



AGENDA – Supplemental Material

MEETING: Benchers
DATE: Friday, March 4, 2011
TIME: 7:30 a.m. Continental breakfast
 8:30 a.m. Meeting begins
PLACE: Bencher Room

BENCHERS' OATH OF OFFICE: At the next regular Benchers meeting attended by a Bencher after being elected or appointed, 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. Nanaimo County Bencher Nancy Merrill will take her Bencher's Oath of Office before the President.

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 January 28, 2011 meeting <ul style="list-style-type: none"> • Minutes of the regular session • Minutes of the <i>in camera</i> session (Benchers only) 	Tab 1 p. 1000
2	Amendment to Rule 1-6: Annual General Meetings <ul style="list-style-type: none"> • Memorandum from Mr. Hoskins on behalf of the Act & Rules Subcommittee 	Tab 2 p. 2000
3	Approval of Thompson Rivers University and Lakehead University Law Degrees <ul style="list-style-type: none"> • Memorandum from Mr. Treleaven 	Tab 3 p. 3000
4	External Appointments: Appointment to the Board of Directors of the Legal Services Society and Nomination to the Board of Directors of the Vancouver Foundation <ul style="list-style-type: none"> • Memorandum from the Executive Committee 	Tab 4 p. 4000

REGULAR AGENDA

5	President's Report <ul style="list-style-type: none"> • Written report to be distributed electronically prior to meeting
---	---

6	CEO's Report <ul style="list-style-type: none">• Written report to be distributed electronically prior to meeting	
7	Report on Outstanding Hearing & Review Reports <ul style="list-style-type: none">• Report to be distributed at the meeting	
GUEST PRESENTATIONS		
8	Presentation by Mayland McKimm, QC, Board Chair of the Legal Services Society	
9	Presentation by Andrew Petter, President of Simon Fraser University	
2009-2011 STRATEGIC PLAN IMPLEMENTATION (FOR DISCUSSION / DECISION)		
10	Independent Oversight of the Law Society's Regulatory Functions Mr. Lucas to report <ul style="list-style-type: none">• Memorandum from Ms. Ensminger	Tab 10 p. 10000
OTHER MATTERS (FOR DISCUSSION AND/OR DECISION)		
11	2010 Key Performance Measures Ms. Andreone and Mr. McGee to report	Tab 11 p. 11000
12	Regional Call Ceremonies Mr. Hume and Mr. McGee to report <ul style="list-style-type: none">• Memorandum from Ms. Small	Tab 12 p. 12000
FOR INFORMATION ONLY		
13	Report to Benchers on CBA National Council 2011 Midwinter Meeting and Conference in Quebec Ms. Berge to report <ul style="list-style-type: none">• Report from Ms. Berge	Tab 13 p. 13000
14	Report on 2010 Bencher Survey Results <ul style="list-style-type: none">• Report from Ms. Alderman and Ms. Papove, Executive Support Administrators	Tab 14 p. 14000
IN CAMERA SESSION		
15	Professional Regulation Briefing Ms. Armour to report <ul style="list-style-type: none">• Memorandum from Ms. Armour to be circulated at the meeting	
16	Bencher Concerns	

THE LAW SOCIETY OF BRITISH COLUMBIA

MINUTES

- MEETING:** Benchers
- DATE:** Friday, January 28, 2011
- PRESENT:**
- | | |
|--|--|
| Gavin Hume, QC, President | Jan Lindsay, QC |
| Bruce LeRose, QC, 1 st Vice-President | Peter Lloyd, FCA |
| Art Vertlieb, QC, 2 nd Vice-President | David Loukidelis, QC, Deputy Attorney
General of BC |
| Haydn Acheson | Benjimen Meisner |
| Rita Andreone | David Mossop, QC |
| Satwinder Bains | Suzette Narbonne |
| Kathryn Berge, QC | Thelma O'Grady |
| Joost Blom, QC | Lee Ongman |
| Patricia Bond | Gregory Petrisor |
| Robert Brun, QC | Claude Richmond |
| E. David Crossin, QC | Alan Ross |
| Tom Fellhauer | Catherine Sas, QC |
| Leon Getz, QC | Richard Stewart, QC |
| Carol Hickman, QC | Herman Van Ommen |
| Stacy Kuiack | Kenneth Walker |
- ABSENT:**
- Nancy Merrill
David Renwick, QC
- STAFF PRESENT:**
- | | |
|---------------------|------------------|
| Tim McGee | Michael Lucas |
| Deborah Armour | Bill McIntosh |
| Stuart Cameron | Jeanette McPhee |
| Robyn Crisanti | Doug Munro |
| Lance Cooke | Lesley Pritchard |
| Charlotte Ensminger | Susanna Tam |
| Su Forbes, QC | Alan Treleaven |
| Jeffrey Hoskins, QC | Adam Whitcombe |
- GUESTS:**
- The Honourable Lance Finch, Chief Justice of British Columbia
 The Honourable Barry Penner, QC, Attorney General of British Columbia
 Dom Bautista, Executive Director, Law Courts Center
 Erin Berger, 2nd Vice President, Trial Lawyers Association of BC
 Johanne Blenkin, Executive Director, BCCLS
 Mary Anne Bobinski, Faculty of Law Dean, UBC
 Marc Douglas, Ministerial Assistant to the AG of BC
 Ron Friesen, CEO, CLEBC
 Jeremy Hainsworth, Reporter, Lawyers Weekly
 Sharon Matthews, Vice-President, CBABC
 Caroline Nevin, Executive Director, CBABC
 Ryan Williams, President, TWI Surveys Inc.

LADDER OATH OF OFFICE:

The Honourable Lance Finch, Chief Justice of British Columbia, administered the swearing / affirming of

- the President’s Oath of Office by the Law Society’s President for 2011, Gavin Hume, QC
- the Vice-President’s Oath of Office by the Law Society’s First and Second Vice-Presidents for 2011, Bruce LeRose, QC, and Art Vertlieb, QC respectively

ATTORNEY GENERAL OF BRITISH COLUMBIA:

Mr. Hume welcomed the Honourable Barry Penner, QC, Attorney General of British Columbia to the meeting. The Attorney delivered brief remarks to the Benchers, noting the importance of the working relationship of the Ministry of Attorney General and the Law Society, and commenting on the fiscal challenges facing the Ministry and the provincial government in the current economic climate.

CONSENT AGENDA

1. Minutes

The minutes of the meeting held on December 10, 2010 were approved as circulated.

Consent Resolutions

The following resolution was passed unanimously and by consent.

2. External Appointments: Canadian Bar Association (CBA) National and Provincial Councils

BE IT RESOLVED:

- a. to appoint Kathryn Berge, QC to the CBA National Council, effective immediately through August 31, 2011, and then for a one-year term commencing September 1, 2011 and concluding August 31, 2012.
- b. to appoint Kathryn Berge, QC to the CBABC Provincial Council, effective April 1, 2011 through August 31, 2011, and then for a one-year term commencing September 1, 2011 and concluding August 31, 2012.
- c. to make future appointments to the CBA National Council and the CBABC Provincial Council for a term not exceeding one year and concluding on August 31.

REGULAR AGENDA – for Discussion and Decision

3. President’s Report

Mr. Hume referred the Benchers to his written report — circulated by email prior to the meeting — for an outline of his activities as President during the month of January 2011.

Mr. Hume also briefed the Committee on the following matters:

- CLE Tenancy in the Law Society building
- 2011 Committee and Task Force assignments
- President’s 2011 focus on supporting:
 - completion of objectives set out in the 2009 – 2011 Strategic Plan
 - development of 2012 – 2014 Strategic Plan
 - development of Ethics Committee’s Model Code recommendations

4. CEO’s Report

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

1. Operational Priorities for 2011
 - a. Support Completion of the 2009-2011 Strategic Plan and Development of the new 2012-2014 Strategic Plan
 - b. Implement Recommendations of the Core Process Review Report
 - i. Enterprise Content Management Working Group
 - ii. Practice Support Working Group
 - iii. Professional Conduct/Discipline Department Plan
 - c. Continue to Implement new LSBC Communications Plan
 - d. Develop and Implement an Enterprise Risk Management Plan
 - e. Updating of all Job Descriptions and Compensation Benchmarking
2. Update – Continuing Professional Development (CPD) Program
3. 2010 Employee Survey

Mr. McGee thanked Mr. Hume for his attendance at the recent Law Society Town Hall, and congratulated Mr. Cameron for his recent appointment as a BC Supreme Court District Registrar. Mr. McGee noted that Mr. Cameron had made valuable contributions to almost every aspect of the Law Society’s regulatory work over the course of his more than 20 years with the Law Society.

5. Report on Outstanding Hearing and Review Reports

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

GUEST PRESENTATION

6. Review of 2010 Employee Survey Results

Ryan Williams, President of TWI Surveys Inc., reviewed the results of the 2010 Law Society Employee Survey with the Benchers. Mr. Williams outlined the survey's five-year history and methodology, noting that the 2010 response rate of 82 per cent is an all-time for the Law Society, and that any response rate over 80 per cent is excellent participation in an employee survey. Mr. Williams analyzed the 2010 results, identified areas of strength and opportunity for improvement, and took questions from the Benchers.

See Appendix 2 to these minutes for graphs used by Mr. Williams to illustrate:

- interpretation of the survey's data and 5-point mean
- overall findings across various categories over the survey's five-year history

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

7. 2009-2011 Strategic Plan – Annual Review

Mr. Hume outlined the process to be followed in the Benchers' review of the final year of the Law Society's current strategic plan. Mr. Hume also outlined the process followed by the Executive Committee in reviewing the submissions of the four Advisory Committees, and in preparing the recommendations set out in the Executive Committee's memorandum to the Benchers at page 7000 of the meeting materials.

The Benchers reviewed the Executive Committee's memorandum and recommendations and reached a number of decisions. For sake of clarity, those decisions are presented below as **BENCHER DECISION annotations** to the relevant passages of the Executive Committee's memorandum, inserted following the Advisory and Executive Committee recommendations to which they relate.

1. Access to Legal Services Advisory Committee Recommendations

- (a) The Law Society should approach the Attorney General to discuss potential supplemental funding for legal aid and the justice system through amendments to the *Class Proceedings Act*, the *Civil Forfeiture Act*, and the *Unclaimed Property Act*.

This recommendation, consistent with Strategy 1-2, would be relatively easy to accomplish within existing resources because it simply requires a letter to or, perhaps, a meeting with government. If implemented, it could improve access to legal services through increased funding, thereby addressing an important public interest issue. The actual implementation of the proposal, however, is dependent on the government. Whether the changes could actually be accomplished is therefore open to debate. However, it would make considerable sense for the Law Society to raise this issue with the government as part of its Access to Legal Services strategies.

The Executive Committee recommends that this initiative be undertaken in 2011 as a strategy under the goal of Enhancing Access to Legal Services.

BENCHER DECISION: to approve the Executive Committee's recommendation.

- (b) Initiative 1-2 should be removed from the Strategic Plan as a stand-alone initiative.

Initiative 1-2 focuses on the issue of costs in the legal system, and was aimed at looking to determine ways to reduce the impact of financial barriers to accessing legal services by reducing those costs. However, that question is at the heart of most, if not all, of the deliberations of the Advisory Committee. Removing it from the Plan would simply remove it as a stand-alone initiative, and subsume it into every other initiative under the heading of “Enhancing Access to Legal Services.” It would probably be advisable to reflect the language of this strategy, however, in the other strategies.

The Executive Committee recommends that Initiative 1-2 be removed from the Strategic Plan as a stand-alone initiative on the understanding that the other strategies under the goal of Enhancing Access to Legal Services be amended to reflect the intent of the initiative.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

- (c) The Law Society should approach the law schools in British Columbia about establishing a program in which a presentation/event takes place early in the school year at which a Bencher and Law Society staff lawyer informs the students about access to justice issues and opportunities in order to promote engagement by future lawyers in criminal, family, and poverty law as well as working in smaller communities.

With limited resources, other issues identified may have a higher priority than this one. It may be advisable to complete the strategies identified on the current Plan and consider this initiative for the next Plan. If time permits, some groundwork could be laid for it now.

The Executive Committee recommends that this initiative be deferred and considered for the next strategic plan.

BENCHER DECISION: to put the development of such a program into the 2011 Strategic Plan.

2. Equity and Diversity Advisory Committee Recommendations

- (a) The Law Society should focus on developing and delivering initiatives to support Aboriginal lawyers and students. These initiatives should be developed to address specific barriers to lawyer retention as identified by research, including the lack of access to mentors, networks and role models. The Law Society should also consider what additional resources are needed in order to advance the strategic objective of enhancing the retention of Aboriginal lawyers, particularly in light of the resolutions passed at the 2009 Annual General Meeting related to the participation of Aboriginal lawyers, and given the need to advance other objectives in the strategic plan.

This initiative is key to the Law Society and requires attention. It is currently reflected in Strategy 1-3, but is not directly reflected in the initiatives under that Strategy. The Advisory Committee’s report identifies some methods by which this initiative might be realized, which will require some additional resources to those that have been budgeted for 2011. However, the importance of the recommendations needs to be addressed, and serious consideration needs to be given to including it specifically in the Strategic Plan, with resources devoted to its implementation in 2011.

The Executive Committee recommends that this initiative be specifically included in the current Strategic Plan and that additional resources, as required, be identified to allow this initiative to proceed.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

- (b) The Law Society should conduct a feasibility assessment of a *Justicia BC* project to work with firms to develop resources to retain and advance women lawyers in private practice. This initiative should be added to the strategic plan to advance the existing strategy to improve the retention rate of lawyers in the profession.

The Justicia project was identified as a recommendation by the Retention of Women in Law Task Force, and therefore forms a part of Initiative 1-3 in the current Plan. Whether a Justicia-like program can be developed and implemented depends on many parameters outside the Law Society’s control, but determining and reporting on the feasibility of such a project in 2011 is feasible within the available resources and should be a priority.

The Executive Committee recommends that this initiative be specifically included in the current Strategic Plan.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

- (c) A staff working group should be created to review all relevant data related to aging of the profession and to identify organizational concerns for review from policy and regulatory perspectives, including the impact on access to legal services. The Committee considers that this is the most effective way to act on Strategy 1-3b of the current Strategic Plan.

Aging of the legal profession was identified as an issue to which attention should be given as a priority in 2008 when the Strategic Plan was being created. However, the gathering and analysis of the census data has taken more time than anticipated. After some consideration, the Equity and Diversity Advisory Committee concluded that a staff working group should be formed to advance the issue which would allow the initiative to develop in a realistic manner under the current Plan. A staff report on what is needed to deal with the issue, which could be done within the existing resources, could lay the groundwork for developing a plan to address the issue to be included on the next Strategic Plan.

While aging of the legal profession continues to be an issue of concern, it is not realistic to expect the issue to be analysed by the end of 2011. The Executive Committee recommends that it be taken off the current Plan and that it be considered as a priority in the planning process for the next strategic plan.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

3. Independence and Self Governance Advisory Committee Recommendations

- (a) The Law Society should create a Task Force to examine alternate business structures, and to develop a Law Society position with respect to such structures.

The Independence and Self-Governance Advisory Committee has identified alternate business structures (“ABSs”) as an issue of priority because ABSs seem to have some popular appeal in other Commonwealth countries as a way of reducing the cost of legal services, thereby increasing access to legal services. However, some concerns have been raised about whether ABSs adversely affect core values of the legal profession. The Committee has recommended that the Law Society develop a position on ABSs to be prepared in the event they are proposed in Canada. The issue could be subsumed into the debate by the Access to Legal Services Advisory Committee expected over the next year.

The Executive Committee believes that it would be prudent to address this issue. The Committee recommends it be included on the current Strategic Plan and that the Independence and Self-Governance Advisory Committee be tasked with preparing a position for consideration by the Benchers later in 2011.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

- (b) The Law Society should create a task force to examine the dual functions of the Law Society as a regulator and insurer of lawyers, and to make recommendations as to whether some form of separation of the functions is advisable.

This initiative has been identified by the Independence and Self-Governance Advisory Committee as a priority issue each year since 2008, but it has not yet made it to the Strategic Plan. The concern is that the function and mandate of the insurance program compromises the public interest mandate of the Law Society. Whether it needs to be addressed now or can wait for the next iteration of the Strategic Plan is open for debate. The Committee’s consistent recommendation that this be addressed indicates how the Committee views the importance of the issue.

This issue is an important one to the confidence that the public must have in the Law Society being able to act in the public interest. It is not on the current Plan, however, and it is unrealistic to expect a completed strategy addressing this issue will be done by the end of 2011. The Executive Committee recommends that serious consideration be given to including it as a strategy for the next strategic plan.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

- (c) The Law Society should identify and set aside resources that would allow it to commission an academic study analyzing the benefits of the public right to an independent lawyer.

This recommendation is consistent with the current Strategy 3-4 of educating the public regarding the legal system on a variety of levels. However, it is not an initiative contemplated under our current plan. If approved, it would require allocation of some of the resources available to the advisory committees.

While consistent with a current strategy on the Strategic Plan, the recommendation is not actually part of the current Plan. The Executive Committee recommends that this initiative be considered during the planning process for the next strategic plan.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

4. Lawyer Education Advisory Committee Recommendations

- (a) The Committee has presented a package of recommendations to the Benchers regarding the Law Society’s continued development of professional education and advocacy education initiatives.

These recommendations were approved by the Benchers on December 10, 2010, except for one that has been referred back to the Advocacy Working Group. Given the work that has been invested in the recommendations, it would make little sense not to have the Committee oversee their implementation, and would be consistent with the strategy already identified on the Strategic Plan.

As these recommendations have been substantially approved by the Benchers, the Executive Committee recommends that the initiative remain on the current Plan and that the Lawyer Education Advisory Committee be tasked to oversee their implementation.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

- (b) A review of the continuing professional development program should continue with a view to assessing the many recommendations and feedback received from lawyers regarding the current delivery model, course content and qualifying criteria.

The Benchers have already committed to undertake a review of the CPD program after a couple of years of operation. It can be debated whether it needs to remain part of the Strategic Plan. On the one hand, the implementation of the program itself was the strategic initiative, and it has been completed. On the other hand, leaving it as part of the Plan identifies the issue as a continuing priority for the Law Society, allowing the Law Society to ensure that both the public and lawyers recognize the organization’s commitment to perfecting the operation of the program.

The Executive Committee believes that this review is essential to the success of the CPD program, and that the Advisory Committee should undertake the review as contemplated. The Executive Committee considers that the review is operational, not strategic, and therefore need not be included in the Strategic Plan.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

OTHER MATTERS

The Executive Committee considered several other items that had been identified as possible priorities to be considered for the Strategic Plan. The Committee sets out the items and makes recommendations as follows:

- (a) A review of Disclosure and Privacy Policies within the Law Society

This is an issue that has been raised by staff, and particularly by Mr. Hoskins and Ms. Crisanti. The Disclosure and Privacy Task Force recommendations as adopted by the Benchers in the early 2000s could usefully be reviewed and rationalized. While the rule changes and new practices adopted at that time moved things ahead considerably, the world is changing rapidly and there are still situations where current restrictions belie

the transparency and accountability of the Law Society, and cause problems for Law Society spokespersons and Communications staff.

The Executive Committee debated whether this item was a strategic or operational issue. The Committee ultimately concluded that it was primarily operational, and that therefore the Committee would monitor the item while staff undertakes an analysis of the current rules and makes determinations as to whether changes can be made at an operational level. If strategic issues arise, they can be considered at a later time.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

- (b) Examination of the rationale/purpose of the Admission Program

This issue was identified by Credentials Committee in the 2008 Priorities briefing materials. Part of the rationale for raising the issue arose from the Competition Bureau Report recommending that law societies justify the duration of the bar admission course, hinting strongly that the Bureau preferred shorter periods of training, and noting the provinces’ uneven approach to admission standards. Some aspects of this issue are currently being addressed through the Federation of Law Societies. The subject has, however, also been raised by some benchers in various discussions during Bencher or Committee meetings.

- (c) Reconciling the qualifications required in order to provide different types of legal services

This is an issue that arises in part from the Futures Committee’s work leading to its 2008 Report. Are there some legal services that require a general background legal education, but may not require a full Bachelor of Laws (or Juris Doctor) degree? The Committee concluded in 2008 that it is in the public interest to expand the range of service providers who are adequately regulated concerning training, accreditation and conduct. The work done to date concerning paralegals is one aspect of the Future Committee’s recommendation, but there are other things that could be considered concerning reconciling the level of qualification required to provide differing types of legal services. This issue may intersect with item (d) above.

- (d) Notaries

The Notaries’ request for an expansion of the legal services they are authorised by statute to provide, and the Law Society’s response and interaction with the Notaries is not really addressed in the current Strategic Plan. This may be an aspect of item (c) above.

The Executive Committee debated items (b), (c) and (d) together. Combined, the issues raised important questions about whether the Law Society should consider the level of qualification needed to provide various levels of legal services. While the issue of qualification standards for lawyers is being addressed at a national level by the Federation of Law Societies of Canada, standards for other service providers aside from notaries is a new issue. The Executive Committee recommends that this item be included in the current Plan under the third goal of “effective education,” and that the Lawyer Education Advisory Committee be tasked with preparing a preliminary report by the end of 2011 so that some direction can be provided for this issue in the next strategic plan.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

(e) Public Outreach and Public Forums

Reaching out to the public about the work of lawyers, about the Law Society as a regulator of lawyers, and about the importance of law in society is an issue that the Law Society has addressed in part on an ad hoc basis (public forums) and in part through the Strategic Plan (the instructional video for use in high schools that focused on lawyer independence), and should be given some consideration to it as stand-alone priority. Public forums have been undertaken in the past. As well, a suggestion has been made that the Law Society identify high school level education on law as a strategic priority. It is understood that the current focus in Law 12 is on criminal law. The Law Society should consider addressing and, if possible, working toward implementing a broadening of the focus of the curriculum.

The Executive Committee discussed this item and agreed that some debate needed to take place how to institutionalize public outreach and legal education.

BENCHER DECISION: to treat this as an operational issue rather than a strategic priority: to be advanced, managed and reported on periodically as an element of the Law Society’s Strategic Plan for Communications.

(f) Governance

A suggestion was made that governance principles be included as a strategic priority. The current Bencher Governance principles have not been reviewed for some time

The Executive Committee recommends that this item be deferred for consideration in the next Strategic Plan as it is doubtful that there are sufficient resources to dedicate to this analysis within the framework of the current Plan.

BENCHER DECISION: to approve the Executive Committee’s recommendation.

OTHER MATTERS – For Discussion and/or Decision

8. Dissolving the Delivery of Legal Services Task Force

Chair Art Vertlieb, QC reported that the work of the task force has been completed. Mr. Vertlieb moved (seconded by Mr. Mossop) that the Delivery of Legal Services Task Force be dissolved.

The motion was carried.

9. Dissolving the Unbundling Legal Services Task Force

Chair Carol Hickman, QC reported that the work of the task force has been completed. Ms. Hickman moved (seconded by Mr. Mossop) that the Unbundling Legal Services Task Force be dissolved.

The motion was carried.

10. Nominations to 2011 Finance Committee

Mr. Hume advised that Rules require two Bencher-at-large (one of whom not being a member of the Executive Committee) and one appointed Bencher to be nominated to the 2011 Finance Committee at the first Benchers meeting of the year.

Mr. LeRose nominated Executive Committee member David Renwick, QC and Kamloops Bencher Kenneth Walker nominated himself. Mr. Lloyd advised that the appointed Benchers have selected Stacy Kuiack to represent them on the 2011 Finance Committee.

Mr. Hume declared that Stacy Kuiack, David Renwick, QC and Kenneth Walker were nominated by acclamation to the 2011 Finance Committee.

IN CAMERA SESSION

The Benchers discussed other matters *in camera*.

WKM/2011-02-19



Chief Executive Officer's Monthly Report

A Report to the Benchers by

Timothy E. McGee

January 28, 2011

Introduction

This is my first CEO's report to the Benchers for 2011 and I would like to wish you all the very best of the New Year. I would also like to extend a warm welcome on behalf of all the staff to our new President Gavin Hume, QC. We look forward to working with all of you in the coming year.

In this report I would like to share with you senior management's operational priorities for the year. I have discussed these with the management team, with President Hume, and with the Executive Committee. I have also met with Gavin to review his Presidential priorities for 2011 (which he will speak to at the Bencher meeting) and I have incorporated the operational aspects of those into the priorities set out below. I have also included updates on two other items.

1. Operational Priorities for 2011

The top 5 operational priorities for management in 2011 are as follows:

(a) **Support Completion of the 2009 – 2011 Strategic Plan and Development of the new 2012 – 2014 Strategic Plan**

2011 is the third and final year of the Law Society's current Strategic Plan. While most organizations adopt a strategic plan, relatively few follow through and successfully implement its stated initiatives. The Law Society is an exception. By the end of 2010, 95% of the initiatives in the Law Society's Strategic Plan were completed or were work in progress.

While much has been accomplished to date, significant work remains to be done. In particular, the Access to Legal Services Advisory Committee needs to develop concrete recommendations regarding the practical aspects of the new expanded service delivery paradigm for paralegals and for articling students. For example, the Committee will be seeking judicial approval for expanded rights of audience, which enhance access to legal services for the public while maintaining appropriate standards for advocacy and courtroom procedure. The Equity and Diversity Advisory Committee will be focusing on implementing the Strategic Plan's initiatives relating to aboriginal lawyers, which were also the subject of a member resolution at a recent annual general meeting. The Discipline Guidelines Task Force will be completing its work in 2011. The recommendations from that task force will be crucial in addressing a number of aspects of our current policies in the areas of professional conduct and discipline, which have hindered rather than supported our goal of effective and efficient regulation.

The Policy group and numerous other staff will be heavily engaged in supporting all of this work. We will also need to draw on various other resources within the Law Society to help assess the operational impacts and the feasibility of options and recommendations as they are formulated.

By the end of 2011, the Benchers will also be approving a new three year Strategic Plan representing the priorities for the Law Society on the most important issues projecting out to the end of 2014. The work on the 2012 – 2014 Strategic Plan will begin in the spring of this year and will be a significant part of the Benchers agenda next fall.

(b) Implement Recommendations of the Core Process Review Report

The Core Process Review was a massive undertaking for the Law Society in 2010 involving virtually all of our staff in one way or another throughout the year. The report of findings and recommendations was delivered in scope and on time in December of last year thanks in large measure to the work of the project leader Kensi Gounden. While many recommendations in the report are already being implemented there are 3 major recommendations which will be further developed in 2011 by internal cross-organizational working groups and reviewed further by the Benchers. These are as follows:

(i) Enterprise Content Management Working Group

The major finding of the Core Process Review was that we are an organization that relies heavily on the creation and storage of data and on the exchange of relevant, accurate information across our various departments. However, the report also found that we do not have a modern system or integrated information management tool to support that need. Instead, we have a patchwork of programs and systems, which, while barely adequate for today, are inadequate for the future. This working group has been created with a mandate to define our user needs in detail, consult on what would constitute the best solution, and create the necessary business case for review by the Finance Committee and the Benchers.

(ii) Practice Support Working Group

The Core Process Review revealed that we provide member “support” in a broad range of areas using various different staff resources. One of the report’s major recommendations was that we should take a fresh look at the scope and mode of delivery of these services (which include practice advice, member services, lawyer education services, communications

services, publications, practice alerts and advisories), and consider whether our model could be improved in any way.

(iii) *Professional Conduct/Discipline Departmental Plan*

Our Chief Legal Officer, Deb Armour, and her team were important contributors to the Core Process Review. Because of the critical nature of these core regulatory functions, Deb has developed an operational plan, which she shared with the Benchers in late 2010. The plan focuses on the achievement of three overarching goals: ensure highly effective investigations and prosecutions; significantly reduce timelines; and improve the working environment and job satisfaction for staff. Deb will be overseeing the introduction of a number of new initiatives in her group, including the greater use of interviews to determine facts and resolve issues, and utilizing more paralegal support to complete administrative steps earlier and more efficiently in the complaint cycle. Deb will be reporting quarterly to the Benchers in 2011 regarding the implementation and progress of this plan. The ultimate objective is to continue to improve how we perform this work so that the regulatory performance of the Law Society will be beyond reproach.

(c) **Continue to Implement new LSBC Communications Plan**

2010 was an important year for the Law Society on the communications front because we developed and adopted a comprehensive new plan for all aspects of Law Society communications both internally and externally. This plan was presented to and reviewed by the Benchers at the Bencher retreat in Parksville last June. We are fortunate that Robyn Crisanti joined us as Manager of Communications in 2010. Robyn is the principal author of the new communications plan and she has provided strong leadership to date in implementing its initiatives. We will focus in 2011 in continuing to implement all aspects of the plan, which is designed to make the Law Society more proactive, responsive and transparent in fulfilling our public interest mandate.

(d) **Develop and Implement an Enterprise Risk Management Plan**

In 2010 management discussed with the Audit Committee the desirability of developing a comprehensive risk management profile for the Law Society and articulating risk management strategies to mitigate those risks. Part of those discussions involved a review with the Audit Committee of our existing risk management processes such as our financial controls and health and safety policies. However, it was clear that much more could be done to investigate all potential

areas of risk for the Law Society and to ensure we are responding appropriately. Management will be working closely with the Audit Committee on this project as a priority in 2011 with a view to making a systemic review of our risk management policies a feature of Bencher oversight going forward.

(e) Updating of all Job Descriptions and Compensation Benchmarking

Every two years management retains experts to produce an external compensation benchmarking report. This work is already underway for 2011. In conjunction with this, we are also doing a comprehensive review of every job description within the Law Society to ensure that these descriptions are up-to-date. All managers and staff are being asked to participate in this review. Management's goal is to ensure that we compensate our staff fairly, based upon appropriate market comparables, and that the data to support that can be shared in a meaningful way.

While the foregoing are our top operational priorities for 2011 they obviously do not reflect the full scope of the work that we do. For all the areas not mentioned here we will continue to strive to meet our Key Performance Measures as applicable and to focus on operational excellence. In addition, we will continue to see an increasing allocation of our resources to support the important national initiatives of the Federation of Law Societies of Canada.

2. Update – Continuing Professional Development (CPD) Program

I would like to provide a brief update on the statistics for our CPD program as at January 13, 2011. Out of approximately 10,300 practicing lawyers, 723 lawyers did not meet the 2010 requirement by the end-of-year deadline. Of those:

- 140 completed late and will be invoiced \$210;
- 10 have pending credits (to be resolved) so will not be invoiced unless disallowed; and
- 582 are currently outstanding and will be invoiced \$210 if they meet the requirement by April 1, 2011.

These results reflect an improvement over 2010, when 993 lawyers did not meet the 2009 requirement by the end-of-year deadline.

Alan Treleaven will be available at the meeting to discuss these results and to report on steps being taken to follow up on members with incomplete results.

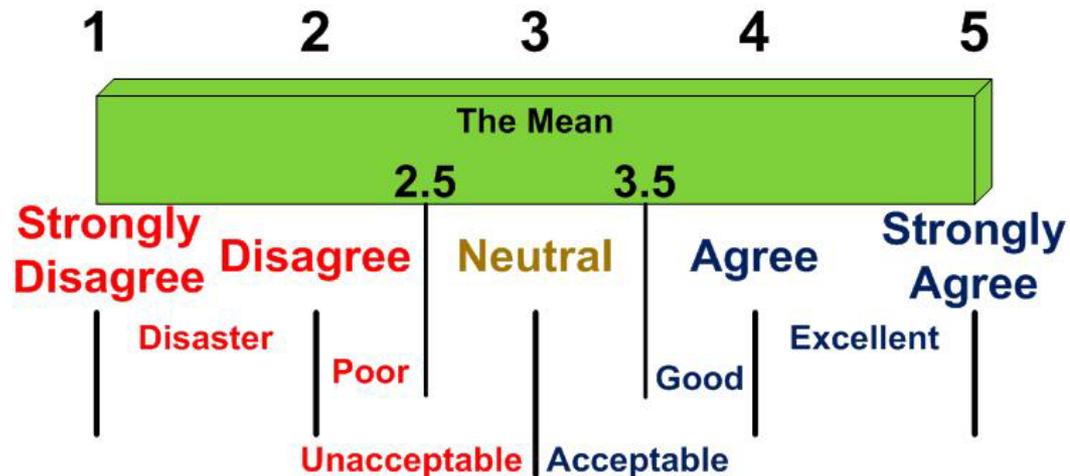
3. 2010 Employee Survey

Ryan Williams of TWI Surveys Inc. will present an overview of the results of the 2010 Employee Survey. This is the fifth year that we have conducted a survey of all employees. The results are used to help us measure how we are doing as an organization and to help management develop action plans to better engage employees in the work and life of the Law Society. The results for 2010 are encouraging and show continuous improvement in all areas.

Timothy E. McGee
Chief Executive Officer

INTERPRETING THE DATA

- ▶ Two primary measures used in this analysis are the mean and the percent (%) of agreement



Interpreting the 5-point mean

OVERALL FINDINGS



Memo



To Benchers
From Jeffrey G. Hoskins, QC for Act and Rules Subcommittee
Date February 23, 2011
Subject **Amendment to Rule 1-6 to give effect to membership referendum**

In November 2010 the members of the Law Society voted overwhelmingly (97 per cent) in favour of this proposition:

Are you in favour of the Benchers amending Rule 1-6 to allow distribution of the audited financial statements to members electronically rather than by traditional mail?

The Act and Rules Subcommittee has considered how this change can be effected in a way that allows the financial saving that was promised to the members while ensuring that members have the information that they are entitled to and preserving maximum flexibility in the future.

The Subcommittee recommends that the Benchers adopt the attached suggested resolution to give effect to the amendment.

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

Meetings

Annual general meeting

- 1-6** (1) The Benchers must hold an annual general meeting of the members of the Society each year.
- (5) At least 60 days before an annual general meeting, the Executive Director must ~~mail~~ distribute to ~~each member~~ members of the Society by mail a notice containing the following information:
- (a) the date and time of the meeting;
 - (b) the text of the resolution recommended by the Benchers to set the practice fee under section 23 [Annual fees and practising certificate] of the Act.
- (8) At least 21 days before an annual general meeting, the Executive Director must make available to members of the Society,
- ~~(a) mail to each member of the Society a copy of each of the following by mail, a notice containing the following information:~~
 - ~~(ai) notice of the locations at which the meeting is to be held, and~~
 - ~~(b) an audited financial statement of the Society covering the last calendar year;~~
 - ~~(eii) each resolution and amendment received in accordance with subrules (6) and (7), and~~
 - (b) by electronic or other means, the audited financial statement of the Society for the previous calendar year.
- (9) The accidental ~~omission to mail~~ failure to comply with anything required requirement under subrule (5) or (8) ~~to any member of the Society or non receipt of it~~ does not invalidate anything done at the annual general meeting.

LAW SOCIETY RULES

PART 1 – ORGANIZATION

Division 1 – Law Society

Meetings

Annual general meeting

- 1-6** (1) The Benchers must hold an annual general meeting of the members of the Society each year.
- (5) At least 60 days before an annual general meeting, the Executive Director must distribute to members of the Society by mail a notice containing the following information:
- (a) the date and time of the meeting;
 - (b) the text of the resolution recommended by the Benchers to set the practice fee under section 23 [*Annual fees and practising certificate*] of the Act.
- (8) At least 21 days before an annual general meeting, the Executive Director must make available to members of the Society,
- (a) by mail, a notice containing the following information:
 - (i) the locations at which the meeting is to be held, and
 - (ii) each resolution and amendment received in accordance with subrules (6) and (7), and
 - (b) by electronic or other means, the audited financial statement of the Society for the previous calendar year.
- (9) The accidental failure to comply with any requirement under subrule (5) or (8) does not invalidate anything done at the annual general meeting.

DISTRIBUTION OF FINANCIAL STATEMENTS**SUGGESTED RESOLUTION:**

BE IT RESOLVED to amend Rule 1-6 by rescinding subrules (5), (8) and (9) and substituting the following:

- (5) At least 60 days before an annual general meeting, the Executive Director must distribute to members of the Society by mail a notice containing the following information:
 - (a) the date and time of the meeting;
 - (b) the text of the resolution recommended by the Benchers to set the practice fee under section 23 [*Annual fees and practising certificate*] of the Act.

- (8) At least 21 days before an annual general meeting, the Executive Director must make available to members of the Society,
 - (a) by mail, a notice containing the following information:
 - (i) the locations at which the meeting is to be held, and
 - (ii) each resolution and amendment received in accordance with subrules (6) and (7), and
 - (b) by electronic or other means, the audited financial statement of the Society for the previous calendar year.

- (9) The accidental failure to comply with any requirement under subrule (5) or (8) does not invalidate anything done at the annual general meeting.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



To Benchers
From Alan Treleaven
Date February 18, 2011
Subject **Request for Benchers Approval of the Thompson Rivers University and Lakehead University Law Degrees**

RECOMMENDATION FOR BENCHER DECISION

The Executive Committee recommends that the Benchers approve the law degree programs at Thompson Rivers University and Lakehead University for purposes of entry into the Law Society of BC Admission Program.

BACKGROUND

Law Society of BC rule 2-27 (4) (a) states that an applicant for admission must provide proof of

... successful completion of the requirements for a bachelor of laws or the equivalent degree from a common law faculty of law in a Canadian university

Canada's law societies have delegated to the Federation of Law Societies the authority to review and make recommendations to law societies with respect to new Canadian law degree programs.

The former Federation Task Force on the Canadian Common Law Degree, chaired by John Hunter, QC, made recommendations for the standards according to which Canadian common law degrees would be approved for purposes of entry into Canadian bar admission programs. Those standards were approved by all law societies.

The Federation then established the Common Law Degree Implementation Committee, which is in the process of developing proposals to implement the Task Force's recommendations.

The Federation received proposals from Thompson Rivers University and Lakehead University requesting approval of their new law degree programs. Because the requests to approve the two law degree programs have arisen before the work of the Common Law Degree Implementation Committee is complete, the Federation Council decided to establish an Ad Hoc Committee on Approval of New Canadian Law Degree Programs to make recommendations relating to the two requests.

The Ad Hoc Committee has applied the new national standards in formulating its recommendations. The Ad Hoc Committee's report, attached, recommends that law societies recognize the two degrees for purposes of entry into bar admission programs.

Thompson Rivers University is preparing to welcome its new first year law school class in September 2011.

LAW DEGREE APPROVALS IN THE LONGER TERM

Today, individual law societies are responsible for prescribing the academic qualifications an applicant must possess to gain access to a bar admission program.

The Common Law Degree Implementation Committee's anticipated recommendations will likely include the Federation creating a new national sub-committee to be responsible for the assessment of Canadian common law degrees on behalf of all law societies. Such a recommendation would have to account for the extent to which law societies are able to delegate the approval of law degree programs to a national body. Law societies would be asked to decide whether and to what extent they will delegate that role to the Federation to ensure effective national standards.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

Ad Hoc Committee on Approval of New Canadian Law Degree Programs

Report on Applications by:

Lakehead University

and

Thompson Rivers University

January 2011

INTRODUCTION

1. In Canada, each provincial and territorial law society determines whether the holder of a Canadian law degree is entitled to apply for admission to its bar admission or licensing program.

2. In the early 1990s, the law societies delegated to the Federation of Law Societies of Canada (the “Federation”) the authority to review and make recommendations with respect to new Canadian law degree programs leading to the conferral of common law degrees (“Law School Programs”).

