OF THE DUTY OF CONFIDENTIALITY

41 In the wake of the Supreme Court's decision, it is arguable that the ethical rules on the public safety exception to the duty of confidentiality have been largely displaced. As solicitor-client privilege has expanded, the areas of a lawyer's ethical duty of

confidentiality not encompassed within the current broad rule of solicitor-client privilege have shrunk substantially. To a large degree, the two doctrines now overlap.[99] Effectively, the Supreme Court's decision nationalizes the public safety exception. Prior to the decision here, in order to understand the public safety exception to the duty of confidentiality, one had to look to the ethical rules of each jurisdiction where five different approaches to the issue could be identified.[100] Now, the continued existence of this diversity of approach is called into question by the Supreme Court's decision in this case.

42 Most jurisdictions provide for permissive disclosure of all crimes, not only those that could be characterized as presenting a clear, serious, and imminent danger to public safety.[101] These provisions are no longer tenable in light of the case at bar.[102] On the one hand, they are too broad because they permit lawyers (and by extension their agents) to disclose a client's intentions to commit any crime and thus fail to sufficiently protect the client's right to confidentiality as presently embodied in the rule of solicitor-client privilege. On the other hand, these provisions are too narrow. By focusing on a client's intention to commit a "crime" rather than on "public safety" more generally, they do not provide for disclosure in circumstances where no crime is committed but a clear, serious, and imminent threat to public safety exists. For example, a lawyer or an expert may have knowledge that a building is likely to collapse with people inside.[103] This may or may not be a crime but surely is a clear, serious, and imminent threat to public safety.[104]

43 The effect of the Court's decision on the continued validity of mandatory public safety disclosure provisions found in law societies' rules of conduct is not clear.[105] The Court carefully avoids addressing whether a lawyer or an expert ever has a duty to disclose information that could thwart a threat to public safety. The Court's articulation of a test for permissible disclosure for solicitor-client privilege arguably provides the starting point for disclosure. Mandatory disclosure provisions require all lawyers who reach this starting point to breach solicitor-client privilege. This fact seems somewhat contradictory to the spirit of the Court's decision. Yet, it points out the difficulty the Court had in traversing the may disclose/must disclose distinction. The Court failed to identify reasons why lawyer disclosure should be permissible and not mandatory and thus left the continued validity of the mandatory disclosure provisions uncertain.

44 The Court also left open the possibility that other exceptions -- such as national interest -- may be recognized.[106] Arguably, a limited exception already exists, at least regarding the duty to prevent or report treason under the Criminal Code.[107] It remains to be seen whether other matters that are currently covered by permissive disclosure provisions -- such as reporting client fraud[108] -- will eventually receive court sanction under either an expanded notion of public safety or a separate heading.

B. THE PROBLEM OF THE LAWYER'S AGENT

45 The Supreme Court considered that the issue before it fell under the rubric of solicitor-client privilege even though the communications at issue were made by the client to an expert retained by the solicitor. It acknowledged the extension of the privilege to cover experts retained by solicitors in the course of a professional relationship. In so doing, the

Court followed established authority.[109] "Tradition and case law support the extension of this privilege to include communications, by conversation or otherwise, between the accused and the expert in the same way as the traditional solicitor-client relationship."[110] Major J. stated that "conversations with defence experts, such as psychiatrists, fall within the solicitor-client privilege, and attract permanent and substantive privilege."[111] Thus, there was nothing novel in applying the privilege to agents of the solicitor. It had been recognized in Canada since at least 1908.[112]

46 The novelty that springs from this case is the loss of lawyer autonomy that results from a recognition that agents of a lawyer have the discretion -- that is a right -- to disclose confidences in certain situations. The ethical rules of confidentiality are ill equipped to address this situation because they guide only the lawyer's conduct. The repercussions of acknowledging that agents of a lawyer also have such a right are widespread. Potentially, every articling student, secretary, and expert has the right to breach solicitor-client privilege and inform authorities where they perceive a clear, serious, and imminent threat to public safety. Despite the great weight given by the Court to the psychiatrist's opinion, the demonstrated failure of health professionals to predict future harmful behaviour[113] should strip them of any right to a monopoly on this issue. Empirically, any person has an equal claim to the ability to predict future danger. And morally, every person would seem to hold co-equal duties to the public interest and therefore be in a position to disclose future harmful behaviour.

47 However, despite my assertions that other agents of a lawyer have equal rights and abilities to violate solicitor-client privilege in the name of public safety, it is highly unlikely that many would do so given the vast imbalances of power that exist in the relationships between these persons and lawyers. Only the very brave or the very stupid are likely to cross their lawyer-employer. In the end, it is likely that only those with independent sources of power and income, such as medical experts retained by solicitors, would be in a position to even consider disobeying a lawyer's wishes. However, there is nothing in the ratio of this case that prevents its application to other agents of a solicitor.

VIII. CONCLUSION

48 Smith v. Jones presented a unique set of facts that are unlikely to re-occur with any frequency: a mentally disturbed accused who makes a full confession to a psychiatrist retained by his lawyer and details his plans to commit future heinous crimes, and a psychiatrist willing not only to challenge the lawyer who retained him but to take the matter to court. The Supreme Court correctly recognized an exception to solicitor-client privilege in the name of public safety. However, in so doing, it articulated a test of clear, serious, and imminent danger that may prove difficult to administer.

* * *

Notes:

Thanks to Bruce Cohen, Richard Goldstone, Peter Sankoff, Michael Shapray, and Jerry Ziskrout for reading an earlier draft of this piece and providing helpful comments. This comment is dedicated to Jerry Ziskrout in continued appreciation for his teaching, mentoring, and friendship and especially for instilling in me the lesson that "ethical lawyering" is neither an oxymoron, nor is it the butt of a current lawyer joke or even an antiquated professional ideal. Rather, it is a professional imperative for the profession, its members, and the public.