3. In 2007, the Federation established the Task Force on the Canadian Common Law Degree (the “Task Force”) to recommend to law societies, for the first time, national academic requirements for a Canadian law degree for purposes of entry into bar admission or licensing programs.

4. Included among the factors motivating the Federation to undertake this initiative was the interest a number of Canadian universities and private degree-granting institutions expressed beginning in 2007 to offer new Law School Programs. The last time a new law school was established in Canada was 31 years ago.

5. The Task Force said this at page 20 of its Final Report (the “Task Force Report”):

New law schools will want to ensure that their graduates are eligible to enter bar admission programs in any common law jurisdiction in Canada. The adequacy and portability of their law degree for this purpose will be as essential to them and their students as it is to the already established law faculties. A clearly articulated national requirement is necessary to ensure that new Canadian law schools know what they must do to enable their graduates to enter bar admission programs.

6. As part of its work, the Task Force considered the long-term manner in which proposals for new law schools should be evaluated and by whom.

7. At the same time, however, given two applicants seeking a decision about their potential programs, prior to the conclusion of the Task Force’s work, the Federation Council recognized the need for a temporary mechanism to consider requests for approval of new Law School Programs.

8. In March 2009, the Federation Council established the Ad Hoc Committee on Approval of New Canadian Law Degree Programs (the “Committee”). Its original mandate was to evaluate applications for new Law School Programs on the basis of standards set by the Law Society of Upper Canada (last reviewed in 1969) as they may be applicable today.

9. The Task Force Report was issued in October 2009 and its recommendations for national academic requirements for a Canadian law degree for purposes of entry into bar admission or licensing programs (the “National Requirements”) were approved by Canada’s law societies in March 2010, with implementation of the National Requirements to be the subject of a further Federation process. The National Requirements are appended to this report as **Appendix A**.

10. In March 2010, the Federation Council revisited the Committee’s terms of reference and determined that applications for new Law School Programs should be considered in light of the National Requirements, pending the implementation of the recommendations of the Task Force Report.

COMMITTEE MEMBERSHIP AND TERMS OF REFERENCE

11. The following individuals are members of the Committee:

- (a) **Ronald J. MacDonald, Q.C., Chair.** Mr. MacDonald is a Criminal Law Policy Advisor with the Nova Scotia Department of Justice, was the President of the Nova Scotia Barristers' Society and is the current President of the Federation;
- (b) **Marilyn Billinkoff.** Ms. Billinkoff is the Deputy Chief Executive Officer of the Law Society of Manitoba;
- (c) **Philip Bryden.** Mr Bryden is the Dean of the Faculty of Law at the University of Alberta and was the Dean of the Faculty of Law at the University of New Brunswick;
- (d) **Tom Conway.** Mr. Conway is a partner at Cavanagh Williams Conway Baxter LLP, a Bencher of the Law Society of Upper Canada and the Federation Council member representing the Law Society of Upper Canada;
- (e) **Graeme Mitchell, Q.C.** Mr. Mitchell is Director of the Constitutional Law Branch of the Saskatchewan Department of Justice, was a Bencher of the Law Society of Saskatchewan and is the Federation Council member representing the Law Society of Saskatchewan; and
- (f) **Stephanie L. Newell, Q.C.** Ms. Newell is a partner at O'Dea Earle Law Offices, Past President of the Law Society of Newfoundland and Labrador and served as the Federation Council member representing the Law Society of Newfoundland and Labrador.

12. The work of the Committee is supported by Deborah Wolfe, P.Eng. Ms. Wolfe is the Managing Director of the National Committee on Accreditation.

13. The Committee's terms of reference, as approved by the Federation Council in March 2010 (the "Terms of Reference"), are as follows:

The Federation of Law Societies of Canada (the "Federation") establishes the Ad Hoc Committee on Approval of New Canadian Law Degree Programs (the "Committee") whose mandate shall be to make recommendations to the Council of the Federation in respect of applications by Canadian universities (the "Applications") for approval by the Federation of new academic programs leading to the conferral of a common law law degree which would entitle its holders to apply for admission to Canadian law societies ("Law School Programs"). In particular, and until such time as a successor body has been established by the Federation pursuant to the implementation of the Final Report of the Task Force on the Canadian Common Law Degree (the "Task Force Report"), the Committee shall:

- (a) Consider any Application in light of the national requirements set forth in the Task Force Report (the "National Requirements") and determine on what conditions, if any, an Application should be approved.
- (b) Invite each applicant to make submissions to the Committee with respect to how the proposed Law School Program would meet the National Requirements.

- (c) Determine in its discretion whether submissions by applicants shall be made orally, in writing or both.
- (d) Determine in its discretion whether and in what manner it wishes to entertain submissions from persons, organizations or institutions other than applicants in respect of Applications.
- (e) In Consultation with the senior staff of the Federation, submit for the Federation Executive's approval a budget in respect of the Committee's consideration of an Application.
- (f) Endeavour to make recommendations to the Council of the Federation regarding an Application no later than three (3) months following receipt of submissions from an applicant including with respect to whether its Application meets the National Requirements, and if so, the conditions upon which such Application is approved, if any.

14. The Committee is mindful that the scope of its mandate does not extend to consideration of policy issues including whether it is desirable to increase the number of law graduates in Canada and if so, whether and how this might best be accomplished, whether by the expansion of existing programs or the creation of new ones. The Committee believes that these questions are best left to universities which seek approval of new programs and the provincial education authorities charged with approving such programs.

15. The Committee also appreciates the distinction between the mandate which has been conferred upon it, namely, to evaluate whether applications for new Law School Programs, if implemented, would meet the National Requirements, and the evaluation of whether existing programs meet the National Requirements. It acknowledges that the monitoring of whether new programs continue to meet the National Requirements on an ongoing basis would be the subject of a different process.

METHODOLOGY FOR EVALUATING APPLICATIONS

16. In accordance with the Terms of Reference, the Committee deliberated as to the methodology for evaluating applications for new Law School Programs.

17. The Committee concluded that the submissions would need to be sufficiently detailed in order for it to arrive at a conclusion in respect of each of the National Requirements applicable to proposed Law School Programs. It was felt that the assessment as to whether each National Requirement would be met, if implemented in the manner described by an applicant, could be made on the basis of written submissions alone.

18. In order to ensure the completeness of an applicant's submissions, the Committee agreed that it could make additional inquires of the applicant and request such additional written information as it saw fit.

19. The Committee deliberated as to whether it ought to seek further submissions from persons, organizations or institutions other than applicants in respect of each application for new Law School Programs. After consideration of the applications before it and the receipt of further written submissions from the applicants in question, the Committee felt that it had all of the information it required in order to make informed and reasoned recommendations to the Council of the Federation.

20. The Committee is mindful of the interim nature of its mandate pending the implementation of the Task Force Report. It acknowledges that the process of evaluation which it has followed in respect of the applications before it may be different from that to be applied for subsequent applications or by a successor body.

21. The Committee also recognizes that one or more of the National Requirements may be modified as a result of the implementation of the Task Force Report and that as a consequence, applicants will be required to adapt to any such modifications.

APPLICATIONS FOR APPROVAL OF NEW LAW SCHOOL PROGRAMS

22. Two Canadian universities, Lakehead University (“Lakehead”) and Thompson Rivers University (“Thompson Rivers”), made formal applications to the Federation for approval of proposed Law School Programs. The Committee was seized with the applications in 2009.

Lakehead University

Background

23. Lakehead proposes to establish a three year program of study at a new Faculty of Law at its campus in Thunder Bay, Ontario leading to a Bachelor of Laws Degree (LL.B.) commencing in September 2012. Lakehead’s plans call for the new Faculty to accommodate up to 150 students based on a first year admission of 55 students.

24. Lakehead advances four rationales for establishing a new Faculty of Law:

- (a) providing an Ontario law school that has an emphasis on working with Aboriginal peoples in order to address the legal needs of Aboriginal communities in the north;
- (b) redressing declining participation in sole and small firm law practice;
- (c) providing access in Northern Ontario to a Canadian law school; and
- (d) providing an educational focus on legal issues related to the resource-based Northern Ontario economy.

25. Lakehead’s proposal for a Faculty of Law has not yet been approved by Ontario’s Ministry of Training, Colleges and universities.

26. In June 2010, in accordance with the Terms of Reference, Lakehead was invited to make submissions to the Committee with respect to how its proposed Law School Program would meet the National Requirements.

27. The Committee’s findings with respect to whether and in what manner Lakehead’s proposed Law School Program would, if implemented as described, meet the National Requirements, are set forth in the table appended to this report as **Appendix B-1**.

Committee Evaluation Process for Lakehead

28. On June 25, 2010, the Committee received submissions from Lakehead. They are appended to this report as **Appendix B-2**.
29. On July 26, 2010, the Committee met in person in Toronto to consider Lakehead's submissions. As a result of its deliberations, the Committee sought additional information from Lakehead by letter dated August 4, 2010. A copy of the letter is appended to this report as **Appendix B-3**.
30. On August 27, 2010, the Committee received supplementary submissions from Lakehead. They are appended to this report as **Appendix B-4**.
31. On September 15, 2010, the Committee met by teleconference to consider Lakehead's supplementary submissions.

Thompson Rivers University

Background

32. In February 2009 the Government of British Columbia announced plans for a new law school to be established at Thompson Rivers.
33. Thompson Rivers proposes to establish a three year program of study at a new Faculty of Law in Kamloops, British Columbia leading to a degree of Juris Doctor (JD) commencing in September 2011. Thompson Rivers' proposal contemplates a first year intake of 60 students.
34. Pursuant to a Licence Agreement entered into with the University of Calgary, the Thompson Rivers JD degree is proposed to be offered in conjunction with the University of Calgary which has granted to Thompson Rivers the licence to reproduce and use the undergraduate law programme and curriculum of the University of Calgary's Faculty of Law. Law societies in Canadian common law jurisdictions currently recognize the University of Calgary's JD degree for purposes of entry into bar admission or licensing programs.
35. The Board of Governors of Thompson Rivers has approved plans for construction of a new law school with occupancy scheduled for Spring 2014 with interim facilities planned to be provided in time for the 2011 academic year.
36. Thompson Rivers has hired its first Dean of the Faculty of Law, Chris Axworthy, Q.C.
37. Thompson Rivers is in the process of seeking approval of its Law School Program from the British Columbia Minister of Advanced Education and Labour Market Development.
38. In June 2010, in accordance with the Terms of Reference, Thompson Rivers was invited to make submissions to the Committee with respect to how its proposed Law School Program would meet the National Requirements.
39. The Committee's findings with respect to whether and in what manner Thompson Rivers' proposed Law School Program would, if implemented as described, meet the National Requirements, are set forth in the table appended to this report as **Appendix C-1**.

Committee Evaluation Process for Thompson Rivers

40. On June 28, 2010, the Committee received submissions from Thompson Rivers. They are appended to this report as **Appendix C-2**.
41. On July 26, 2010, the Committee met in person in Toronto to consider Thompson Rivers' submissions. As a result of its deliberations, the Committee sought additional information from Thompson Rivers by letter dated August 4, 2010. A copy of the letter is appended to this report as **Appendix C-3**.
42. On August 27, 2010, the Committee received supplementary submissions from Thompson Rivers. They are appended to this report as **Appendix C-4**.
43. On September 15, 2010, the Committee met by teleconference to consider Thompson Rivers' supplementary submissions. Further information was again requested of Thompson Rivers as a result. The Committee's letter dated September 16, 2010 is appended to this report as **Appendix C-5**.
44. On September 28, 2010, Thompson Rivers provided the requested information (appended as **Appendix C-6 and C-7**) and on October 13, 2010, the Committee met by teleconference to further deliberate in respect of the Thompson Rivers application.

CONCLUSION

45. After due consideration of the applications before it, the Committee makes the following recommendations to the Council of the Federation:
- (a) That the Federation accept the application by Lakehead University for approval of a new academic program leading to the conferral of a common law degree which would entitle its holders to apply for admission to Canadian law societies (the "Lakehead Law Degree Program"), such approval being granted on the following conditions:
 - (i) issuance by the appropriate governmental authority of such approvals as are necessary for the Lakehead Law Degree Program to come into existence;
 - (ii) full implementation to the satisfaction of the Committee until such time as a successor body is established pursuant to the implementation of the Task Force Report, of the undertakings and representations made by the applicant in its submissions to the Committee as set forth in **Appendix B** including, without limitation, those with respect to the securing of financial resources necessary to operate the program as described; and
 - (iii) ongoing compliance with such measures as may be established by the Federation pursuant to the implementation of the Task Force Report for the purpose of ensuring that the Lakehead Law Degree Program continues to meet the National Requirements; and

- (b) That the Federation accept the application by Thompson Rivers University for approval of a new academic program leading to the conferral of a common law law degree which would entitle its holders to apply for admission to Canadian law societies (the “Thompson Rivers Law Degree Program”), such approval being granted on the following conditions:
- (i) issuance by the appropriate governmental authority of such approvals as are necessary for the Thompson Rivers Law Degree Program to come into existence;
 - (ii) full implementation to the satisfaction of the Committee until such time as a successor body is established pursuant to the implementation of the Task Force Report, of the undertakings and representations made by the applicant in its submissions to the Committee as set forth in **Appendix C** including, without limitation, those with respect to the securing of financial resources necessary to operate the program as described; and
 - (iii) ongoing compliance with such measures as may be established by the Federation pursuant to the implementation of the Task Force Report for the purpose of ensuring that the Thompson Rivers Law Degree Program continues to meet the National Requirements.



To The Benchers
From The Executive Committee
Date February 22, 2011
Subject **Recommendations: 1. Appointment of Suzette Narbonne to the Legal Services Society Board of Directors; 2. Nomination of Anna Fung, QC to the Vancouver Foundation Board of Directors**

1. Appointment of Suzette Narbonne to the Legal Services Society (LSS) Board of Directors

Background

The Benchers appoint four directors to the LSS board, on the advice of the Executive Committee and upon consultation with the executive of the Canadian Bar Association, BC Branch. [Section 4 of the *Legal Services Act*](#) limits a director's term of service to three years, and provides that a director "must not hold office for more than 6 consecutive years." (s.4(7)). Subsection 8 allows a director whose term of office has expired to continue to hold office until a successor is appointed.

Mayland McKimm, QC was first appointed to the LSS board by the Law Society in 2004; his second three-year term expired in September 2010. At LSS's request, in April 2010 the Benchers deferred the appointment of Mr. McKimm's replacement until May 2011.

Mr. McKimm's letter dated February 7, 2011 to Mr. Hume (Tab 1a), requests that the replacement director be appointed effective May 1, 2011, and sets out the elements of LSS's directorship competency matrix and the 'gap' qualities identified by the LSS board:

- Knowledge of the social and economic circumstances associated with the special legal and other needs of low-income individuals (e.g. work/life experience that has exposed board members to the special needs of low-income individuals);
- Organizational leadership expertise (e.g. work experience as CEO/Senior Manager in public or private sector);
- Financial expertise (e.g. hold a financial designation preferably with CFO experience);
- Respected member of the legal profession (e.g. recognized as a leader or prominent member of the legal profession);

- Knowledge of government decision-making process (e.g. significant work experience with senior government decision-makers);
- Knowledge of justice system operations (e.g. in-depth knowledge of one or more areas of the justice system; exposure to or knowledge of conflict resolution alternative);
- Leadership experience in Aboriginal communities (e.g. significant experience in leading an Aboriginal organization or agency);
- Experience with the provision of legal aid (e.g. delivery of legal aid services); and Work/Life experience involving exposure to cultural diversity of BC (e.g. knowledge of how the Aboriginal, cultural and geographic diversity of BC affects delivery of legal aid).

The LSS board is of the view that it would be highly desirable that the next appointment:

- Be a prominent and respected member of legal profession;
- Have a knowledge and experience with legal aid; and
- Have significant practice experience outside the Lower Mainland and Vancouver Island - to provide better geographic representation on the board.

Mr. McKimm's letter also:

- sets out LSS's view that Suzette Narbonne "has all the qualifications identified by LSS"
- refers to [LSS's website](#) for a full list of LSS's current board of directors, their respective bio's and Board governance policies
- encloses Ms. Narbonne's current resume (Tab 1b)
- encloses the current *Legal aid facts* on LSS's mandate, funding and governance (Tab 1c)

The Executive Committee believes that Suzette Narbonne would make an excellent LSS director. Ms. Narbonne's skill set and background satisfy LSS's selection criteria and she has advised that she would be honoured to take on the challenges of this demanding and important appointment.

Recommendation

With the support of the executive of the Canadian Bar Association, BC Branch, the Executive Committee recommends that the Benchers appoint Suzette Narbonne to the Board of Directors of the Legal Services Society, for a three-year term commencing May 1, 2011.

2. Nomination of Anna Fung, QC to the Vancouver Foundation Board of Directors

Background

In August 2009 the Vancouver Foundation advised that it was requesting the provincial government to amend the *Vancouver Foundation Act*, such that the Law Society would replace the Vancouver Bar Association as the nominating authority for a Society member on the Vancouver Foundation board of directors (Tab 2a).

In January 2011 the Vancouver Foundation advised that that the new *Vancouver Foundation Act* is in place, such that the Law Society is authorized to nominate a Society member to replace Ms. Ursula Botz on the Vancouver Foundation board when her term expires in April 2011 (Tab 2b).

The Foundation's Governance Committee has identified the following areas/skills as appropriate points of focus for recruiting new Foundation directors:

- community knowledge
- marketing/public relations
- investment expertise
- fund raising
- an understanding of our community and its needs
- a passion for our cause
- a willingness to commit time for Board meetings, committee meetings, planning sessions and donor engagement initiatives
- teamwork skills (adept at both leading and being part of a group)
- excellent listening skills (able to be thoughtful and reflective in considering issues)

At its last meeting the Executive Committee received a detailed briefing by the Appointments Subcommittee on its deliberations in this matter and reviewed a short list of outstanding candidates. First on the short list was Life Bencher Anna Fung, QC. With leadership skills and experience of the highest calibre, and with a distinguished record of professional, business and community service (Tab 2c), we are satisfied that Ms. Fung would make a valuable contribution to the important work of the Vancouver Foundation as a member of its board.

We have been advised that Ms. Fung is prepared to accept the Law Society's nomination, and would be honoured to serve on the Board of Directors of the Vancouver Foundation.

Recommendations

The Executive Committee recommends that the Benchers

- resolve to nominate Anna Fung, QC to the Board of Directors of the Vancouver Foundation for a three-year term, effective May 1, 2011; and
- resolve that future nominations to the Board of Directors of the Vancouver Foundation on behalf of the Law Society shall be made by the Benchers, on the advice of the 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

February 7, 2011

The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Attention: Gavin Hume, QC, President

Dear Sir:

Re: Appointment to the Legal Services Society (“LSS”) board

Further to your last correspondence regarding the expiry of my appointment to the LSS Board of Directors, I am pleased to write to request the appointment of my successor to the LSS Board effective May 1, 2011. If this could be done in March it would allow my replacement to attend the annual LSS Board planning session which will be held April 8 and 9 this year.

As you may recall, Section 4 of the *LSS Act* articulates a desired collective set of knowledge skills and experience for the board. In addition, the board has established a process to identify the competencies required to strengthen and complement the board. We publish these on our website as part of our competency matrix. These competencies are:

- Knowledge of the social and economic circumstances associated with the special legal and other needs of low-income individuals (e.g. work/life experience that has exposed board members to the special needs of low-income individuals);
- Organizational leadership expertise (e.g. work experience as CEO/Senior Manager in public or private sector);
- Financial expertise (e.g. hold a financial designation preferably with CFO experience);
- Respected member of the legal profession (e.g. recognized as a leader or prominent member of the legal profession);
- Knowledge of government decision-making process (e.g. significant work experience with senior government decision-makers);
- Knowledge of justice system operations (e.g. in-depth knowledge of one or more areas of the justice system; exposure to or knowledge of conflict resolution alternative);
- Leadership experience in Aboriginal communities (e.g. significant experience in leading an Aboriginal organization or agency);
- Experience with the provision of legal aid (e.g. delivery of legal aid services); and
- Work/Life experience involving exposure to cultural diversity of BC (e.g. knowledge of how the Aboriginal, cultural and geographic diversity of BC affects delivery of legal aid).



The LSS board is of the view that it would be highly desirable that the next appointment:

- Be a prominent and respected member of legal profession;
- Have a knowledge and experience with legal aid; and
- Have significant practice experience outside the Lower Mainland and Vancouver Island - to provide better geographic representation on the board.

In examining possible appointments we have become aware that Ms. Suzette Narbonne, Barrister and Solicitor, is interested in serving on the LSS Board and, I trust you will agree, meets all of these qualifications. It is our understanding that she will not be seeking a further term as a Bencher.

A full list of the current board of directors with their respective bio's and our Board governance policies can be found on our website at http://www.lss.bc.ca/about_lss/board.asp .

If any other appropriate applicants come forward, we will not hesitate to forward these names for your attention. Please contact me should you require any further information.

Yours truly,

D. Mayland McKimm, QC
Chair – LSS Board of Directors

P.S. I have attached the current *Legal aid facts* on mandate, funding and governance to update your records.

Cc: Mark Benton, Executive Director
Bill McIntosh, Manager, Executive Support, Law Society of BC
Stephen McPhee, President, Canadian Bar Association, BC

Attachments

BOX 1693 GIBSONS, BC, V0N 1V0
 PHONE (604) 886-0524 • FAX (250) 624-3046

SUZETTE NARBONNE

EDUCATION

1985 - 1988 University of Ottawa Ottawa, Ontario
Baccalaureate of Laws (LL.B)

May, 1985 University of Winnipeg Winnipeg, Manitoba
Bachelor of Arts (Honours)

PROFESSIONAL EXPERIENCE

1996 - 2011 Narbonne Law Office Prince Rupert, BC
Lawyer

Sole practitioner in a litigation firm, my area of work focuses on Criminal litigation and Human Rights representation. I also do some family law and *Child and Family Services Act* representation.

1990 – 1996 Legal Aid Manitoba The Pas, Manitoba
Staff Lawyer

Staff lawyer assigned to litigation files, primarily in the area of criminal law

PROFESSIONAL MEMBERSHIPS

Called to the British Columbia Bar on May 19, 1995

Called to the Manitoba Bar June 29, 1989

Member of the Canadian Bar Association

Member of Trial Lawyers Association

Member in good standing of the Law Society of British Columbia

Non-practicing member of the Law Society of Manitoba

VOLUNTEER AND OTHER ACTIVITIES

COMMUNITY ACTIVITIES

Race Director, Rupert Half Marathon, 2004 to 2010

Assistant Race Director, Cannery Road Race, 2008 to 2010

Executive Member Rupert Runners Running Club

Designed and taught learn-to-run programs from 2007 to 2010. I also assist runners and walkers in creating personal fitness programs

I have run 18 marathons and countless other running races. I have also completed one triathlon.

Recipient of Canadian Bar Association Community Service Award for Prince Rupert County, 2008.

PROFESSIONAL ACTIVITIES

Bencher of the Law Society of British Columbia, September 2009 to present.

Governor of the Board of the Law Foundation of British Columbia, November 2003 to December 2009.

Tribunal Member, Employment and Assistance Appeal Tribunal, 2003 to 2009.

Supervising lawyer, Prince Rupert Unemployed Centre Society, 2004 to present.

Created and taught a number of continuing legal education programs for the Prince Rupert County Bar.

Created and taught a human rights training course for a not-for-profit group in Prince Rupert.

Regularly provide pro bono assistance at the courthouse, over the telephone, or in meetings with people who need such assistance.



Legal
Services
Society

British Columbia
www.lss.bc.ca

Legal aid facts

Mandate, funding, and governance

Mandate

The Legal Services Society (LSS) provides legal aid in British Columbia. Created by the Legal Services Society Act in 1979, LSS is a non-profit organization that remains independent of government. Our priority is to serve the interests of people with low incomes.

Under section 9 of the LSS Act, the society's mandate is: to help people resolve their legal problems and to facilitate access to justice; to establish and administer an effective and efficient system for providing legal aid to people in BC; and to provide advice to the Attorney General about legal aid and access to justice for people in BC.

Vision and mission

Our vision is a British Columbia where all people are able to find timely and lasting solutions to their legal issues.

Our mission is to provide innovative and collaborative legal aid services that enable people with low incomes to effectively address their issues within the justice system.

Funding

The society receives approximately 90% of its revenues from the provincial government. It also receives funding from the Law Foundation of BC and the Notary Foundation of BC, which collect interest earned on lawyer and notary trust accounts and pay a portion to LSS. The federal government reimburses the province for legal aid costs related to immigration and federal prosecutions.

In 2009/2010, LSS had revenues of \$76.3 million, including \$66.9 million from the provincial government, \$3.6 million from the Law Foundation, and \$347,000 from the Notary Foundation.

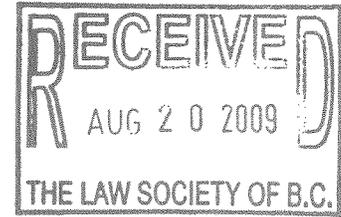
Governance

The society is governed by a nine-member board of directors. Five are appointed by the Lieutenant-Governor in Council on the recommendation of the Attorney General, and four are appointed by the Law Society of BC after consultation with the executive of the BC Branch of the Canadian Bar Association.

LSS is committed to strong corporate governance practices that enable public accountability and transparency. The society adheres to the governance principles established by the Board Resourcing and Development Office (BRDO) and is in full compliance with BRDO guidelines. To maintain excellence in board governance, LSS reviews its governance framework regularly to ensure it meets the society's ongoing business needs while being consistent with recognized best practices.

vancouver
foundation

August 17, 2009



Timothy E. McGee
Chief Executive Officer
The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9

Dear Mr. McGee:

Re: Changes to director appointments on Vancouver Foundation's Board

Thank you for meeting with Chief Justice Donald Brenner, Mr. Turiff, and myself to discuss potential changes to the Vancouver Foundation Act to include a nominee from The Law Society of British Columbia on the Foundation's Board of Directors. We appreciated the opportunity to discuss this possibility with you prior to Vancouver Foundation making an application to the legislative assembly to change the governing Act.

Since 1950 our 12-member Board of Directors is comprised of six elected directors and six appointed directors as follows:

- The Chief Justice of the Supreme Court of British Columbia
- An appointee from the United Way of the Lower Mainland
- An appointee from the Vancouver Board of Trade
- An appointee from the Vancouver Bar Association
- An appointee from Advocis (The Financial Advisors Association of Canada)
- An appointee from the Pacific Subsection of the Canadian Bankers Association

The Board of Vancouver Foundation is preparing to put forward a request to the provincial government asking changes be made to the Vancouver Foundation Act, including changes to the appointed Directors. It is their desire to have the Board reflect the provincial nature of the Foundation and they believe this can be best accomplished by having a nominee from The Law Society of British Columbia instead of the Vancouver Bar Association. As The Law Society is a provincial body it is the more appropriate organization to have an appointee on the Vancouver Foundation's Board. The Board is proposing other changes to the membership including the elimination of appointees from both the

Vancouver Board of Trade and Advocis, and the addition of an appointee from the Institute of Chartered Accountants of British Columbia.

Assuming the province will pass the proposed changes, we would like to move forward with the new membership once the Directors from the current organizations have completed their term. In the case of the Vancouver Bar Association, Ms. Ursula Botz has been their appointee and her term will be complete in April of 2011. Therefore, assuming the Law Society approves our request to nominate an appointee to our Board, this would be effective April 2011.

Enclosed please find information about the Vancouver Foundation for your review, including the current and proposed Act, our By-Laws, our most recent financial statements, and a generic package of material we provide to donors. You may also peruse our website at www.vancouverfoundation.ca.

As we discussed, this letter will serve to formally request your endorsement of Vancouver Foundation including the Law Society of BC in the revised Vancouver Foundation Act as having the right to submit a nominee to the Vancouver Foundation Board of Directors.

Thank you again for meeting with us and for your initial enthusiasm with the request. I look forward to hearing from you in due course. Please feel free to contact me if you require additional information.

Yours Sincerely,



Faye Wightman
President and Chief Executive Officer

Enclosures

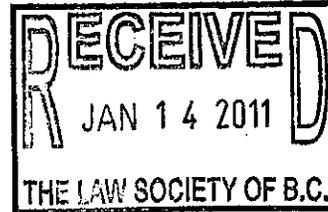
cc: Chief Justice Donald Brenner

FW/dm

vancouver
foundation

January 12, 2011

Timothy E. McGee
Chief Executive Officer
The Law Society of British Columbia
845 Cambie Street
Vancouver, BC V6B 4Z9



Dear Mr. McGee:

Re: Appointment to Vancouver Foundation's Board

Further to our correspondence on August 17, 2009 and September 2, 2009 regarding proposed changes to Director appointments to the Vancouver Foundation Board, we are pleased to confirm that all provincial government amendments to the *Vancouver Foundation Act* have been approved.

As discussed, the new *Vancouver Foundation Act* requires a nominee from the Law Society of British Columbia to be appointed to the Vancouver Foundation Board. As noted in the correspondence, the intended effective date for nominating a Law Society appointee to the Vancouver Foundation Board would be April 2011, when Ms. Ursula Botz, the incumbent Vancouver Bar Association appointee, concludes her term.

Pursuant to this letter, we are pleased to provide the Law Society of British Columbia notice of your entitlement to nominate a successor to replace Ms. Ursula Botz.

Selection Criteria for Vancouver Foundation Board Members

It is important to the health and sustainability of the Foundation to recruit highly qualified, engaged, skilled, enthusiastic people on the Board. The Foundation's goal is to ensure we have a good cross section of leaders. We are looking for Board members that are diverse (in terms of ethnicity, age and geography) and that can bring a range of skills and expertise to solve complex problems, identify opportunities and develop creative solutions.

The Governance Committee has identified the following areas/skills as ones which would be good to focus our recruitment efforts:

- community knowledge;
- marketing/public relations;

- investment expertise; and
- fundraising.

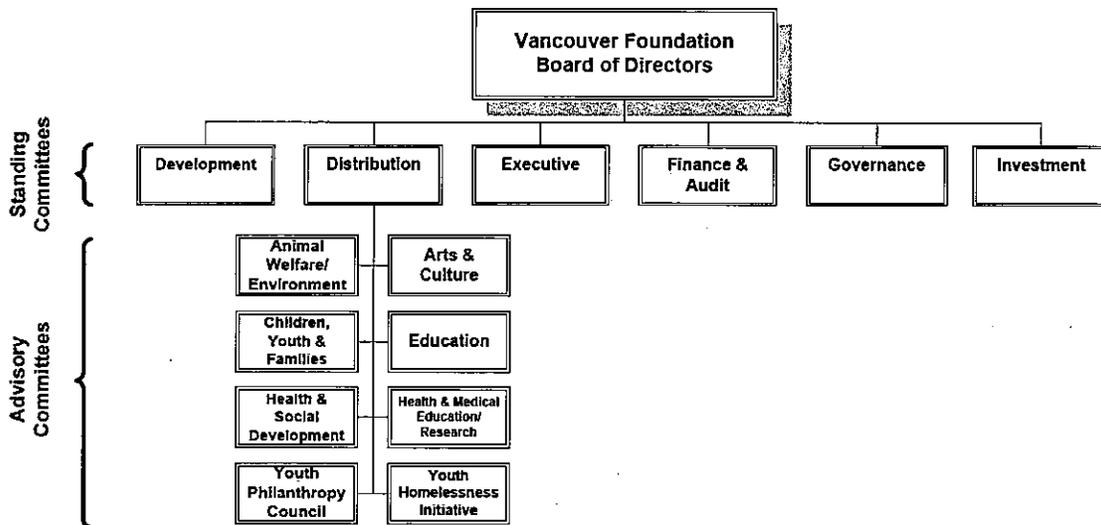
In addition to these skills, we also want individuals who have:

- an understanding of our community and its needs;
- a passion for our cause;
- a willingness to commit time for Board meetings, committee meetings, planning sessions and donor engagement initiatives;
- teamwork skills - adept at both leading and being part of a group; and
- excellent listening skills - able to be thoughtful and reflective in considering issues.

Role of a Vancouver Foundation Board Member

The Board of the Vancouver Foundation is responsible for the overall governance of the organization, which includes a moral and legal responsibility, as well as stewardship of, and accountability for funds raised, invested and distributed. For more information, we encourage you to refer to the enclosed copy of the Board of Directors Roles and Responsibilities outlining the duty of the Board of the Vancouver Foundation as well as the responsibilities of Individual Board members.

The Board of the Vancouver Foundation meets at least four times each year, with additional meetings as required for strategic planning, etc. Please see the image below setting out the Board's Standing Committees and Advisory Committees. Each Standing Committee must include at least two Board members and each Advisory Committee must be chaired by a Board member.



The current Vancouver Foundation Board Members are listed below:

- John (Jake) C. Kerr - *Outgoing Chair*
- Chief Justice Robert Bauman
- Kevin Bent
- Ursula Botz - *Vancouver Bar Association Representative*
- John Dustan
- Dr. Vera Frinton
- Yuri Fulmer - *United Way of the Lower Mainland Representative*
- Ida Goodreau - *Vancouver Board of Trade Representative*
- Brandt C. Louie
- Gord MacDougall - *Incoming Chair*
- John McLernon
- Floyd Murphy - *Advocis Representative*

Law Society Nomination to the Vancouver Foundation Board

Process Pursuant to Revised Bylaws

The Vancouver Foundation's revised Bylaws reflect the *Vancouver Foundation Act* amendments and clarify the process for nominating Directors to the Vancouver Foundation Board. Enclosed please find a copy of the revised Bylaws for your reference.

Pursuant to our revised Bylaws, nominations from the Law Society must be made in writing and delivered to the Chair of the Governance Committee of the Vancouver Foundation, currently Ms. Ida Goodreau, within the prescribed time period. The Governance Committee shall review and recommend to the Vancouver Foundation Board whether to accept or reject such nomination. Upon the Board's resolution on the proposed nomination, the Vancouver Foundation shall notify the Law Society of the Board's decision with respect to the nomination. If such nomination is rejected by the Board, the Board may elect any person to fill the vacancy and upon the expiration of such person's term, the Law Society shall once again be entitled to nominate a successor.

Our Recommendation

In September 2010, we canvassed our Board and Honorary Governors' Council for potential Board member suggestions to fill additional vacancies on the Board. Geoff Plant, Q.C. recommended an accomplished colleague and fellow lawyer at Heenan Blaikie, Ms. Nitya Iyer.

Although impressed with Ms. Iyer's qualifications, we chose not to pursue her Board nomination through our regular Board recruitment channel as she is a lawyer and could be a potential candidate through the Law Society nomination. We did review her name and application at the Governance Committee and felt that she would be a good Board candidate. The Governance Committee

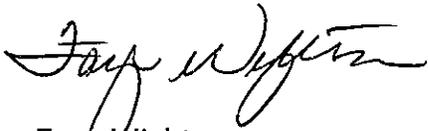
suggested communicating our preference for Ms. Iyer to the Law Society, as we were unsure whether the Law Society had a candidate in mind to nominate to the Vancouver Foundation Board.

As mentioned above, this letter will serve to formally provide the Law Society of British Columbia notice of your entitlement to nominate a successor to replace Ms. Ursula Botz effective April 2011. Our recommendation is for the Law Society to nominate Ms. Nitya Iyer as the Law Society representative.

Our next Board meeting is scheduled for February 21, 2011, where we will be bringing potential Board candidate names forward to the Board for their review and decision. We would appreciate hearing from you regarding your nomination by **Friday, February 11, 2011**. Please advise if we can expect a name by such date.

Thank you for your time and your patience. I look forward to hearing from you in due course. Please do not hesitate to contact me if you require additional information.

Yours sincerely,



Faye Wightman
President and Chief Executive Officer

Enclosures

cc: Ms. Ida Goodreau, Chair, Governance Committee,
Vancouver Foundation
Mr. Gord McDougall, Incoming Board Chair, Vancouver Foundation

FW/kh

CURRICULUM VITAE

ANNA K. FUNG, Q.C.
 Counsel & Chief Privacy Officer
 Intrawest ULC
 Suite 710, 375 Water Street
 Vancouver, B.C. V6B 5C6
 (604) 695-8303 (Direct)
 (604) 695-8204 (Fax)
 (604) 312-9665 (Cellular)
 afung@intrawest.com

EDUCATION

- | | |
|------|--|
| 2004 | <p>QUEEN'S SCHOOL OF BUSINESS</p> <ul style="list-style-type: none"> • Completion of Leadership Program at Queen's Executive Development Centre |
| 1984 | <p>UNIVERSITY OF BRITISH COLUMBIA</p> <ul style="list-style-type: none"> • Bachelor of Laws Degree • Highest ranking in three years: 9th out of 227 |
| 1981 | <p>UNIVERSITY OF BRITISH COLUMBIA</p> <ul style="list-style-type: none"> • Bachelor of Arts Degree (First Class Standing) • Double major in English and French |

AWARDS

- | | |
|-----------------|--|
| 1977-1981 | Recipient of annual UBC scholarships while pursuing Bachelor of Arts degree for ranking in the top 10% of the Faculty of Arts student body each year |
| 1978 | Winner of UBC French Department Book Prize |
| 1982 | Winner of Graduating Class of Law '53 Scholarship and UBC Sopron Memorial Scholarship |
| 1983 | Winner of Begbie Trophy awarded to winning team in First Annual UBC Law versus U.Vic. Law Competitive Moot |
| April 14, 2000 | Recipient of provincial Queen's Counsel designation |
| August 17, 2004 | Recipient of RVA Jones Canadian Corporate Counsel Award for outstanding contribution and service to corporate counsel community |
| May, 2007 | Winner of Vancouver YWCA 2007 Woman of Distinction Award in Business and Professions category |
| June, 2007 | Winner of 2007 Canadian Bar Association (BC Branch) Equality Award |

August, 2007	Recipient of Friends of Simon Wiesenthal Centre for Holocaust Studies Award
March 13, 2008	Recipient of 2008 BC Community Achievement Award
May, 2008	Nominee for UBC Alumni of Distinction Award
October, 2008	Nominee for 2008 Spotlight on Leadership in Business/Professional Category, Vancouver Venture of the North American Association of Asian Professionals

EMPLOYMENT EXPERIENCE

2009 - Present

Counsel & Chief Privacy Officer, Intrawest ULC

- Advisor and counsel to Intrawest and various ski resorts operated by Intrawest, including Mont Tremblant, advising on variety of legal, aboriginal and compliance matters in English and French;
- Manager of Mont Tremblant litigation;
- Chief Privacy Officer for Intrawest group of companies.

August, 1993 - 2008

Senior Counsel & Chief Privacy Officer, Terasen Inc.

- Advisor and counsel to Terasen group of companies on variety of legal matters including business acquisitions, corporate/commercial, contracts, lands and securities matters, aboriginal issues and corporate reorganizations; represented company in rate and facilities hearings before the B.C. Utilities Commission and the National Energy Board;
- Chief Privacy Officer for Terasen group of companies.

November, 1989 – August, 1993

Associate of McCarthy Tétrault LLP, Vancouver

- Focus on general corporate/commercial practice with emphasis on corporate acquisitions, reorganizations and take-overs, and some lending and security and lease work;
- Extensive experience in representing syndicators of immigrant investor offerings under the Canada Business Immigration Program and advising clients on general business immigration matters;
- Member of Recruiting Committee and Vancouver Business Development Committee and editor of firm's Rainmaker publication.