40 Solosky v. The Queen, [1980] 1 S.C.R. 821 at 834, 105 D.L.R. (3d) 745 at 756 [hereinafter Solosky at S.C.R.].
41 Ibid.
42 J.H.Wigmore, Evidence in Trials at Common Law (J.T. McNaughton rev.) (Boston: Little Brown & Co., 1961) at para. 2292; cited with approval in Solosky, supra note 40 at 834; See also Descoteaux v. Mierzwinski, [1982] 1 S.C.R. 860, 141 D.L.R. (3d) 590 at 603 [hereinafter Descoteaux cited to S.C.R.].
43 See Solosky, supra note 40 at 836 (and cases cited therein).
44 Ibid. at 760; see Descoteaux, supra note 42 at 601.
45 See ibid.
46 Ibid. at 605. Also cited with approval in Smith, supra note 1 at 476.
47 See e.g. Canadian Bar Association, Code of Professional Conduct, rev. ed. (Ottawa: Canadian Bar Association, 1988) c. iv, comment 2 [hereinafter CBA Code] (noting that the ethical rule is wider as it applies without regard to the nature or source of the information or to the fact that others may share the knowledge); J.D. Ziskrout & A.M. Dodek, "Professional Conduct" in D. Lundy, ed., Barristers and Solicitors in Practice (Toronto: Butterworths, 1998) 8.1 at para. 8.19.
48 This case is an example of such an instance. See infra notes 101-04 and accompanying text (describing how, under the ethical rules in certain jurisdictions, the lawyer has a duty to disclose a threat to public safety, while here the lawyer has the discretion to choose whether or not to disclose).
49 Smith, supra note 1 at 477.
50 Ibid. at 226 (citing Descoteaux, supra note 42 at para. 55 (which in turn quotes R. v. Cox and Railton (1884), 14 Q.B.D. 153)).
51 Solosky, supra note 40 at 836.
52 Smith, supra note 1 at 478.
53 See T.G. Lund, A Guide to the Professional Conduct and Etiquette of Solicitors (London: The Law Society, 1960) at 103 (stating that "[a] solicitor acted for a client who made threats to murder the other party to the action if he, the client, was unsuccessful; it was in fact a divorce proceeding. The Council advised that the statement was not privileged and that if the solicitor really thought that his client was likely to carry out that threat, it was his duty to inform the police"). Lund's writings and lectures substantially influenced the pre-eminent (and for many years the sole) book on legal ethics in Canada. See e.g. M. M. Orkin, Legal Ethics: A Study of Professional Conduct (Toronto: Cartwright & Sons, Ltd., 1957) at 86 (citing statements by Lund in 1950 that solicitor-client privilege must yield in cases of national emergency). Mr. Orkin served as counsel to the committee

of the Canadian Bar Association that revised the CBA's Code of Professional Conduct. See CBA Code, supra note 47 at ii.
54 Solosky, supra note 40 at 840.
55 Smith, supra note 1 at 478. The Court also stated that these cases assisted in determining the approach to be taken to the issue and helped in exploring other issues in the case particularly how the victim class was to be identified and how specific the potential victim or class must be. Ibid. The partial dissent took issue with the majority's use of American jurisprudence on the private law duty to warn. Ibid. at 220 (asserting that these cases are of limited usefulness because they do not engage any of the legal and constitutional principles which underlie solicitor-client privilege).
56 In Tarasoff v. Regents of University of California, 551 P.2d 334 (Cal. 1976) [hereinafter Tarasoff], the Supreme Court of California held that therapists have a duty to warn a potential victim when they are or should be aware that a patient presents a serious danger to an identifiable person. In Tarasoff, the student-patient under the care of University of California psychiatrists and a psychologist threatened to kill a specific young woman. The psychologist called the police, who briefly detained the patient and then released him. Two months later, the patient killed the woman, and her parents sued the therapists for failing to warn them of the danger to their daughter. This case was the subject of much commentary and criticism. See e.g. A.A. Stone, "The Tarasoff Decision: Suing Psychotherapists to Safeguard Society" (1976) 90 Harv. L. Rev. 358.
57 The Court also examined cases that followed Tarasoff, supra note 56 such as Thompson v. County of Alameda, 614 P.2d 728 (Cal. 1980) and Brady v. Hopper, 570 F.Supp. 1333 (D.Colo. 1983). See Smith, supra note 1 at 228.
58 Smith, supra note 1 at 483. Cory J. provides the following example of someone making his or her intentions known: "It could be accomplished soundlessly yet with brutal clarity by thrusting a knife through a photograph of an intended victim." Ibid.
59 Egdell, supra note 26.
60 Smith, supra note 1 at 483.
61 Egdell, supra note 26 at 846, Sir Stephen Brown P.
62 Smith, supra note 1 at 474 ("It is because of the fundamental importance of the privilege that the onus properly rests upon those seeking to set aside the privilege to justify taking such a significant step").
63 Egdell, supra note 26. at 848, Bingham L.J
64 Smith, supra note 1 at 486-487.
65 Ibid. at 487.
66 Ibid. at 487.
67 Ibid. at 488.
68 Ibid. at 488.
69 Ibid. at 488.
70 The Court did not restrict the public safety exception to what Major J. called "true emergencies" where time is of the essence. See Ibid. at 219, Major J. (dissenting in part), and at 467, Cory J.
71 See infra notes 78-81 and the accompanying text on the application of the imminence factor in this case.
72 Smith, supra note 1 at 489.
73 Ibid. at 491.

74 Ibid. at 492.
75 Dr. Smith's affidavit stated that he "considered [Jones] to be a dangerous individual in that he would more likely than not, act on these fantasies unless he had sufficient treatment." Affidavit of Dr. Smith at para. 32, Smith v. Jones, Vancouver Registry No. C976491.
76 This point was actually stronger than the Court presented it. Mr. Jones told Dr. Smith that he changed the licence plates on his car in order to avoid police detection when he drove to the area prohibited under the terms of his bail. See Smith Trial Decision, supra note 8 at para. 11.
77 Smith, supra note 1 at 493.
78 "Let us assume that the evidence as to imminence of the danger may not be as clear as might be desired." Ibid.
79 See C. Blatchford, "What the Jurors Were Never Told About Francis Carl Roy" The National Post (9 April 1999) A8 (noting that the accused on trial for killing Toronto eleven-year-old Alison Parott in 1986 had been convicted twice before for committing violent rapes, the second of which occurred while he was out on bail pending trial of the first assault).
80 Smith, supra note 1 at 491.
81 Although the Supreme Court did not mention it, the accused disputed the allegation that he had informed Dr. Smith he had worked out the preparation to effect his fantasies of kidnapping a woman and using her as a sex slave. He admitted that he told Dr. Smith that his fantasies had become more concrete in the two years prior to committing the offence; however, he stated, "[A]t no time did I inform Dr. Smith that I had planned any similar act since my arrest approximately fifteen months ago." Affidavit of James Jones, Smith v. Jones, Vancouver Registry No. C976491 (10 December 1997).
82 Smith, supra note 1 at 466, Major J. (dissenting).
83 Ibid.
84 See J. Armstrong, "B.C. man who planned to kill prostitutes faces jail for life" The Globe and Mail (18 May 1999) A2.
85 See I. Bailey, "Prostitute's attacker gets 14 years" National Post (26 August 2000) online: <www.nationalpost.com/news/national/story.html?f-/ stories/20000826/ 372815.html> (date accessed 26 August 2000).
86 Smith, supra note 1 at 468-69 citing R. v. Jones, [1994] 2 S.C.R. 229 [hereinafter Jones].
87 Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 [hereinafter Charter].
88 See Jones, ibid. at paras. 113-14.
89 See ibid. at para. 126.
90 See supra notes 2 and 85.
91 I have elected to use the term the "potential discloser" as a neutral term to encompass the solicitor and any experts or agents retained by the solicitor. Although this section of the Court's decision speaks of the "expert," I think it is quite clear that coming as it does under the general rubric of solicitor-client privilege, this section applies equally to solicitors and all of their agents, not merely experts.
92 Smith, supra note 1 at 493.
93 Ibid.