August, 1985 – October, 1989

Articled Student and Associate of Davis LLP, Vancouver

- Practised general corporate/commercial law with emphasis on share and asset purchase transactions, leasing matters and business immigration; advised professional associations on charter and compliance issues; advised Indian bands on land and resource development and taxation issues;
- Assisted lead counsel in major aboriginal rights and Charter of Rights litigation and appeals; investigated complaints against nurses on behalf of the B.C. Registered Nurses Association, advised said association on handling of complaints and assisted counsel in conducting related professional disciplinary hearings.

September, 1984 – August, 1985

Law clerk to the Court of Appeal for British Columbia (then justices Esson, Hutcheon and Craig)

VOLUNTEER ACTIVITIES

1989 – 1997	Director on the Boards of West Coast Legal Education and Action Fund (“West Coast LEAF”) and LEAF National, member of West Coast LEAF Legal Committee and Chair of Diversity Working Group
1989 – 2005	Volunteer instructor and editor, Director (1992 to 2005), President and Past President of the People’s Law School
1990 – 1994	Director and President of B.C. Autism Association
1995 – 2000	Director and Past President (1999-2000) of the Canadian Corporate Counsel Association
1995 – 2004	Director and Secretary of U.B.C. Law Alumni Association
1996 – 2004	Director of Battery Opera
1997 – 2000	Director of Canadian Bar Association
1997 – 2005	Director of Continuing Legal Education Society of B.C.
1998 – Present	Elected Bencher of Law Society of British Columbia (1998 -2007); Discipline Committee member (2001), Vice-Chair (2002), Chair (2003-2004, 2006); Futures Committee member (2002-2004), Chair (2005) & Vice-Chair (2006); Credentials Committee member (1999-2000, 2008),& Chair (2005); Equity and Diversity Committee Vice-Chair (1999) & Chair (2000-2001); member of Financial Planning Subcommittee, Public Affairs Committee, Western Law Societies Task Force, Executive Committee (2004-2007); President of Law Society (2007); Life Bencher (2007)

	onwards); member of Discipline Guidelines Task Force (2010 – present)
2000	Speaker on diversity in the workplace initiatives at Institute for International Research conferences.
2003 – 2010	Director of Association of Chinese Canadian Professionals (B.C.) (2002 - 2007) & President (2004 - 2006); Honorary Advisor (2007 - 2010)
2003 – Present	Member of Foundation for Legal Research
August, 2005	Co-chair of Canadian Corporate Counsel Association's 2005 Annual Meeting in Vancouver, British Columbia and presenter at workshop on Corporate Counsel Ethics and Professional Responsibility Issues
October, 2005	Co-chair of BC Continuing Legal Education Society conference on Aboriginal Law and Natural Resource Use
October, 2006	Speaker at BC Continuing Legal Education Society's Aboriginal Law Conference
November, 2006	Chair of Panel on Scope of Practice Debate at Federation of Law Societies of Canada Conference
2005 -- Present	Member of UBC Law School Dean's National Business Law Centre Advisory Committee
2007	BC Law Society's representative on Council of Federation of Law Societies of Canada
October, 2008	Community Leader in Minerva Foundation for BC Women's "Follow a Leader 2008 Program"
2009 – Present	Governor of Law Foundation of British Columbia, member of New Grants and Finance Committees, chair of Finance Committee (2011)
2010	Member of Judges Panel for International Legal Alliance Summit and Awards 2010
October, 2010	Speaker at International Bar Association's 2010 Annual Meeting sessions on Legal Ethics and Professional Responsibility
2011 -- Present	Director of Arts Club Theatre Society

PUBLICATIONS

Mitchell H. Gropper, Q.C. and Anna K. Fung, “Significant Recent Legal Developments Affecting Foreign Investment in Canada”, Guide to Canada-Hong Kong Business 1991, pp. 1 – 18, published by the Canada Festival Corporation, Hong Kong, 1991.

Anna K. Fung, “The Doctrine of Constructive Dismissal”, (1986) 44 The Advocate 497-511.

Past book reviewer for the Canadian Bar Review.

Past editor of various People’s Law School pamphlets and publications.

Author and presenter of various papers presented at educational and professional development courses and seminars of the Canadian Bar Association, Canadian Corporate Counsel Association, Canadian Institute, Pacific Business & Law Institute, Institute for International Research, Insight, Federated Press, Law Society of British Columbia, Continuing Legal Education Society of BC, Career Women Interaction and Women Lawyers Forum

Co-author of chapter on “A Decade Since Delgamuukw: Update from an Industry Perspective” in Aboriginal Law Since Delgamuukw, Canada Law Book, 2009

Co-author of chapter on “The Lawyer in Corporate Settings” in Canadian Legal Practice, LexisNexis Canada Inc., 2009

LANGUAGE SKILLS

Fluent in English and French with a smattering of Cantonese, Mandarin, Spanish and Italian.

INTERESTS

Downhill skiing, golf, music, cooking, reading and travel.

Vancouver Foundation – Bylaws, Act and Board of Directors Roles and Responsibilities

Part 2.0 of the Bylaws of Vancouver Foundation (the Bylaws) (Appendix 1a), section 4 of the *Vancouver Foundation Amendment Act* (amending section 5 of the *Vancouver Foundation Act* (the Act)) (Appendix 1b) and the Board of Directors Roles and Responsibilities (Appendix 1c) govern the appointment, election and terms of service of Vancouver Foundation directors.

Directors are appointed or elected for a renewable term of three years, which is deemed to commence on May 1 of the year of appointment or election. The nomination of a Law Society member by the Society is addressed by subsection 5 (1) of the Act (as amended) and Article 2.4 of the Bylaws.

ss. 5(1) of the Act:

4 Section 5 is amended

(a) by repealing subsection (1) and substituting the following:

- (1) The board of directors of the foundation is to consist of at least 10 and not more than 18 persons, with the directors determining the number of directors from time to time in the bylaws of the foundation., ***and***

(b) by adding the following subsections:

- (1.1) If the number of directors is below the minimum number set out in subsection (1) or in the bylaws, as applicable, the board continues to have the authority to carry out its duties and exercise its powers until all vacancies are filled.

- (1.2) Subject to section 6, the board consists of the following members:

(a) the Chief Justice of the Supreme Court of British Columbia or, if applicable, the judge appointed by the Chief Justice under that section;

(b) a member of the Law Society of British Columbia who has been nominated by the Law Society of British Columbia in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;

.....

- (1.3) The board may decline a nomination under subsection (1.2) (b), (c) or (d) if, in the opinion of the board, the nominee does not have the skills, knowledge or experience to benefit the foundation.

Article 2.4 of the Bylaws:

2.4 Nomination of Directors by Specified Organizations

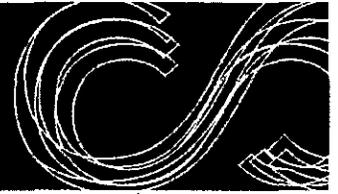
With respect to the nomination of Directors pursuant to subsection 5(1.2)(b), (c) or (d) of the Act, the following procedures shall apply:

2.4.1 subsection 5(1.2)(b) of the Act shall apply to the seat on the Board that was filled by a nominee of the Vancouver Bar Association prior to the 2010 amendments to the Act;

...

- 2.4.3 before a person whose seat on the Board is subject to the provisions of subsection 5(1.2)(b), (c) or (d) of the Act ceases to be a Director pursuant to Section 2.9 below, the Foundation shall provide reasonable notice to the relevant organization of their entitlement to nominate a successor;
- 2.4.4 nominations pursuant to subsection 5(1.2)(b), (c) or (d) of the Act must be made in writing and delivered to the Chair of the Governance Committee of the Foundation within the time period prescribed from time to time by the Foundation;
- 2.4.5 the Governance Committee of the Foundation shall accept the nominations received pursuant to subsection 5(1.2)(b), (c) or (d) of the Act and shall recommend to the Board whether to accept or reject such nominations;
- 2.4.6 the Board shall determine by resolution whether a nomination received pursuant to subsection 5(1.2)(b), (c) or (d) of the Act is accepted or rejected;
- 2.4.7 when an organization has made a nomination pursuant to subsection 5(1.2)(b), (c) or (d) of the Act, the Foundation shall notify the organization if the nomination is accepted or rejected by the Board; and
- 2.4.8 in the event that a nomination received pursuant to subsection 5(1.2)(b), (c) or (d) of the Act is rejected, then the Board shall elect any person to fill the vacancy following the procedures set out in Section 2.5 and upon the expiration of the term of such person, the relevant nominating organization shall once again be entitled to nominate a successor.

Bylaws



vancouver
foundation

Bylaws of Vancouver Foundation

Effective Date: January 6, 2011
Approved Date: December 14, 2010
Approved by: Board of Directors

Table of Contents

PART 1.0	INTERPRETATION	4
PART 2.0	DIRECTORS	4
2.1	<i>Powers of the Board</i>	4
2.2	<i>Number of Directors</i>	4
2.3	<i>Exclusion of Chief Justice</i>	5
2.4	<i>Nomination of Directors by Specified Organizations</i>	5
2.5	<i>Election of Directors</i>	6
2.6	<i>Term</i>	6
2.7	<i>Term Limit and Renewal</i>	6
2.8	<i>Exception to Term Limit</i>	7
2.9	<i>Ceasing to be a Director</i>	7
2.10	<i>Replacement of Directors</i>	7
2.11	<i>Qualifications of Directors</i>	8
PART 3.0	APPOINTMENTS	8
3.1	<i>Appointment of Chair, Vice-Chair and Committee Chair</i>	8
3.2	<i>Term of Chair and Vice-Chair</i>	8
3.3	<i>Exception to Term Limit for Chair and Vice-Chair</i>	9
3.4	<i>Term of Committee Chairs</i>	9
3.5	<i>Appointment of Committee Members</i>	9
3.6	<i>Appointment of President and Chief Executive Officer</i>	9
3.7	<i>Ex-Officio Committee Members</i>	9
PART 4.0	MEETINGS OF THE BOARD	9
4.1	<i>Meeting Frequency</i>	9
4.2	<i>Convening a Meeting</i>	9
4.3	<i>Quorum</i>	10
4.4	<i>Form of Meeting</i>	10
4.5	<i>Calculation of Votes</i>	10
4.6	<i>Resolution in Writing</i>	10
PART 5.0	COMMITTEES	10
5.1	<i>Mandatory Standing Committee</i>	10
5.2	<i>Chair of Committees</i>	11
5.3	<i>Quorum for Standing Committees</i>	11

5.4	<i>Other Committees</i>	11
5.5	<i>Advisory Council</i>	11
5.6	<i>Delegation to Committees</i>	11
5.7	<i>Committee Reporting</i>	12
PART 6.0	SIGNING AUTHORITY AND USE OF THE CORPORATE SEAL	12
6.1	<i>Authority to Execute</i>	12
6.2	<i>Appointment of Signing Officers</i>	12
PART 7.0	CREATION OF ENDOWMENT FUNDS	12
7.1	<i>Legal Review</i>	12
7.2	<i>Acceptance of Gifts</i>	13
PART 8.0	GENERAL	13
8.1	<i>Registered Office</i>	13
8.2	<i>Fiscal Year</i>	13
8.3	<i>Inspection of Records</i>	13
8.4	<i>Legal Advisor</i>	13
8.5	<i>Indemnification of Directors and Officers</i>	13
8.6	<i>Purchase of Insurance</i>	13
PART 9.0	AMENDMENTS OF BYLAWS	13
9.1	<i>Resolution to Amend Bylaws</i>	13
9.2	<i>Notice to Amend Bylaws</i>	14

BYLAWS OF VANCOUVER FOUNDATION

Part 1.0 INTERPRETATION

In these Bylaws, unless the context otherwise requires:

- 1.1 “Act” means the Vancouver Foundation Act (British Columbia) as amended from time to time;
- 1.2 “Board” means the Board of Directors of the Foundation;
- 1.3 “Chair” means a person elected to the office of Chair of the Board in accordance with these Bylaws;
- 1.4 “Committee Chair” means a person elected to the office of the Chair of a committee in accordance with these Bylaws;
- 1.5 “Director” means a person elected or appointed to the Board pursuant to the Act;
- 1.6 “Foundation” means Vancouver Foundation; and
- 1.7 “Vice-Chair” means a person elected to the office of Vice-Chair of the Board in accordance with these Bylaws.

Words importing the singular include the plural and vice versa, and words importing a male person include a female person and a corporation.

Part 2.0 DIRECTORS

- 2.1 Powers of the Board
The Directors may exercise all the powers and do all the acts and things that the Foundation may exercise and do, but subject, nevertheless, to:
 - 2.1.1 all laws affecting the Foundation;
 - 2.1.2 these Bylaws; and
 - 2.1.3 all rules and guidelines, including the Board of Directors Roles and Responsibilities, made from time to time by the Board which are not inconsistent with these Bylaws.
- 2.2 Number of Directors
The number of Directors of the Foundation shall be not more than 15 or such other number as may be determined from time to time by resolution of the Board and in compliance with Section 5 of the Act.

- 2.3 Exclusion of Chief Justice
Sections 2.3 to 2.11 inclusive of this Part 2 apply to Directors, other than the Chief Justice of the Supreme Court or the judge appointed by the Chief Justice.
- 2.4 Nomination of Directors by Specified Organizations
With respect to the nomination of Directors pursuant to subsection 5(1.2)(b), (c) or (d) of the Act, the following procedures shall apply:
- 2.4.1 subsection 5(1.2)(b) of the Act shall apply to the seat on the Board that was filled by a nominee of the Vancouver Bar Association prior to the 2010 amendments to the Act;
- 2.4.2 subsection 5(1.2)(c) of the Act shall apply to the seat on the Board that was filled by a nominee of the Canadian Institute of Chartered Financial Consultants (Advocis Vancouver) prior to the 2010 amendments to the Act;
- 2.4.3 before a person whose seat on the Board is subject to the provisions of subsection 5(1.2)(b), (c) or (d) of the Act ceases to be a Director pursuant to Section 2.9 below, the Foundation shall provide reasonable notice to the relevant organization of their entitlement to nominate a successor;
- 2.4.4 nominations pursuant to subsection 5(1.2)(b), (c) or (d) of the Act must be made in writing and delivered to the Chair of the Governance Committee of the Foundation within the time period prescribed from time to time by the Foundation;
- 2.4.5 the Governance Committee of the Foundation shall accept the nominations received pursuant to subsection 5(1.2)(b), (c) or (d) of the Act and shall recommend to the Board whether to accept or reject such nominations;
- 2.4.6 the Board shall determine by resolution whether a nomination received pursuant to subsection 5(1.2)(b), (c) or (d) of the Act is accepted or rejected;
- 2.4.7 when an organization has made a nomination pursuant to subsection 5(1.2)(b), (c) or (d) of the Act, the

Foundation shall notify the organization if the nomination is accepted or rejected by the Board; and

- 2.4.8 in the event that a nomination received pursuant to subsection 5(1.2)(b), (c) or (d) of the Act is rejected, then the Board shall elect any person to fill the vacancy following the procedures set out in Section 2.5 and upon the expiration of the term of such person, the relevant nominating organization shall once again be entitled to nominate a successor.

2.5 Election of Directors

With respect to the election of Directors pursuant to subsection 5(1.2)(e) and 6(1.1) of the Act, the following procedures shall apply:

- 2.5.1 the Governance Committee of the Foundation shall nominate a candidate or candidates to fill each such vacancy on the Board and shall provide notice of the nomination to the Board;
- 2.5.2 the Board may by resolution accept the nomination or reject it, in which case the matter will be referred back to the Governance Committee; and
- 2.5.3 a Director may not vote on a resolution of the Board concerning that Director's re-election to the Board.

2.6 Term

A Director shall be elected or appointed for a term of three years. A Director's term of office shall be deemed to commence on May 1st of the year in which the Director was elected or appointed and such term shall expire three years after the deemed commencement date.

2.7 Term Limit and Renewal

Before the expiry of a Director's three year term, whether such Director was elected pursuant to Section 2.5 above or appointed pursuant to Section 2.4 above, the Governance Committee shall review and assess the composition of the Board and put forth nominations to the Board recommending which, if any, Director(s) should serve additional terms. The Board may by resolution accept the Governance Committee's nomination to re-elect or re-appoint the Director(s) or reject such nomination(s), in which case the procedure specified in Section 2.5 applies for any Director originally elected pursuant to subsection 5(1.2)(e) of the

Act and the procedures specified in Section 2.4.3 through 2.4.8 apply for any Director originally appointed pursuant to subsection 5(1.2)(b), (c) or (d) of the Act. No person may be re-elected or re-appointed as a Director if he or she has served two full terms as a Director.

2.8 Exception to Term Limit

Notwithstanding Section 2.7, a person who was appointed Chair of the Board during his or her second term in office may be re-elected or re-appointed until he/she serves a full term as Chair, as such term is determined in Sections 3.1 and 3.2 below.

2.9 Ceasing to be a Director

A person ceases to be a Director on:

- 2.9.1 the expiry of his or her term of office;
- 2.9.2 his or her resignation, submitted in writing to the Chair of the Board, or if the resignation be that of the Chair, to the Vice-Chair of the Board or the President and Chief Executive Officer of the Foundation;
- 2.9.3 non-attendance by a Director at three consecutive meetings of the Board, provided that the Directors may, by a resolution approved by not less than 75% of the Directors then holding office, decide that the non-attending Director shall not cease to be a Director;
- 2.9.4 on the approval, by not less than 75% of the Directors then holding office, of a resolution removing a Director from office; or
- 2.9.5 death.

2.10 Replacement of Directors

If a person ceases to be a Director before the expiry of his or her term of office, then:

- 2.10.1 in cases where the Director has been elected pursuant to subsection 5(1.2)(e) of the Act, the Board may elect a replacement Director in the manner specified in Section 2.5 above;
- 2.10.2 in cases where the Director has been appointed pursuant to subsection 5(1.2)(b), (c) or (d) of the Act, the Foundation shall provide reasonable notice to the relevant organization of their entitlement to nominate a successor and the Board may appoint a replacement

Director in the manner specified in Sections 2.4.4 through 2.4.8 above;

- 2.10.3 the person elected as replacement Director shall hold office until the following May 1st, when such Director shall be eligible for election for his/her first three year term.

2.11 Qualifications of Directors

In determining the composition of the Board, the Directors shall endeavor to ensure that at all times the members of the Board have sufficient investment and/or other relevant expertise to carry out the duties and responsibilities of the Foundation.

Part 3.0 APPOINTMENTS

3.1 Appointment of Chair, Vice-Chair and Committee Chair

During the Board's second quarter meeting (usually in May), the Directors shall elect from their number a Chair of the Board, a Vice-Chair of the Board and a Committee Chair for each of the standing committees of the Foundation (as listed in Section 5.1 below).

The Chair shall preside at all meetings of the Board and shall have and exercise general charge and supervision of the affairs of the Foundation and do and perform such other duties as may be assigned to him/her by the Board. At the request of the Chair, or in the event of his or her absence or disability, the Vice-Chair should perform the duties and exercise the power of the Chair and shall have such other powers as the Board may determine. Each Committee Chair, or in the event of his or her absence or disability, another Board member, shall preside at all meetings of his/her respective standing committee.

The Directors may also create such other positions on the Board as they deem necessary for the Board to carry out its functions (such as Treasurer), and may elect from their number persons to fill those positions.

3.2 Term of Chair and Vice-Chair

The term of office for the Chair and the Vice-Chair of the Board shall be deemed to commence on May 1st of the year in which such person was elected or appointed. The term for the Chair and the Vice-Chair shall be two years.

- 3.3 Exception to Term Limit for Chair and Vice-Chair
Notwithstanding Section 3.2 above, the Directors shall have the option by a resolution approved by the Directors, to renew the term of the Chair and the Vice-Chair for one year for a total term of three years.
- 3.4 Term of Committee Chairs
The term of office for each Committee Chair shall be deemed to commence on May 1st of the year in which such person was elected or appointed. Each Committee Chair shall be appointed annually by the Board to serve a one-year term which can be renewed each year for as long as the Chair is a member of the Board.
- 3.5 Appointment of Committee Members
Directors and non-Board members serving as members of the Board standing committees, pursuant to Part 5.0, will be appointed by the Board. The term of each appointment shall be set out in each committee's Terms of Reference.
- 3.6 Appointment of President and Chief Executive Officer
The Directors from time to time shall appoint a President and Chief Executive Officer of the Foundation to hold office at the pleasure of the Board. The President and Chief Executive Officer of the Foundation shall report to the Board and shall exercise overall management and, together with the Board, direction of the Foundation.
- 3.7 Ex-Officio Committee Members
The Chair (and in his or her absence the Vice-Chair) and the President and Chief Executive Officer of the Foundation shall be ex-officio, non-voting members of all committees of the Foundation, except that (a) the Chair of the Board shall be a full voting member of the Executive Committee; and (b) the Chair of the Board shall be entitled to vote at standing committee meetings in the event of a tie on any vote or if the Chair's vote is required for quorum.

Part 4.0 MEETINGS OF THE BOARD

- 4.1 Meeting Frequency
The Board shall meet in person at least four times in each calendar year.
- 4.2 Convening a Meeting

At any time, the Chair of the Board (with at least three days' written notice) or any two Directors (with at least seven days' written notice) may convene a meeting of the Board.

4.3 Quorum

A quorum of the Board shall be not less than 50% of the Directors. No business may be transacted at any meeting of the Directors unless a quorum is present pursuant to Section 4.4 below.

4.4 Form of Meeting

A Director is present at a meeting if the Director is physically present at the location of the meeting, or if the Board has approved participation in meetings by teleconference, electronic or any other means of participation and the Director participates in the manner approved by the Board.

4.5 Calculation of Votes

Each Director, except for the Chair of the Board, shall have one vote. Directors may vote by voice or ballot. The Chair does not vote at a meeting of the Board unless there is a tie on any vote at a meeting of the Board, in which case the Chair of the Board will be entitled to a deciding or casting vote. Except where there is a contrary provision in the Act or in the Bylaws, decisions of the Board may be taken by a majority vote of those present at a meeting pursuant to Section 4.4 above.

4.6 Resolution in Writing

A Board resolution in writing which has been approved by 100% of the Directors is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted. Such Board resolution may be in two or more counterparts which together will be deemed to constitute one resolution in writing. Such resolution will be filed with minutes of the proceedings of the Board and will be deemed to be passed on the date stated therein or, in the absence of such date being stated, on the latest date stated on any counterpart.

Part 5.0 COMMITTEES

5.1 Mandatory Standing Committee

The Board shall create and maintain the following standing committees:

- Investment Committee;
- Finance and Audit Committee;
- Governance Committee;

- Executive Committee;
- Development Committee; and
- Distribution Committee.

Each such committee shall include at least two Directors and may include any other persons as the Board from time to time determines as per such committee's terms of reference.

5.2 Chair of Committees

All standing committees must be chaired by a Director.

5.3 Quorum for Standing Committees

Quorum for all standing committees of the Board shall be not less than 50% of the members of such standing committee and shall include at least one member of the Board.

5.4 Other Committees

The Board may create such other standing or special committees as may from time to time be required. Each such committee may include any other persons as the Board from time to time determines. In the case of Advisory Committees, as defined in Section 20(1) of the Act, the Board may delegate its authority to appoint the members of such Committees to the Distribution Committee. The Advisory Committees must be chaired by a Board appointed Director.

5.5 Advisory Council

The Board may create an advisory council (the "Honorary Governors' Council") comprised of members elected by the Board to provide the Board and the Foundation with input, advice and support in line with the Foundation's mission, vision and strategic direction. The Board shall establish specific Terms of Reference governing such advisory council.

The Governance Committee of the Foundation shall nominate candidates to serve as council members and shall provide notice of the nomination to the Board.

The Board may by resolution accept the nomination or reject it, in which case the matter will be referred back to the Governance Committee.

5.6 Delegation to Committees

The Board may delegate any, but not all, of its power to its standing committees and any such standing committee shall limit

its activities to the purposes for which it is constituted, and shall have no powers except those specifically conferred by the Board. For each such standing committee, the Board shall establish specific Terms of Reference governing such committee.

5.7 Committee Reporting

Each standing committee and the Honorary Governors' Council will report on the exercise of its powers at the subsequent meeting of the Board, or at such other time as the Board may determine, by way of verbal report and/or draft or approved meeting minutes.

Part 6.0 SIGNING AUTHORITY AND USE OF THE CORPORATE SEAL

6.1 Authority to Execute

Contracts, documents and other instruments in writing requiring the signature of the Foundation, which may or may not require the corporate seal, may be signed and may be sealed by two of the following, one of which must be the Board Chair, Board Vice-Chair or the President and Chief Executive Officer of the Foundation:

- Board Chair;
- Board Vice-Chair;
- President and Chief Executive Officer of the Foundation;
- Vice President, Finance & Administration of the Foundation; or
- Vice President and Chief Investment Officer of the Foundation.

6.2 Appointment of Signing Officers

The Board has the power from time to time by way of Board resolution or policy approved by the Board, to appoint such other person or persons as the Board deems necessary, on behalf of the Foundation, to sign contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing.

Part 7.0 CREATION OF ENDOWMENT FUNDS

7.1 Legal Review

The template for the Deeds of Gifts establishing new endowment funds, and any revisions to the template, must be approved by the Legal Advisor (as defined in Section 8.4 below) to the Board.

- 7.2 Acceptance of Gifts
 Gifts establishing new endowment funds shall be accepted by any two persons of the Foundation having signing authority, consistent with the Foundation's policies and reported to the Board.

Part 8.0 GENERAL

- 8.1 Registered Office
 The registered office of the Foundation shall be in the Province of British Columbia.
- 8.2 Fiscal Year
 The fiscal year end of the Foundation is December 31.
- 8.3 Inspection of Records
 The documents of the Foundation and the minutes of meetings of the Foundation and the Board will be open to the inspection of Directors.
- 8.4 Legal Advisor
 The Board shall engage and retain a law firm (the "Legal Advisor"), from time to time, to act as legal advisor to the Foundation at such remuneration as is deemed appropriate.
- 8.5 Indemnification of Directors and Officers
 Each Director and each Officer of the Foundation will be indemnified by the Foundation against all costs, charges and expenses reasonably incurred in connection with any claim, action, suit or proceeding to which that person may be made a party by reason of being or having been a Director or Officer of the Foundation.
- 8.6 Purchase of Insurance
 The Foundation will purchase and maintain insurance for the benefit of any or all Directors, Officers, employees or agents against personal liability incurred by any such person as a Director, Officer, employee or agent.

Part 9.0 AMENDMENTS OF BYLAWS

- 9.1 Resolution to Amend Bylaws
 These Bylaws of the Foundation will not be amended, altered, abrogated or otherwise varied except by resolution of the Board passed by at least 75% of the Directors then holding office present at a meeting and entitled to vote thereon.

9.2 Notice to Amend Bylaws

Notice of the intention to amend these Bylaws shall be given to each Director at least seven days before such meeting.

Home > Documents and Proceedings > 2nd Session, 39th Parliament > Bills > Bill Pr 402 — 2010: Vancouver Foundation Amendment Act, 2010

2010 Legislative Session: 2nd Session, 39th Parliament
THIRD READING

The following electronic version is for informational purposes only.
The printed version remains the official version.

Certified correct as passed Third Reading on the 2nd day of June, 2010
Ian D. Izard, Q.C., Law Clerk

MR. GORDON HOGG

BILL PR 402 — 2010
VANCOUVER FOUNDATION AMENDMENT ACT, 2010

WHEREAS a petition has been presented for the amendment of the *Vancouver Foundation Act*, and it is expedient to grant the request in the petition:

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

1 Section 1 of the Vancouver Foundation Act, S.B.C. 2000, c. 32, is amended

(a) by repealing the definitions of "base amount" and "foundation endowment" and substituting the following:

"base amount" means, for a particular trust fund at a particular time,

(a) the dollar value of all contributions at the time those contributions were made to the trust fund before the particular time, other than contributions that were subsequently withdrawn from the trust fund,

less

(b) any amounts that were added to the distributable amount of the trust fund under section 9 (6) before the particular time;

"foundation endowment" means any donation to the foundation

(a) on trust terms that expressly or impliedly create a trust, or

(b) on terms under which expressly or impliedly the foundation has the discretion to create a trust and does so; ,

(b) by adding the following definitions:

"custodian" means a trust company or any other body that is selected by the board to hold some or all of the funds or property of the foundation and that has the

legal capacity to hold the funds and undertake any other obligations under this Act or imposed in any contract with the foundation;

"original directors" means the persons listed in the Schedule;

"United Way of the Lower Mainland" means the United Way of the Lower Mainland, a society incorporated under the *Society Act*; , **and**

(c) by repealing the definitions of "Community Fund", "original Act" and "United Way of the Lower Mainland Endowment Fund".

2 Section 2 is amended by repealing paragraph (b) and substituting the following:

(b) in case of any failure on the part of the foundation or the board, do what may be necessary to carry out the true intent and purpose of this Act.

3 Section 4 is amended

(a) by renumbering the section as section 4 (1),

(b) by repealing subsection (1) (c) and (e) and substituting the following:

(c) to support the relief of poverty;

(e) to support any other charitable purposes that the board considers to be of benefit to communities;

(f) to make grants to qualified donees within the meaning of the *Income Tax Act* (Canada). , **and**

(c) by adding the following subsection:

(2) The prime purpose of the foundation is to carry out its objects in British Columbia, but the foundation may, at the discretion of the board,

(a) accept donations that a donor directs may be used outside of British Columbia, and

(b) use those donations, in whole or in part, to carry out its objects in any part of Canada in accordance with the donor's directions.

4 Section 5 is amended

(a) by repealing subsection (1) and substituting the following:

(1) The board of directors of the foundation is to consist of at least 10 and not more than 18 persons, with the directors determining the number of directors from time to time in the bylaws of the foundation. , **and**

(b) by adding the following subsections:

(1.1) If the number of directors is below the minimum number set out in subsection (1) or in the bylaws, as applicable, the board continues to have the authority to carry out its duties and exercise its powers until all vacancies are filled.

(1.2) Subject to section 6, the board consists of the following members:

- (a) the Chief Justice of the Supreme Court of British Columbia or, if applicable, the judge appointed by the Chief Justice under that section;
- (b) a member of the Law Society of British Columbia who has been nominated by the Law Society of British Columbia in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;
- (c) a member of the Institute of Chartered Accountants of British Columbia who has been nominated by the Institute of Chartered Accountants of British Columbia in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;
- (d) a person who has been nominated by the United Way of the Lower Mainland in accordance with the bylaws of the foundation and whose nomination has been accepted by the board;
- (e) other persons that are elected from time to time by the board.

(1.3) The board may decline a nomination under subsection (1.2) (b), (c) or (d) if, in the opinion of the board, the nominee does not have the skills, knowledge or experience to benefit the foundation.

5 Section 6 is amended

(a) in subsection (1) by striking out "or any other person," **and by striking out "section 5 (1) (a)" and substituting "section 5 (1.2) (a)",**

(b) by adding the following subsection:

(1.1) In the event that an organization that is entitled to nominate a director under section 5 (1.2) fails to do so in the manner set out in the bylaws of the foundation, or if the board declines a nomination under section 5 (1.3), the members of the board may elect a person to fill a vacancy. , **and**

(c) by repealing subsections (2) to (6).

6 Section 7 (1) (e) is amended by striking out "trust companies" in both places and substituting "custodians".

7 Section 8 (1) (b) is amended by striking out "a trust company," and substituting "a custodian,".

8 Section 10 (2) (b) is amended by striking out "total return;" and substituting "total returns;".

9 Section 12 is amended

(a) in subsection (1) by striking out "and subject to this section",

(b) in subsection (3) by striking out "subsection (2)," and substituting "subsection (1)", and

(c) by repealing subsections (2) and (4) to (9).

10 Section 13 is repealed.**11 Section 16 is repealed and the following substituted:****Custody of funds or property**

- 16** (1) The foundation may hold in its own name any donation it receives, or any other funds or property, or it may appoint one or more custodians to hold some or all of its donations, funds or property on its behalf.
- (2) The foundation may at any time, by resolution passed by a majority of the board, revoke the appointment of a custodian and may appoint another custodian.
- (3) A custodian appointed by the foundation must
- (a) have custody of all funds or property entrusted to it by the foundation,
 - (b) make all investments, reinvestments, conversions, sales or other dispositions of the funds or property as instructed in writing by the board,
 - (c) under the direction of the board, give effect to and observe all directions given to it by the board with regard to funds or property, and
 - (d) distribute from the money in its possession the sums in the manner that the board by resolution directs.
- (4) A custodian is not accountable for any act or omission if the act or omission was authorized in writing by the board.

12 Section 17 is amended

- (a) by striking out "charitable organization" and substituting "charity",**
- (b) in paragraph (a) by striking out "British Columbia," and substituting "Canada,"**
- (c) in paragraph (b) by adding "as a charity" after "registered", and**
- (d) by striking out "organization" in both places and substituting "charity".**

13 Section 20 (1) is amended by striking out "composed of British Columbia residents".**14 Section 21 (2) is amended by striking out "the board." and substituting "a person who has signing authority for the foundation under the bylaws of the foundation."****15 Section 22 is amended**

- (a) by adding ", by resolution passed by at least 75% of the directors," after "The board may", and**
- (b) by adding the following paragraph:**

(d.1) the number of members of the board, the manner of their selection, removal, replacement and terms of office; .

16 Section 23 (2) is amended by striking out "trust company" and substituting "custodian".

17 The following Schedule is added:

Schedule

(Section 1, definition of "original directors")

Original Directors

Robert Barnett MacKay

Charles Thomas McHattie

Alexander Douglas Wilson

Eric Vickers Chown

Gordon Farrell

Whitford Julian Van Dusen

Alan Holmes Williamson

Transition

- 18** A member of the board who holds office on the date this Act comes into force continues in office until his or her term is completed or until his or her membership on the board is terminated in accordance with any bylaw passed by the board.

Commencement

- 19** This Act comes into force on the date of Royal Assent.

vancouver foundation

BOARD OF DIRECTORS ROLES AND RESPONSIBILITIES

A. MANDATE OF THE BOARD

The Board of the Vancouver Foundation (VF) is responsible for the overall governance of the organization, which includes a moral and legal responsibility, as well as stewardship of, and accountability for funds raised, invested and distributed. This encompasses actively participating in strategic planning and making policy decisions that ensure that there are the necessary financial and human resources in place to accomplish the mission of the Foundation and the ongoing monitoring of the execution of the strategic plan. The Board is accountable for the Foundation's performance, based on the standards it establishes, and for ensuring that the organization develops the capacity to meet those standards.

B. SPECIFIC RESPONSIBILITIES

1. Undertake Planning and Evaluation

- 1.1 Set the strategic direction for the organization, participating in and approving the strategic planning process and plan and setting the long-term goals.
- 1.2 Oversee an environmental scan on a regular basis to determine if the Foundation's strategies are responsive to and addressing community needs.
- 1.3 Ensure there is an annual operational plan and priorities developed for the various departments in the Foundation and an annual evaluation of the plan.
- 1.4 Assess and evaluate the overall performance of the Board and ensure individual Board members assess their own performance.
- 1.5 Ensure there is a regular evaluation of the Foundation's programs and services to ensure they are consistent with the organization's mission and monitor their effectiveness.

vancouver foundation

2. Ensure all legal and ethical standards are met; responsible for policy development
 - 2.1 Ensure the Foundation has policies addressing all aspects of finance and investment, human resource management, development, communications, granting and allocation of funds.
 - 2.2 Review, update and approve all Foundation policies.
 - 2.3 Ensure compliance with all relevant material laws affecting VF and its programs and operations to ensure VF is adhering to legal standards and ethical norms.
 - 2.4 Propose a slate of prospective directors and fill vacancies as needed on the Board.
 - 2.5 Annually review the performance of the board (including its composition, organization and responsibilities) and take steps to improve its performance.
3. Provide Proper Financial Oversight
 - 3.1 Approve the annual operating budget and ensure that proper financial controls are in place.
 - 3.2 Ensure the Foundation has adequate resources to fulfill its mission, current needs and long-term strategies.
 - 3.3 Review revenues and expenses on a quarterly basis to ensure the mission of VF is being upheld.
 - 3.4 Ensure that published reports properly reflect the operating results and financial condition of the Foundation.
4. Human Resource Management
 - 4.1 Select, monitor, appraise, advise, support, reward, and, if deemed necessary or desirable, change top management. Ensures the CEO has the moral and professional support he/she needs to further the goals of the organization.
 - 4.2 Annually approve the performance review of the President and CEO and establish compensation based on recommendations of the Executive Committee and Board Chair.
 - 4.3 Ensure that management succession is properly planned.

- 4.4 Ensure that the organizational strength and employee base can substantiate long-range goals.
- 4.5 Approve appropriate compensation and benefit policies and practices.
- 5. Provide Leadership in Fundraising and Donor Stewardship
 - 5.1 Oversees and participates in the fundraising program through the identification, cultivation, solicitation and stewardship of donors.
 - 5.2 Contributes personally to the Foundation through the establishment of an endowment fund.
 - 5.3 Participates in donor recognition and ensures there is an effective donor stewardship program in place and being implemented.
 - 5.4 Ensures funds contributed are utilized in concert with donors' wishes.
- 6. Enhance the Public Image of the Foundation
 - 6.1 Develops relationships with key stakeholders promoting the mission, and vision of VF and generating good will for the organization and encouraging support from individuals, corporations, organizations and the community.
 - 6.2 Serves as an informal advocate for Vancouver Foundation in the community.

C. FUNCTIONING OF THE BOARD OF DIRECTORS

1. Membership

The Board of Directors comprises twelve individuals, six of whom are nominees of specific organizations as defined by the Vancouver Foundation Act and the remainder who are nominated by the Governance Committee and elected by the members of the Board. The elected members are to be representative of the community, reflecting a cross-section of British Columbians including a balance with respect to geography, gender, age, skills and knowledge, professional talents, cultural/race/religious background, experience with one or more core

vancouver foundation

business areas of the Foundation (fund development, investment, stewardship, grant making and community leadership), access and influence with potential major donors.

2. Meetings

2.1 *Agenda and Preparation*

Materials for Board meetings, including the agenda and pertinent background information should be circulated two weeks in advance.

2.2 *Frequency and Duration*

Meetings are held four times a year in addition to an annual planning meeting and are usually two and one half hours to three hours in duration.

2.3 *Quorum*

A quorum shall be not less than 50% of the members of the Board.

3. Formal Communications

3.1 *Terms of Reference*

The approved terms of reference for the Board of Directors should be made available to Standing Committees and other groups, as requested.

3.2 *Board of Directors Orientation Manual*

A Board of Directors Orientation Manual will have a section that provides detail and information as to the functioning of the Board and will assist members in fulfilling their responsibilities.

3.3 *Minutes*

Minutes of the meetings should be taken to provide evidence that the Committee has discharged its responsibilities. A copy of the approved Minutes is kept in the administrative office and is signed by the Minute Recorder and the Board Chairman.

D. RESPONSIBILITIES OF INDIVIDUAL BOARD MEMBERS

1. Participate in Board orientation session(s); review background information; become knowledgeable about the organization, its purpose and work.

vancouver foundation

2. Prepare for meetings by reviewing minutes, reports and other background information, attend and participate in meetings.
3. Serve actively on one or more assigned Committees or Task Forces and offer to take on special assignments.
4. Provide candid, open and honest feedback and evaluation when appropriate.
5. Keep up to date on developments in the broader philanthropic and Community Foundation field. Ask questions for clarification and to increase knowledge and understanding.
6. Participate in fundraising, Foundation donor stewardship and community leadership activities and identify individuals in the community for volunteer participation and funding support.
7. Make a personal financial contribution to the organization.
8. Work to increase awareness of Vancouver Foundation in the community.
9. Follow conflict of interest and confidentiality policies.
10. Assist the board in carrying out its fiduciary and legal responsibilities, such as reviewing the organization's annual financial statements.