94 Ibid. at 494. See also ibid. at 469 ("the scope and timing of disclosures should be dealt with by the courts on a case-by-case basis").
95 This suggestion was made to me by Michael Shapray of the Ontario bar. My thanks to him for his cogent insight on this issue in particular and on this case in general.
96 Here, Michael Shapray makes an analogy to a police investigation. "Think about the situation where the police need an urgent search warrant when they are in the midst of a fast moving investigation ... they get a Justice of the Peace on the phone or in person and attain judicial approval for their actions." E-mail correspondence (10 April 1999). See also R. v. Feeney, [1997] 2 S.C.R. 13 (police violated the Charter in not obtaining a warrant while in hot pursuit of a murder suspect).
97 Mister Justice Major termed such a case "an instant risk such that even an ex parte application to the court is not possible." Smith, supra note 1 at 219, Major J., (dissenting in part). The best example I have discovered is of the person who has knowledge of a kidnapped victim buried alive who will suffocate unless found. See H.I. Subin, "The Lawyer as Superego: Disclosures of Client Confidences to Prevent Harm" (1985) 70 Iowa L. Rev. 1091 at 1119. This article addresses several issues relevant to this case.
98 Here, I believe that a gap exists between ordinary morality and the Court's decision. I assert that most people would agree that in the case of a true emergency, such as when a person has knowledge of where a kidnapped victim is being hidden, the person should inform the appropriate authorities. However, under the Court's decision, the most that can be said is that the person may do so. On the Court's approach to the "true emergency," see Smith, supra note 1 at 236, Cory J., and at 219, Major J. (dissenting in part).
99 It may still be arguable that communications a lawyer receives from a true third party (i.e. not through an agent of the client or though the client via an agent of the lawyer) are not privileged but still subject to the duty of confidentiality.
100 See Ziskrout & Dodek, supra note 47 at paras. 8.25-8.26.
101 See e.g. CBA Code, supra note 47 at c. iv, comment 11. See Law Society of Alberta, Code of Professional Conduct (Calgary: The Law Society of Alberta, 1995) c. 7, Rule 8(c) and comment 8(c); Law Society of Manitoba, Code of Professional Conduct, c.5, comment 11; Law Society of Saskatchewan, Code of Professional Conduct, c. 5, comment 11. But see Law Society of British Columbia, Professional Conduct Handbook, c. 5, Rule 12 (permitting disclosure only for crimes involving death or serious harm). See generally Ziskrout & Dodek, supra note 47 at para. 8.25.
102 In light of the Supreme Court's decision in Smith, the Law Society of Upper Canada adopted a new rule on disclosure incorporating the Smith test for permissive disclosure. See Law Society of Upper Canada, Professional Conduct Handbook, rule 2.03(3) ("Where a lawyer believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the lawyer may disclose, pursuant to judicial order where practicable, confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required").
103 I have altered these facts slightly from those at issue in State Bar of California Standing Committee on Professional Responsibility and Conduct, Formal Opinion 58 (1981).

104 See also Spaulding v. Zimmerman, 236 Minn. 346, 116 N.W. 2d 704 (1962) (a personal injury lawyer representing the defendant kept confidential the fact that the plaintiff had a potentially fatal aortic aneurysm).
105 On these provisions, see generally Ziskrout & Dodek, supra note 47 at paras. 8.25-8.26.
106 Smith, supra note 1 at 477. On the exception to the duty of confidentiality on the grounds of national interest see Orkin, supra note 53 at 86, cited with approval in the CBA Code, supra note 47 at c. iv.; supra note 101, Law Society of Manitoba, Code of Professional Conduct, c. 5; Nova Scotia Barristers' Society of Nova Scotia, Legal Ethics and Professional Conduct, c. 5, comment 5.11; note 101, Law Society of Saskatchewan, Code of Professional Conduct, c. 5. See also Law Society of New Brunswick, Professional Conduct Handbook (Fredericton: Law Society of New Brunswick, 1996) Part C, Rule 5 [hereinafter New Brunswick Handbook].
107 See Criminal Code, R.S.C. 1985, c. C-46, s. 50(1)(b), which makes it an offence for a person who "knowing that a person is about to commit high treason does not, with all reasonable dispatch, inform a justice of the peace or other peace officer thereof or make other reasonable efforts to prevent that person from committing high treason or treason." There is no exception to this provision for lawyers who would arguably be required under the law to report a client's intention to commit high treason.
108 See New Brunswick Handbook, supra note 106, Part C, Rule 5.
109 See e.g. Re Alcan-Colony Contracting Ltd. (1971), 18 D.L.R. (3d) 32, [1971] 2 O.R. 365 (H.C.); Susan Hosiery Ltd. v. Minister of National Revenue (1969), 69 D.T.C. 5278.
110 Smith, supra note 1 at 463, Major J. (dissenting in part).
111 Ibid. at 464, Major J. (dissenting in part) [emphasis added, citations omitted].
112 See R. v. Choney (1908), 13 C.C.C. 289, 17 Man. R. 467 (C.A.) (holding that solicitor-client privilege extends to communications made to persons who act as a solicitor's agents).
113 See Stone, supra note 56 at 364 (asserting that no member of the profession can reliably predict danger).

January 10, 2008

Federation of Law Societies
Constitution Square
360 Albert Street, Suite 1700
Ottawa ON K1R 7X7

Attention: Michael Milani

Dear Sir:

Re: Federation of Law Societies Model Code

Our Ethics Committee and Benchers have now had an opportunity of considering the draft Model Code and have a number of comments on it. We have divided our comments into two parts. The comments in Part A identify Model Code provisions that we believe we would be unable to adopt in place of our current *Professional Conduct Handbook* provisions without making changes to the Code to remedy what we see as the Code's shortcomings. The comments in Part B highlight additional Code provisions which we think ought to be changed to improve the Code, although we are uncertain at this time whether we would necessarily make the Part B modifications to the Code should the Code remain unchanged in those areas.

A. Matters where LSBC would feel obliged to change the Model Code if we were to implement it in British Columbia

The following are the issues where we believe we would be unable to adopt the proposed Model Code provision in place of our current *Professional Conduct Handbook* without making changes to the Code to remedy the concerns we identify.

1. Disclosure of Privileged Information
[Model Rules 2.03(4) and 2.03(5)]

Chapter 5, Rule 12 of our *Professional Conduct Handbook* currently provides:

> 12. A lawyer may disclose information received as a result of a solicitor-client relationship if the lawyer has reasonable grounds to believe that the disclosure is necessary to prevent a crime involving death or serious bodily harm to any person.

Rules 2.03(4) and 2.03(5) of the Model Code contemplate either mandatory or optional disclosure of confidential client information in specified circumstances. Rule 2.03(4) would require disclosure of privileged communications to prevent a serious crime.

In our view the rule dealing with disclosure of information to prevent a crime should be discretionary rather than mandatory. A mandatory requirement does not place sufficient value on the judgment of individual lawyers and may prevent lawyers from taking other effective action to deal with threats of violence, short of disclosing the information.

Rule 2.03(5) is the optional version and in that respect is similar to our current Rule 12. Unlike Rule 12, however, it specifically contemplates that the potential for serious psychological harm that substantially interferes with health or well-being may justify disclosure. It would permit a lawyer to disclose potential crimes that do not involve violence.

We are of the view that what potentially constitutes serious psychological harm is too subjective and uncertain a standard to include in the rule. Moreover, it is contrary to the core value of solicitor-client privilege to require a lawyer to report potential criminal activity of a client except in narrow circumstances involving violence. While a lawyer may not assist a client to plan or carry out such activity, permitting a lawyer to disclose such information fails to place enough value on clients' need to be able to receive frank advice from their lawyers without fear that the lawyer will use information they disclose to their detriment.

OTHER ISSUES IN THE LETTER REDACTED

Thank you for giving us the opportunity of commenting on the Model Code. We look forward to participating in further discussions in 2008 about this important initiative.

Yours truly,

ORIGINAL SIGNED BY JOHN J.L. HUNTER, Q.C.

John J.L. Hunter, Q.C.
President
The Law Society of B.C.

cc: Jonathan G. Herman
Frederica Wilson

11024

CONFIDENTIAL

Future Harm
Interactive Scenarios

Federation of Law Societies of Canada
Semi-Annual Conference
March 18-20, 2010

Scenario Notes

Future Harm Scenarios

PANEL SCENARIO ONE

You represent an insurance company which is negotiating the settlement of a claim arising out of an accident. There is no doubt about the insured's responsibility for the accident. The victim of the accident has indicated that she is willing to settle for $100,000.00.

After receiving this offer, you receive a copy of the report of the insurance company's doctor who has examined the victim. The doctor indicates in her report that the victim has very serious health problems as a result of the accident and has a serious risk of suffering a brain aneurysm in the very near future if she does not obtain immediate medical attention. For some reason, perhaps negligence on his part, the victim's own doctor did not detect the problem.

Your client has instructed you not to reveal the medical report to the victim. You know that the insurance company's doctor has not informed the victim of the health problem. It is clear that the settlement offered by the victim is inadequate in light of the victim's state of health.

PANEL SCENARIO TWO

You represent a client who belongs to an organized crime gang that is implicated in the City’s narcotics trade. In the course of meeting with your client, he informs you that he plans to “mess up” any witnesses who cannot be bribed. He has previously served time for harassing witnesses from an earlier trial.

Scenario Notes

Future Harm Scenarios

PLENARY SCENARIOS

Scenario 1

Your client discloses that he has Hepatitis C and admits he had unprotected sex with unknowing women. He tells you he intends on having unprotected sex again in the next week with Sally Jones, a woman he recently met at the bar.

Scenario 2

You represent the husband in a very bitter divorce case. After two years of fighting before the court over the division of property and custody of the children and two failed attempts at mediating an agreement, the court gives the wife custody of the children, title to the matrimonial home and support payments. You advise your client of the outcome and ask if he wishes to appeal. He responds angrily to the court decision and informs you that he is going to get back at his wife regardless of the court decision. He informs you that this very evening he is going to slash the tires of his wife's car, which she parks in the driveway of the family home. You try to convince your client to abandon this plan but without success. He leaves your office with the firm intention of carrying out his plan.

Future Harm Scenarios

Scenario 3

Your client, Al, is the non-custodial parent of Zoë. Al has been ordered not to take Zoë out of the country without permission. Al tells you he plans to take his daughter to Peru tonight. You have witnessed Al interact with Zoë and you know he is a very gentle, attentive and loving father. You know he will do nothing to harm her.

Scenario 4

François is standing trial for assaulting Joe. Joe was attacked from behind in a dark alley and was severely beaten. Assault is a hybrid offence. You represent neither party but are aware of the case.

Marc is your client in a wholly unrelated matter. He confesses to you that he was Joe's assailant.

Scenario 5

You are advising a company that sells income-producing investments to the public and targets seniors. Many investors have a good portion of their retirement savings invested with this firm.

You know that the firm has made some bad investments and lost a high percentage of its assets. It is on shaky financial ground and is struggling to maintain the cash flow necessary to pay the interest owing to its investors.

You are reasonably certain that it is just a matter of time before the company goes under and then the investors will be unlikely to get their money back. You have spoken to the President of the Company because you are concerned about the company's future and about the propriety of continuing to attract new investors when the Company is almost certain not to be able to return their principal that they invested. At this point, you do not think that the Company is committing any crimes although it may be violating some securities regulations.

Future Harm Scenarios

Scenario 6

You are the in-house corporate lawyer for a large manufacturer in the Ottawa region. Your client is being investigated for violations of the Environmental Protection Act.

You learn, in the course of your employment, that your client has been systematically dumping Poly-Harmicide 7 into a field behind its plant. The field is close to several waterways. However, your client has been successful in hiding these facts from the investigators through the submission of false documents and the concealment of incriminating information. You have discussed the situation with the President of the company as well as the Board of Directors, but you have not been able to convince them to stop their stonewalling and obstruction of the investigation. You have also tried, without success, to convince the Board to install the equipment necessary to reduce the pollution to levels acceptable under the legislation.

You know that improperly discarded Poly-Harmicide 7will eventually find its way into groundwater and that multiple studies have affirmed the link between this toxin and cancer. However, the cancer can take years to develop.

In addition, your employer has instructed you to represent the company at a community forum called to discuss the impact of pollution on the community and the province's ongoing investigation. The community has been calling for a mediation to develop a plan to deal with pollution.

Scenario 7

Your client threatens to kill you when he gets out of jail in two years.