The Law Society of British Columbia



Independent Oversight of the Law Society's Regulatory Functions

An Analysis of Three Models

For: The Benchers

Date: March, 2011

Purpose of Report: Discussion and Decision

**Prepared by: Charlotte Ensminger, Staff Lawyer
Policy and Legal Services**

TABLE OF CONTENTS

		Page
I.	EXECUTIVE SUMMARY	3
II.	INTRODUCTION	4
III.	BACKGROUND	4
IV.	RECENT REGULATORY CHANGES IN OTHER COMMON LAW JURISDICTIONS	6
V.	DISCUSSION	7
	Some Preliminary Questions	7
	MODEL 1: OVERSIGHT AND REVIEW BY THE PROVINCIAL OMBUDSPERSON	8
	The Current Role of the BC Ombudsperson in Reviewing Law Society Regulatory Decisions	8
	Policy Objectives Served by the Ombudsperson’s Existing Authority to Review Law Society Regulatory Decisions.....	11
	Benefits of the Ombudsperson’s Current Oversight Role.....	12
	Possible Limitations of the Ombudsperson’s Current Oversight Role.....	14
	1. Procedural Review vs. Review on the Merits	14
	2. Lack of Adequate Resources to Ensure Consistent Oversight	15
	3. The Ombudsperson is a Creature of the Legislature	15
	MODEL 2: VOLUNTARY EXTERNAL REVIEW	15
	General Description of the Model.....	15
	Policy Objectives Served by a Voluntary External Review Process	16
	Benefits of a Voluntary External Review Process	16
	Limitations of a Voluntary External Review Process	16
	Examples from other Jurisdictions of a Voluntary External Review	17
	1. Independent Observer – Bar Standards Board UK	17
	2. Law Society of Upper Canada’s Complaints Resolution Commissioner.....	17
	3. The Law Society of Manitoba’s Complaints Commissioner	18
	MODEL 3: PERFORMANCE AUDIT OR PEER REVIEW OF BEST PRACTICES	19
	General Description of the Model.....	19
	Examples of the Model	20
	Limitations of a Performance Audit or Peer Review of Best Practices.....	21
	Benefits of a Performance Audit or Peer Review of Best Practices.....	21
VI.	CONCLUSION AND RECOMMENDATION	22
VII.	NEXT STEPS	23

EXECUTIVE SUMMARY

One of the goals of the Law Society's 2009-2011 Strategic Plan is to enhance the public's confidence in the legal profession through appropriate and effective regulation. A strategy articulated in the Plan to achieve this goal is to "assess possible roles of an oversight or review board for Law Society core functions." The topic of external oversight regimes for the legal profession formed much of the policy discussion at the 2009 Benchers retreat.

The primary public interest benefit served by an independent regulatory oversight regime is that it ensures accountability, which in turn helps to enhance public confidence in the Law Society's performance as a regulator. Public confidence provides important support for the principles of lawyer independence and self-governance. One of the challenges is to identify a model that provides for accountability but does not, functionally, undermine independence and self-governance.

At the direction of the Executive Committee, this paper examines three different models for regulatory oversight of the Law Society's core regulatory functions: oversight and review by the BC Ombudsperson; a Voluntary External Review process; and a Performance Audit or Peer Review of Best Practices. It analyzes each of the models in some detail: the policy objectives the model serves, and the benefits and possible limitations. The paper offers examples of each model and describes regulatory changes that have occurred in other common law jurisdictions.

The Executive Committee concluded that Model 3 – a performance audit of best practices – is the preferred model because it would ensure the development of standards against which the Law Society's regulatory performance could be measured, and enhance the public's confidence while still protecting the important principles of independence and self-governance. While the Executive Committee believes that the Federation of Law Societies is best placed to take a lead in establishing a framework for creating national standards and an independent review and performance audit of Canadian law societies' processes and practices, including a set of best practices guidelines, the Committee is concerned about the length of time it would likely take at the Federation level to complete the project, possible delays due to funding or resource issues, and difficulties in achieving national consensus. It recommends, therefore, that the Law Society of British Columbia begin its own work on Model 3 to develop the model first at the local level, with a view to bringing it forward to the Federation at some future date.

The Executive Committee also recommends that the Law Society of British Columbia enhance its communications with the public about the important role that the Office of the BC Ombudsperson plays in reviewing the Law Society's handling of complaints against lawyers.

INTRODUCTION

The Benchers' interest in this subject arises from the second of three principal goals set out in the Law Society's Strategic Plan for 2009-2011. Goal 2 is to:

Enhance public confidence in the legal profession through appropriate and effective regulation of legal professionals.

The Strategic Plan, in discussing Goal 2, states:

Public confidence in the ability of the Law Society to effectively regulate the competence and conduct of lawyers is critical in order for the Society to fulfill its mandate. It is also of critical importance in order to maintain the public's right to retain independent lawyers. The Benchers identified several desirable outcomes through which the goal of enhancing public confidence may be achieved.

One of the strategies described for achieving Goal 2 is Strategy 2, which is to:

Assess possible roles of an oversight or review board for Law Society core functions.

Initiative 2-2, which follows Strategy 2-2, reads:

Regulatory oversight or review boards exist in British Columbia in connection with the health professions, and have been created in some foreign jurisdictions in connection with the legal profession. Whether such boards improve public confidence is under debate. Is there a method to enhance the public confidence in the Law Society's decision making processes that does not run contrary to the fundamental constitutional principle of, and public right to, lawyer independence?¹

BACKGROUND

Much of the policy portion of the Benchers' Retreat in June 2009 focused on the topic of external regulatory oversight regimes for the legal profession, wherein regulatory decision-making is overseen in some fashion by an independent agency. The Law Society's government relations advisors, the Federation of Law Societies, and the BC Office of the Ombudsperson made presentations to the Benchers on the subject. The Benchers also heard from the Washington State Bar Association about regulatory systems in the United States where oversight of the legal profession is performed by the courts.

In September 2009, the Executive Committee discussed the topic and decided the Law Society should focus its policy analysis on two regulatory oversight models: 1) a

¹ Law Society Strategic Plan for 2009-2011 dated January 22, 2010, Initiative 2-2, page 6.

voluntary external review process, and 2) a review involving the provincial Ombudsman's office. The Committee instructed staff to develop a policy paper for presentation to the Benchers, expected in the spring of 2010.

In May 2010, the Executive Committee reviewed a draft policy paper prepared by staff that analyzed the two oversight models. At the conclusion of the meeting, staff was asked to include an analysis of a third option, that being 3) a proactive "performance audit" or "credentialing" approach to public oversight. The focus of a performance audit or peer review was to be on reviewing the Law Society's current operations and processes against best practices, rather than determining an individual's entitlement to relief through a complaints-driven process.

This paper includes an analysis of the three options identified by the Executive Committee, and it builds on earlier memoranda prepared by Michael Lucas.² It examines in some detail the BC Ombudsperson's current mandate for overseeing the Law Society's regulatory/decision-making processes as these relate to Law Society core functions and responsibilities, and considers whether the Ombudsperson's existing role is sufficient to ensure public confidence in the Law Society's ability to regulate the conduct and competence of lawyers effectively. For this part of the discussion, a starting assumption is that the Ombudsperson's current oversight mandate does not interfere with self-regulation or compromise the principle of lawyer independence because the Ombudsperson has no authority to make an order against the Law Society. The question of whether the Ombudsperson's present oversight and review role needs only to be promoted more effectively to increase the public's confidence in the Law Society's handling of its regulatory responsibilities or whether it should be expanded is also examined, as is the question of whether this could be done without undermining the independence of the legal profession.

The analysis of the second option, i.e. a voluntary external review process (one example of which is the recent appointment of an Independent Observer by the Law Society of England and Wales's Bar Standards Board) considers whether a similar process in BC might enhance public confidence in the Law Society's ability to be an effective regulator and, if so, whether a model can be developed that would not compromise the public's right to an independent legal profession. Ontario and Manitoba have had Legal Complaints Commissioners in place for a number of years. Their role is to review their respective law societies' handling of complaints. In Manitoba, the concept was introduced by the Benchers in the 1990s as a result of a review of their discipline processes, so it is a Canadian example of a voluntary external review process. Additional information about the Manitoba model and the Ontario Legal Complaints Commissioner, a statutorily mandated position, is included in the second part of the paper.

² See memos dated May 11, 2009 and August 18, 2009, which are attached as Appendix 1.

The third model, a performance audit of best practices, poses an interesting challenge in terms of the stated goal of enhancing public confidence in the Law Society's performance as a regulator in the public interest. While a certification model such as ISO (International Organization for Standardization) can be a useful tool in some industries for assessing performance and best practices to a certain industry standard, it may not be the best fit for achieving the regulatory oversight objectives envisioned in the Strategic Plan.

At its November 2010 meeting, the Executive Committee again considered the three models, and concluded that the Ombudsperson's Office was better suited to investigating complaints about lawyer conduct and the Law Society's complaints handling processes than reviewing standards and best practices. The Committee expressed a concern that encouraging greater involvement by the Ombudsperson beyond reviewing complaints handling potentially raises issues that may affect independence and self-governance of lawyers. The Executive Committee concluded that the Federation of Law Societies is best placed to take a lead role in establishing an independent process for establishing national standards and best practices guidelines for Canadian law societies, and for reviewing and auditing their regulatory performance.

RECENT REGULATORY CHANGES IN OTHER COMMON LAW JURISDICTIONS

During the past several years, a number of common law jurisdictions outside North America have introduced regulatory oversight regimes that have changed how the legal profession in those jurisdictions is governed and regulated. These include many of the Australian states, as well as New Zealand, and England and Wales. In Australia, a proposal for the national regulation of the legal profession includes an oversight regime. The reasons behind the regulatory changes vary, but two main drivers are apparent from a review of the literature: the unsatisfactory handling by lawyer regulatory and representative bodies (often combined into one entity) of complaints against lawyers, and the growing trend towards treating legal services as a consumer commodity best suited to a competition-based market analysis.

The regulatory models adopted also vary. In some cases, a new entity with exclusive authority to handle complaints against lawyers has been introduced. In others, an officer, who is often described as being independent, has been appointed to oversee, monitor and review a law society's or similar body's handling of complaints. In yet others, a new body has been given broad powers to review a still-to-be-defined range of processes related to the regulation of lawyers. The extent to which these changes do, or may compromise the fundamental principle of lawyer independence has become a concern in some of the jurisdictions.

Additional information about these regulatory changes is included as Appendix 2, attached.

DISCUSSION

In order to maintain public confidence, the legal profession must display a commitment to both independence and accountability.³ Ensuring and preserving an independent legal profession so that lawyers can operate without undue influence from third parties, including government, is an essential element of the rule of law. Accountability, which may be more of a concern to the public than the often misunderstood principle of lawyer independence, is required for the effective regulation of the practice of law.

Balancing the need to protect the profession's independence and the need to ensure accountability can give rise to some difficult questions when considering a possible role for an oversight board because independence and accountability are generally considered to be mutually exclusive concepts. An oversight regime must itself be independent of other influences in order to protect the profession's independence. Its composition will directly affect its functional independence and the public's perception of its objectivity. So will its sources of funding, and the processes used for selecting, appointing, and removing individuals who are to perform the oversight functions.

Some Preliminary Questions

Before embarking on an analysis of the three regulatory oversight models identified by the Executive Committee, the Benchers might wish first to consider some preliminary policy questions:

- 1) Is some form of independent regulatory oversight actually necessary to ensure that the public has confidence in how lawyers are regulated?
- 2) Should a regulatory oversight function be limited to reviewing processes related to the handling of complaints only, or should it oversee and review other Law Society regulatory functions such the discipline process?
- 3) Should the role of oversight be limited to a procedural review, or should it include the authority to conduct a review on the merits?
- 4) Should an oversight regime be able to review all of the Law Society's regulatory functions?
- 5) If there is a role for independent oversight, should a model be developed that is specific to BC, or is there value in encouraging a national approach by having

³ See, for example, the Preamble to the 1990 Standards for the Independence of the Legal Profession, International Bar Association, as referenced in Michael J. Trebilcock and Ronald J. Daniels, *Rule of Law Reform and Development* (UK Edward Elgar Publishing, Inc. 2008) at 314.

other law societies, or the Federation of Law Societies, develop or adopt a similar model?

The analysis that follows is situated in the context of the Law Society's complaints process because this area of regulation (together with the discipline process) is, in my view, most susceptible to a potential crisis of public confidence. Although there may be benefits arising from the optics of a broader oversight mandate, any imposed external oversight body would most likely focus primarily or exclusively on the Law Society's complaints and discipline process. The public must be confident, therefore, that the Law Society handles complaints thoroughly and in a timely way, in accordance with the principles of natural justice and solely in the public interest. The question of whether an oversight regime should involve only a procedural review or include authority to conduct a substantive review is a topic that requires further discussion and analysis. In the interests of keeping the length of this paper manageable, I offer some preliminary thoughts on this question as it relates to the Ombudsperson model. A fuller analysis can be undertaken at the direction of the Benchers.

MODEL 1:

OVERSIGHT AND REVIEW BY THE PROVINCIAL OMBUDSPERSON

The Current Role of the BC Ombudsperson in Reviewing Law Society Regulatory Decisions

The concept of a special Legal Ombudsman whose mandate is limited to monitoring and reviewing law societies' handling and resolution of complaints against lawyers has found favour in some international common law jurisdictions. There is, however, debate about whether these positions are in every circumstance truly independent of government. In Canada, British Columbia and the Yukon are the only common law province and territory where the provincial Ombudsperson's Office already has a role in overseeing the legal profession and other self-regulating professions. My research to date has not found any other common law jurisdiction that has mandated its state, provincial or national Ombudsman's Office to oversee the regulatory decisions of self-governing bodies, including law societies or other professional organizations representing lawyers.

The role of the BC Ombudsperson, an independent and impartial officer appointed by the Legislature, is to investigate on a complaint or on her own initiative, decisions, acts or procedures of public bodies with respect to a matter of administration that aggrieve or may aggrieve a person.⁴ The current Ombudsperson is Kim Carter. She was appointed to a six-year term on May 15, 2006. The Ombudsperson's two primary roles are to investigate complaints, and to generally oversee the administrative actions of government and other authorities with a view to upholding the democratic principles of openness,

⁴ See section 10 of the *Ombudsperson Act*.

transparency and accountability. The Ombudsperson's office provides expertise in applying the principles of administrative and procedural fairness to reviews of decisions, recommendations made, acts done or omitted, or procedures used by public authorities in administering their duties.⁵

The authorities over which the Ombudsperson's Office has jurisdiction are set out in a Schedule to the *Ombudsperson Act*, and include the Law Society of BC.⁶ Self-regulating professions were added to the Schedule in October 1993. Complaints received by the Ombudsperson are assessed to determine whether the complaint is against an "authority" – that is, a public agency listed in the Schedule. If the complaint is against an agency not listed in the Schedule, the Ombudsperson has no jurisdiction to investigate. If the complaint falls within the Ombudsperson's jurisdiction, there may be alternative remedies available such as using another process to resolve the issue or settling the matter. The Ombudsperson has discretion to not pursue an investigation where there is an alternative remedy available. It is the "office of last resort" and the Ombudsperson encourages people to try first to resolve their complaint with the agency concerned. If, after exhausting those remedies, the complainant remains concerned there has been unfairness or that the remedy they received was inadequate to address the problem, they may contact the Office of the Ombudsperson again.

If the Ombudsperson decides to investigate, she must notify the authority affected (section 14). The Office may also attempt an early resolution of the matter. The Ombudsperson has authority under section 15 of the *Act* to obtain information, which includes the power to summon and examine under oath any person she believes has information relevant to the investigation. If an investigation is refused, discontinued, or the complaint is not substantiated, the Ombudsperson must provide written reasons and notify the authority and the complainant of the decision and the reasons for it.

During an investigation, the following questions are considered:⁷

- Has the complainant contacted the authority?
- Did the decision-maker have the authority to make the decision?
- Did the authority exercise discretion appropriately in reaching a particular decision?
- Did the person affected have an opportunity to be heard?
- Was the person given reasons for the decision?

⁵ Report of the Special Committee to Appoint an Ombudsman, Legislative Assembly of British Columbia, Second Session, Thirty-Eighth Parliament, April 26, 2006, at p.1.

⁶ The *Act* and Schedule are attached as Appendix 3.

⁷ See BC Office of the Ombudsperson presentation materials at the 2009 Benchers retreat.

- Did the person have the opportunity to have an unfavourable decision reviewed by someone who was not involved in making the decision?
- Could a reasonable person have reached a similar decision based on the information available to the decision-maker?

Section 23 of the *Act* describes the procedure to be followed once an investigation has been completed. It also identifies the bases on which the Ombudsperson is required to issue a report. It is important to note that while the Ombudsperson's review authority is generally understood to be a review of procedures, section 23 appears to allow for more than a mere procedural review. Under section 23 the Ombudsperson may conclude that a mistake of law or fact was committed by the authority being reviewed (iii), or that its decision was otherwise wrong (vi).

If, after completing her investigation, the Ombudsperson finds against the authority, she is statutorily required to issue a report with reasons, and may make any recommendations she considers appropriate. The range of recommendations the Ombudsperson can make are set out in section 23(2) and include referring the matter back to the authority for further consideration, recommending that the authority rectify an omission or delay or remedy an act, or reconsider an enactment or rule of law, among other things.

If the Ombudsperson makes recommendations under section 23, she may request that the affected authority notify her within a specified period of time of the steps it has taken or proposes to take to give effect to her recommendations, or the reasons for not following them. If the Ombudsperson believes that no suitable action has been taken, section 25 authorizes her to submit a report to the Lieutenant Governor in Council and the Legislature respecting the matter. Under section 31, she may also make a special report to the Legislature or comment publicly about a matter related to her duties or to a particular case, if she considers it to be in the public interest to do so. The Ombudsperson has no statutory authority to make an order or otherwise enforce any of her recommendations.

Under the Law Society's complaints process, once a complainant has exhausted the review processes available under the *Legal Profession Act* and Rules⁸ he or she can make a complaint to the Ombudsperson. The Ombudsperson's role in overseeing Law Society complaints handling has been inconsistent, however, largely because of limited resources. According to the presentation made at the 2009 Benchers Retreat, the Ombudsperson's Office stopped accepting complaints about professional bodies in January 2003 because

⁸ This process includes a review by the Law Society's Complainants Review Committee. In 2009, the Committee considered 73 complaints, and resolved to take no further action on 70 of them, determining that staff decisions were appropriate. While no referrals to the Discipline or Practice Standards Committees were made in 2009, the Complainants' Review Committee sought further information on 3 files before satisfying itself that no further action was required. The Committee expressed no concerns about fairness or due process in the investigation of complaints: see Report to the Benchers on Key Performance Measures, spring 2010.

of a lack of resources. In May 2005, complaints were put in a hold queue. Then, in April 2006 the Ombudsperson began accepting these complaints again. The Ombudsperson at the time, Mr. Howard Kushner, issued a Report to the Legislature in February 2003 describing how the cutbacks had affected his ability to carry out his mandate.⁹

The following statistics identify the number of enquires and complaints received by the Ombudsperson about professional bodies in 2007/2008, the number of enquiries the Ombudsperson received about the Law Society, and the number of enquires the Law Society received from the Ombudsperson from 2006 to 2009:

- During the 2007/2008 fiscal year, 3% (or approximately 200) of the 6,669 enquiries and complaints the Ombudsman received concerned professional associations;
- In 2007, the Ombudsperson received 52 requests for information or enquiries regarding the Law Society. Of these, she declined to investigate 12, investigated 16, 3 settled, 1 was withdrawn, 4 were not substantiated, 1 was referred, and 7 required no further investigation;
- In 2008, there were 45 enquiries related to the Law Society: she declined to investigate 11, and investigated 7: 2 settled, 3 were not substantiated, and 2 required no further investigation;
- In 2009 (to May 20) there were 12 enquiries: she declined to investigate 3, and investigated 3: 1 settled, 1 was not substantiated, and 1 was declined because there was no benefit;
- According to the Law Society of BC's own data, it received 8 enquiries from the Ombudsperson in 2006, 13 in 2007, 6 in 2008, and 5 in 2009.

The Ombudsperson's mandate also includes a general oversight role that is not complaint specific. The Ombudsperson can conduct an investigation under her own initiative or, according to the materials presented at the 2009 Benchers retreat, decide to work together with an agency to improve its internal complaint resolution processes. This has important implications for regulatory oversight of the Law Society because it provides the Ombudsperson with a mechanism to oversee, evaluate and assist the Law Society in improving its procedures, perhaps in a manner similar to a "best practices" review.

Policy Objectives Served by the Ombudsperson's Existing Authority to Review Law Society Regulatory Decisions

Clearly, the Ombudsperson's existing oversight role with respect to the Law Society serves the public interest in several ways. First, it gives a complainant a way to seek an independent review of a Law Society decision that impacts them. The review process itself ensures that the Law Society continues to make its decisions in an administratively fair way and that it is held accountable for those decisions. External oversight by the

⁹ Special Financial Report to the Legislature February 2003.

Ombudsperson also provides important support for the principle of lawyer independence and the preservation of self-regulation in furtherance of that independence. As has been discussed in papers by the Honourable Bryan Ralph¹⁰ and others, regulatory oversight by the Ombudsperson's office ensures there is an independent check on the exercise of power by the authorities over which it has jurisdiction, and it lends credibility and weight to a self-governing body's careful and responsible decision-making processes.

But does the Ombudsperson's review authority go far enough? Given the scope of the Ombudsperson's existing mandate, an argument can be made that the current breadth of oversight is sufficient to meet any public concerns about, or lack of confidence in, the Law Society's handling of complaints, at least as these involve Law Society processes. If one subscribes to this view, any failure of public confidence in how the Law Society handles complaints against lawyers (as well as the relatively few complaints the Ombudsperson receives about the Law Society) might simply be because the general public knows very little about the Ombudsperson's role or authority in respect of the Law Society. Remedying this may only require facilitating broader public knowledge about the powers of review and oversight the Ombudsperson already has. It is worth noting that the Law Society advises complainants of their right to seek a review through the Ombudsperson's Office once they have exhausted the internal review process available to them through the Law Society's Complainants' Review Committee. Complainants are not advised about the Ombudsperson, however, if the Discipline Committee closes the complaint or if another form of discipline is handed out – for example, a letter, a conduct meeting, or a conduct review.

Another possible, though less likely interpretation of the low numbers of enquiries and complaints the Ombudsperson receives about the Law Society is that a knowledgeable public is generally well satisfied with the job the Law Society is doing in regulating lawyers.

Benefits of the Ombudsperson's Current Oversight Role

If the Benchers conclude that some external oversight of the Law Society's regulatory functions enhances the public's confidence in lawyers and helps to preserve self-governance and the independence of the legal profession, there are a number of advantages to continuing to have the BC Ombudsperson fulfill that role. These include:

1. The Ombudsperson is already statutorily and functionally independent of both the Law Society and government;
2. The Ombudsperson has established credibility and the respect of the public;

¹⁰ See a 1993 paper entitled *Law Societies – Can They Meet the Need of the Public? A Canadian Point of View* by Bryan Ralph, Secretary of the Law Society, as he then was.

3. The Ombudsperson already has jurisdiction and the infrastructure in place to review regulatory decisions made by the Law Society, so there would be no need to “reinvent the wheel”;
4. The Ombudsperson’s current mandate does not include authority to make an Order against the Law Society or enforce any recommendations. This limitation on her authority in respect of the Law Society helps to preserve the important principles underlying lawyer independence and self-governance;

NOTE: Under the existing model, while the Ombudsperson cannot enforce her findings or recommendations, she can publish a report and present it to the Legislature. The policy debates and regulatory changes occurring in other jurisdictions regarding self-governance and self-regulation may now give more weight to any report or recommendations the Ombudsperson might issue against the Law Society, but there are good policy reasons for not having her conclusions bind the Law Society. As has been pointed out by Stephen Owen and others, these include the fact that self governing bodies have statutory mandates and special expertise:

“... given the direct statutory responsibility and the special expertise of the self-governing association, it is perhaps preferable that the conclusions of the external review agency not bind the professional organization, but merely recommend reconsideration along stated grounds.”¹¹

5. The Ombudsperson’s existing mandate is likely broad enough to encompass more than a procedural review should the Benchers decide that a regulatory oversight regime ought to include a substantive review;
6. Costs associated with the Ombudsperson’s current mandate are not borne by the Law Society.

The fact that the Ombudsperson’s Office is an independent review body is an important point. Mr. Kushner, in discussing proposed 2003 *Health Professions Act* amendments that would give the government formal oversight of the health colleges’ operations, observed that the proposed government review and intervention would not be independent. He acknowledged the importance of independent oversight but said that in the absence of sufficient funding for his Office it was no longer possible for him to fulfill that role.

¹¹ See former Ombudsman Stephen Owen’s 1991 Report, and the Ombudsperson’s presentation at the Benchers 2009 Retreat.

In addition to questions concerning adequate funding, there may also be merit in considering how the Law Society might better promote and publicize the Ombudsperson's existing oversight authority, perhaps in conjunction with the Ombudsperson's Office. Educating the public about the review function already performed by the Ombudsperson could enhance the public's confidence in the Law Society's performance as a regulator in the public interest. It might also raise the profile of the Law Society's commitment to the principles of accountability and independence.

If the Benchers decide the Ombudsperson's jurisdiction with respect to the Law Society should be expanded to include authority to issue and enforce Orders, or any other actions not currently provided for in the legislation, an amendment to *The Ombudsperson's Act* would need to be sought.

Possible Limitations of the Ombudsperson's Current Oversight Role

1. Procedural Review vs. Review on the Merits

Preserving the legal profession's independence in today's climate of sweeping regulatory changes elsewhere requires not just maintaining the confidence the public already has in the Law Society but, arguably, improving upon it. External oversight that provides for both procedural and a substantive review of Law Society decisions would likely enhance that confidence, but a review on the merits by an external body other than the courts may not be in the public interest, given the Law Society's specific expertise on the regulatory questions it must decide. Whether the *Ombudsperson's Act* already confers authority to conduct a substantive review is not expressly set out in the *Act*, but in his 1986 Annual Report as Ombudsperson Stephen Owen concluded it was part of his mandate. He noted that the courts have confirmed "...the right of the Ombudsman to review the merits of administrative and quasi-judicial decisions" but urged that "...the authority must be used cautiously if the office is to remain credible" and, further, that "...substitution of the Ombudsperson's opinion...merely on the grounds that, on balance, a different conclusion is reached on the same evidence, may well be irresponsible." Mr. Kushner made a similar point in his Report on self-governance in the health professions. He described his decision not to review complaints on the merits except in rare cases where a college's decision is clearly inconsistent with the evidence before it, choosing instead in most cases "...to focus on the fairness and adequacy of the investigative and review processes used by the college."¹²

These passages suggest that even with jurisdiction to undertake a substantive review, the Ombudsperson was, and is still likely to defer to an authority's expertise on substantive questions. If the Benchers decide that an external regulatory oversight regime should

¹² *Acting in the Public Interest? Self-Governance in the Health Professions: The Ombudsman's Perspective*, Special Report No.24, May 2003 to the Legislative Assembly of British Columbia, at p.10.

include an active role in reviewing decisions on their merits, this aspect of the Ombudsperson's jurisdiction would require further examination and analysis.

2. Lack of Adequate Resources to Ensure Consistent Oversight

As noted, the BC Ombudsperson's Office has encountered difficulties fulfilling its statutory responsibilities in the past because of insufficient resources, with the result that for several years it could not exercise its jurisdiction regarding the self-governing professions. If the Ombudsperson's Office is expected to perform a consistent and meaningful role in overseeing the Law Society's complaints handling or other regulatory processes, it is critical the Office has sufficient and ongoing resources to enable it to respond to and, where appropriate, investigate enquiries and requests for a review.

What the role of the Law Society should be, if any, in ensuring that the Ombudsperson's Office has the resources it needs to fulfill its mandate would need to be discussed by the Benchers. Sources of funding can affect the oversight body's functional independence as well as public perception of the degree of independence the oversight body has from the entity it is intended to oversee. These are important factors to consider were the Benchers to decide that the Law Society should provide some operational funding to an independent oversight body.

3. The Ombudsperson is a Creature of the Legislature

Although the Ombudsperson's Office operates independently from government, it is the Legislature that makes the appointment. If an entity created by the Legislature performs an oversight role that is actually within the jurisdiction of the courts, does this result in an infringement of a functional separation of powers?

MODEL 2:

VOLUNTARY EXTERNAL REVIEW

General Description of the Model

Some Canadian law societies, and international lawyers' bodies, such as the Bar Standards Board in England and Wales, have voluntarily appointed independent observers or complaints commissioners to review the handling of complaints against lawyers or, in the case of the Bar Standards Board, "...to check all aspects of the system to ensure that it is operating in line with agreed objectives and procedures." Because these appointments are external to an agency, intended to be independent, and made voluntarily, they are seen as being good for the credibility of an organization. They can also assist an organization in looking at its processes through a fresh set of eyes.¹³

¹³ *Supra*, p. 2 of Lucas memorandum August 18, 2009.

Details of two different voluntary external review models are included at the end of this section, as is a description of the Ontario Complaints Commissioner, which is a legislatively mandated position.

Policy Objectives Served by a Voluntary External Review Process

The public in BC might be equally well served by the voluntary introduction of an independent Complaints Commissioner or similar position. Depending on its design, this model could support accountability and give the public and any other third parties some assurance that the Law Society is performing its regulatory responsibilities fairly and effectively in the public interest. By voluntarily introducing an external review regime, the Law Society would make a strong statement about its commitment to its public interest mandate. The objectives of accountability and lawyer independence could both be met, provided a model is designed that satisfactorily addresses issues of functional independence. This is where some of the biggest challenges lie because without it the fundamental principle of an independent legal profession may well be compromised. State-appointed complaints commissioner models in some commonwealth jurisdictions do not appear to be independent from government. Consideration would therefore need to be given to, among other things, sources for funding the position, and the processes utilized for selecting, appointing, compensating and removing an individual or board.

Benefits of a Voluntary External Review Process

As with the Ombudsperson model of oversight, and for the reasons already outlined, public confidence could be fostered and enhanced through knowing that the Law Society's regulatory decisions were subject to review by an independent entity. Lawyers, too, could benefit from such a voluntary external review process because it could provide them with an independent review of Law Society regulatory decisions that affect them directly.

Limitations of a Voluntary External Review Process

- There are structural challenges associated with developing a model that, in perception and reality, is truly independent;
- There can be significant costs associated with the position or process, and issues of funding would have to be determined;
- The Law Society would have to expend staff and financial resources to develop and implement such a model from scratch.
- The review jurisdiction of the Manitoba Complaints Commissioner is substantially narrower than the BC Ombudsperson's current jurisdiction. The Complaints Commissioner is only able to review a decision not to investigate a complaint. The Ontario Complaints Commissioner has broader review powers but these do not include being able to assist the Law Society with its "best practices".

While a voluntary external review process, such as the Independent Observer in the UK or the Complaints Commissioner in Manitoba (described below), would not require any legislative amendments, implementing a similar scheme in BC would require a careful analysis of funding sources, and policies for hiring, compensation, and termination.

If the Benchers determine that an external review process similar to the Legal Complaints Commissioner in Ontario should be introduced in BC, amendments to the *Legal Profession Act* would have to be made.

Examples from other Jurisdictions of a Voluntary External Review

1. *Independent Observer - Bar Standards Board UK*

The creation by the Bar Standards Board of the position of an Independent Observer is of interest because it is an example, albeit still a rather vague one, of an external oversight model that was voluntarily introduced by the regulatory body for barristers in the UK as an attempt to improve the public's confidence in how barristers are regulated. It has been introduced at a time when self-governance by the legal profession and the Law Society's handling of complaints against lawyers is under significant scrutiny.

The Bar Standards Board introduced the position in the spring of 2009 with a mandate to "...check all aspects of the system to ensure that it is operating in line with the agreed objectives and procedures".¹⁴ The individual currently appointed to the position is an accountant with a background in audit, investigations, corporate finance, systems analysis, risk control, strategic planning and governance.¹⁵ It appears that his specific mandate is still rather ambiguous as it is not entirely clear from the available materials what it actually entails. The position is described as independent of anyone making a complaint, independent of the complaints process itself, and it is expected to operate independently of the Bar Standards Board. His salary is paid by the Bar Standards Board. According to information available on the official website, the Independent Observer's work plan will be based on what he alone considers necessary to review, without any input from the Bar Standards Board or the public. It remains to be seen what the relationship will be between the Independent Observer and the UK's Legal Services Board's Legal Ombudsman.

2. *Law Society of Upper Canada's Complaints Resolution Commissioner*

The Law Society in Ontario has had a Complaints Resolution Commissioner in place since 2005. The Commissioner is appointed under the *Law Society Act*. The provisions relating to the position are contained in sections 49.14 to 49.19 of the *Act*, and Part 1 of

¹⁴ <http://www.barstandardsboard.org.uk/>

¹⁵ The current Independent Observer is Alan Baines.

By-Law 11.¹⁶ Mr. Clare Lewis held the position from 2005 to 2010, and was the first appointed Commissioner. In December 2009, the LSUC appointed Mr. Stindar K. Lal, Q.C. to a two year term starting April 1, 2010.¹⁷

In practice, when the LSUC decides to close a complaints file, a letter is sent to the complainant explaining the reason for the closure and an information sheet about the Complaints Resolution Commissioner is included with the letter.¹⁸ If a complainant is dissatisfied with a Law Society decision on his complaint and requests a review, the file is sent to the Commissioner's office. The Commissioner may decide to review the procedure followed by the investigator as well as all the material in the file to determine whether the outcome is reasonable. A decision to close a complaint is considered unreasonable if there is no line of analysis within the given reasons that could reasonably lead the Law Society, based on the evidence before it, to arrive at its decision.

If the Commissioner finds LSUC's decision reasonable, the file remains closed. The Commissioner informs the complainant and LSUC of his decision and there is no appeal. If the Commissioner considers LSUC's outcome was not reasonable, the file is sent back to the Law Society with a recommendation to investigate further, and the complainant is also informed. LSUC is not bound by the Commissioner's recommendations but it may decide to follow them and conduct a further investigation. If, after completing a further investigation, the LSUC closes the file again, the decision is final and not subject to further review by the Commissioner.

3. *The Law Society of Manitoba's Complaints Commissioner*

A Complaints Commissioner has been in place in Manitoba since 1994. The concept was introduced by the Law Society in the 1990s as a result of a Bencher review of their discipline processes, but it is not mandated by statute. The position is occupied by a non-lawyer who functions independently of the Law Society and is paid an honorarium of a few thousand dollars a year. The Law Society provides an office and some administrative support. Law Society Rules 5-62 and 5-63¹⁹ set out the current process for review, which is quite limited. The Complaints Commissioner can review a decision of Law Society staff not to investigate a complaint either on the basis it does not merit investigation or because it falls outside the jurisdiction of the Society. The Commissioner can do only one of two things: either confirm the decision by the Law Society not to investigate, or direct that an investigation be commenced. If he directs the commencement of an investigation, a copy of the original letter of complaint is sent to the

¹⁶ Attached as Appendix 4.

¹⁷ See news release, attached as Appendix 5.

¹⁸ Attached as Appendix 6.

¹⁹ Attached as Appendix 7.

lawyer who is the subject of the complaint and the lawyer is required to respond to the complaint in writing. The complainant will usually receive a copy of the lawyer's written response. There are no reviews or appeals available once the Commissioner has made a decision.

The Law Society receives approximately 100 complaints a year where the Law Society either has no jurisdiction or determines the complaint is without merit. Approximately 25-30 complainants per year seek a review from the Complaints Commissioner.

According to the Law Society of Manitoba, the current process is in a state of flux. The Law Society was expected to implement some changes this fall and they have advised us that the new process will expand the types of matters the Complaints Commissioner can consider. The reason for expanding the Complaints Commissioner's role is to be proactive in regulating in the public interest and preemptive in protecting the right to self-governance. The Law Society of Manitoba emphasized that they have a good working relationship with the Attorney General and there have been no indications from him that the Law Society is not doing a good job regulating lawyers in that province.

Some elements of the proposed expansion of the Commissioner's role include:

- Any decision that does not go to "charging" will now be reviewable by the Commissioner on the request of a complainant;
- The authority to review a question of jurisdiction will be taken out of his mandate because of difficulties that can arise when the Law Society says it has jurisdiction and the Commission determines it does not;
- The new process will be for complaints only, not for discipline decisions, and the Commissioner will either confirm or disagree with the Law Society's decision. Essentially, the Commissioner will be determining whether the Law Society got it "right", or "wrong". This means that the Commissioner will be able to conduct a review on the merits if he determines it is necessary;
- He will have independent legal counsel available to assist him as needed; his office will be provided by the Law Society but it will not be in the same building; and
- He will be paid a larger honorarium as his workload is expected to increase.

MODEL 3:

PERFORMANCE AUDIT OR PEER REVIEW OF BEST PRACTICES

General Description of the Model

In the health care context, external peer review systems aim to address quality issues in the delivery and management of service provision through a standardized evaluation process. These are sometimes provided by a panel of independent reviewers who can provide an unbiased expert review of service delivery, or through a best practices evaluation that functions basically as an organizational audit. The focus of a review is to

ensure that good organizational models are in place to deliver quality services, and it can often include an accreditation or certification aspect. The ISO 9000 series of standards, which were developed by the International Organization for Standardization (“ISO”), are some of the best known in the health care sector. Arguments have been made both in support of, and against the use of external peer review and accreditation in health care: for example, some countries in the European Union have opted instead to make clinicians more aware of quality issues and problems rather than legislating the use of a particular external peer review system.

Examples of the Model

Examples of independent performance audits are also found in the accounting profession and in government. For example, in 2006 Scotland undertook an independent review into the regulation, audit, inspection and complaints handling of public services in Scotland, with the objective of improving, through external scrutiny, the way these bodies operated.

A Canadian example in the accounting profession is the creation in 2003 of the Canadian Public Accountability Board (CPAB), a national agency responsible for the oversight of public accounting firms that audit Canadian reporting issuers.²⁰ It was created by the provincial securities commissions, the Federal Superintendent of Financial Institutions and the Canadian Institute of Chartered Accountants. CPAB’s mandate is to foster confidence in the integrity of financial reporting by Canadian reporting issuers and it acts independently and transparently to achieve this objective.²¹ CPAB conducts inspections of the accounting firms over which it has oversight responsibility by reviewing a firm’s policies and procedures in a number of areas and testing the firm’s compliance with these policies and with audit and accounting standards established by external professional bodies. At the conclusion of a review, CPAB sets out a number of recommendations for the firm. The firm is required to implement the recommendations if it wishes to retain its registration status. If CPAB is not satisfied with the results of its audit, it may also place a restriction, sanction or requirement on the firm.

Many Canadian law schools also participate in a peer review process.