The Law Society of British Columbia

Enhancing the Delivery of Legal Services

Retreat Agenda: Friday, June 11, 2010

			Materials
9:00 am	Welcome and Introduction of Guests	Glen Ridgway, QC	
9:10 am	Workshop Theme and Overview: **How should the Law Society support and regulate improvement in the delivery of competent legal services in British Columbia?**	Gavin Hume, QC	
9:20 am	LSBC Delivery of Legal Services Task Force: Introduction	Art Vertlieb, QC	
9:30 am	Ipsos Reid Survey: Understanding Legal Service Needs Across BC	Ipsos Senior VP Daniel Savas	Ipsos Reid: Legal Services in BC: Final Report
10:00 am	Task Force Report Context: R & D	Michael Lucas Doug Munro	
10:30 am	**Coffee Break**		
10:45 am	Delivery of Legal Services Task Force Report	Art Vertlieb, QC	
11:00 am	Task Force Recommendations - Discussion	Task Force Members	
11:30 am	Unbundling of Legal Services Task Force: Report Implementation Update	Carol Hickman/Doug Munro	
11:45 am	Ethics Committee's Pro Bono Report: Proposed Amendment to the Rules / Handbook	Gavin Hume, QC	
12:00 pm	**Lunch**		
1:00 pm	Manitoba: Legal Cost Insurance Experience: the Family Law Access Centre pilot project	LSM CEO Allan Fineblit. QC and 2010 President Irene Hamilton	
1:45 pm	Alberta: Alternative Legal Services Project Update	ED Don Thompson, Pres Rod Jerke, QC & Pres-elect Doug Mah, QC	LSA Report: Alternative Delivery of Legal Services
2:30 pm	**Coffee Break**		
2:40 pm	Poverty Legal Service Needs	David Mossop, QC	
3:05 pm	Aboriginal Legal Service Needs	To be confirmed	
3:30 pm	Wrap-up and Next Steps	Gavin Hume, QC	
3:55 pm	Closing Remarks	Glen Ridgway, QC	

Jan. 19, 2010
Rec'd
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OFF V

The Law Society of B.C.
845 Cambie St
Vancouver, B.C.
V6B 4Z9

Attention: The President & Benchers

Dear Sirs & Mesdames,

Re: Photos at Commemorative Luncheon

Thank you so much for the photos taken at above luncheon. I certainly didn't expect to receive such large photos to mark that memorable & delicious luncheon. Your thoughtfulness is most appreciated. I certainly remember many happy times when I was a Bencher & I really miss the comaraderie of those days. The law profession is a most rewarding profession and the friendships I made over the years are never to be forgotten. Again, many thanks for the photos.

Yours sincerely
Brian Low Gould Q.C.

COURT OF APPEAL

THE LAW COURTS
800 SMITHE STREET
VANCOUVER, B. C.
V6Z 2E1

17 February 2010

Glen Ridgway QC
President, Law Society of British Columbia
c/o Ridgway & Company
200 – 44 Queens Road
Duncan BC
V9L 2W4

Dear Mr. Ridgway:

Re: DVD of Victoria Special Sitting held 8 January 2010

I am writing to provide you with a copy of the DVD of the Special Sitting held in Victoria on 8 January 2010. This copy is intended for the archives of the Law Society. I thank you for your kind assistance in forwarding it to the appropriate person at the Law Society, probably Ms. Bernice Chong.

The DVD is an excellent record of a wonderful and historical event. I encourage you to take a moment to watch and enjoy the DVD. I thank you again for your participation in that Special Sitting and the dinner at Government House that night.

I look forward to your participation in upcoming centenary events, the next being the Special Sitting in Vancouver on 26 March in the Great Hall of the Vancouver Law Courts.

Yours truly,

Chief Justice Finch
British Columbia Court of Appeal

Memo

The Law Society of British Columbia

16000

To Benchers

From Susanna Tam

Date April 14, 2010

Subject **Event to Recognize and Support Aboriginal Leadership in the Legal Profession - Planning Update**

In support of the strategic objective of increasing the retention of Aboriginal lawyers in the profession, the Equity & Diversity Advisory Committee has been working with staff to plan an event in conjunction with National Aboriginal Day. The event will be held on **June 16, 2010** at the First Nations House of Learning (Longhouse) at UBC from 9:00 am to 2:00 pm.

The Event – Advancing the Strategic Plan

The Law Society's current strategic plan includes the objective of increasing the retention of Aboriginal lawyers in the profession. Research has identified a number of key retention issues including the lack of role models, mentors and networking opportunities.

The Law Society aims to further its strategic retention objective with this event, which will focus on developing networks within the profession and connecting young Aboriginal lawyers and students with role models and potential mentors. As much as possible, these role models should be drawn from various regions around the province, where there are fewer lawyers available to provide services to communities. The event will also be a useful first step toward developing an Aboriginal lawyers' directory in BC, as the need for a directory has been and continues to be identified.

The Program – In Honour of Judge Alfred Scow

The event will be held in honour of retired Judge Alfred Scow, the first Aboriginal person called to the Bar and to the Bench in BC. Tina Dion, president of the Scow Institute, will speak about Judge Scow's achievements.

The event will also include a panel of Aboriginal leaders and lawyers who will be asked to share the strategies and supports that helped them stay and succeed in the profession. Panelists have been confirmed: Mary Ellen Turpel-Lafond, BC's Representative for Children and Youth; Grand Chief Edward John of the First Nations Summit; and Elizabeth Hunt, a member of the Equity & Diversity Advisory Committee. The panel will be followed by a networking lunch and participants will have the opportunity to meet and connect.

The Outcome – Supporting a Network

The Advisory Committee has heard from Aboriginal lawyers who practise in more remote communities about their sense of isolation and their lack of mentors and professional networks. The solutions that this event is designed to create would be of particular assistance to this group. However, access to the event may pose a financial challenge, given the distances in the province. To increase access, the Law Society will provide a limited number of grants to Aboriginal lawyers who need to travel significant distances in order to attend the event. These grants will be allocated in a random draw.

Event participants will be invited to provide their contact information to be included in an Aboriginal lawyers' directory that will be compiled by the Law Society. Participants will also be asked whether the Law Society can contact them at a later date for feedback regarding effective supports for Aboriginal lawyers.

The Law Society of British Columbia

Annual Report of the Law Society of British Columbia Equity Ombudsperson Program for the Term January 1, 2009 to December 31, 2009