In the context of the Law Society, it would be necessary to detail its processes, procedures, and outcomes before an organizational audit could be undertaken to evaluate against a set of best practices. To maximize the independent oversight aspect of the model and foster confidence in the Law Society’s regulatory performance, the evaluation itself should be performed by an independent reviewer, perhaps similar to the Independent Observer model. Peer review by other law societies is another alternative, although this would be seen as less independent in the public eye.

²⁰ See p.1 of the Statement of Accountability and Governance Practices, CPAB website.

²¹ *Id.*

Limitations of a Performance Audit or Peer Review of Best Practices

- An external scrutiny system may be unnecessarily complex or lack a means of evaluating the impact of the review on service delivery.
- The public's voice may not be sufficiently represented in a performance audit or peer review of best practices.
- It would not likely include a review of individual service concerns and complaints handling.
- Depending on the model chosen, it may not be as effective as some of the other proposed models in meeting the objectives of accountability and enhancing the public's confidence in how the Law Society conducts its core regulatory functions.
- Certification or accreditation outcomes may not be the best model for a regulatory body such as the Law Society.
- There may be significant costs associated with the process, for which the Law Society would be responsible.
- If the preferred approach is to develop national standards, it may be difficult to achieve consensus among the law societies, given their differences, and keeping in mind that Quebec already has a legislated standards body.

Another consideration is whether this process would differ substantially from the Law Society's core process review currently underway, or from the Key Performance Measures, which are intended to make it possible for the public to determine whether the Law Society is doing a good job in regulating lawyers. Would it be an unnecessary duplication?

Benefits of a Performance Audit or Peer Review of Best Practices

- It creates an external review mechanism for core functions through which public confidence can be improved.
- A national approach to best practices and performance audits could provide law societies throughout Canada with a standardized and uniform approach for evaluating their organizational processes.
- Regular performance audits should provide a clearer analysis of where systemic problems arise with regulatory processes and practices, and offer law societies useful information about how to improve them.

CONCLUSION AND RECOMMENDATION

The primary public interest benefit served by having the Law Society's regulatory decision making processes overseen by an independent entity is that it ensures accountability. Accountability in turn can help foster and enhance public confidence in the Law Society's performance of its regulatory functions, thus providing important support for the principle of lawyer independence and self governance. It is, however, of crucial importance that the latter principle – self-governance – is not compromised or lost through any oversight mechanism that is developed.

Of the three models for regulatory oversight discussed in this paper, the Executive Committee has concluded that Model 3 – a performance audit or review of best practices – is the preferred model. The Committee believes that the Ombudsperson model is better suited to investigations about individual complaints than to reviewing standards and best practices. The Committee was also concerned that having the Ombudsperson's Office perform regulatory oversight raises issues of independence and self-governance because the Ombudsperson is appointed by the Legislature. Furthermore, the Ombudsperson's Office appears to have insufficient resources to undertake any additional responsibilities. The Committee thinks there is considerable merit, however, in enhancing the Law Society's public communications to complainants and others about the Ombudsperson's existing powers of oversight in reviewing the Law Society's handling of complaints against lawyers.

The Executive Committee is of the view that any performance audit and review of best practices should be conducted by an independent panel, and that the standards against which the Law Society's regulatory performance would be measured must improve the public's confidence about how lawyers are regulated while still protecting the important principles of independence and self-governance. Essentially, this model has three main components: determining the appropriate standards that a law society would be expected to meet; how and by whom compliance would be monitored; and developing a set of best practices guidelines. Careful thought would need to be given to how the review and audit process would be conducted, and by whom. The Committee does not favour a peer review model because a review conducted by other law societies or only lawyers would not be perceived to be independent.

The Executive Committee considered whether the Federation of Law Societies should be approached to develop national standards and best practices guidelines. The Federation is already doing important work on national standards through its work on the model Code, on admissions standards and a Canadian common law degree, and on discipline and complaints handling through its National Discipline Standards Steering Committee. While the Executive Committee believes that a national approach is preferable and that the Federation is the best body to establish a framework for creating national standards and an independent review and performance audit of Canadian law societies' processes and practices, including a set of best practices guidelines, some of the disadvantages to having the Federation undertake this work include the length of time it would likely take

to complete the project, possible delays due to funding or resource issues, and difficulties in achieving national consensus.

The Executive Committee also discussed, as an alternative to the development of a national program, whether the western law societies might consider taking a regional approach instead.

The Executive Committee concluded that the Law Society of British Columbia should take a leadership role in developing a framework for the model described as Option 3, and that it be introduced first at the local level and then brought to the Federation at some future date.

The Executive Committee recommends a two-pronged strategy for improving the public's confidence in how lawyers are regulated in British Columbia:

- 1. The Law Society of BC should begin work on developing an oversight framework for British Columbia that is based on a performance audit and review of best practices model.**
- 2. The Law Society of BC should enhance its communications with the public about the important role the Office of the BC Ombudsperson plays in reviewing the Law Society's handling of complaints against lawyers.**

NEXT STEPS

If the Benchers agree with the Executive Committee's recommendation that a performance audit or review of best practices is the preferred model for regulatory oversight, and agrees that the Law Society of BC should begin developing a framework for the model in British Columbia, consideration will need to be given to how this project fits within the current Strategic Plan, whether it is to be included in the 2012-2015 Strategic Plan, and the staff and other resources that will be needed to undertake the project.

If the Benchers decide the Law Society should continue to examine the other models presented in this paper or the topic of independent regulatory oversight more generally, a Task Force with a suitable mandate to undertake this work should be established.

To Independence and Self-Governance Committee

From Michael Lucas

Date May 11, 2009

APPENDIX 1(A)

Subject **Bencher Retreat: Oversight of Regulation and Self-governance**

The topic of the upcoming Bencher Retreat focuses on regulatory oversight. The benchers will hear from various quarters about different regulatory systems wherein the regulating body is overseen, to some degree, by another body. Some examples will include an explanation of the system of professional regulation in Quebec, where all the professional “orders” are overseen by the Office des Professions. The benchers will also hear about regulatory systems in the United States where oversight of lawyer regulation is done by the Courts. Information will also be presented by, and a discussion will be had with, the Ombudsman’s office in British Columbia. This province is the only common law province where the Ombudsman has some oversight role of the legal profession. As this Committee knows, that role does not include any order-making function. To that end, I found a paper written by the Law Society’s Secretary, Brian Ralph, QC as he then was, explaining *inter alia* the Ombudsman’s role in connection with the independence of the legal profession that I thought might be of interest.

Committee members are also, of course, at least somewhat familiar with systems of oversight of lawyer regulatory processes in England (where responsibility now ultimately lies with the Legal Services Board as a consequence of the *Legal Services Act 2007*), New Zealand (through the Legal Complaints Review Officer and the Lawyers and Conveyancers Disciplinary Tribunal as a consequence of the *Lawyers and Conveyancers Act, 2008*), as well as some of the Australian states such as New South Wales where the Office of the Legal Services Commission (OLSC) oversees the investigation of complaints about the conduct of practitioners and works as part of a co-regulatory system, together with the Law Society of New South Wales, and where the separate Administrative Decisions Tribunal, whose members are appointed by government, hears discipline matters concerning members of that Law Society.

As part of the retreat preparation, Ms. Lindsay was asked to draft some questions that could be raised for discussion purposes relating to examining the self-governance aspect of lawyer regulation. Ms. Lindsay has prepared six questions, which she would like this Committee to consider in advance of the Retreat to help inform the debate. A few thoughts in connection with the questions are included. The questions are:

1. If one of the most common complaints about lawyers relates to fees, can the Law Society, as a self-regulating body, justify the fact that it generally does not investigate fee complaints, but rather refers the complainant to the Registrar’s fee review processes?

This raises the question of effective regulation as a necessary condition of self-governance. Is the Law Society's mandate to self-regulate affected if one of the issues that generates a considerable number of complaints to the Law Society is one that the Law Society routinely refers to another body to address through an adversarial process that will quite often require the complainant to have to at least consider retaining another lawyer to help him or her through the process?

In the past, the Law Society has made some effort at creating fee mediation programs, and one currently operates with some recent success after many years of lassitude. These, however, have always been voluntary. While complainants may have expressed interest in participating in them, lawyers have generally not, preferring the Registrar's process which has processes to enforce orders.

2. Is self-adjudication a necessary part of self-regulation?

This question raises for debate the issues concerning whether there should be a separation between the adjudicative and investigative functions of the Law Society. Could self-regulation persist if benchers made rules and investigated complaints (thereby discharging a pure *regulatory* function), but permitted others to determine whether the rules were breached and what sanction was appropriate?

3. How can the Law Society create a better public profile of the role it plays and the work it does?

Mr. Turriff has spent a considerable amount of time travelling around the Province speaking to groups about the role of the Law Society and the importance of that role in the protection of important public rights relating to the proper administration of justice. Trudi Brown, QC, when she was Treasurer in 1998, spent time on various radio talk-shows delivering a similar message and taking calls from listeners who had questions about the Law Society processes. Perhaps coincidentally, the Law Society received a record number of complaints in 1998. The Law Society has, over the past two years, also run various public forums on specific issues relating to the justice system which have been relatively well attended and have received generally positive reviews. What else can or should be done to communicate a somewhat complicated but nonetheless important message to a population who may not be much interested in the topic – at least in the general, academic sense?

4. Is self-regulation a right or a privilege?

This is a delicate question. If self-regulation is a necessary condition to lawyer independence, and if lawyer independence, like judicial independence, is an unwritten constitutional principle, how can self-regulation be but a privilege? On the other hand, if there is another manner of regulation that preserves lawyer independence as effectively as self-regulation, then perhaps self-regulation may be a privilege, not a right. Perhaps one could view the issue differently by saying that self-regulation is an *obligation* or a responsibility.

5. Is the question of who should regulate lawyers really a function of who should *pay* to regulate lawyers?

Would the question of who funds regulatory programs be relevant should the government ever give serious consideration to changing the current regulatory model? Is the fact that the profession currently bears all the costs of regulating itself enough justification to encourage the government to permit continued self-regulation? What if the profession were to limit the costs of regulation?

6. Should the Law Society play a larger role in pre-call legal education?

Does self-regulation justify, or require, involvement in determining who is eligible to attend law school or what courses of study should be undertaken prior to call to the bar? Do the educational commitments, both in time and money, undertaken by applicants in any way influence the Law Society into approving admissions of applicants where the test under s. 19 of the *Legal Profession Act* may otherwise raise some questions? Does the Law Society use the bachelor of laws degree as the requirement for academic qualifications only because the Law Society has created no alternative?

To The Executive Committee

From Michael Lucas

Date August 18, 2009

APPENDIX 1(B)

Subject **Regulatory Oversight - Options, Process and Proposed Timeline**

A significant focus of the discussion at the last Benchers Retreat was on the topic of regulatory oversight. The Benchers heard from the Law Society's government relations advisors, the Ombudsman's office, the Washington State Bar Association, and speakers from the Federation of Law Societies discussing the model of accountability in Quebec, as well as about discussions that have taken place at a national level about whether, or how, law societies can demonstrate public accountability, and on what basis that public accountability should be premised.

At the June Executive Committee meeting, the Committee asked for a proposal by which the discussion on this topic could be advanced. This memorandum outlines, in a general fashion, the options that might be considered in connection with this issue, together with a process and timeline by which those options might be considered.

OPTIONS

A review of my notes from the Retreat suggests that a number of options for consideration are available.

1. Do Nothing More Than is Currently Undertaken

The Law Society has already developed key performance measures by which its accountability can be measured, and nothing more need be done.

2. Promote or Recommend Enhancements to the Ombudsman's Current Powers of Review in Connection with Law Society Processes and Decisions

As will be recalled, the Ombudsman currently has jurisdiction to review Law Society decisions and processes. The mandate of the Ombudsman in connection with self-regulating organizations and does not appear to be widely understood, however.

Is there scope for enhancing the role of the Ombudsman, a statutory office of the legislature, and an impartial independent investigator of complaints concerning public bodies? Would this be a viable method to ensure the preservation of self regulation through public accountability without the need to develop new oversight bodies or governance structures?

Alternatively, is there value for the Law Society, as a professional self-regulating body, to the possible availability of some scope of external review of decisions made by the Society by an independent officer of the legislature in connection with public complaints? Would the availability of the Ombudsman to review Law Society processes from time to time assist the Law Society in demonstrating its commitment to protecting the public interest?

3. Developing a Quebec-like Model of Regulatory Oversight

As will be recalled, the Office des Professions in Quebec is a government-appointed body that oversees the activities of the self-regulating bodies in that province. In Quebec, there is one framework legislation for all the self-regulated professions that is aimed at balancing the independence of the professions through self-regulation against a system of accountability and the ability of government to monitor the performance of the professions. The Office is required to make sure that all professions in Quebec comply with their statutory obligations under the Professional Code and thereby protect the public interest.

The disciplinary function of the Barreau in Quebec, operated through the Office of the Syndic, must be kept at arm's length from the regulatory body itself, and the Syndic exercises his or her functions independently of the Barreau. While on its face the structure of the Quebec system would seem to interfere significantly with the independence of a self-regulating body, M. Rivard expressed his view that the Office des Professions was an effective insulator from arbitrary government action.

4. Other Models

At the Benchers Retreat, information on the relatively recent changes to the self-regulation of legal professions in New Zealand and Ireland was presented, each of which have created a Legal Services Ombudsman or Review Officer.

5. Voluntary External Review

Also presented in the information attached with the Benchers Retreat materials was a brief outline of recent efforts by the Bar Standards Board in England and Wales concerning the voluntary appointment of an independent observer by that body whose role is to "check all aspects of the system to ensure that it is operating in line with the agreed objectives and procedures". As stated in the materials, the Bar Standards Board considers that the appointment of the independent observer, which is not legislatively mandated, will be good for the credibility of the organization, but will more importantly assist the Bar Standards Board in looking at its processes through a fresh set of eyes.

6. Court Oversight

At the Benchers Retreat, the Benchers heard about the regulatory processes and oversight mechanisms in Washington State where lawyers are ultimately subject to regulation by the Courts, with investigative functions and "minor" discipline carried out largely through the Bar Association. Variations of this model are common in the United States.

PROCESS AND TIMELINES

The options outlined above are simply those that were raised, considered and/or discussed at the recent Benchers Retreat. Each option obviously encompasses a considerable number of issues that should be the subject of a considered policy analysis and debate by the Benchers before any consideration is given to implementation. It is quite obvious, for example, that changes incorporating many of the options above (particularly options 3 through 6) would embark on a significant change in the manner by which the legal profession in British Columbia is regulated.

Consideration of the options through a two-staged process may be considered advisable for this issue. A two-staged process was used with some success in the recent past when developing the Continuing Professional Development program.

The first stage of the process would aim to have a preliminary policy analysis of the options prepared by the Policy Department and presented for discussion at the November Benchers' meeting. This discussion paper would, aside from defining the issues, examine the policy objectives to be served by the options and analyse the options, including their program effectiveness, how the public interest and member interest is affected, government and public relations considerations, as well as legal consequences and financial implications.

At the November meeting, the Benchers could then consider and debate the options as presented and make recommendations concerning further development of particular options (the second stage of the process), with a view to receiving a more detailed analyses of particular options at a meeting in early 2010. At that meeting, a resolution could be proposed about proceeding with a particular option for implementation.

The Executive Committee may wish to consider whether the appointment of a task force or working group of Benchers would assist in the development of the options. The CPD process, of course, benefited from the Lawyer Education Task Force's, and later the Lawyer Education Advisory Committee's, deliberations and discussions concerning recommendations for and development of options concerning the program.

APPENDIX 2

England and Wales

Responsibility for the regulatory oversight of lawyers now lies with the national Legal Services Board, created under the 2007 *Legal Services Act*. Its stated goal is to “...reform and modernize the legal services marketplace by putting the interests of consumers at the heart of the system, reflecting the objectives of the statute...”. The regulatory objectives¹ of the *Act* are to:

- Protect and promote the public interest;
- Support the constitutional principle of the rule of law;
- Improve access to justice;
- Protect and promote the interests of consumers;
- Promote competition in the provision of services in the legal sector;
- Encourage an independent, strong, diverse and effective legal profession;
- Increase public understanding of citizens’ legal rights and duties;
- Promote and maintain adherence to the professional principles of independence and integrity; proper standards of work; observing the best interest of the client and the duty to the court; and maintaining client confidentiality.

The Legal Services Board describes itself as an independent² oversight regulator that shares its regulatory objectives with, and oversees, eight separate bodies named as Approved Regulators under the *Legal Services Act*. Each Approved Regulator has direct regulatory responsibility for the day to day regulation of a category of lawyer. Together, the eight bodies directly regulate approximately 130,000 lawyers practising in England and Wales (16,000 barristers, 112,000 solicitors, and 12,000 individuals operating in other aspects of the legal profession). Approved Regulators include, among others, the Law Society’s Legal Complaints Service (its complaints-handling body), the Bar Standards Board (the regulatory arm of the Bar Council for barristers), the Solicitors Regulation Authority (also a regulatory body of the Law Society), as well as regulatory bodies for licensed conveyancers, legal executives, patent and trademark attorneys, law costs draftsmen, and notaries.

The Legal Services Board currently consists of nine members. Its Chair, David Edmonds, was appointed as the inaugural Chairman on May 1, 2008. The appointment was made by the Lord Chancellor and Justice Secretary, Jack Straw, after consultation

¹ See www.legalservicesboard.org.uk.

² “Independent of Government and of the legal profession”: see “About us” at the Legal Services Board website.

with the Lord Chief Justice. The Board became operational on January 1, 2010. According to its website, its responsibilities are to ensure the highest standards of competence, conduct and service in the legal profession. It is responsible for appointing and overseeing a new organization, the Office for Legal Complaints (the “OLC”). It calls for the appointment of a legal Ombudsman to deal with consumers’ complaints about a full range of legal services. The OLC was created under the 2007 *Legal Services Act* to administer the ombudsman scheme, and is expected to be fully operational by the end of 2010.

The Legal Ombudsman/OLC has produced a business plan for 2010 (available on their website)³ which gives some insight into how it expects to operate. Details are still being finalized about when and how responsibility for complaints handling will pass from existing providers to the Ombudsman⁴, but the Plan assumes there will be a significant increase in the number of complaints about lawyers – in part, it says, because of the publicity the new regime will generate, and also because of an expected increase in awareness and consumer confidence that will result in more complaints being raised by consumers about the poor service they have received from lawyers.

The Legal Ombudsman has authority, among other things, to facilitate informal settlement, make binding decisions (with consumer agreement) not subject to further appeal, enforce redress through the courts, and involve authorized regulators where a lawyer has failed to provide redress. It is interesting to note that the full cost of the OLC is expected to be recovered through a combination of a levy on the legal profession to pay for both the OLC and the Legal Services Board, and fees charged to lawyers for dealing with individual complaints once the Ombudsman scheme is operational. The *Legal Services Act* also provides for the possibility of government funding.

A further dimension to this already rather complex regulatory scheme was added in 2009 when the Bar Standards Board created the position of an Independent Observer. Although the role is not mandated under the *Legal Services Act*, the Bar Standards Board reasoned that creating the new position would be good for its credibility and would assist it in looking at its processes through a fresh set of eyes.⁵ The position is said to operate independently of the Bar Standards Board (although the position’s salary is paid by them), be independent of anyone making a complaint, and independent of the complaints process itself. The Independent Observer’s work plan will be based on what he alone considers necessary to review, without input from the Bar Standards Board or the public. It remains to be seen what the relationship between the BSB’s Independent Observer and the Legal Services Board’s Legal Ombudsman will be.

³ See www.legalombudsman.org.uk.

⁴ See Business Plan 2010 Legal Ombudsman, available on the website.

⁵ See M. Lucas’s memo to the Benchers dated May 26, 2009, entitled *Oversight of Regulatory Processes from Selected Jurisdictions*.

This brief overview of the regulatory regimes in England and Wales suggests that while the intention may have been to create only one oversight regulator for the legal profession (the Legal Services Board), there are still many steps and agencies involved that have a regulatory role along the way. This could prove confusing to the public and to an individual complainant and may delay a satisfactory and timely resolution of complaints, thereby undermining the intended outcome of the reforms – enhancing public confidence in how lawyers are regulated. Equally important, concerns remain that the reforms have undermined the principle of, and the public’s right to an independent legal profession.

Australia

During the 1990s, various governments and the legal profession began discussions about the need to change the regulatory approaches which had developed within the State and Territorial jurisdictions of Australia. In an address given in 2007, Mr. Bugg, President of the Law Council of Australia at the time, identified several drivers of the need for change. These included:

- a public policy embracing the concepts of open markets and competition;
- a demand for a national legal services market to meet the needs of consumers who themselves operated on a national or interstate basis;
- a growth in demand for international legal services to underpin businesses operating globally; and
- globalization of legal practice and internationalization of the law.

Regulatory changes have since been made in a number of Australian states and territories. Each state and territory has a complaints handling body that the public can contact about legal professionals, but they vary from state and territory. A detailed description of the different regulatory schemes in Australia can be found at:

http://www.lawlink.nsw.gov.au/lawlink/olsc/11_olsc.nsf/pages/lra_complaints.

The following is a summary of some of them.

Victoria

Complaints against lawyers are now made to a Legal Services Commissioner. The Commission’s website describes its office as an independent agency that works with the legal profession and consumers of legal services to improve standards and increase awareness of lawyers’ obligations to their clients.⁶ The statutory objectives of the Legal Services Commissioner are to ensure that complaints against legal practitioners and disputes between law practices or legal practitioners and clients are dealt with in a timely and effective manner, educate the legal profession about issues of concern to the

⁶ See <http://www.lsc.vic.gov.au/>

profession and to consumers of legal services, and educate the community about legal issues and the rights and obligations that flow from the client-practitioner relationship. The Commissioner is appointed by the Attorney General.

Queensland

Complaints against lawyers in Queensland are made to a Legal Services Commissioner, whose office was established in 2007. The Office describes itself as an independent statutory body whose core business is, among other things, to receive and deal with complaints about lawyers, initiate investigations when it suspects lawyers have acted improperly, and initiate disciplinary or other regulatory action as appropriate. The Commission's two fundamental purposes are to protect the rights of legal consumers and to promote high standards of conduct in the delivery of legal services.⁷ The Commissioner is appointed by the Attorney General.

By amendments to the *Legal Profession Act 2007*, Queensland created the Civil and Administrative Tribunal ("QCAT"), which commenced its work on December 1, 2009. It has jurisdiction to hear and decide discipline applications lodged with it by the Commissioner, notably the more serious cases that could result in a lawyer's disbarment.

The President of QCAT is a Judge of the Supreme Court. Two panels appointed by the Governor-in-Council help QCAT to decide discipline applications: a lay panel and a practitioner panel. The lay panel consists of people who are not legal practitioners but who have a high level of experience and knowledge of consumer protection, business, public administration or another relevant area. The practitioner panel is made up of solicitors and barristers with at least five years experience. One member of each panel sits with QCAT to help hear and decide a case. Parties dissatisfied with a decision of the tribunal can appeal to the Court of Appeal.

Tasmania

Until recently, the Legal Ombudsman monitored the Law Society's handling of complaints against legal practitioners, reviewed the manner in which complaints had been investigated, and brought a community perspective to the complaints handling process. The Ombudsman was appointed by the Attorney General. The handling of complaints has now transferred, under the *Legal Profession Act 2007*, to the Legal Profession Board of Tasmania. The Board is a separate entity established under the 2007 Act and its members are appointed by the Minister for Justice, after receiving nominations from the Law Society and the bar associations for three of the appointments. The Board has jurisdiction to deal with less serious complaints. The more serious ones where the alleged conduct may amount to professional misconduct, must be referred to the Disciplinary Tribunal or the Supreme Court.

⁷ See the Commission's website at www.lsc.qld.gov.au

New South Wales

Complaints about lawyers are now made to the Legal Services Commissioner. The Legal Services Commissioner reports to Parliament through the Attorney General. The Office functions as a co-regulator with the Law Society of New South Wales (the professional body for solicitors) and the NSW Bar Association (the professional body for barristers) to resolve disputes and investigate complaints about professional conduct.⁸ Its stated mission includes, among other objectives, encouraging an improved consumer focus within the profession to reduce causes for complaint, and promoting realistic community expectations of the legal system.

South Australia

Complaints against lawyers in South Australia are heard by the Legal Practitioners Conduct Board, a statutory authority that handles the complaints process in its entirety. The Law Society of South Australia does not investigate complaints. The Board was set up under the *Legal Practitioners Act 1981* and comprises seven members: four lawyers and three lay persons. The Attorney General nominates three and the Law Society nominates four individuals. It is funded by the Guarantee Fund which is a fund maintained by the Law Society of South Australia and consists of a proportion of interest earned from deposits in the combined trust account; money recovered by the Law Society in relation to claims against the Guarantee Fund; prescribed proportion of fees paid by lawyers for their Practising Certificates or for interstate practitioners setting up office in this state; and in addition to certain costs recovered and any fees paid to the Board. No payment can be made from the Guarantee Fund except with the authorization of the Attorney-General.

Western Australia

The Legal Practice Board has statutory responsibility for the admission, supervision and discipline (through the Legal Profession Complaints Committee) of all legal practitioners in Western Australia. It also regulates the issue of annual practice certificates and administers the Articles Training Program and the law libraries at the Supreme and Central Law Courts. Appointments consist of a chairperson, not less than 6 other legal practitioners appointed by the Legal Practice Board from amongst its members, and not less than 2 lay representatives of the community appointed by the Attorney General after consultation with the Minister responsible for consumer affairs.

Northern Territory

The Legal Practitioners Act (NT) provides that the Law Society is the first tier of a three tiered system of regulation of the legal profession, comprised of the Law Society, the Legal Practitioners' Complaints Committee and the Supreme Court. The Society

⁸ See Office of the Legal Services Commissioner at www.lawlink.nsw.gov.au/lawlink/olsc/ll_olsc.nsf/pages/OLSC_aboutus

assesses and/or investigates complaints and refers serious matters to the Legal Practitioners' Complaints Committee.

National Law Council of Australia

Early 2009, the Council of Australian Governments (COAG) agreed that further work needed to be done to nationalize regulation of the legal profession in Australia. Its view was that "...although improvements have been made in recent years, regulation of the legal profession remains overly complex and inconsistent with each State and Territory applying different sets of rules."⁹ A Task Force was established in April 2009 to prepare nationally uniform legislation and to recommend regulatory structures to achieve uniformity of regulatory practice. In 2009, the Law Council of Australia (the national representative body of the legal profession representing approximately 56,000 lawyers) prepared a paper¹⁰ articulating a framework for a new, national model for regulating the legal profession. The paper was prepared in response to the National Legal Profession Reform Project, an initiative developed by the Council of Australian Governments to "harmonize" regulatory processes across the country. **At its meeting in April 2010, the Council of Australian Governments agreed to release for public consultation a draft national law for uniform national regulation of the legal profession. The consultation period will open on 14 May 2010 and close 13 August 2010.**¹¹ Details can be found on their website.

New Zealand

New Zealand introduced legislation in 2008 establishing the position of a Legal Complaints Review Officer (the "LCRO"), as well as the New Zealand Lawyers and Conveyancers' Disciplinary Tribunal. The new legislation requires the New Zealand Law Society to establish a Standards Committee with responsibilities to inquire into and investigate complaints against lawyers; promote the resolution of complaints by negotiation, conciliation, or mediation; investigate on its own motion any matter that appears to indicate misconduct or unsatisfactory conduct by a practitioner; intervene (under legislatively prescribed circumstances) in the affairs of practitioners or firms; make final determinations about complaints; and lay and prosecute charges before the Disciplinary Tribunal. Decisions made by the Standards Committee are reviewable and overseen by the LCRO. The LCRO has authority to, among other things, modify or

⁹ See <http://www.ag.gov.au/legalprofession>

¹⁰ *Regulatory Framework for a National Approach to Regulation of the Legal Profession*, Law Council of Australia, 4 November 2009. The Law Council paper was developed after the National Legal Profession Task Force released its September, 2009 paper entitled *The Regulatory Framework: A National Legal Profession*.

¹¹ See Note 10.

reserve a decision of the Standards Committee, and may exercise any of the powers available to the Standards Committee. The LCRO may also lay a charge before the Disciplinary Tribunal.

The stated policy objectives behind the changes were to provide for independent review and determination of complaints against lawyers. The LCRO, appointed by the Minister responsible for the legislation, is considered to be independent and cannot be a practising lawyer. The LCRO's website states that "The LCRO's role is to promote public confidence in lawyers and conveyancers. The LCRO does this by, upon application, providing independent oversight and review of the decisions made by the Standards Committees of the New Zealand Law Society and the New Zealand Society of Conveyancers."¹²

¹² See <http://www.justice.govt.nz/tribunals/legal-complaints-review-officer>.

This Act is Current to May 12, 2010

APPENDIX 3

OMBUDSPERSON ACT
[RSBC 1996] CHAPTER 340***Contents****Section*

- 1 Definition
- 2 Appointment of Ombudsperson
- 3 Term of office
- 4 Remuneration
- 5 Pension
- 6 Resignation, removal or suspension
- 7 Appointment of acting Ombudsperson without recommendation of Legislature
- 8 Staff
- 9 Confidentiality
- 10 Powers and duties of Ombudsperson in administrative matters
- 11 Jurisdiction of Ombudsperson
- 12 Complaint to Ombudsperson
- 13 Refusal to investigate
- 14 Ombudsperson to notify authority
- 15 Power to obtain information
- 16 Protection
- 17 Opportunity to make representations
- 18 Attorney General may restrict investigative powers
- 19 Application of other laws respecting disclosure
- 20 Privileged information
- 21 Witness and information expenses
- 22 If investigation is refused or discontinued or complaint is not substantiated
- 23 Procedure after investigation
- 24 Authority to notify Ombudsperson of steps taken
- 25 Report of Ombudsperson if no suitable action taken
- 26 Complainant to be informed
- 27 No hearing as of right
- 28 Ombudsperson not subject to review
- 29 Proceedings privileged
- 30 Delegation of powers
- 31 Annual and special reports

- 32 Offences
- 33 Other remedies
- 34 Rules
- 35 Additions to Schedule

Schedule

Definition

- 1 In this Act, "**authority**" means an authority set out in the Schedule or added under section 35 and includes members and employees of the authority.

Appointment of Ombudsperson

- 2 (1) On the recommendation of the Legislative Assembly, the Lieutenant Governor must appoint as an officer of the Legislature an Ombudsperson to exercise the powers and perform the duties assigned to the Ombudsperson under this Act.

(2) The Legislative Assembly must not recommend a person to be appointed Ombudsperson unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

Term of office

- 3 (1) The Ombudsperson must be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.

(2) The Ombudsperson must not hold another office or engage in other employment.

Remuneration

- 4 (1) The Ombudsperson is entitled to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court.

(2) The Ombudsperson must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging duties.

Pension

- 5 (1) Subject to subsection (2), the Public Service Pension Plan, continued under the *Public Sector Pension Plans Act*, applies to the Ombudsperson.

(2) When calculating the amount of a pension under the Public Service Pension Plan, each year of service as Ombudsperson must be counted as 1/2 years of pensionable service.

(3) [Repealed 2003-62-3.]

Resignation, removal or suspension

6 (1) The Ombudsperson may at any time resign the office by written notice

(a) to the Speaker of the Legislative Assembly, or

(b) to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from British Columbia.

(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor must, in accordance with the recommendation,

(a) suspend the Ombudsperson, with or without salary, or

(b) remove the Ombudsperson from office.

(3) On the recommendation of the Legislative Assembly the Lieutenant Governor must appoint an acting Ombudsperson if

(a) the Ombudsperson is suspended or removed,

(b) the office of Ombudsperson becomes vacant for a reason other than by operation of subsection (4) (c), or

(c) the Ombudsperson is temporarily ill or temporarily absent for another reason.

(4) The appointment of an acting Ombudsperson under subsection (3) terminates

(a) on the appointment of a new Ombudsperson under section 2,

(b) at the end of the period of suspension of the Ombudsperson,

(c) immediately after the expiry of 30 sitting days after the commencement of the next session of the Legislature, or

(d) on the return to office of the Ombudsperson from the temporary illness or absence

whichever occurs first.

(5) If the Legislature is not sitting and is not ordered to sit within the next 5 days, the Lieutenant Governor in Council may suspend the Ombudsperson from office, with or without salary, for cause or incapacity, but the

suspension does not continue in force after the expiry of 30 sitting days.

Appointment of acting Ombudsperson without recommendation of Legislature

7 (1) The Lieutenant Governor in Council may appoint an acting Ombudsperson

(a) if

- (i) the Ombudsperson is suspended or removed, or
- (ii) the office of Ombudsperson becomes vacant for a reason other than by operation of subsection (2) (c),

when the Legislature is sitting but it does not make a recommendation under section 2 or 6 (3) before the end of that sitting or before an adjournment of the Legislature exceeding 5 days,

(b) if the Ombudsperson is suspended or the office of Ombudsperson becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days, or

(c) if the Ombudsperson is temporarily ill or temporarily absent for another reason.

(2) The appointment of an acting Ombudsperson under subsection (1) terminates

(a) on the appointment of a new Ombudsperson under section 2,

(b) at the end of the period of suspension of the Ombudsperson,

(c) immediately after the expiry of 30 sitting days after the day on which the Ombudsperson was appointed,

(d) on the appointment of an acting Ombudsperson under section 6 (3), or

(e) on the return to office of the Ombudsperson from temporary illness or absence,

whichever occurs first.

Staff

8 (1) In accordance with the *Public Service Act*, the Ombudsperson may appoint employees necessary to perform the duties of the office.

(2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsperson is a deputy minister.

(3) The Ombudsperson may make a special report to the Legislative Assembly if the Ombudsperson believes

- (a) the amounts and establishment provided for the office of the Ombudsperson in the estimates, or
- (b) the services provided to the Ombudsperson by the BC Public Service Agency

are inadequate to enable the Ombudsperson to fulfil the duties of the office.

Confidentiality

9 (1) Before beginning to perform the duties of the office, the Ombudsperson must take an oath before the Clerk of the Legislative Assembly

- (a) to faithfully and impartially exercise the powers and perform the duties of the office, and
- (b) not to divulge any information received under this Act, except if permitted by this Act.

(2) A person on the staff of the Ombudsperson must, before beginning to perform duties, take an oath before the Ombudsperson not to divulge any information received under this Act except if permitted by this Act.

(3) For the purposes of subsection (2) the Ombudsperson is a commissioner for taking affidavits for British Columbia.

(4) The Ombudsperson and every person on the staff of the Ombudsperson must, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in performing their duties under this Act.

(5) The Ombudsperson or a person holding an office or appointment under the Ombudsperson must not give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his or her knowledge in the exercise of duties under this Act, except

- (a) to enforce the Ombudsperson's powers of investigation,
- (b) to enforce compliance with this Act, or
- (c) with respect to a trial of a person for perjury.

(6) An investigation under this Act must be conducted in private unless the Ombudsperson considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(7) Despite this section, the Ombudsperson may disclose or authorize a member of his or her staff to disclose a matter that, in the opinion of the

Ombudsperson, is necessary to

- (a) further an investigation,
- (b) prosecute an offence under this Act, or
- (c) establish grounds for conclusions and recommendations made in a report under this Act.

Powers and duties of Ombudsperson in administrative matters

10 (1) The Ombudsperson, with respect to a matter of administration, on a complaint or on the Ombudsperson's own initiative, may investigate

- (a) a decision or recommendation made,
- (b) an act done or omitted, or
- (c) a procedure used

by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsperson may be exercised and performed despite a provision in an Act to the effect that

- (a) a decision, recommendation or act is final,
- (b) no appeal lies in respect of it, or
- (c) a proceeding or decision of the authority whose decision, recommendation or act it is must not be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsperson for investigation and report.

(4) The Ombudsperson must

- (a) investigate the matter referred under subsection (3), so far as it is within the Ombudsperson's jurisdiction and subject to any special directions, and
- (b) report back as the Ombudsperson thinks fit.

(5) Sections 23 to 26 do not apply in respect of an investigation or report made under subsection (4).

Jurisdiction of Ombudsperson

11 (1) This Act does not authorize the Ombudsperson to investigate a decision, recommendation, act or omission

- (a) in respect of which there is under an enactment a right of

appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted under an enactment, until after that right of appeal, objection or application has been exercised or until after the time limit for the exercise of that right has expired, or

(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.

(2) The Ombudsperson may investigate conduct occurring before the commencement of this Act.

(3) If a question arises about the Ombudsperson's jurisdiction to investigate a case or class of cases under this Act, the Ombudsperson may apply to the Supreme Court for a declaratory order determining the question.

Complaint to Ombudsperson

12 (1) A complaint under this Act may be made by a person or group of persons.

(2) A complaint must be in writing.

(3) If a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsperson the person in charge of the institution, hospital or facility in which the writer is confined or the person having custody of the writer must immediately, mail or forward the communication, unopened, to the Ombudsperson.

(4) A communication from the Ombudsperson to a person confined or in custody as described in subsection (3) must be forwarded to that person in a similar manner.

(5) Subsections (3) and (4) apply despite any other enactment.

Refusal to investigate

13 The Ombudsperson may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsperson, any of the following apply:

(a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which

the complaint refers more than one year before the complaint was received by the Ombudsperson;

(b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;

(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and, if the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for the failure to do so;

(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint;

(f) in the circumstances, investigation would not benefit the complainant or person aggrieved;

(g) the complainant has abandoned the complaint

(i) by failing to advise the Ombudsperson of a current address or telephone number at which the Ombudsperson can contact him or her, or

(ii) by failing to respond after a reasonable number of attempts by the Ombudsperson to contact him or her in writing or verbally;

(h) the complaint is withdrawn by the complainant by notice to the Ombudsperson;

(i) the complaint is settled under section 14.

Ombudsperson to notify authority

14 (1) If the Ombudsperson investigates a matter, the Ombudsperson must notify the authority affected and any other person the Ombudsperson considers appropriate to notify in the circumstances.

(2) At any time during or after an investigation the Ombudsperson may consult with an authority to attempt to settle the complaint, or for any other purpose.

(3) If before making a decision respecting a matter being investigated the Ombudsperson receives a request for consultation from the authority, the

Ombudsperson must consult with the authority.

Power to obtain information

15 (1) The Ombudsperson may receive and obtain information from the persons and in the manner the Ombudsperson considers appropriate, and in the Ombudsperson's discretion may conduct hearings.

(2) Without restricting subsection (1), but subject to this Act, the Ombudsperson may do one or more of the following:

(a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, talk in private with any person there and otherwise investigate matters within the Ombudsperson's jurisdiction;

(b) require a person to furnish information or produce, at a time and place the Ombudsperson specifies, a document or thing in the person's possession or control that relates to an investigation, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;

(c) make copies of information furnished or a document or thing produced under this section;

(d) summon before the Ombudsperson and examine on oath any person who the Ombudsperson believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath;

(e) receive and accept, on oath or otherwise, evidence the Ombudsperson considers appropriate, whether or not it would be admissible in a court.

(3) If the authority requests the return of a document or thing obtained under subsection (2), the Ombudsperson must return it to the authority within 48 hours after receiving the request, but the Ombudsperson may again require its production in accordance with this section.

Protection

16 A person must not discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists

in the investigation, inquiry or reporting of a complaint or other proceeding under this Act.

Opportunity to make representations

17 If it appears to the Ombudsperson that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsperson must, before deciding the matter,

- (a) inform the authority or person of the grounds, and
- (b) give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsperson.

Attorney General may restrict investigative powers

18 (1) The Ombudsperson must not enter any premises and must not require any information or answer to be given or any document or thing to be produced if the Attorney General certifies that entering the premises, giving the information, answering the question or producing the document or thing might

- (a) interfere with or impede the investigation or detection of an offence,
- (b) result in or involve the disclosure of deliberations of the Executive Council, or
- (c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest.

(2) The Ombudsperson must report each certificate of the Attorney General to the Legislative Assembly not later than in the Ombudsperson's next annual report.

Application of other laws respecting disclosure

19 (1) Subject to section 18, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsperson.

(2) Subject to section 18 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter must not be required to supply any information to or answer any question put by the Ombudsperson in relation to that matter, or to produce to the Ombudsperson any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

(3) Subject to section 18 but despite subsection (2), if a person is bound to maintain confidentiality in respect of a matter only because of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), the person must disclose the information, answer questions and produce documents or things on the request of the Ombudsperson.

(4) Subject to section 18, after receiving a complainant's consent in writing, the Ombudsperson may require a person described in subsection (2) to, and that person must, supply information, answer any question or produce any document or thing required by the Ombudsperson that relates only to the complainant.

Privileged information

20 (1) Subject to section 19, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsperson as the person would have with respect to a proceeding in a court.

(2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsperson and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

Witness and information expenses

21 (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if the person were a witness in the Supreme Court.

(2) If a person incurs expenses in complying with a request of the Ombudsperson for production of documents or other information, the Ombudsperson may reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

If investigation is refused or discontinued or complaint is not substantiated

22 (1) If the Ombudsperson decides

- (a) not to investigate or further investigate a complaint under section 13, or
- (b) at the conclusion of an investigation, that the complaint has not been substantiated,

the Ombudsperson must

- (c) record the decision in writing, and
 - (d) as soon as is reasonable, notify both the complainant and the authority of the decision and the reasons for it.
- (2) The reasons provided under subsection (1) (d) with respect to a decision referred to in subsection (1) (b) must be in writing.
- (3) The Ombudsperson may indicate with the notification under subsection (1) (d) any other recourse that may be available to the complainant.

Procedure after investigation**23** (1) If, after completing an investigation, the Ombudsperson is of the opinion that

- (a) a decision, recommendation, act or omission that was the subject matter of the investigation was
 - (i) contrary to law,
 - (ii) unjust, oppressive or improperly discriminatory,
 - (iii) made, done or omitted under a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory,
 - (iv) based wholly or partly on a mistake of law or fact or on irrelevant grounds or consideration,
 - (v) related to the application of arbitrary, unreasonable or unfair procedures, or
 - (vi) otherwise wrong,
- (b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority
 - (i) did so for an improper purpose,
 - (ii) failed to give adequate and appropriate reasons in relation to the nature of the matter, or
 - (iii) was negligent or acted improperly, or

(c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsperson must report that opinion and the reasons for it to the authority and may make the recommendation the Ombudsperson considers appropriate.

(2) Without restricting subsection (1), the Ombudsperson may recommend that

- (a) a matter be referred to the appropriate authority for further consideration,
- (b) an act be remedied,
- (c) an omission or delay be rectified,
- (d) a decision or recommendation be cancelled or changed,
- (e) reasons be given,
- (f) a practice, procedure or course of conduct be altered,
- (g) an enactment or other rule of law be reconsidered, or
- (h) any other steps be taken.

Authority to notify Ombudsperson of steps taken

24 (1) If a recommendation is made under section 23, the Ombudsperson may request the authority

- (a) to notify the Ombudsperson within a specified time of the steps that have been or are proposed to be taken to give effect to the recommendation, or
- (b) if no steps have been or are proposed to be taken, the reasons for not following the recommendation.

(2) If, after considering a response made by an authority under subsection (1), the Ombudsperson believes it advisable to modify or further modify the recommendation, the Ombudsperson must notify the authority of the recommendation as modified and may request that the authority notify the Ombudsperson

- (a) of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or
- (b) if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

Report of Ombudsperson if no suitable action taken

25 (1) If within a reasonable time after a request has been made under section 24 no action is taken that the Ombudsperson believes adequate or appropriate, the Ombudsperson, after considering any reasons given by the authority, may submit a report of the matter to the Lieutenant Governor in Council and, after that, may make a report to the Legislative Assembly respecting the matter as the Ombudsperson considers appropriate.

(2) The Ombudsperson must attach to a report under subsection (1) a copy of the Ombudsperson's recommendation and any response made to it under section 24, but the Ombudsperson must delete from the recommendation and from the response any material that would unreasonably invade any person's privacy, and may delete material revealing the identity of a member, officer or employee of an authority.

Complainant to be informed

26 (1) If the Ombudsperson makes a recommendation under section 23 or 24 and no action that the Ombudsperson believes adequate or appropriate is taken within a reasonable time, the Ombudsperson

(a) must inform the complainant of the recommendation and

(b) may make additional comments the Ombudsperson considers appropriate.

(2) The Ombudsperson must in every case inform the complainant within a reasonable time of the result of the investigation.

No hearing as of right

27 A person is not entitled as of right to a hearing before the Ombudsperson except as provided in this Act.

Ombudsperson not subject to review

28 Proceedings of the Ombudsperson must not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

Proceedings privileged

29 (1) Proceedings do not lie against the Ombudsperson or against a person acting under the authority of the Ombudsperson for anything done in good faith, reported or said in the course of the exercise or purported exercise of

duties under this Act.

- (2) For the purposes of any Act or law respecting libel or slander,
 - (a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceeding before the Ombudsperson under this Act are privileged to the same extent as if the inquiry or proceeding were a proceeding in a court, and
 - (b) a report made by the Ombudsperson and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsperson were the order of a court.

Delegation of powers

- 30** (1) The Ombudsperson may in writing delegate to a person or class of persons any of the Ombudsperson's powers or duties under this Act, except the power
- (a) to delegate under this section,
 - (b) to make a report under this Act, and
 - (c) to require a production or disclosure under section 19 (1).
- (2) A delegation under this section is revocable at will and does not prevent the Ombudsperson from exercising the delegated power at any time.
- (3) A delegation may be made subject to terms the Ombudsperson considers appropriate.
- (4) If the Ombudsperson by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsperson.
- (5) A person purporting to exercise power of the Ombudsperson through a delegation under this section must, when requested to do so, produce evidence of the person's authority to exercise the power.

Annual and special reports

- 31** (1) The Ombudsperson must report annually on the affairs of the Ombudsperson's office to the Speaker of the Legislative Assembly.
- (2) The Speaker must lay the report before the Legislative Assembly as soon as possible.

(3) If the Ombudsperson considers it to be in the public interest or in the interest of a person or authority, the Ombudsperson may make a special report to the Legislative Assembly or comment publicly about a matter relating generally to the exercise of the Ombudsperson's duties under this Act or to a particular case investigated by the Ombudsperson.

Offences

32 A person commits an offence who does any of the following:

- (a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsperson or another person in the exercise of a power conferred or a duty imposed under this Act;
- (b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsperson or another person under this Act;
- (c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsperson or another person in the exercise of a power conferred or a duty imposed under this Act;
- (d) violates an oath taken under this Act;
- (e) contravenes section 16.

Other remedies

33 The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

- (a) a remedy, right of appeal or objection is provided, or
- (b) a procedure is provided for inquiry into or investigation of a matter,

and nothing in this Act limits or affects that remedy, right of appeal, objection or procedure.

Rules

34 (1) On its own initiative or on the recommendation of the Lieutenant Governor in Council the Legislative Assembly may make rules for the guidance of the Ombudsperson in exercising the powers and performing the duties of the office.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsperson may determine the Ombudsperson's procedure and the

procedure for the members of the Ombudsperson's staff in exercising of the powers conferred and performing the duties imposed by this Act.

Additions to Schedule

- 35** The Lieutenant Governor in Council may, by order, add authorities to the Schedule.

Schedule

Authorities

- 1 Ministries of the government.
- 2 A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,
 - (a) appointed by an Act, minister, the Lieutenant Governor in Council,
 - (b) in the discharge of their duties, public officers or servants of the government, or
 - (c) responsible to the government.
- 3 A corporation the ownership of which or a majority of the shares of which is vested in the government.
- 4 Municipalities.
- 5 Regional districts.
- 6 The Islands Trust established under the *Islands Trust Act*.
- 7 Improvement districts as defined in the *Local Government Act*.
- 8 The Capital Improvement District under the *Capital Commission Act*.
- 9 Boards, committees, commissions or similar bodies established under the *Community Charter*, the *Local Government Act* or the *Vancouver Charter*.
- 10 The Resort Municipality of Whistler and the Whistler Resort Association.
- 11 A local trust committee, the Trust Council, the Trust Fund Board and the executive committee and persons to whom their powers are delegated under the *Islands Trust Act*.
- 12 Library boards as defined in the *Library Act*.
- 13 The Cultus Lake Park Board.
- 14 A greater board as defined in the *Community Charter*.

15 Development districts, water users' communities, comptroller and regional water manager under the *Water Act*.

16 The commissioners of a district defined in section 58 of the *Drainage, Ditch and Dike Act* and an engineer, commissioner, inspector of dikes, land settlement board, municipality or regional district acting under that Act.

17 The British Columbia Diking Authority and a diking authority under the *Dike Maintenance Act*.

18 The Okanagan Kootenay Sterile Insect Release Board.

19 Regional transit commissions established under the *British Columbia Transit Act*.

20 A corporation

(a) more than 50% of the issued voting shares of which are owned by one or more of the authorities listed in section 4 to 19 or this section, or

(b) that is controlled by one or more of the authorities listed in section 4 to 19 and, for the purposes of ascertaining control, a corporation is controlled by one or more of these authorities if a majority of the members of the corporation or of its board of directors or board of management consists of either or both of the following:

(i) persons appointed as members by the authorities;

(ii) officers or employees of an authority acting as such.

21 Schools and boards as defined in the *School Act*.

21.1 Francophone education authorities as defined in the *School Act* and francophone schools operated by francophone education authorities.

22 Universities as defined in the *University Act*.

23 The University of Northern British Columbia.

23.1 The Thompson Rivers University.

24 Royal Roads University.

25 Institutions as defined in the *College and Institute Act*.

26 Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

27 Governing bodies of professional and occupational associations that are established or continued by an Act.

28 Regional Health Boards established under the *Health Authorities Act*.

29 Regional Hospital Districts under the *Hospital District Act*.

30 [Repealed 2002-35-11.]

31 The South Coast British Columbia Transportation Authority continued under the *South Coast British Columbia Transportation Authority Act*.

32 The Business Practices and Consumer Protection Authority established under the *Business Practices and Consumer Protection Authority Act*.

33 The Municipal Pension Board of Trustees.

34 The Teachers' Pension Board of Trustees.

35 The Public Service Pension Board of Trustees.

36 The College Pension Board of Trustees.

37 The British Columbia Safety Authority established under the *Safety Authority Act*.

38 The Land Title and Survey Authority established under the *Land Title and Survey Authority Act*.

Copyright (c) Queen's Printer, Victoria, British Columbia, Canada

COMPLAINTS RESOLUTION COMMISSIONER

APPENDIX 4(A)

Appointment

49.14 (1) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations. 1998, c. 21, s. 21.

Restriction

(2) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner. 1998, c. 21, s. 21.

Term of office

(3) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment. 1998, c. 21, s. 21.

Removal from office

(4) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation. 1998, c. 21, s. 21.

Restriction on practice of law

(5) The Commissioner shall not engage in the practice of law during his or her term of office. 1998, c. 21, s. 21.

Functions of Commissioner

49.15 (1) The Commissioner shall,

- (a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and
- (b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws. 1998, c. 21, s. 21.

Investigation by Commissioner

(2) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to an employee of the Society holding an office prescribed by the by-laws shall be deemed to be a reference to the Commissioner. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (1).

Access to information

(3) If a complaint is referred to the Commissioner under the by-laws, the Commissioner is entitled to have access to,

- (a) all information in the records of the Society respecting a licensee who is the subject of the complaint; and

- (b) all other information within the knowledge of the Society with respect to the subject matter of the complaint. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (2).

Delegation

49.16 (1) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws. 1998, c. 21, s. 21.

Terms and conditions

(2) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate. 1998, c. 21, s. 21.

Identification

49.17 On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation. 1998, c. 21, s. 21.

Confidentiality

49.18 (1) The Commissioner and each member of his or her staff shall not disclose,

- (a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or
- (b) any information that comes to his or her knowledge under subsection 49.15 (3) that a bencher, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12. 1998, c. 21, s. 21.

Exceptions

(2) Subsection (1) does not prohibit,

- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
- (b) disclosure required in connection with a proceeding under this Act;
- (c) disclosure of information that is a matter of public record;
- (d) disclosure by a person to his or her counsel; or
- (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure. 1998, c. 21, s. 21.

Testimony

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

Decisions final

49.19 A decision of the Commissioner is final and is not subject to appeal.
1998, c. 21, s. 21.

APPENDIX 4(B)**BY-LAW 11**

Made: May 1, 2007
 Amended: June 28, 2007
 September 20, 2007 (editorial changes)
 October 25, 2007 (editorial changes)
 February 21, 2008
 April 24, 2008
 October 30, 2008
 January 29, 2009

REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE**PART I****COMPLAINTS RESOLUTION COMMISSIONER****GENERAL****Definitions**

1. In this Part,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a licensee;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 6 (1).

Provision of funds by Society

2. (1) The money required for the administration of this Part and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefor by Convocation.

Restrictions on spending

(2) In any year, the Commissioner shall not spend more money in the administration of this Part and sections 49.15 to 49.18 of the Act than is budgeted therefor by Convocation.

Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

REVIEW OF COMPLAINTS

Reviewable complaints

4. (1) A complaint may be reviewed by the Commissioner if,
- (a) the merits of the complaint have been considered by the Society;
 - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
 - (c) the complaint has not been previously reviewed by the Commissioner; and
 - (d) the Society has notified the complainant that it will be taking no further action in respect of the complaint.

Same

(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:

- 1. Quantum of fees or disbursements charged by a licensee to a complainant.
- 2. Requirements imposed on a licensee under By-Law 9 [Financial Transactions and Records].
- 3. Negligence of a licensee.

Interpretation: “previously reviewed”

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 7 (1).

Right to request referral

5. (1) A complainant may request the Society to refer to the Commissioner for review a reviewable complaint.

Request in writing

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

Time for making request

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

When notice given

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,
 - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
 - (ii) if it was faxed, on the first day after it was faxed.

Referral of complaints

6. (1) The Society shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 5.

Notice

(2) The Society shall notify in writing the licensee who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 5 that the complaint has been referred to the Commissioner for review.

Fresh evidence

7. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner's opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

Disposition of complaint referred for review

(2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,

- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

Disposition of complaint referred for review: notice

(3) The Society shall notify in writing the licensee who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

Referral back to Society: notice

(4) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, the Society shall consider the recommendation and notify in writing the Commissioner, complainant and licensee who is the subject of the complaint of whether the Society will be following the recommendation.

Same

(5) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and the Society determines not to follow the recommendation of the Commissioner, the Society shall provide the Commissioner, complainant and licensee who is the subject of the complaint with a written explanation for the determination.

Procedure

8. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

Meeting

(2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet

with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Participation in review: Society

(3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

Participation in review: licensee

(4) The licensee who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

Description of consideration, etc.

(5) At the time that the Society refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

Requirement to answer questions

(6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

RESOLUTION

Discretionary referral of complaints

9. (1) The Society may refer a complaint to the Commissioner for resolution if,
- (a) the complaint is within the jurisdiction of the Society to investigate;
 - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
 - (c) the complaint has not been referred to the Proceedings Authorization Committee;
 - (d) no resolution of the complaint has been attempted by the Society; and
 - (e) the complainant and the licensee who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

Parties

10. The parties to a resolution of a complaint by the Commissioner are the complainant, the licensee who is the subject of the complaint and the Society.

Outcome of Resolution

11. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

No resolution

(2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Society.

Enforcement of resolution

(3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

Confidentiality: Commissioner

12. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

Exceptions

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's rules of professional conduct.

Without prejudice

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

Procedure

13. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

PART II

DISCRIMINATION AND HARASSMENT COUNSEL

Interpretation

14. In this Part, "Committee" means the Equity and Aboriginal Issues Committee.

Appointment

15. (1) Convocation shall appoint a person as Discrimination and Harassment Counsel in accordance with section 16.

Same

(2) Convocation may appoint one or more persons as Alternate Discrimination and Harassment Counsel in accordance with section 17.

Term of office

(3) Subject to subsection (4), the Counsel and each Alternate Counsel hold office for a term not exceeding three years and are eligible for reappointment.

Appointment at pleasure

(4) The Counsel and each Alternate Counsel hold office at the pleasure of Convocation.

No appointment without recommendation

16. (1) Convocation shall not appoint a person as Counsel unless the appointment is recommended by the Committee.

Vacancy in office

(2) When a vacancy exists in the office of Counsel, the Committee shall conduct a search for candidates for appointment as Counsel in accordance with procedures and criteria established by the Committee.

List of candidates

(3) At the conclusion of the search, the Committee shall give Convocation a ranked list of at least two persons the Committee recommends for appointment as Counsel, with brief supporting reasons.

Additional candidates

(4) If the Committee gives Convocation a list of persons it recommends for appointment, Convocation may require the Committee to give Convocation a list of additional persons who are recommended by the Committee for appointment.

Recommendations considered in absence of public

(5) Convocation shall consider the Committee's recommendations in the absence of the public.

No appointment without recommendation

17. (1) Convocation shall not appoint a person as Alternate Counsel unless the appointment is recommended by the standing Committee.

Vacancy in office

(2) If the Committee wishes Convocation to appoint another person as Alternate Counsel, the Committee shall give Convocation, from the most recent list of persons the Committee recommended to Convocation for appointment as Counsel, a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, with brief supporting reasons.

Same

(3) If the Committee is not able to give Convocation, from the most recent list of persons the Committee recommended to Convocation for appointment as Counsel, a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, the Committee shall,

- (a) conduct a search for candidates for appointment as Alternate Counsel in accordance with procedures and criteria established by the Committee; and
- (b) at the conclusion of the search, the Committee shall give Convocation a ranked list of at least two persons the Committee recommends for appointment as Alternate Counsel, with brief supporting reasons.

Additional candidates

(4) If the Committee gives Convocation a list of persons it recommends for appointment, Convocation may require the Committee to give Convocation a list of additional persons who are recommended by the Committee for appointment.

Recommendations considered in absence of public

(5) Convocation shall consider the Committee's recommendations in the absence of the public.

Application of ss. 16 and 17

18. If Convocation, on the recommendation of the Committee,
- (a) reappoints the Counsel, subsections 16 (2) to (4) do not apply; or
 - (b) reappoints an Alternate Counsel, subsections 17 (2) to (4) do not apply.

Function of Counsel

19. (1) It is the function of the Counsel,
- (a) to assist, in a manner that the Counsel deems appropriate, any person who believes that he or she has been discriminated against or harassed by a licensee;
 - (b) to assist the Society, as required, to develop and conduct for licensees information and educational programs relating to discrimination and harassment; and
 - (c) to perform such other functions as may be assigned to the Counsel by Convocation.

Information received not for investigation

- (2) Information received by the Counsel under clause (1) (a) is not information received by the Society for the purposes of section 49.3 of the Act.

Access to information

- (3) Except with the prior permission of the Society, the Counsel is not entitled to have any information in the records or within the knowledge of the Society respecting a licensee.

Annual and semi-annual report to Committee

20. (1) Unless the Committee directs otherwise, the Counsel shall make a report to the Committee,
- (a) not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year; and
 - (b) not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.

Report to Convocation

(2) The Committee shall submit each report received from the Counsel to Convocation on the first day following the deadline for the receipt of the report by the Committee on which Convocation has a regular meeting.

Confidentiality

21. (1) The Counsel shall not disclose,
- (a) any information that comes to his or her knowledge as a result of the performance of his or her duties under clause 19 (1) (a); or
 - (b) any information that comes to his or her knowledge under subsection 19 (3) that a bencher, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12.

Rules of professional conduct

(2) For greater certainty, clause (1) (a) prevails over the Society=s rules of professional conduct to the extent that the rules require the Counsel to disclose to the Society the information mentioned in clause (1) (a).

Exceptions

- (3) Subsection (1) does not prohibit,
 - (a) disclosure required in connection with the administration of the Act, the regulations, the by-laws or the rules of practice and procedure;
 - (b) disclosure of information that is a matter of public record;
 - (c) disclosure of information where the Counsel has reasonable grounds to believe that there is an imminent risk to an identifiable individual or group of individuals of death, serious bodily harm or serious psychological harm that substantially interferes with the individual=s or group=s health or well-being and that the disclosure is necessary to prevent the death or harm;
 - (d) disclosure by the Counsel to his or her counsel; or
 - (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

Alternate Counsel: Counsel unable to act

22. (1) If the Counsel for any reason is unable to perform the function of the Counsel during his or her term in office, an Alternate Counsel shall perform the function of the Counsel.

Selection of Alternate Counsel

(2) The Alternate Counsel mentioned in subsection (1) shall be chosen by the Counsel or, if the Counsel is unable to do so, by the Chief Executive Officer.

Alternate Counsel: Counsel office vacant

(3) Despite subsection (1), if there is a vacancy in the office of the Counsel, an Alternate Counsel chosen by the Committee shall perform the function of the Counsel until a Counsel is appointed under section 15.

Annual and semi-annual report to Committee

(4) If the Committee directs, an Alternate Counsel shall make any report mentioned in section 20.

Application of s. 21

(5) Section 21 applies to an Alternate Counsel while performing the function of the Counsel.

PART III

INVESTIGATIONS

EXERCISE OF POWERS

Exercise of powers, etc.

23. The holders of the following offices may exercise the powers and perform the duties under subsection 49.3 (2) and 49.3 (4) of the Act:

1. The office of Director, Professional Regulation.
2. The office of Senior Counsel, Professional Regulation.

PART IV

PROFESSIONAL COMPETENCE

INTERPRETATION

Interpretation

24. In this Part,

“holiday” means,

- (a) any Saturday or Sunday;
- (b) New Year’s Eve Day, and where New Year’s Eve Day falls on a Saturday or Sunday, the preceding Friday;
- (c) New Year’s Day, and where New Year’s Day falls on a Saturday or Sunday, the following Monday;
- (d) Good Friday;
- (e) Easter Monday;
- (f) Victoria Day;
- (g) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday;
- (h) Civic Holiday;
- (i) Labour Day;
- (j) Thanksgiving Day;
- (k) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday;
- (l) Christmas Eve Day, and where Christmas Eve Day falls on a Saturday or Sunday, the preceding Friday;
- (m) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday;
- (n) Boxing Day; and
- (o) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

“panelist” means a member of the Hearing Panel appointed under subsection 42 (6) of the Act to review a proposal for an order made to a licensee.

Exercise of powers by committee

25. The performance of any duty, or the exercise of any power, given to the Professional Development and Competence Committee under this Part is not subject to the approval of Convocation.

INFORMATION

Requirement to provide information

26. (1) The Society may require a licensee to provide to the Society specific information about the licensee's quality of service to clients, including specific information about,
- (a) the licensee's knowledge, skill or judgment;
 - (b) the licensee's attention to the interests of clients;
 - (c) the records, systems or procedures of the licensee's professional business; and
 - (d) other aspects of the licensee's professional business.

Notice of requirement to provide information

(2) The Society shall notify a licensee in writing of the requirement to provide information under subsection (1) and shall send to the licensee a detailed list of the information to be provided by him or her.

Time for providing information

(3) The licensee shall provide to the Society the specific information required of him or her not later than thirty days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

(4) Despite subsection (3), on the request of the licensee, the Society may extend the time within which the licensee is required to provide to the Society the specific information required of him or her.

Request for extension of time

(5) A request to the Society to extend time under subsection (4) shall be made by the licensee in writing and not later than the day on which the licensee is required under subsection (3) to provide to the Society the specific information required of him or her.

PRACTICE REVIEWS

Reviews

27. (1) A review of a licensee's professional business may be conducted if,
- (a) an employee of the Society holding the office of Director, Professional Development and Competence is satisfied that there are reasonable grounds for believing that the licensee may be failing or may have failed to meet standards of professional competence;
 - (b) the licensee holds a Class L1 licence and has held the licence for not more than eight years;
 - (c) the licensee holds a Class L1 licence and,
 - (i) is required to pay the full amount of the annual fee under subsection 2 (2) of By-Law 5 [Annual Fee], and
 - (ii) is required to pay insurance premium levies under subsection 2 (1) of By-Law 6 [Professional Liability Insurance]; or
 - (d) the licensee holds a Class P1 licence.

Determination of reasonable grounds

(2) For the purposes of clause (1) (a), in determining that there are reasonable grounds for believing that the licensee may be failing or may have failed to meet standards of professional competence, the following may be considered:

1. The nature, number and type of complaints made to the Society in respect of the conduct and competence of the licensee.
2. Any order made against the licensee under section 35, 40, 44 or 47 or subsection 49.35 (2) of the Act.
3. Any undertaking given to the Society by the licensee.
4. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of considering a complaint which suggests that the licensee may be failing or may have failed to

meet standards of professional competence.

5. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of an investigation which suggests that the licensee may be failing or may have failed to meet standards of professional competence.
6. Any information that comes to the knowledge of an officer, employee, agent or representative of the Society in the course of or as a result of a proceeding which suggests that the licensee may be failing or may have failed to meet standards of professional competence.
7. The result of an audit where the result suggests that,
 - (a) the licensee is in default of the requirements of By-Law 9 [Financial Transactions and Records];
 - (b) the licensee is in default of the requirements of the rules of professional conduct for licensees with respect to conflicts of interest;
 - (c) there are deficiencies in the records, systems or procedures of the licensee's professional business; or
 - (d) there are deficiencies in the administration of the licensee's professional business.

Review of licensee's professional business

28. (1) The Society shall assign one or more persons to conduct a review of a licensee's professional business.

Assignment of additional persons to review

(2) At any time after a review has commenced, the Society may assign one or more persons to assist or replace the person or persons originally assigned to conduct the review.

Review of professional business is not public information

(3) The fact that a review of a licensee's professional business is being or has been conducted shall not be made public, except as required in connection with a proceeding under the Act.

Final report

29. (1) On completion of a review of a licensee's professional business, the person or persons who conducted the review shall submit to the Society a final report on the review.

Contents of final report

- (2) The final report on a review of a licensee's professional business shall contain,
- (a) the opinion of the person or persons who conducted the review as to whether the licensee who was the subject of the review is failing or has failed to meet standards of professional competence; and
 - (b) if the person or persons who conducted the review are of the opinion that the licensee who was the subject of the review is failing or has failed to meet standards of professional competence, the recommendations of the person or persons.

Final report

(3) The Society shall provide to the licensee who is the subject of the final report a copy thereof.

Recommendations

30. (1) If on completion of a review of a licensee's professional business and receipt of the final report on the review, the Society decides to make recommendations to the licensee under subsection 42 (3) of the Act, but not to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Society shall so notify the licensee in writing.

Same

(2) The Society may make recommendations to the licensee at the same time as the Society notifies the licensee under subsection (1) or within a reasonable period of time after the Society notifies the licensee under subsection (1).

Proposal for order

31. (1) If on completion of a review of a licensee's professional business and receipt of the final report on the review, the Society decides to make recommendations to the licensee under subsection 42 (3) of the Act and to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Society shall so notify the licensee in writing.

Same

(2) The notice under subsection (1) shall be accompanied by the proposal for an order.

Form of proposal for an order

(3) A proposal for an order shall, as far as possible, be in the form of an order made under subsection 42 (7) of the Act.

Time for responding to proposal

(4) A licensee who receives a proposal for an order shall, not later than thirty days after the date specified on the notice given to the licensee under subsection (1), notify the Society in writing as to whether the licensee accepts the proposal.

Extension of time for responding to proposal

(5) Despite subsection (4), on the request of the licensee, or on its own initiative, the Society may extend the time within which the licensee is to respond to the proposal.

Request for extension of time

(6) A request to the Society to extend time under subsection (5) shall be made by the licensee in writing and not later than the day on which the licensee is required under subsection (4) to respond to the proposal.

Modifying proposal for order

(7) Before the time for responding to a proposal for an order has expired, the Society may modify the proposal if the licensee consents to the modification, and the modified proposal shall be deemed to be the proposal to which the licensee is required to respond under subsection (4).

Failure to respond

(8) A licensee who fails to respond in writing to a proposal for an order within the thirty day period specified in subsection (4), or within the extended time period specified by the Society under subsection (5), the licensee shall be deemed to have refused to accept the proposal.

Review of proposal by panelist: materials

32. The Society shall provide to the panelist the following materials:

1. The final report on the review of the licensee's professional business.
2. The licensee's written response, if any, to the final report, including the licensee's written response, if any, to the recommendations of the person or persons who conducted the review.
3. The proposal for an order made to the licensee.
4. The licensee's written response, if any, to the proposal.

Review of proposal by panelist: refusal to make order

33. The panelist may refuse to make an order giving effect to the proposal only after a meeting with the licensee and the Society.

Review of proposal by panelist: modifications

34. The panelist may make an order that includes modifications to the proposal only after a meeting with the licensee and the Society.

Communications with licensee and Society prohibited

35. The panelist shall not communicate with the licensee or the Society with respect to the proposal except in accordance with section 36.

Meeting with licensee and Society

36. (1) The panelist may meet with the licensee and the Society by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Both parties to be present

(2) Subject to subsection (3), the panelist shall not meet with the licensee alone or with the Society alone to discuss the proposal, but nothing in this subsection is intended to deny to the licensee the right to counsel.

Exception

- (3) The panelist may meet with the Society alone to discuss the proposal if,
- (a) the meeting is not held under section 34; and
 - (b) notice of the meeting has been given to the licensee in accordance with subsections (4) and (5) and the licensee fails to attend at the meeting.

Notice

(4) The Society shall give to a licensee reasonable notice of a meeting with the panelist.

Same

- (5) A notice of a meeting shall be in writing and shall include,

- (a) a statement of the time, place and purpose of the meeting; and
- (b) a statement that if the licensee does not attend at the meeting, the panelist may meet with the Society alone to discuss the proposal.

Order

37. (1) An order made under subsection 42 (7) of the Act shall be in Form 11A and shall contain,

- (a) the name of the panelist who made it;
- (b) the date on which it was made; and
- (c) a recital of the particulars necessary to understand the order, including the date of any meeting and the persons who attended at the meeting.

Same

(2) The operative parts of an order made under subsection 42 (7) of the Act shall be divided into paragraphs, numbered consecutively.

Notice of order

(3) The Society shall send to the licensee who is the subject of an order made under subsection 42 (7) of the Act a copy of the order by any of the following methods:

1. Personal delivery to the licensee.
2. Regular lettermail to the last known address of the licensee.
3. Fax to the last known fax number of the licensee.
4. E-mail to the last known e-mail address of the licensee.

Date of receipt: mail

(4) If the copy of the order is sent by regular lettermail, it shall be deemed to be received by the licensee on the fifth day after the day it is mailed, unless the day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

Date of receipt: fax or e-mail

(5) If the copy of the order is sent by fax or e-mail, it shall be deemed to be received by the licensee on the day after it was sent, unless the day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

Effective date of order

(6) Unless otherwise provided in the order, an order made under subsection 42 (7) of the Act is effective from the date on which it is made.

Order is not public information

(7) An order made under subsection 42 (7) of the Act shall not be made public.

Order making licence subject to terms, etc., is public information

(8) Despite subsection (7), an order made under subsection 42 (7) of the Act that imposes terms, conditions, limitations or restrictions on the licensee or the licensee's licence is a matter of public record.

PART V**PAYMENT OF COSTS****AUDIT****Payment of costs**

38. On application by the Society, a bencher appointed for the purpose by Convocation may make an order requiring a licensee who was the subject of an audit under section 49.2 of the Act to pay the cost or a portion of the cost of the audit if the bencher is satisfied that,

- (a) the audit was required because the licensee had failed to submit to the Society the report required under section 4 of By-Law 8 [Reporting and Filing Requirements];
- (b) at the time arranged between the Society and the licensee, the person conducting the audit could not gain entry to the business premises of the licensee;
- (c) at any time during the audit, the licensee failed to produce to the person conducting the audit the financial records and other documents that the licensee prior to a specified time had been requested to make available to the person at that time;
- (d) at any time during the audit, the licensee failed to produce to the person conducting the audit financial records that were up to date and the failure to produce financial records that were up to date increased significantly the amount of time required to complete the audit; or

- (e) at any time during the audit, the licensee produced financial records that were not in compliance with the requirements of By-Law 9 [Financial Transactions and Records] and the production of financial records that were not in compliance with the requirements of By-Law 9 [Financial Transactions and Records] increased the amount of time required to complete the audit.

Notice of application

39. (1) An application for payment of the cost or a portion of the cost of an audit shall be commenced by the Society notifying the licensee in writing of the application.

Method of giving notice

- (2) Notice under subsection (1) is sufficiently given if,
 - (a) it is delivered personally;
 - (b) it is sent by regular lettermail addressed to the licensee at the latest address for the licensee appearing on the records of the Society; or
 - (c) it is faxed to the licensee at the latest fax number for the licensee appearing on the records of the Society.

Receipt of notice

- (3) Notice under subsection (1) shall be deemed to have been received by the licensee,
 - (a) if it was sent by regular lettermail, on the fifth day after it was mailed; and
 - (b) if it was faxed, on the first day after it was faxed.

Bill of costs

40. (1) Where the Society is applying for payment of the cost or a portion of the cost of an audit, the Society shall send to the licensee at least ten days before the date fixed for consideration of the application a bill of costs setting out the expenses, fees, disbursements and other charges incurred by the Society to conduct the audit.

Tariff

(2) The bill of costs prepared by the Society shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

Application of certain sections

(3) Subsections 39 (2) and (3) apply, with necessary modifications, to the delivery of the bill of costs under subsection (1).

Consideration of application: procedure

41. (1) Subject to sections 39 and 40 and subsections (2), (3), (5) and (6), the procedure applicable to the consideration of an application for the payment of the cost or a portion of the cost of an audit shall be determined by the bencher and, without limiting the generality of the foregoing, the bencher may decide who may make submissions to him or her, when and in what manner.

Submissions by licensee and Society

(2) The licensee and the Society are entitled to make submissions to the bencher when he or she is considering an application for the payment of the cost or a portion of the cost of an audit.

Ability to pay

(3) In considering an application for the payment of the cost or a portion of the cost of an audit, the bencher shall take into account, among other relevant factors, the licensee's ability to pay.

Authority of bencher

(4) After considering an application for payment of the cost or a portion of the cost of an audit, the bencher shall,

- (a) dismiss the application and declare that the licensee is not required to pay the cost or any portion of the cost of the audit; or
- (b) order that the licensee pay the cost or a portion of the cost of the audit, as requested by the Society in the application or as determined by the bencher, and set the due date for payment.

Tariff

(5) Where the bencher determines under clause (4) (b) that the licensee is to pay the cost or a portion of the cost of the audit other than as requested by the Society in the application, the bencher's determination as to the amount payable by the licensee shall, as far as possible, be in accordance with a tariff established by Convocation from time to time.

Reasons for decision

(6) If requested by the licensee or the Society, the benchers shall state in writing the reasons for his or her decision on the application.

Appeal

42. (1) The licensee or the Society if dissatisfied with the benchers' decision under subsection 41 (4) may appeal the decision to a panel of three benchers appointed for the purpose by Convocation.

Time for appeal

- (2) An appeal under subsection (1) shall be commenced,
- (a) if the licensee is appealing, by the licensee notifying the Society in writing of the appeal within thirty days after the day the benchers deliver his or her decision; or
 - (b) if the Society is appealing, by the Society notifying the licensee in writing of the appeal within thirty days after the day the benchers deliver his or her decision.

Procedure

(3) The rules of practice and procedure apply, with necessary modifications, to the consideration by the panel of three benchers of an appeal under subsection (1) as if the consideration of the appeal were the hearing of an appeal under subsection 49.32 (2) of the Act.

Same

(4) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the panel of three benchers of an appeal under subsection (1).

Payment of cost of audit

(5) Where a licensee or the Society appeals under subsection (1), payment of the cost or a portion of the cost of an audit, as ordered by the benchers under subsection 41 (4), is postponed until the appeal is disposed of by the panel of three benchers.

Decision on appeal

- (6) After considering an appeal made under subsection (1), the panel of three benchers shall,
- (a) confirm the benchers' decision; or
 - (b) strike out the benchers' decision and substitute its own decision.

Decision final

(7) The decision of the panel of three benchers on an appeal made under subsection (1) is final.

PART VI**PROCEEDINGS AUTHORIZATION COMMITTEE****GENERAL****Definitions**

43. In this Part,

“Committee” means the Proceedings Authorization Committee;

“outside counsel” means a person appointed under section 49.53 of the Act to represent the Society in any proceeding under Part II of the Act before the Hearing Panel, the Appeal Panel or a court that concerns a bencher or employee of the Society;

Proceedings Authorization Committee

44. (1) The Proceedings Authorization Committee is continued as the Proceedings Authorization Committee in English and as Comité d=autorisation des instances in French.

Composition

- (2) The Committee shall consist of five persons appointed by Convocation, of whom,
- (a) one shall be the chair or a vice-chair of the Professional Regulation Committee;
 - (b) one shall be the chair or a vice-chair of the Professional Development and Competence Committee; and
 - (c) one shall be,
 - (i) until the first election of benchers under subsection 16 (1) of the Act takes place, one of the two persons referred to in subsection 16 (6) of the Act, or
 - (ii) a bencher who is licensed to provide legal services in Ontario.

Eligibility for appointment

(3) A person is not eligible to be appointed to the Committee unless he or she is a bencher.

Term of office

(4) Subject to subsection (5), a person appointed to the Committee shall hold office for a term of one year and is eligible for reappointment.

Appointment at pleasure

(5) A person appointed to the Committee holds office as a member of the Committee at the pleasure of Convocation.

Chair

45. (1) Convocation shall appoint one member of the Committee who is an elected bencher as chair of the Committee.

Term of office

(2) Subject to subsection (3), the chair holds office for a term of one year and is eligible for reappointment.

Appointment at pleasure

(3) The chair holds office at the pleasure of Convocation.

Function of Committee

46. It is the function of the Committee,

- (a) to review all matters referred to it in accordance with this Part and, in respect of each matter, to determine whether any action mentioned in subsection 51 (1) should be taken; and
- (b) to determine, in any given case, whether the Society should apply to the Superior Court of Justice for an order under section 49.13 of the Act.

REVIEW OF MATTERS REFERRED TO COMMITTEE

Review of matters: quorum of Committee

47. (1) Two members of the Committee constitute a quorum for the purposes of reviewing a matter and taking action in respect of the matter.

Temporary members

(2) If no two members of the Committee are able to constitute a quorum because four or more members of the Committee are unable for any reason to act, subject to subsection (3), the chair of the Committee may appoint one or more persons as temporary members of the Committee for the purposes of constituting a quorum, and the temporary members shall be deemed, for the purposes of subsection (1), to be members of the Committee.

Eligibility for appointment

(3) The chair shall not appoint a person as a temporary member of the Committee under subsection (2) unless the person is,

- (a) a bencher; or
- (b) until the first election of benchers under subsection 16 (1) of the Act takes place, one or the two persons referred to in subsection 16 (6) of the Act.

Review by telephone conference call, etc.