For: **The Benchers**
Date: **April 2010**

Purpose of Report: For Information

Prepared by: Anne Bhanu Chopra, Equity Ombudsperson, LSBC
B. Comm., MIR., LL.B

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PREFACE

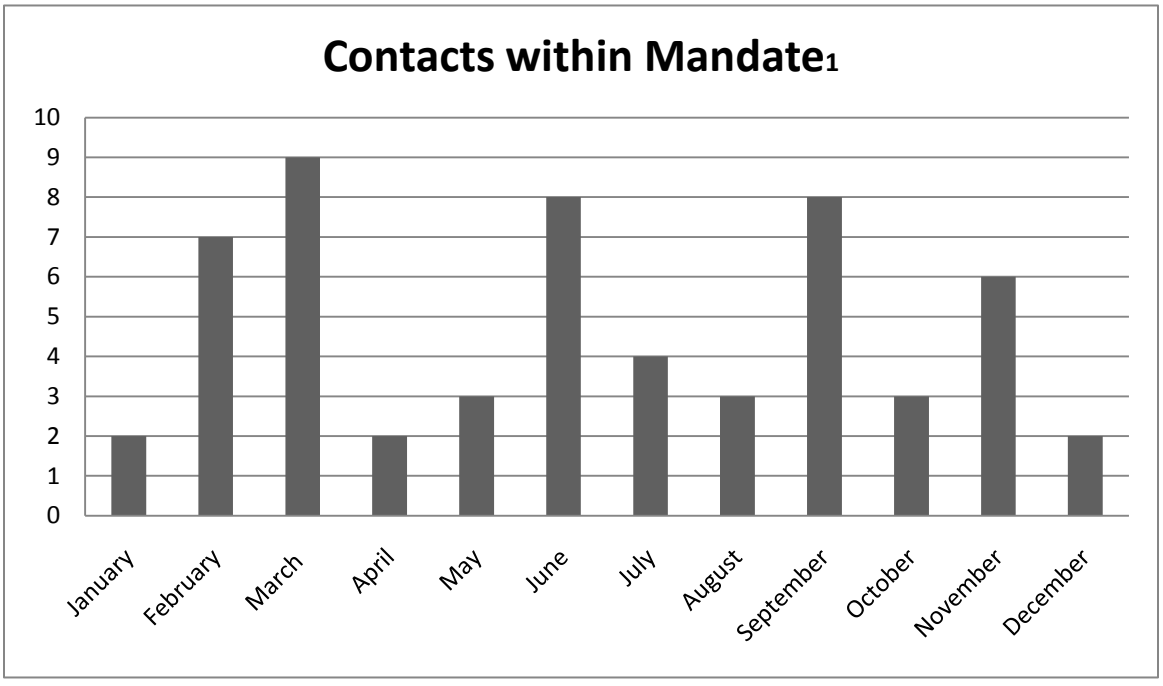
The Following report is prepared by the Equity Ombudsperson on an annual basis and disseminated to the Law Society of British Columbia for information purposes. Should the reader have any questions about the report or comment contained in same, please feel free to email the Equity Ombudsperson at achopra1@novuscom.net.

A. OVERVIEW OF NEW CONTACTS

1. The Law Society of British Columbia (the "Law Society") Equity Ombudsperson Program (the "EOP" or "Program") received 91 calls from individuals during the reporting period (January 1 to December 31, 2009). These were calls from individuals with a new matter. Of the 91 calls, 57 of these new contacts were within the Mandate (as defined below) of the Program. Further, each caller may have contacted the Program on the new matter, on a number of occasions. As a result, the total number of contacts made with the EOP during this period was 258 contacts. (See Table 2 and 3 for information on the total contacts made with the Program.)

2. The below Table 1, displays the distribution of the 91 new contacts made with the EOP, during the reporting period:

TABLE: 1



[1] Mandate = Calls from lawyers, articling students, staff dealing with issues arising from the prohibited grounds of discrimination, including workplace harassment.

3. The initial contact made by these callers is distributed as follows: 85 (93%) used the telephone to make their initial contact, 4 (4%) used email and 2 (2%) used regular mail.

4. Further, of the 91 new contacts with the Program, 78 (86%) were made by women and 12 (13%) were made by men.

5. The following Table 2 notes the contacts made with the EOP since 2006 and the geographic distribution in British Columbia:

TABLE 2: CONTACTS : 2006-2009

GEOGRAPHIC DISTRIBUTION:

	2006	2007	2008	2009
Total Contacts[1]:	286	297	275	258
Vancouver (Lower Mainland):	121	142	133	128
Victoria:	78	65	68	64
Outside (Lower Mainland /Victoria)	49	34	41	32
Outside the Mandate[2]:	38	56	33	34

NOTE:

[1]Contacts = All email, phone, in person, fax and mail contacts made with the EOP. Some contacts may have resulted in more than one issue.

[2]Outside Mandate= callers are from the public and/ or lawyers dealing with issues not within the Mandate of the EOP.

6. The following Table 3 identifies the profile of the caller (based on position, gender and size of firm) since 2006:

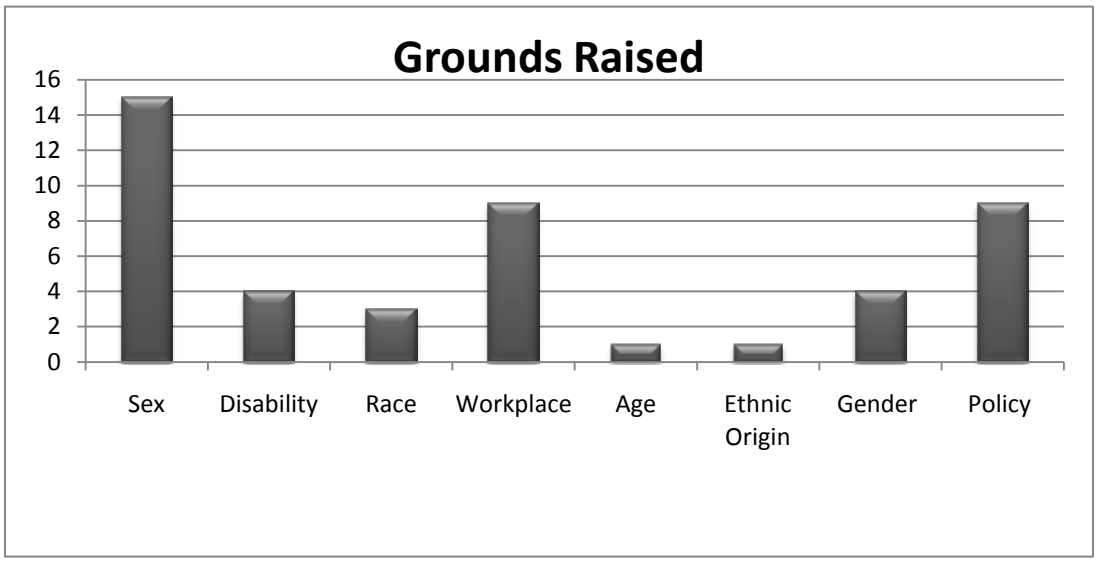
TABLE 3: PROFILE DISTRIBUTION

Profile Distribution:	**2006**	**2007**	**2008**	**2009**
Associates	50	55	56	53
Partners	60	58	43	38
Students	12	8	13	11
Articling Students	58	49	51	50
Support Staff	68	71	79	72
Females	168	164	170	178
Males	80	77	72	46
SIZE OF FIRM IN (PERCENT %)				
Small	(1-10)	45%	39%	42%
Medium	(10-50)	29%	35%	32%
Large	(50 +)	26%	23%	24%

B. OBSERVATIONS AND NARRATIVE EXAMPLES OF THE CALLERS WITHIN THE MANDATE:

1. Table 4 below, displays the grounds of discrimination which were raised in the complaints from the callers: sex, disability, race, religion, age, ethnic origin, gender, policy and workplace/personal harassment:

TABLE: 4



2. It is interesting to note the following observations:

- Of the 57 contacts, 46 individuals made human rights based discrimination or harassment and workplace harassment complaints against lawyers. Of these complaints, they were made as follows: 24% associates, 9% partners, 28% articling students 9% law students and 30% support staff; and
- Six (6) of the 46 complaints (13%) from within the legal profession were made by the complainant in reference to their employment or a job interview experience.