48. The Committee may meet to review a matter by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

No right to participate

49. (1) Subject to subsection (2), no person may participate in the review of a matter by the Committee.

Participation at request of Committee

(2) For the purposes of answering any questions that the Committee might have about a matter referred to it or about actions that may be taken by the Committee with respect to a matter referred to it, the Committee may require one or more of the following persons to participate in a review of a matter:

- 1. The person who referred the matter to it.
- 2. An officer, employee, agent or representative of the Society who is or was involved in an audit, investigation, review, search or seizure relating to the matter.

Referral by Society

50. (1) Subject to subsection (2), during or after an audit, investigation or review, the Society may refer to the Committee a matter respecting the conduct of a licensee or group of

licensees, the capacity of a licensee or the professional competence of a licensee for one or more of the following purposes:

1. Obtaining directions with respect to the conduct of an audit, investigation or review.
2. Obtaining approval or directions for the informal resolution of the matter.
3. Obtaining authorization for the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.
4. Obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether,
 - i. a licensee has contravened section 33 of the Act,
 - ii. a licensee is or has been incapacitated, or
 - iii. a licensee is failing or has failed to meet standards of professional competence.

Restrictions on referrals by Society

(2) The Society shall not refer to the Committee a matter respecting the conduct of a licensee if the matter is a complaint that has been referred to the Complaints Resolution Commissioner for resolution or review and the Complaints Resolution Commissioner has not yet disposed of the matter.

Referral by panelist

(3) Subject to subsection (4), a member of the Hearing Panel appointed under subsection 42 (6) of the Act to review a proposal for an order made to a licensee may refer to the Committee a matter respecting the professional competence of the licensee for the purpose of obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether the licensee is failing or has failed to meet standards of professional competence.

Restrictions on referrals by panelist

(4) A member of the Hearing Panel appointed under subsection 42 (6) of the Act to review a proposal for an order made to a licensee shall not refer to the Committee a matter respecting the professional competence of the licensee except after the bench has,

- (a) met with the licensee and the Society, as required under sections 33 and 34, in accordance with sections 35 and 36; and
- (b) refused to make an order under subsection 42 (7) of the Act.

Recommendations for action

(5) A person who refers a matter to the Committee may recommend actions to be taken by the Committee in respect of the matter, and, in making his or her recommendations, the person is not restricted to recommending the actions mentioned in paragraphs 1 to 7 of subsection 51 (1).

Review of matters

51. (1) After reviewing a matter, the Committee may determine that no action should be taken in respect of the matter or, subject to subsections (2) to (4), the Committee may take one or more of the following actions:

1. Approve, or give directions for, the informal resolution of the matter.
2. Authorize the Society to apply to the Hearing Panel for a determination of whether,
 - i. a licensee has contravened section 33 of the Act,
 - ii. a licensee is or has been incapacitated, or
 - iii. a licensee is failing or has failed to meet standards of professional competence.
3. Invite a licensee to attend before a panel of benchers to receive advice concerning his or her conduct.
4. Invite a licensee to attend before a panel of benchers to receive advice concerning his or her professional competence.
5. Send to a licensee a letter of advice concerning his or her conduct.
6. Send to a licensee a letter of advice concerning his or her professional competence.
7. Authorize the Society to move in an intended proceeding or in a proceeding, if the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

8. Any other action that the Committee considers appropriate.

Restriction on authorization of conduct proceedings

(2) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a licensee has contravened section 33 of the Act unless the Committee is satisfied that there are reasonable grounds for believing that the licensee has contravened section 33 of the Act.

Restriction on authorization of capacity proceedings

(3) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a licensee is or has been incapacitated unless the Committee is satisfied that there are reasonable grounds for believing that the licensee is or has been incapacitated.

Restriction on authorization of professional competence proceedings

(4) The Committee shall not authorize the Society to apply to the Hearing Panel for a determination of whether a licensee is failing or has failed to meet standards of professional competence unless the Committee is satisfied that there are reasonable grounds for believing that the licensee is failing or has failed to meet standards of professional competence.

Appointment of representative

52. (1) Where the Committee authorizes the Society to apply to the Hearing Panel for a determination of whether a licensee is or has been incapacitated, the Committee may appoint another licensee to represent the licensee in proceedings under Part II of the Act before the Hearing Panel, the Appeal Panel or a court if the Committee is satisfied that,

- (a) the licensee is unable to participate in the proceedings or is unable to instruct counsel to do so;
- (b) the licensee has no legal representation; and
- (c) the licensee does not have a guardian, an attorney or a similar person who has authority to represent the licensee in the proceedings.

Costs

(2) The costs resulting from an appointment under subsection (1) shall be paid for by the Society.

Decision in writing

53. The Committee shall record in writing its decision on every matter referred to it.

Notice

54. The Committee shall give to the Society notice of its decision on every matter referred to it.

Reasons

55. The Committee is not required to provide at any time to any person its reasons for a decision.

Withdrawal of application to Hearing Panel

56. (1) If the Committee authorizes the Society to apply to the Hearing Panel for a determination mentioned in paragraph 2 of subsection 51 (1) but the Hearing Panel has not commenced a hearing to determine the merits of the proceeding, the Society shall not withdraw its application to the Hearing Panel unless the Committee has first authorized the withdrawal.

Request for withdrawal: procedure

(2) A request to the Committee to withdraw an application to the Hearing Panel shall be made by the Society or an outside counsel, as the case may be, and sections 47, 48, 49, 53, 54 and 55 apply, with necessary modifications, to the Committee's consideration of the request.

APPLICATION FOR DISCLOSURE ORDER**Application by Society**

57. (1) On application by the Society, the Committee shall determine whether the Society should apply to the Superior Court of Justice for an order under section 49.13 of the Act.

Quorum of Committee

(2) Any two members of the Committee constitute a quorum for the purposes of making the determination under subsection (1).

Factors to be considered

(3) In making the determination under subsection (1), the Committee shall give primary consideration to the extent to which disclosure of information is necessary in order to protect the public and further the administration of justice.

Application of certain sections

(4) Sections 48, 49, 53, 54 and 55 apply, with necessary modifications, to the making of a determination under subsection (1).



APPENDIX 5

The Law Society of Upper Canada
 Osgoode Hall
 130 Queen Street West
 Toronto, ON M5H 2N6

For Immediate Release

December 9, 2009

News Release

Stindar K. Lal, Q.C. appointed new Complaints Resolution Commissioner

Toronto — Mr. Stindar K. Lal, Q.C. was appointed as the Law Society’s Complaints Resolution Commissioner at the December 4 meeting of Convocation.

“We are very pleased that Mr. Lal has accepted the appointment as the Law Society’s Complaint Resolution Commissioner,” said Treasurer Derry W. A. Millar. “His distinguished career in public service involving accountability in regulatory processes, as well as his experience as an arbitrator, mean that he will make an invaluable contribution to ensuring transparency and sensitivity for members of the public involved in the Law Society’s complaints resolution process.”

Mr. Lal is a former deputy minister in six different ministries of the Ontario government, including Environment, Consumer and Commercial Relations, Municipal Affairs, Citizenship, Management Board Secretariat, and the Solicitor-General. He served as a Deputy Minister of Justice and lawyer for the government of the Northwest Territories; was involved in the patriation of the Canadian Constitution particularly as it related to the entrenchment of Aboriginal rights; and was instrumental in the establishment of a self-regulating Law Society of the Northwest Territories. Mr. Lal is a long-serving chair of the Inuvialuit Arbitration Board established to resolve disputes arising out of the Land Claims Agreement of the Western Arctic Inuit and the Government of Canada or industry. He also served as general counsel to the Canadian Human Rights Commission. As a lawyer and consultant, Mr. Lal has advised governments in Canada and the world, in countries as diverse as Qatar, Russia and Vietnam, on the establishment of more accountable governmental and regulatory processes.

The Complaints Resolution Commissioner plays a vital role in the Law Society’s complaints resolution process. In cases where a complaint against a lawyer or paralegal has been closed and the complainant is unsatisfied with this result, he or she can apply to the Commissioner to review the case. The Commissioner will review the file to ensure that the complaint was handled appropriately and the results were reasonable. This will often involve a face-to-face meeting with complainants, and the Commissioner also has the authority to provide alternative dispute resolution between lawyers or paralegals and their clients for issues that do not require a regulatory response.

Mr. Lal will serve a two-year term starting April 1, 2010. He succeeds Mr. Clare Lewis, Q.C., who has held the post since 2005.

The Law Society of Upper Canada regulates the lawyers and paralegals of Ontario in the public interest. The Law Society ensures that every individual who practises law or provides legal services in Ontario meets standards of learning, professional competence and professional conduct that are appropriate for the legal services provided.

The Law Society has a duty to protect the public interest, to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario, and to act in a timely, open and efficient manner.

-30-

For additional information, please contact: Roy Thomas, Director Communications at 416 947 7619 or rthomas@lsuc.on.ca or Jane Withey, Communications Manager, at 416-947-7625 or jwithey@lsuc.on.ca.

Office of the Complaints Resolution Commissioner



INFORMATION SHEET

COMPLAINTS REVIEW PROCESS

This information sheet is to help you with the complaints review process. If the Law Society of Upper Canada has conducted an investigation of your complaint and advised that it will be closing the complaint file, you may ask the Complaints Resolution Commissioner (CRC) to review the decision to close the file.

ROLE OF THE COMPLAINTS RESOLUTION COMMISSIONER

The CRC will conduct an independent review of the Law Society's investigation and the decision to close your complaint file. After reviewing the Law Society's decision, the CRC, in accordance with the Law Society Act, has two options. The first is to agree that the

Law Society's review and outcome are reasonable and that the file will remain closed. Alternatively, the Commissioner may decide to refer the complaint back to the Law Society with a recommendation to take further action.

THE CRC CANNOT:

- Make a finding of professional misconduct;
- Impose disciplinary penalties;
- Make a finding of professional negligence;
- Award compensation for financial losses;
- Direct a lawyer to refund fees or disbursements; or
- Conduct a new investigation.

REQUESTS FOR REVIEW

A request for review by the CRC must be made in writing within 60 days of the Law Society's notification that no further action would be taken with respect to your complaint.

As a result of your request for a review, either a face-to-face meeting with the Commissioner will be scheduled or a teleconference call arranged. There may also be cases in which the Commissioner feels that it is more appropriate to review the complaint in writing.

As part of the process, the CRC will review the investigation file. If you intend to provide additional material concerning your complaint to the Commissioner, please do so well in advance. Providing new information shortly before or at the meeting may result in the matter being referred back to the Law Society for further review and delay the CRC's review.

MEETING WITH THE COMPLAINTS RESOLUTION COMMISSIONER

As part of the review process, you may be invited to meet with the Commissioner or participate in a conference call. These sessions are informal and involve a discussion of your complaint and the concerns you have with the Law Society's decision to close its file.

Neither the lawyer(s) who was the subject of your complaint nor the Law Society investigator will be present at the meeting or during the conference call.

However, there will be a lawyer present to assist the Commissioner and respond to any legal questions raised by the Commissioner. The lawyer's role is restricted to providing assistance to the Commissioner and he or she cannot provide you with legal advice. This lawyer has no previous knowledge or involvement in the case.

Office of the Complaints Resolution Commissioner



INFORMATION SHEET

COMPLAINTS REVIEW PROCESS

Most meetings take between 30 minutes to one hour, so it is important that you are organized and prepared in advance. To assist you, the Law Society will provide you with an indexed book of documents and correspondence one-week prior to the meeting. The Commissioner and the lawyer assisting the Commissioner

will also have a copy and will review the book of documents beforehand.

Most people choose to meet with the CRC independently. You may, however, bring a friend, family member or even a legal representative with you.

SCHEDULING A MEETING:

Scheduling a meeting with the CRC is often completed several weeks before the actual meeting. If you are unable to attend the meeting on the scheduled date or have decided not to pursue

your complaint further, please notify the Review Coordinator as soon as possible.

THE DECISION OF THE COMPLAINTS RESOLUTION COMMISSIONER

After reviewing the file and meeting with you, the Commissioner may:

- Decide that the Law Society's decision to close the file was reasonable and no further action with respect to the complaint needs to be taken; or
- Decide that the complaint file should be referred back to the Law Society for further action.

Either way, the Commissioner will express the decision to you in writing.

If the Commissioner agrees with the Law Society's decision to close the complaint, this decision concludes the matter. There are no further reviews or appeals.

FOR MORE INFORMATION

If you have questions about the process for a review by the CRC, please contact:

Coordinator to the Complaints Resolution Commissioner
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario M5H 2N6

Telephone : (416) 947-3442
Toll Free : 1-866-880-9480 (ext. 3442)
Fax : (416) 947-5213
E-mail : complaintsreview@lsuc.on.ca

APPENDIX 7**Complaint not meriting investigation**

5-62 The chief executive officer must not investigate a complaint when he or she determines that it does not merit investigation or is not within the jurisdiction of the society and must:

- (a) inform the complainant and member in writing of the decision not to investigate and the reason for that decision;
- (b) provide the member with a copy of the complaint; and
- (c) provide the complainant with instructions on how to apply for a review of the chief executive officer's decision.

Complaints commissioner

5-63(1) The benchers must appoint a person who is not a member of the society to act as complaints commissioner under this division.

Review by complaints commissioner

5-63(2) A complainant may apply in writing to the complaints commissioner for a review of a decision made by the chief executive officer under rule 5-62. The complainant's request for review must

be made within 90 days from the date the chief executive officer's decision was mailed to the complainant at his or her last known address.

Scope of review

5-63(3) The complaints commissioner may review all documents obtained, collected or produced by the chief executive officer.

Decision

5-63(4) Following his or her review, the complaints commissioner must:

- (a) confirm the decision of the chief executive officer; or
- (b) direct the chief executive officer to conduct an investigation of the complaint.

Notification of decision

5-63(5) The complaints commissioner must notify the complainant, the member and the chief executive officer in writing of his or her decision and the reasons for that decision.

Decision not subject to review

5-63(6) A decision of the complaints commissioner under subsection (4) is not subject to further review.

The Law Society *of British Columbia*



Key Performance Measures

Report on 2010 Performance

Presented to Benchers March 4, 2011



Table of Contents

	Page
Professional Conduct and Discipline....	4
Custodianships.....	16
Trust Assurance.....	21
Credentials, Articling & PLTC	29
Practice Advice	37
Practice Standards	43
Policy & Legal Services	50
Lawyers Insurance Fund	56



Background

This is the fourth 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



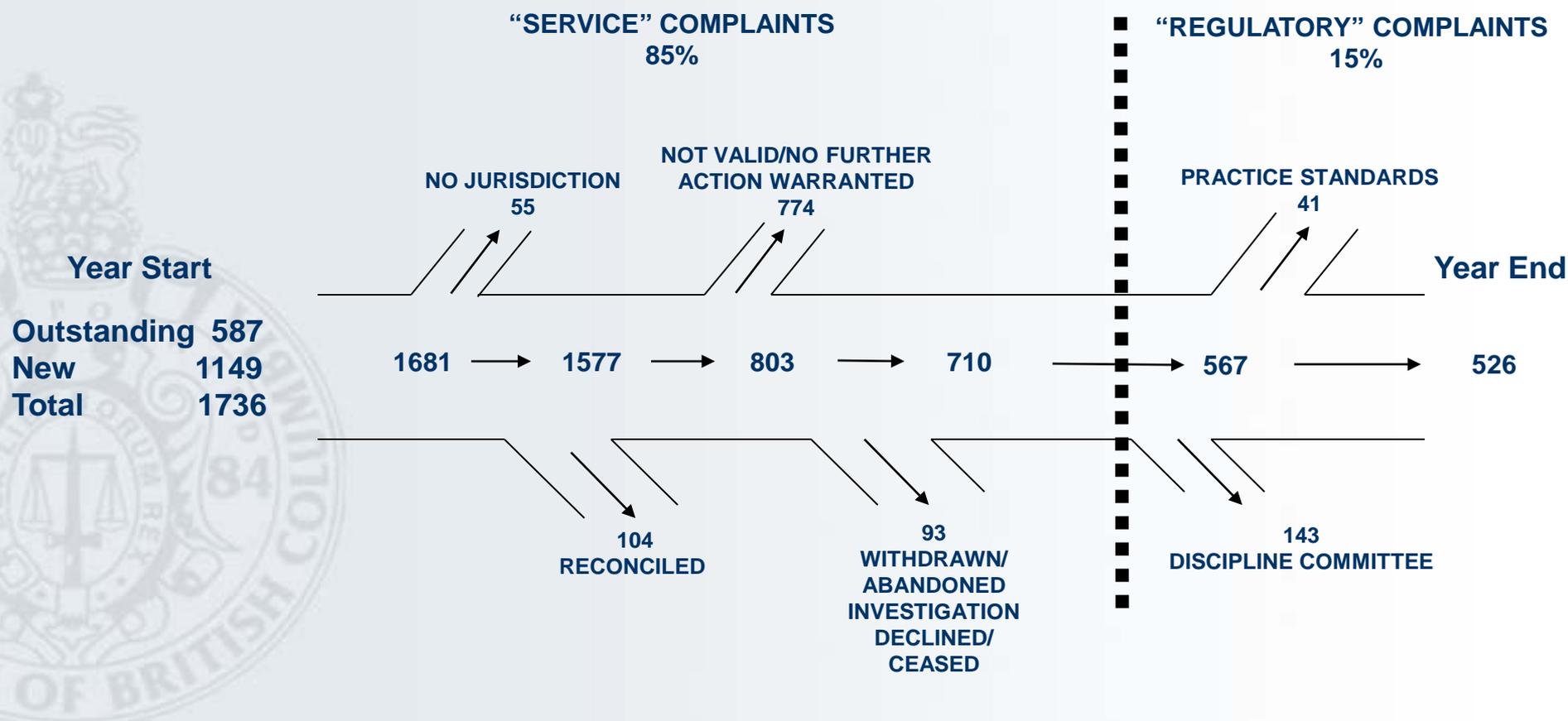


Department Highlights

- In 2010, the Professional Conduct Department received 1149 complaints, and closed 1210, leaving 61 fewer open files at the end of the year than the beginning.
- The Professional Conduct Department met or exceeded its Key Performance Measures for all areas but one. The areas that were met were the frequency of complaints did not increase over time, and that Complainants were satisfied with timeliness, fairness, courtesy, and thoroughness.
- The one KPM that was slightly below the target was whether Complainants would recommend that someone make a complaint to the Law Society.
- The Department has been working hard to close complaints quickly; 91% of files of all files closed in 2010 were closed within 1 year. This is a significant improvement over the 83% that were closed in 2009.
- Both the CRC and the Ombudsperson continue to be satisfied with our complaints handling process and procedure.

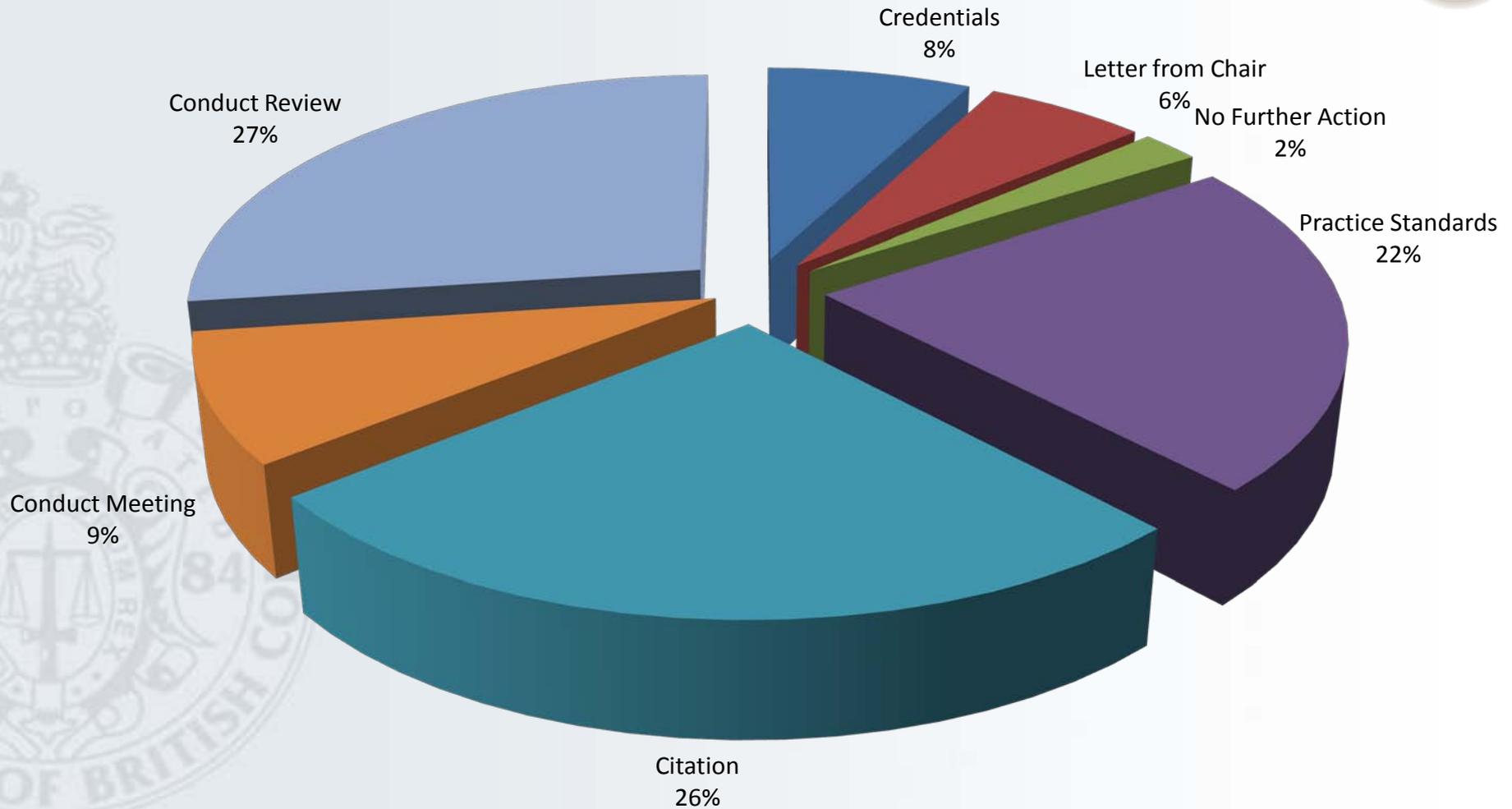


2010 Complaints Results





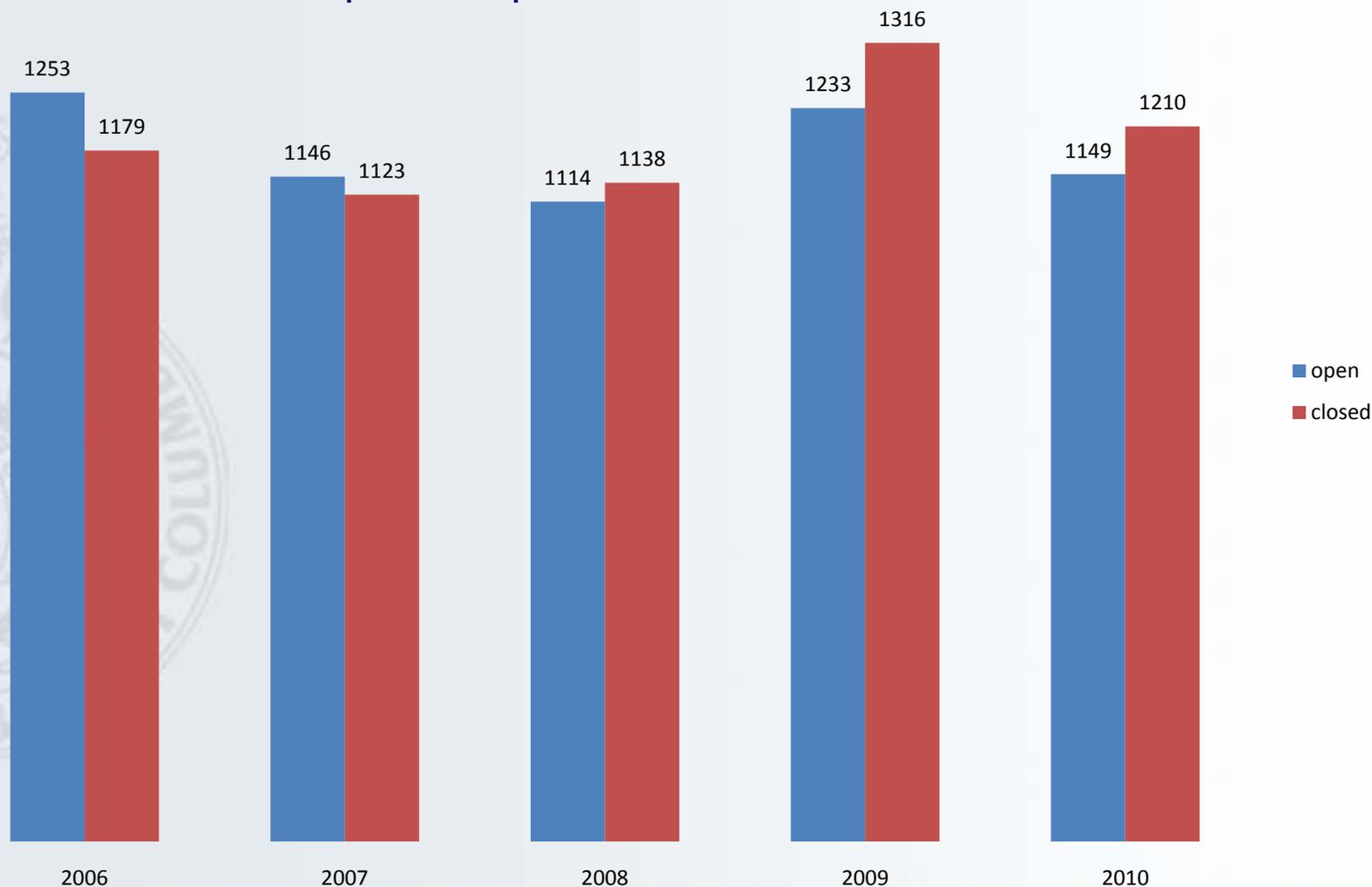
2010 Discipline Results





Key Activities

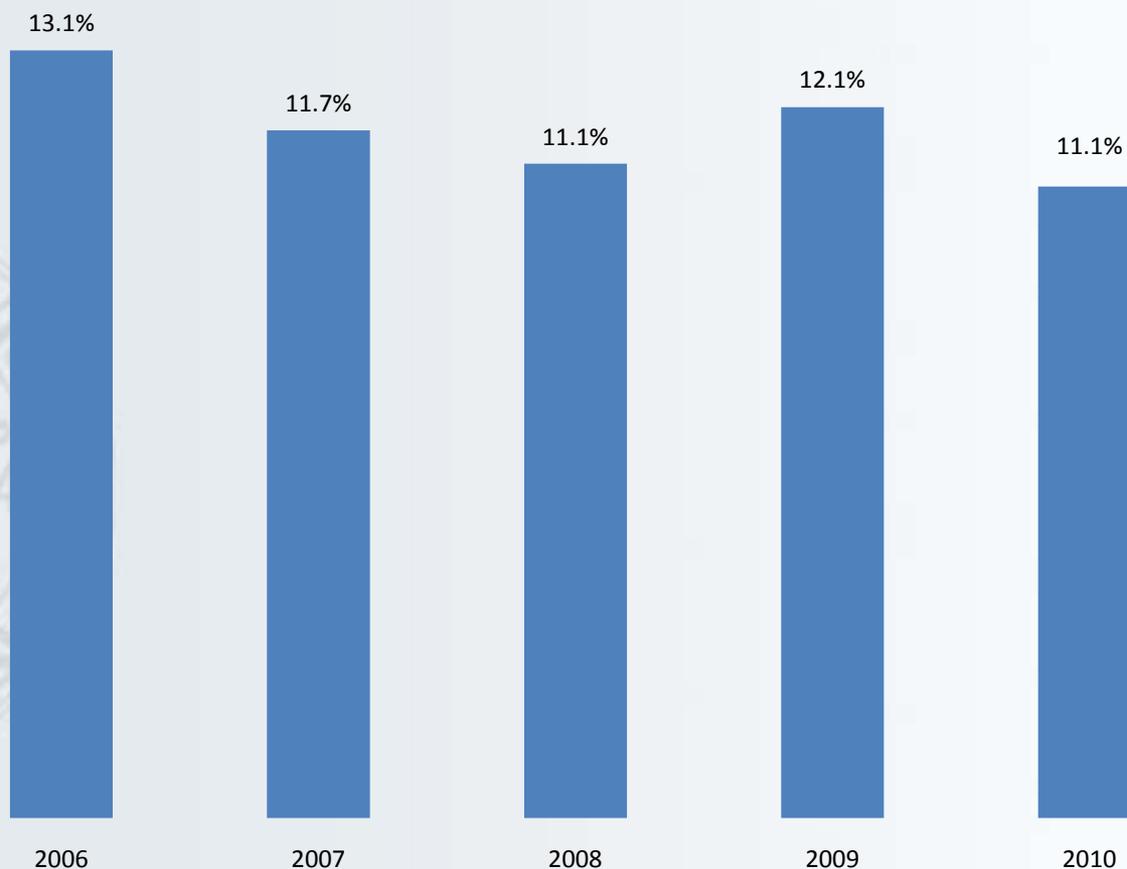
Number of Member Complaints Opened and Closed Each Year





Key Performance Measures

Frequency of complaints does not increase over time compared to the average number of practicing lawyers