3. During this period, the EOP received a number of complaints, based on the above grounds. The following examples may assist the reader in appreciating the types of complaints received by the EOP:

<u>Based on sex:</u>

- Three women complained about sexist treatment and/or sexual harassment by a male partner in the firm.
- Two female lawyers complained about pregnancy-related discrimination in their employment.
- One female lawyer complained that her employer was refusing to accommodate pregnancy-related health concerns.

Based on disability:

- Two individuals complained that their employer was failing to accommodate their disability.

- Two individuals complained about employment-related discrimination based on disability. Specifically, a female lawyer reported that her employer was refusing to employ her after having received a note from her doctor to have bed rest for few days at the early stage of her pregnancy. The firm advised her that they viewed her continued employment as a health risk to her pregnancy and refused continued employment. The firm's position was not supported by any medical documentation.

Based on race:

- An Asian female lawyer complained about derogatory racialized remarks made by her partner about her abilities when giving her feedback on her work. He attributed her weakness to her race.

- A female articling student of colour complained about racial harassment by his principal at his firm.

- A male articling student complained about racialized jokes made by a partner in the firm.

Based on ethnic origin.

- A female law student complained that she was asked inappropriate questions about her ethnicity during a job interview by a law firm, athough she was offered the position.

Based on personal/workplace harassment:

- One complaint involved a woman who had a senior woman publically humiliate and bully her. Specifically, the senior lawyer advised an articling student that she had no intelligence and screamed at her when she made an error. We learned that this was the female lawyer's pattern with previous students at her firm.

- The other two (2) cases involved the partners in the firm verbally humiliating a student and a junior lawyer in front of the support staff.

C. SERVICES PROVIDED TO CALLERS

Table 5 below, denotes the services provided to the caller. These services are advertised on the LSBC website and pamphlets are provided when the Equity Ombudsperson delivers presentations.

TABLE: 5	
CALLER:	**SERVICES PROVIDED:**
LAW FIRM	• Advise them of their obligations under the Human Rights Act and the Law Society Professional Conduct Handbook • Confidentially assist them with the particular problem, including discussing strategies, obligations and possible training. • Provide information to firm on education seminars or training workshops
COMPLAINANT	• Listen to the complainant and provide safe haven for their story. • Assist in identifying the issues the complainant is dealing with. • Provide the complainant with their options, (internal complaints process in their firm, formal complaint process, mediation, litigation and the Human Rights Tribunal) including any costs, references for legal representation, remedies which may be available and time limits for the various avenues, as relevant. • Mediation is offered to the complainant, where feasible. To date, only informal mediation sessions have taken place. • Provide the complainant information on resources, such as Interlock and LAP, as relevant. • Direct them to relevant resource materials available from other organizations, including the Law Society and the BC Human Rights Tribunal.
GENERAL INQUIRES	Providing the inquirer with information about the: • EOP mandate • Services offered by the EOP • a information seminar

	• on the EOP • Reporting and Statistics gathered by the EOP
CALLER (outside Mandate)	• All callers outside the mandate are re-directed. Minimum time is consumed by the caller. • The EOP has a detailed voice mail on the phone, to act as a screener of the calls. • The EOP does not assist these callers beyond the initial contact.

D. SUMMARY OF CALLERS

In summary, Table 6 notes the distribution of all the issues, as raised by a caller, within the Mandate, during this period:

TABLE 6: ISSUE DISTRIBUTION

Issues addressed:	2006	2007	2008	2009
1. Information:				
a) General Information:	21	25	27	24
b) Office Policy Concerns:	18	16	13	14
2. Discussion/Request:				
a) Article, Training or Presentation	31	37	28	26
3. Discuss specific issue or concern:				
Discrimination				
a) Gender	15	20	21	17
b) Racial	20	16	13	12
c) Disability	33	21	17	16
d) Sexual Orientation[1]	n/a	n/a	n/a	0
Harassment				
a) Sexual harassment:	65	6	64	59
b) Workplace harassment:	39	43	40	37
Policy				
a) Leave policy:	14	21	17	18
b) Other policies:	12	6	2	1

1 New Category-2010

E.

MARKETING ACTIVITIES

1. The Equity Ombudsperson Program is included under the Law Society website under member support.

2. Articles and Information pieces are included in the Benchers Bulletin periodically, to promote the Program.

3. The EOP continues to makes contact with various organizations. The EOP has emphasized organizations which have a high number of paralegal/legal assistants as these groups are in need of the Program and there remains a lack of awareness of the same.

4. Continued dissemination of contact information about the Program is provided to the various organizations so that there is increased awareness and referrals to the Program. The types of organizations include: LEAF, Capilano College, LAP, Interlock, University of Victoria and University of British Columbia (law school).

F. EDUCATIONAL/TRAINING ACTIVITIES

1. The Program aims to provide ongoing education on respectful workplace issues. With that goal in mind, articles and speaking engagements are conducted, and an informational brochure is distributed.

2. The educational engagements at which the Program was discussed and brochures distributed:

- Benchers Bulletin Information Article;
- Brochures distributed at the LEAF Breakfast;
- Presented the Role of the Equity Ombudsperson for PLTC, Victoria;
- Presented the Role of the Equity Ombudsperson for PLTC, Vancouver;

- Disseminated Equity Ombudsperson brochures to women lawyers at the AGM of WLF/CBA, Mentoring Program Orientation/WLF, PLTC, UBC, and UVIC;

- Attended a session in Victoria and delivered a presentation to the students regarding the role of the Equity Ombudsperson; and

- Attended a number of the Benchers Meetings to be available to meet with the Benchers, as requested.

3. A number of requests were made for training, and the EOP provided information and discussed possible options with the caller.

G. OBJECTIVES ACHIEVED DURING 2009

1. The following are the objectives achieved by the Equity Ombudsperson in 2009:

- To raise awareness of the Equity Ombudsperson Program;

- To provide general education to the legal profession in British Columbia about respectful workplace issues;

- To receive and handle individual concerns and complaints about discrimination and harassment;

- To provide consultation on workplace policies and initiatives, as requested;

- To continue to disseminate the Equity Ombudsperson informational brochure;

- To follow-up on contacts made through seminars, presentations, the confidential phone line, fax, e-mail and post-office box;

- To exchange information with provincial Equity Ombudsperson counterparts and other equity experts with the other law societies;

- To closely work with Susanna Tam, Staff Lawyer, Policy and Legal Services, so there is enhanced communication between the Equity Ombudsperson and the Law Society.
- To serve as liaison/ resource for the Law Society's Equity and Diversity Advisory Committee so as to ensure and encourage exchange of information.

H. RECOMMENDATIONS FOR 2010

I continue to encourage the Law Society to take an integrative approach in regards to the issues of Equity and Diversity, by considering the concerns, issues and feedback provided by the EOP Program and the Equity and Diversity Advisory Committee (the "Feedback") on a pro-active basis. Specifically, taking into consideration the Feedback when:

i) approaching/addressing any issues on the Law Society task forces;

ii) establishing the membership of a taskforce/committee; and

iii) drafting and implementing new Law Society initiatives, policies and programs.

I am also pleased to report, that I met with a number of Benchers and the WLF to discuss the continuing challenges of sexual harassment; and constructive ways that we may reduce these types of issues arising in law firms.

I thank the Equity and Diversity Advisory Committee for their work and the individuals who have assisted me in the preparation of this report, specifically, Susanna Tam, Staff Lawyer, Policy and Legal Services and Michael Lucas, Manager, Policy & Legal Services.

Presented to the Board on January 2009

I. APPENDIX A

Background

The Law Society of British Columbia (the "Law Society") launched the Discrimination Ombudsperson program in 1995, the first Canadian law society to do so. It is now referred to as the Equity Ombudsperson Program, (the "Program") to reflect its pro-active and positive approach. The purpose of the program was to set up an informal process at arms-length to the Law Society, which effectively addressed the sensitive issues of discrimination and harassment in the legal profession as identified in the various gender and multiculturalism reports previously commissioned by the Law Society.

In the past thirteen years, the Program has been challenged with funding. Accordingly, it has undergone a number of reviews and revisions to address program efficiency, cost-effectiveness and the evolving understanding of the needs of the profession. In 2005, ERG Research Group ("ERG") was retained to conduct an independent study of the Program. ERG concluded that the complainants who accessed the Program "were overwhelmingly satisfied with the way the complaint or request was handled."

The Program has been divided into the following five (5) key functions:

1. Intake and Counseling: receiving complaints from, providing information to, and discussing alternative solutions regarding complaints with members, articled students, law students and support staff working for legal employers;

2. Mediation: resolving complaints informally with the consent of both the complainant and the respondent;

3. Education: providing information and training to law firms about issues of harassment in the workplace;

4. Program Design: at the request of a law firm, assisting in the development and implementation of a workplace or sexual harassment policy; and

5. Reporting: collecting statistics on the types of incidences and their distribution in the legal community, of discrimination or harassment and preparing a general statistical report to the Law Society, on an annual basis.

The original intention of the Law Society was to apportion these key functions among several parties, as follows:

A. The Ombudsperson would be responsible for: 1. Intake and Counselling and 5. Reporting

B. A Panel of Independent Mediators would be responsible for: 2. Mediation

C. The Law Society and the Ombudsperson would both be responsible for: 3. Education and 4. Program Design

From a practical perspective, the above responsibilities have not been apportioned to the intended parties.

With regard to education, the Law Society is not actively involved, other than to distribute model policies on demand. Further, from an operational side, it has become quite evident that it is very impractical to call on mediators from a roster. When a situation demands attention, it is on an expedited and immediate basis. Further, no evidence exists to date that there is a need for a mediator on a regular basis. For example, over the last two years mediators were called on four occasions but they were unavailable due to various reasons: delay in returning the call; a conflict made them unable to represent the client; one did not have the capacity to take the work; and another was on vacation. Accordingly, it was concluded that it was challenging to retain a qualified mediator with the requisite expertise, in an appropriate length of time. The costs and inefficiencies to retain a mediator to address highly stressed, emotional and potentially explosive situations was also a concern and consequently the Ombudsperson has been directly handling the conflict by using her mediation skills. As a result, all components of the Program are currently being handled, primarily, by the Ombudsperson.

i) **Description of Service since 2006**

The Equity Ombudsperson:

- provides confidential, independent and neutral assistance to lawyers, support staff working for legal employers, articling students and clients who have concerns about any kind of discrimination or harassment. The Ombudsperson **does not** disclose to anyone, including the Law Society, the identity of those who contact her about a complaint or the identity of those about whom complaints are made;

- provides mediation services to law firms when required to resolve conflict or issues on an informal and confidential basis;

- is available to the Law Society as a general source of information on issues of discrimination and harassment as it relates to lawyers and staff who are engaged in the practice of law. From a practical perspective, the Ombudsperson is available to provide information generally, where relevant, to any Law Society task force, committee or initiative on the forms of discrimination and harassment;

- delivers information sessions on the Program to PLTC students, law students, target groups, CBA sub-section meetings and other similar events;

- provides an annual report to the Law Society. The reporting consists of a general statistical nature in setting out the number and type of calls received;

- liaises with the Law Society policy lawyer, Susanna Tam, in order to keep her informed of the issues and trends of the Program; and

- provides feedback sheets for the Program to callers who have accessed the service.

ii) **Objective of the Program**

The objective of the Program is to resolve problems. In doing so, the Equity Ombudsperson maintains a neutral position and does not provide legal advice. She advises complainants about the options available to them, which include filing a formal complaint with the Law Society or with the Human Rights Tribunal; commencing a civil action, internal firm process, or having the Ombudsperson attempt to resolve informally or mediate a discrimination or harassment dispute.

The Equity Ombudsperson is also available to consult with and assist any private or public law office which is interested in raising staff awareness about the importance of a respectful workplace environment. She is available to assist law firms in implementing office policies on parental leave, alternative work schedules, harassment and a respectful workplace. She can provide educational seminars for members of firms, be available for personal speaking engagements and informal meetings, or can talk confidentially with a firm about a particular problem. The services of the Equity Ombudsperson are provided free of charge to members, staff, articling students and law students.

Equity Ombudsperson programs have been a growing trend among Canadian law societies since 1995. Currently the Law Societies of British Columbia, Alberta, Manitoba, Ontario and Saskatchewan have Equity Ombudsperson type positions. The Nova Barristers' Society has a staff Equity Officer who fulfills a similar role.

As these law societies have established and publicized these services, it has assisted staff and lawyers, from a practical perspective, to access information and resources to assist them in learning about their options, so that they are in a position to consider and take the appropriate steps to deal with the issues of discrimination and harassment. Further, the establishment of the Program continues to send a positive and powerful reminder to the legal profession about the importance of treating everyone equally, with respect and dignity. Achieving this goal is crucial to ensure a respectful and thriving legal profession.