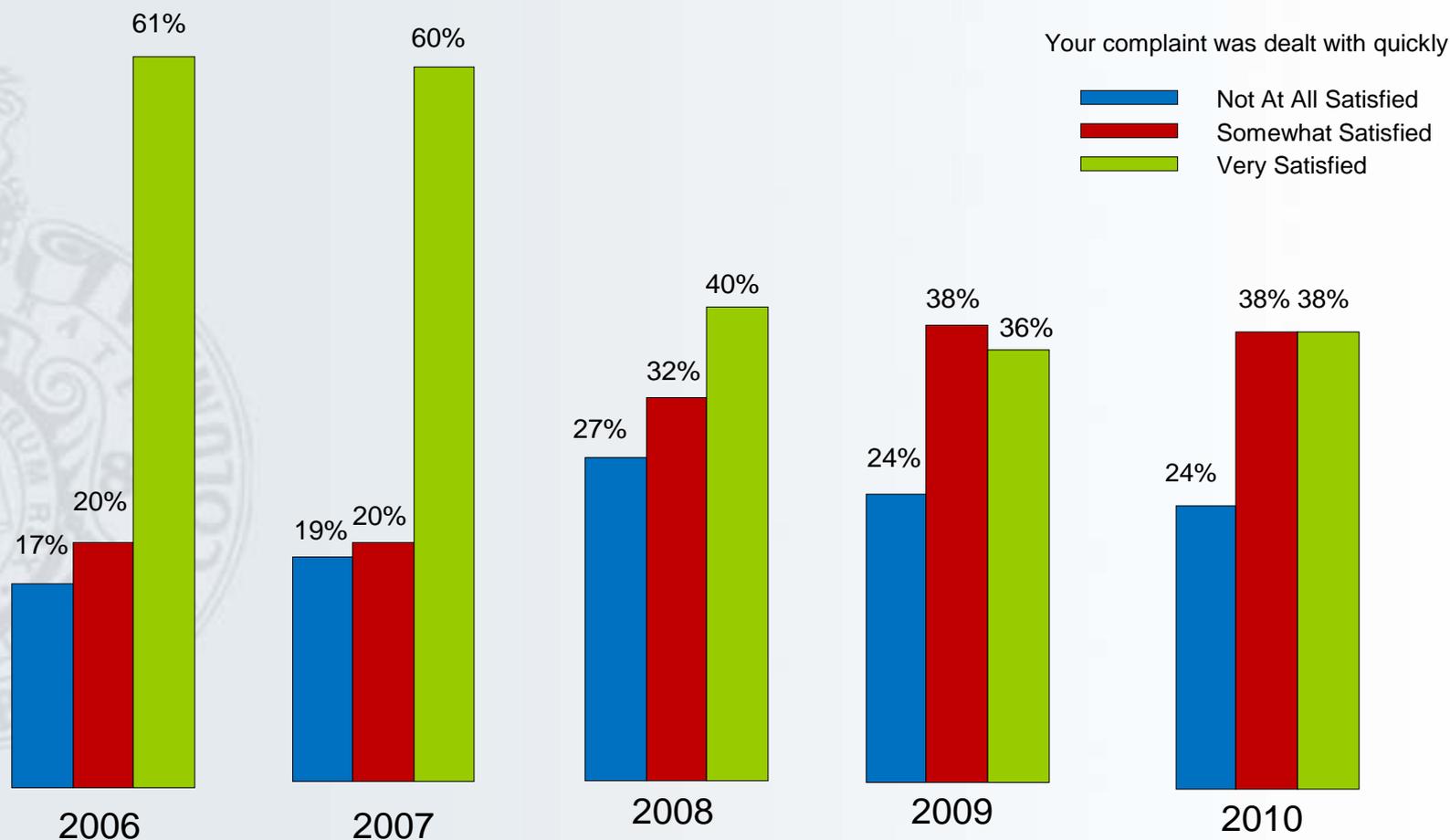




Key Performance Measures

At least 75% of Complainants express satisfaction with timeliness

2010 76%
2009 74%

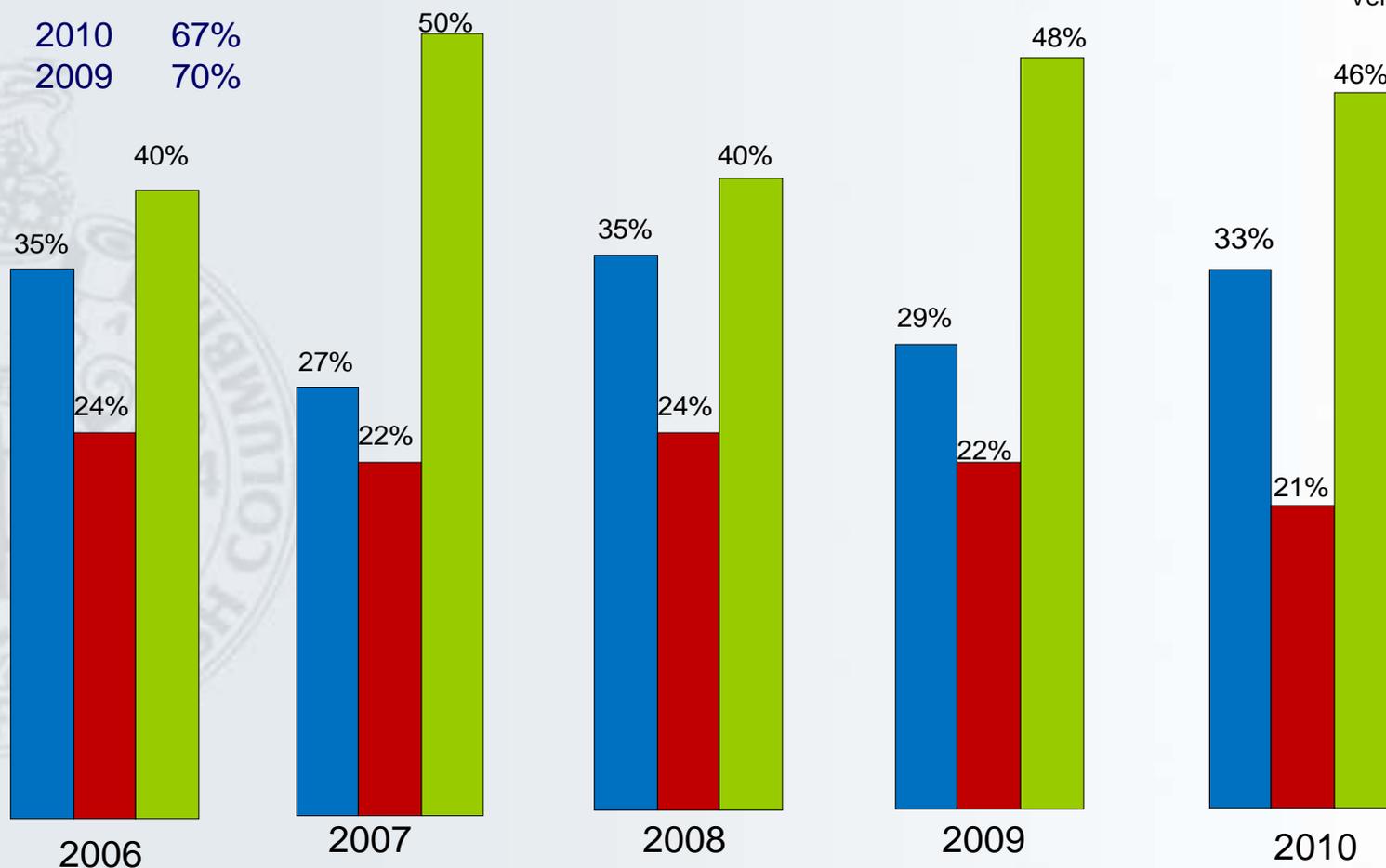


Key Performance Measures

At least 65% of Complainants express satisfaction with fairness

Your complaint was dealt with fairly

- █ Not At All Satisfied
- █ Somewhat Satisfied
- █ Very Satisfied





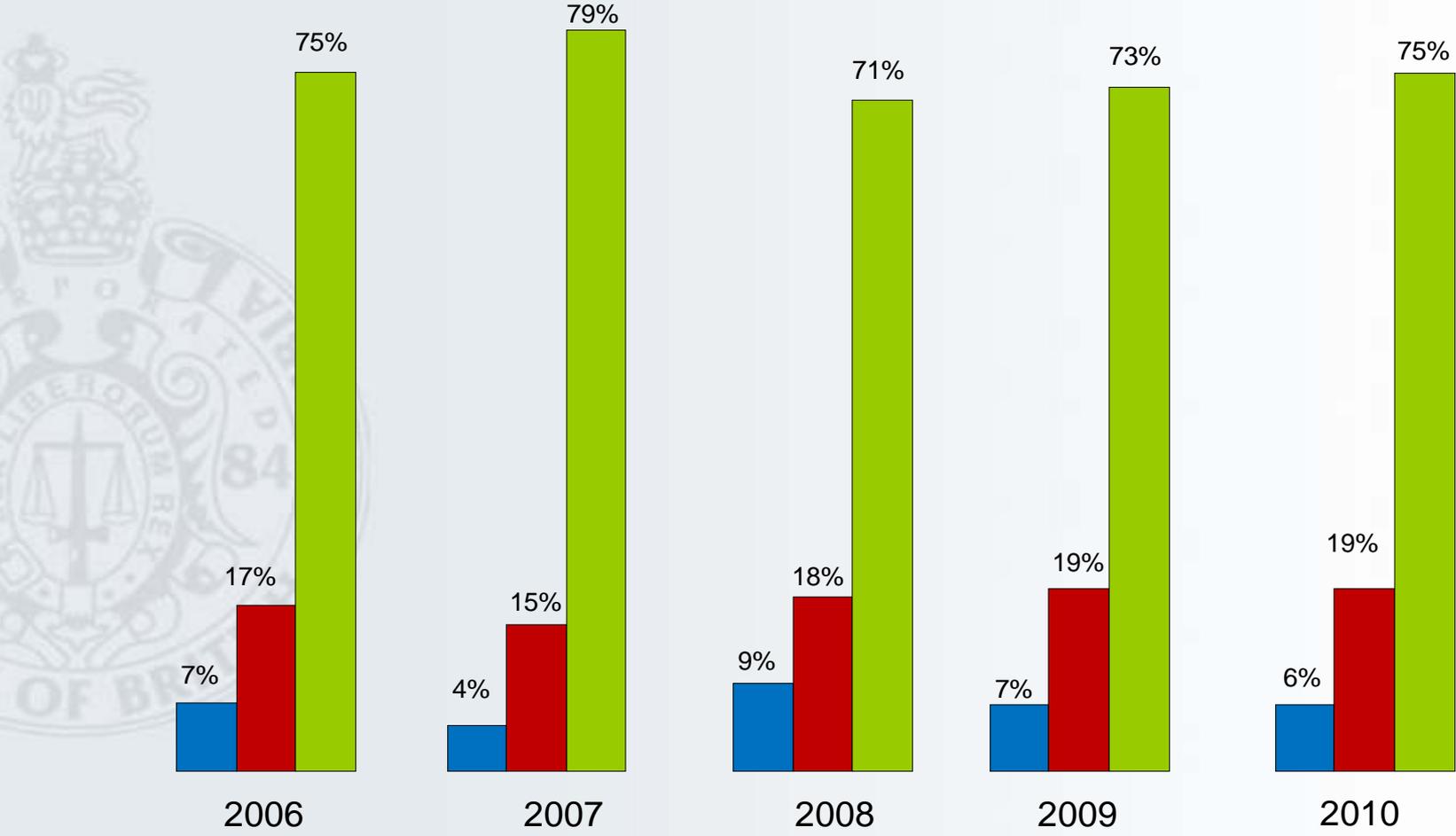
Key Performance Measures

At least 90% of Complainants express satisfaction with courtesy

2010 94%
2009 92%

Your complaint was dealt with courteously

- █ Not At All Satisfied
- █ Somewhat Satisfied
- █ Very Satisfied





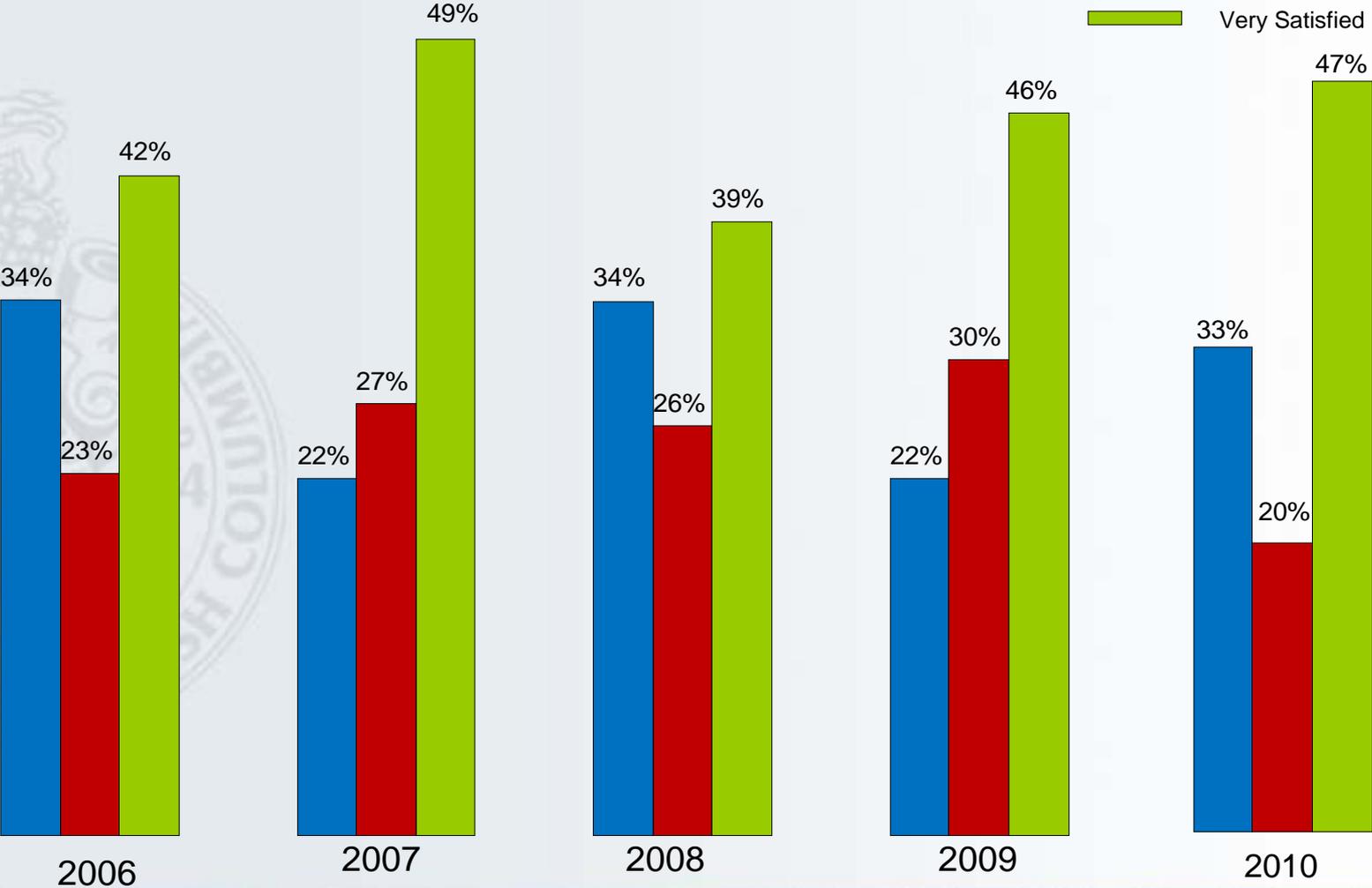
Key Performance Measures

At least 65% of Complainants express satisfaction with thoroughness

2010	67%
2009	76%

Your complaint was dealt with thoroughly

- Not At All Satisfied
- Somewhat Satisfied
- Very Satisfied



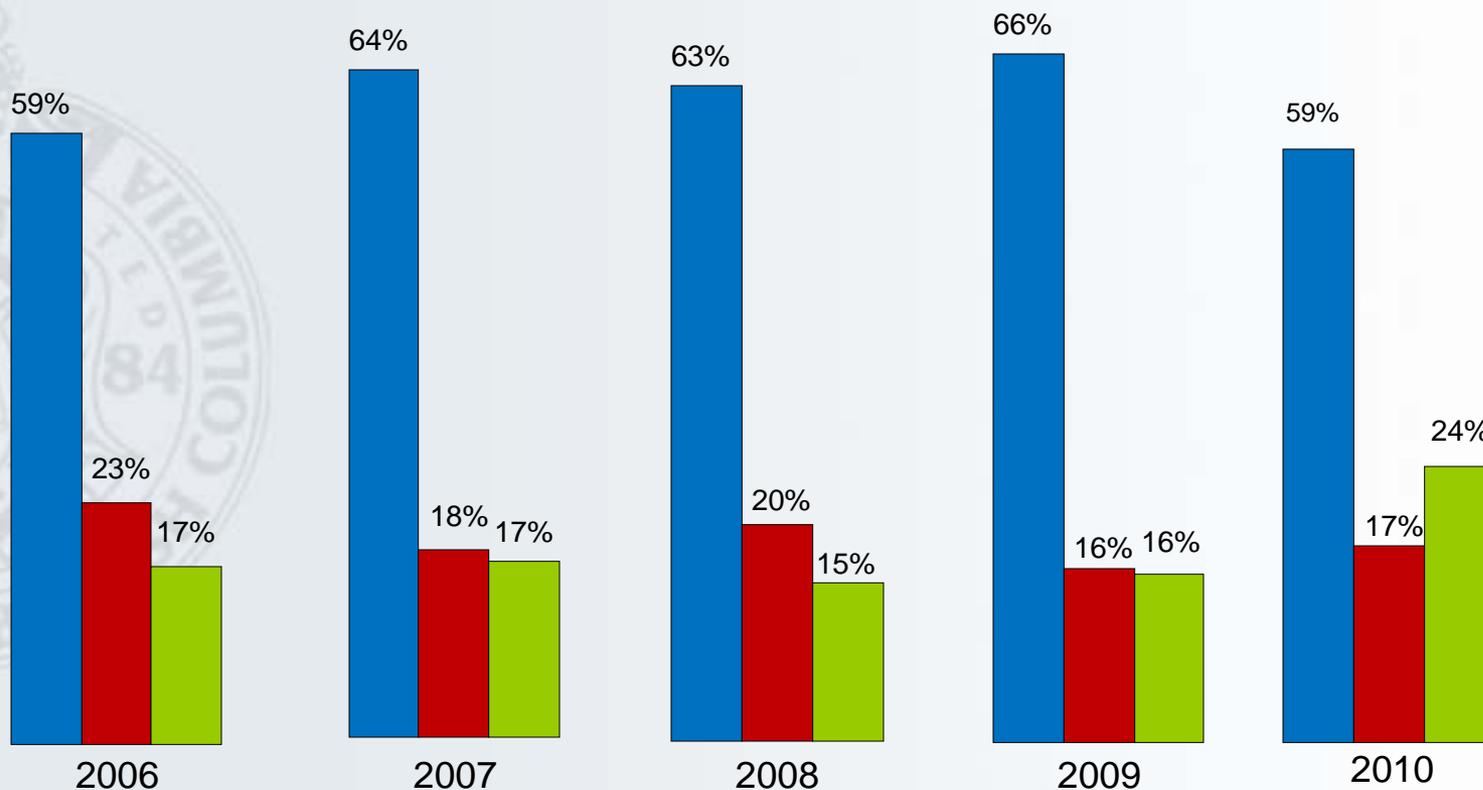


Key Performance Measures

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?

- Yes
- No
- Not Sure





Key Performance Measures

The Ombudsperson, 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 2010, no formal enquiries were received from the Office of the Ombudsperson concerning our complaint investigation process, compared with the 5 enquiries received in 2009.

In 2010, the Complainants' Review Committee considered 104 complaints as compared to 73 in 2009. CRC resolved to take no further action on 94 of them on the basis the staff assessments made were appropriate in the circumstances. Two referrals were made to the Discipline Committee, two to the Practice Standards Committee and one was referred to the former member's personal file. As well, the Complainants' Review Committee sought further information on 5 files before satisfying itself on four of them that no further action was required. One is pending.

In 2010, the Committee expressed no concerns about the fairness or due process followed in the investigation of complaints.

The Law Society

of British Columbia



Custodianships



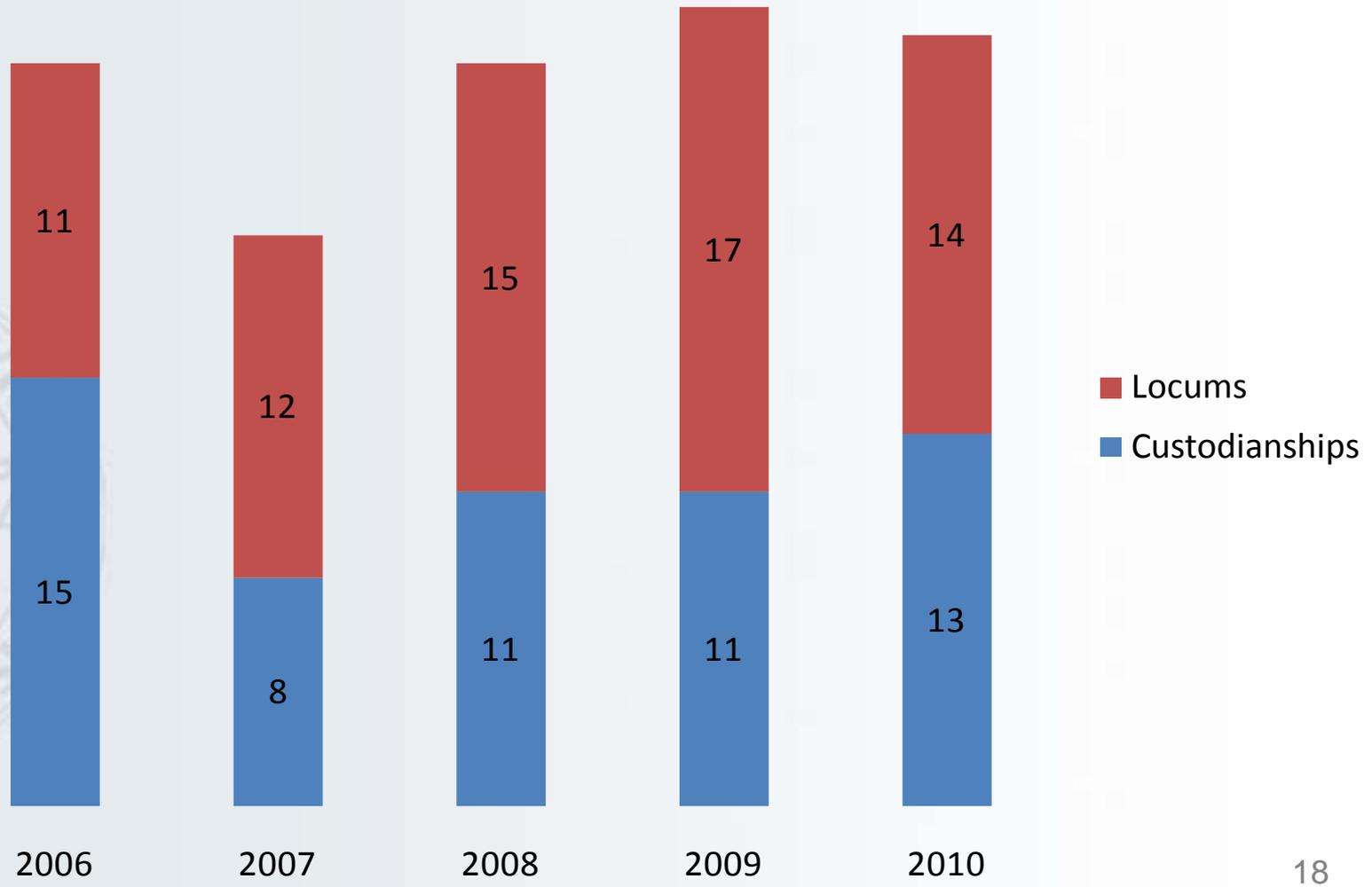


Departmental Highlights

- In 2010, the Law Society was appointed as a custodian for 13 practices and staff coordinated 14 locum placements, eliminating the need for the appointment of the Law Society as a custodian in those cases.
- There were 40 custodianships under administration at year end compared with 39 at the end of 2009.
- Overall, the total number of practices requiring the appointment of a custodian or placement of a locum has remained steady since 2008.
- The average time under the new program to complete a custodianship is lower compared with the historical average.
- The average cost of custodianships was lower than the comparable historical average.

Key Activities

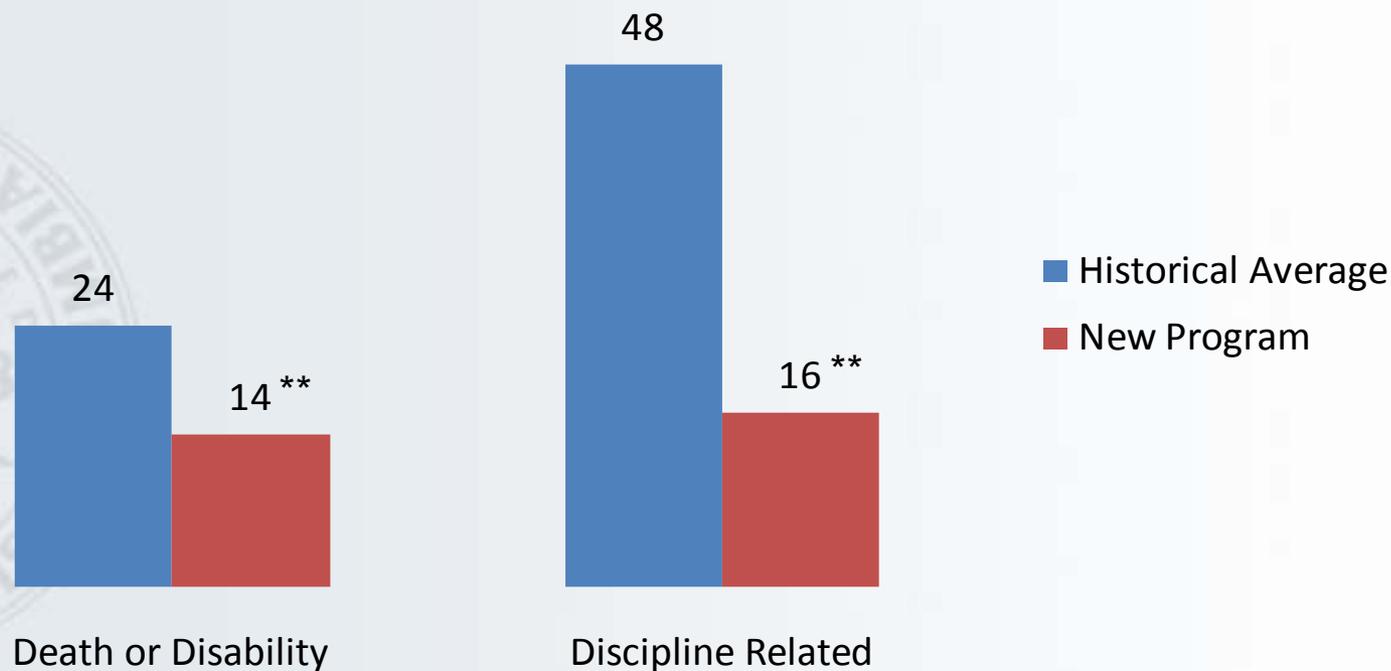
New Custodianships and Locums By Year





Key Performance Measures

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



* Duration in months

** As new program, small sample to date



Key Performance Measures

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



The Law Society

of British Columbia



Trust Assurance



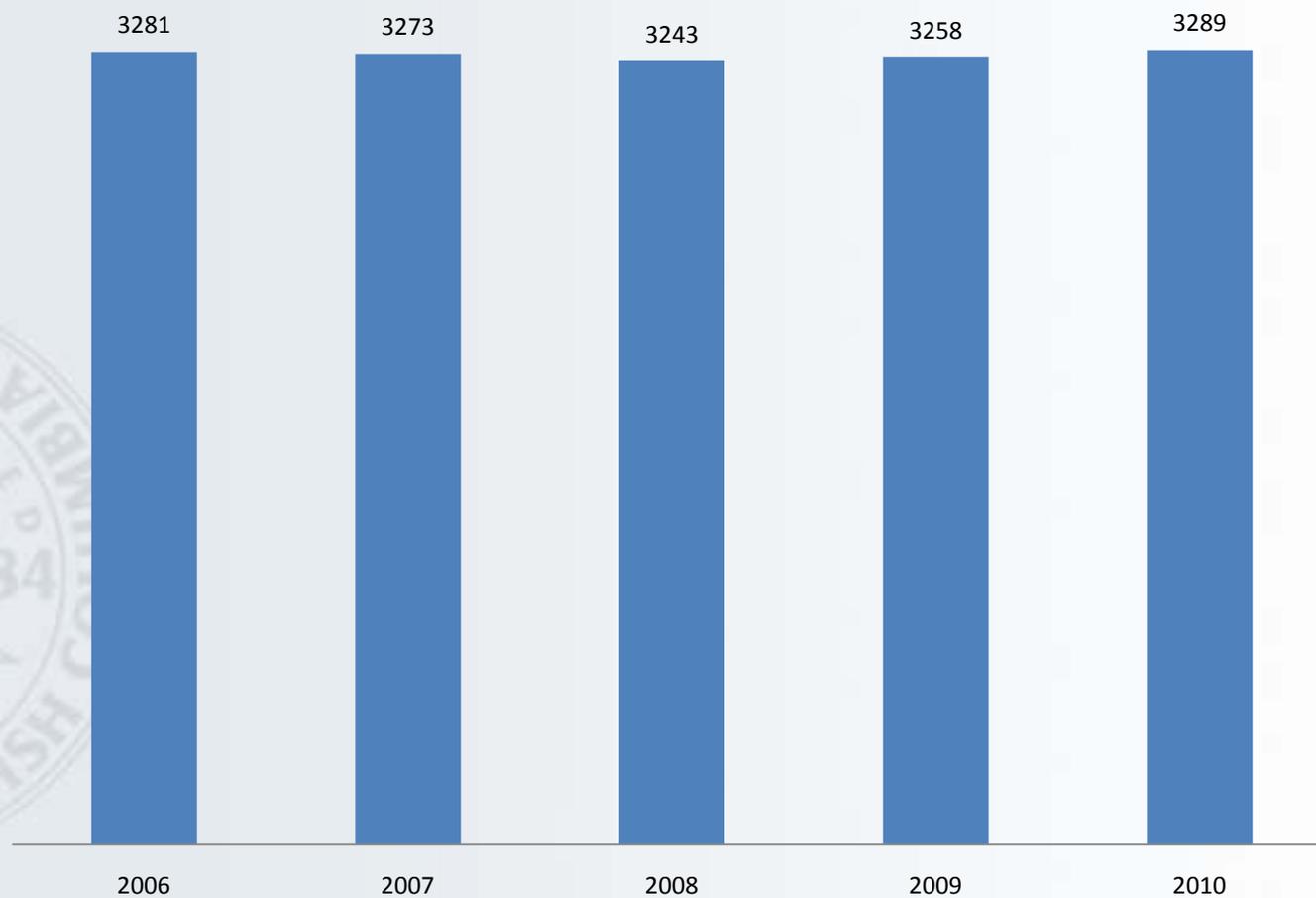


Department Highlights

- Reviewed approximately 3,300 trust reports in 2010, similar to past years.
- Performed 570 compliance audits in 2010, have completed approximately 1600 since the inception of the trust assurance program. On target to complete a compliance audit for each firm over a six year period.
- Continued positive member survey results.
- The number of financial suspensions remains low and stable.
- Slight increase in referrals in 2010 compared to 2009, but consistent results compared to 2008.
- Performance on key compliance questions improved in 2009 (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 were required to provide an accountant's report.

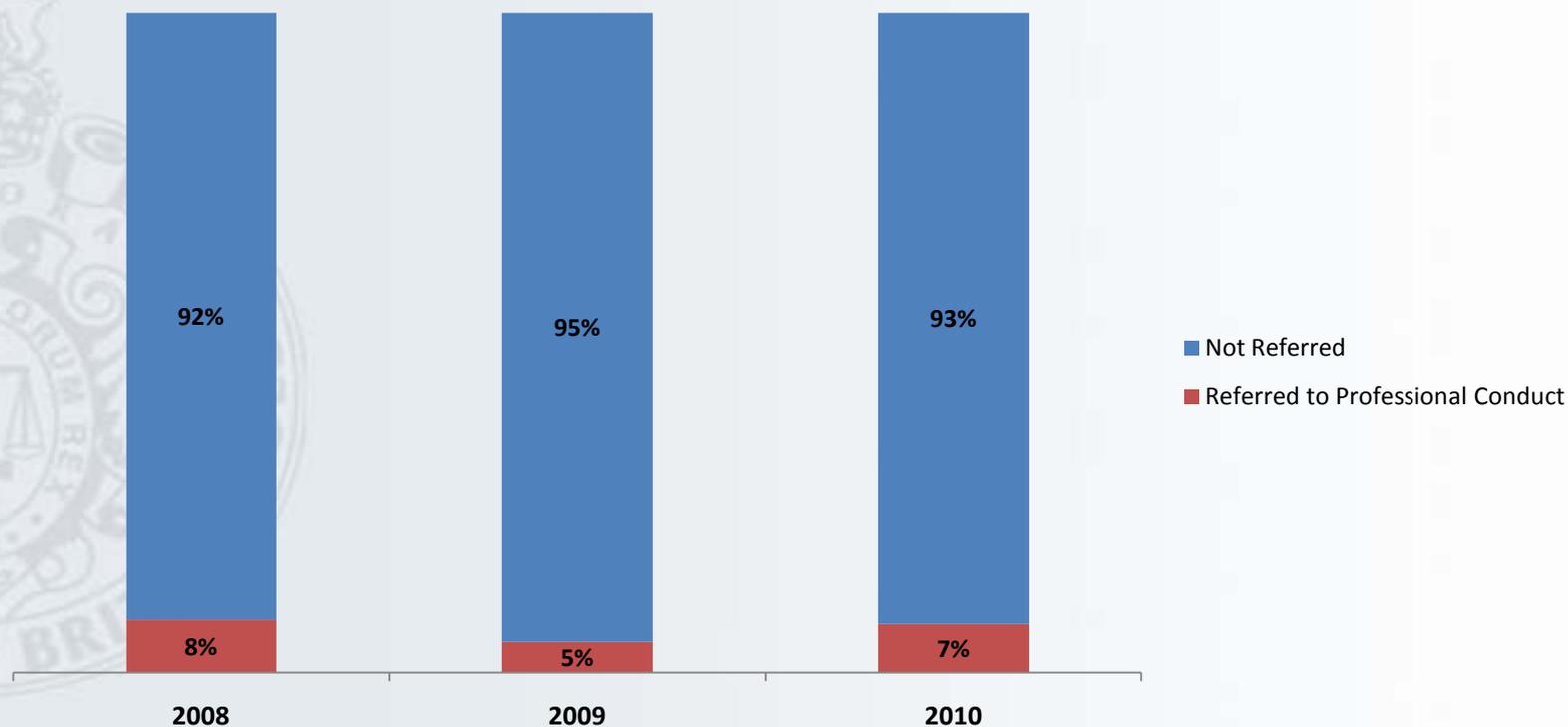


Number of Trust Reports



Compliance Audits

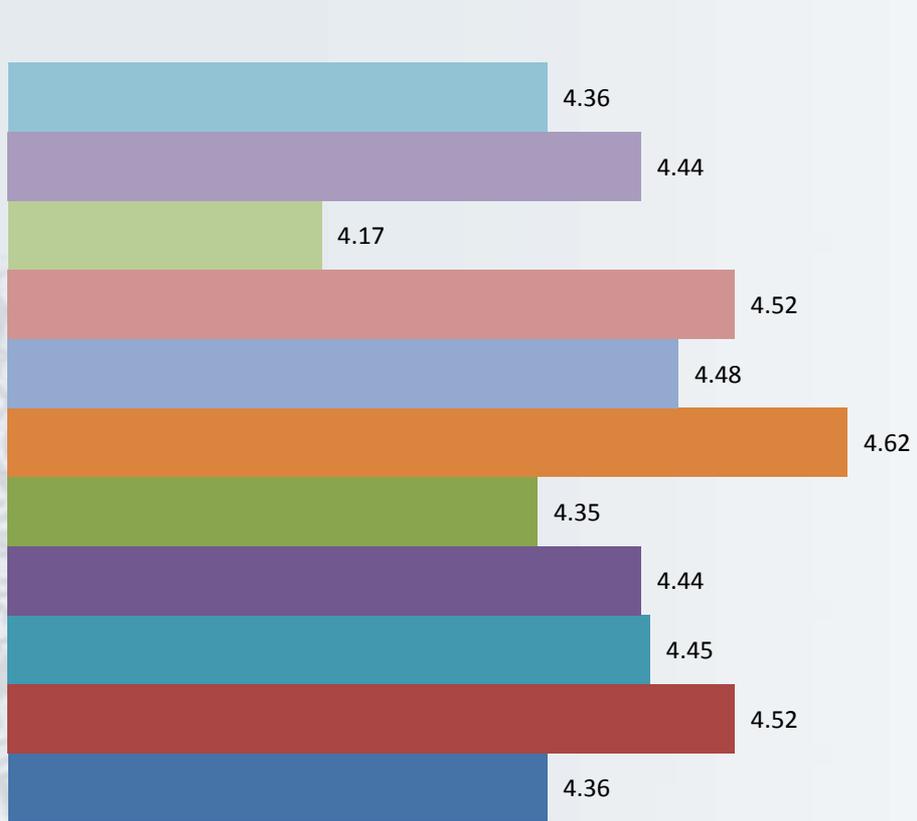
In 2010, we performed approximately 570 compliance audits





Key Activities

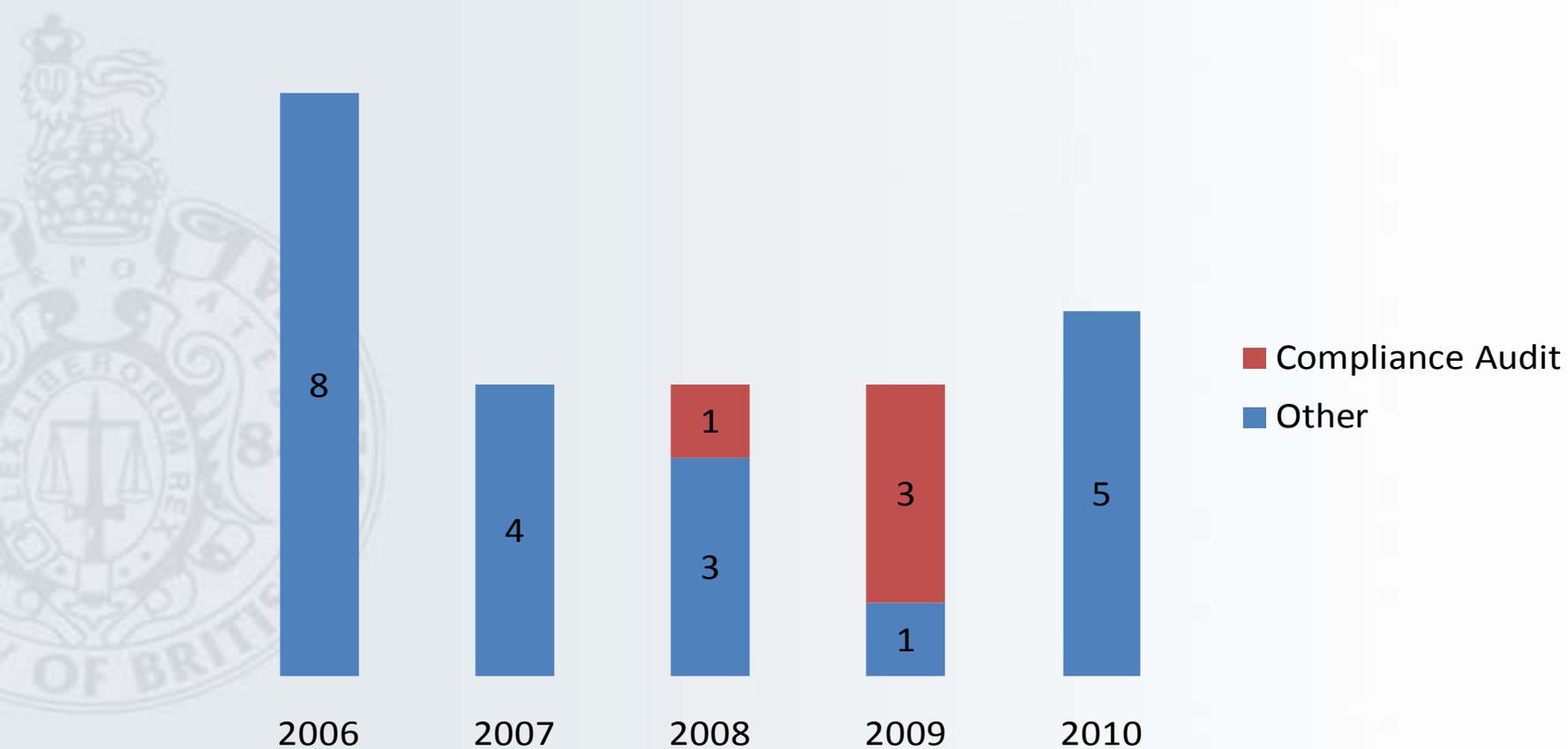
Compliance Audit Survey Results (Average rating based on 5 point scale)



- The compliance audit has benefited the practice by increasing awareness of the Law Society of Division 7 Rules.
- The recommendations provided in the audit report and by the auditor were constructive and useful.
- The time span of the audit appeared reasonable.
- A draft audit report was delivered and discussed upon completion of the audit.
- The auditor provided clear answers and rule references (if applicable) to any questions posed.
- The auditor displayed a professional, constructive, and positive approach during the audit.
- There were minimal disruptions to the practice during the audit.
- The practice had an opportunity to ask questions and provide explanations for the deficiencies noted.
- The audit was clear, logical, and well organized.
- The auditor discussed key results/findings after completing the compliance audit.
- The objectives of the compliance audit were clearly stated and discussed by the auditor

Key Performance Measure

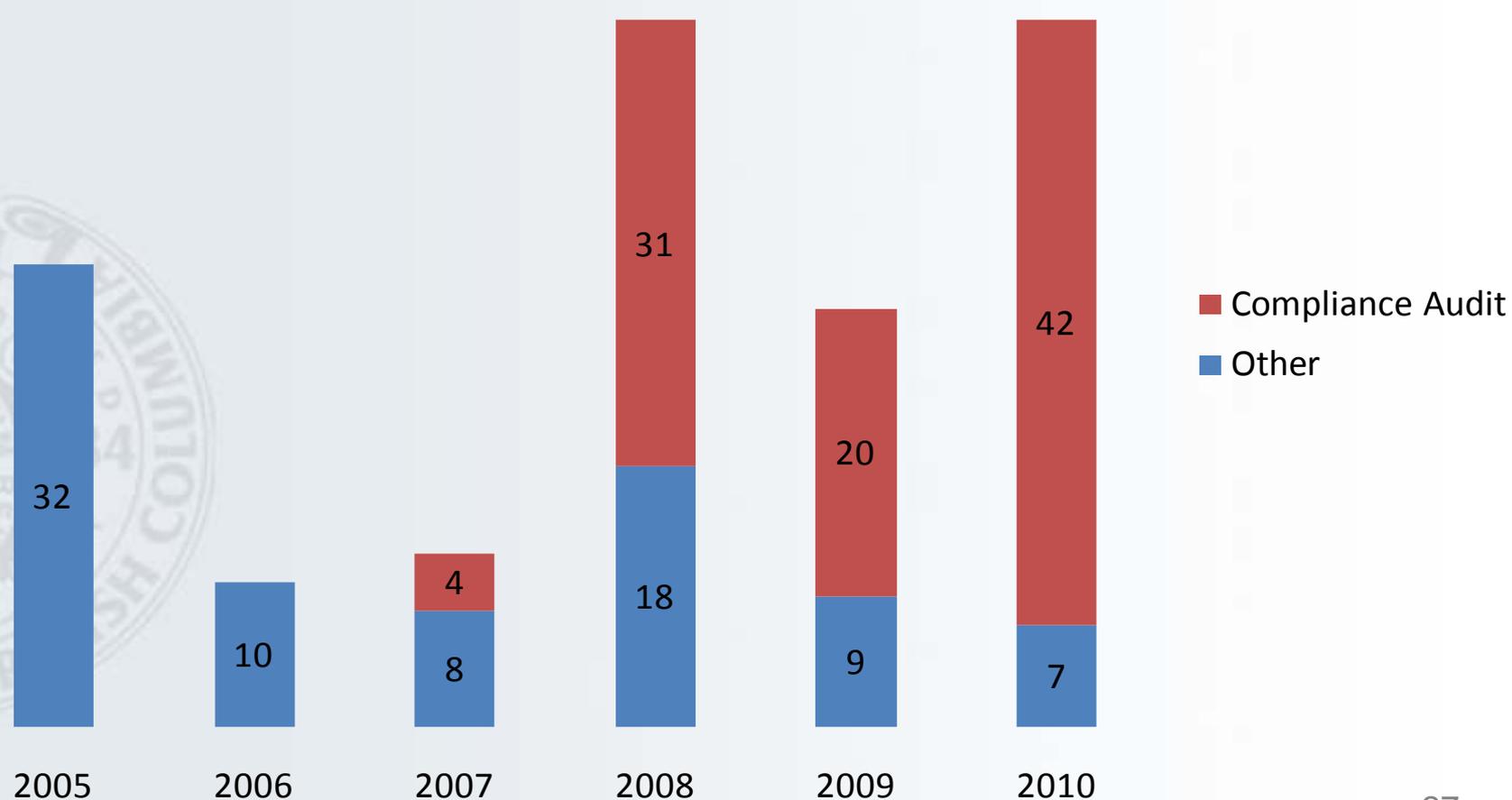
Long term reduction in the number of financial suspensions issued by trust assurance program





Key Performance Measure

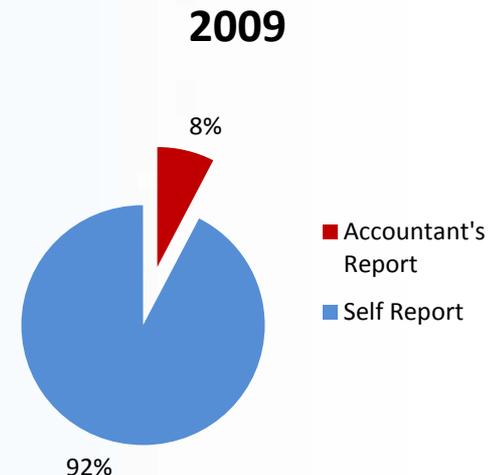
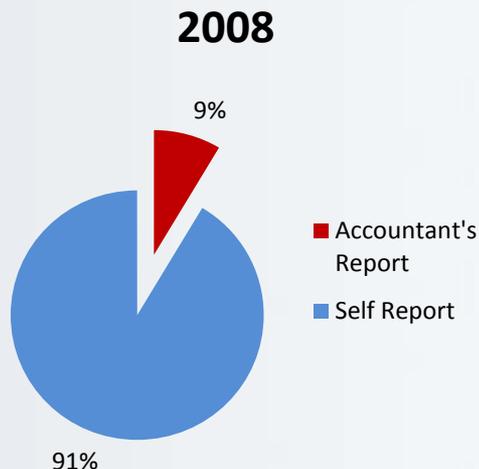
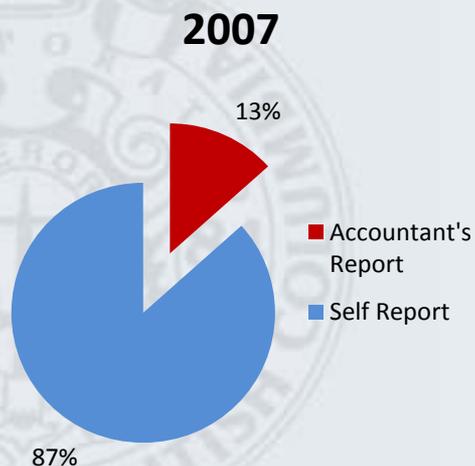
Long term reduction of referrals to Professional Conduct



Key Performance Measure

Improved performance on key compliance questions from lawyer trust report filings

Increase in Self Reported Trust Report filings allowed



The Law Society

of British Columbia



Credentials, Articling and PLTC





Department Highlights

- Between 2004 and 2009, the number of PLTC students increased steadily from 311 to 410, and declined in 2010 to 392. In 2011, it is estimated that there will be approximately 400 students.
- In the past five years, the number of Admission Program students with foreign law degrees increased each year. During the final 2010 PCTC session, students with foreign law degrees were the third largest group, after UBC and University of Victoria. The trend appears to be continuing in 2011. Most of these students are Canadians with Canadian undergraduate degrees who have studied law abroad. Law schools from the UK, Australia and USA actively recruit at Canadian universities.



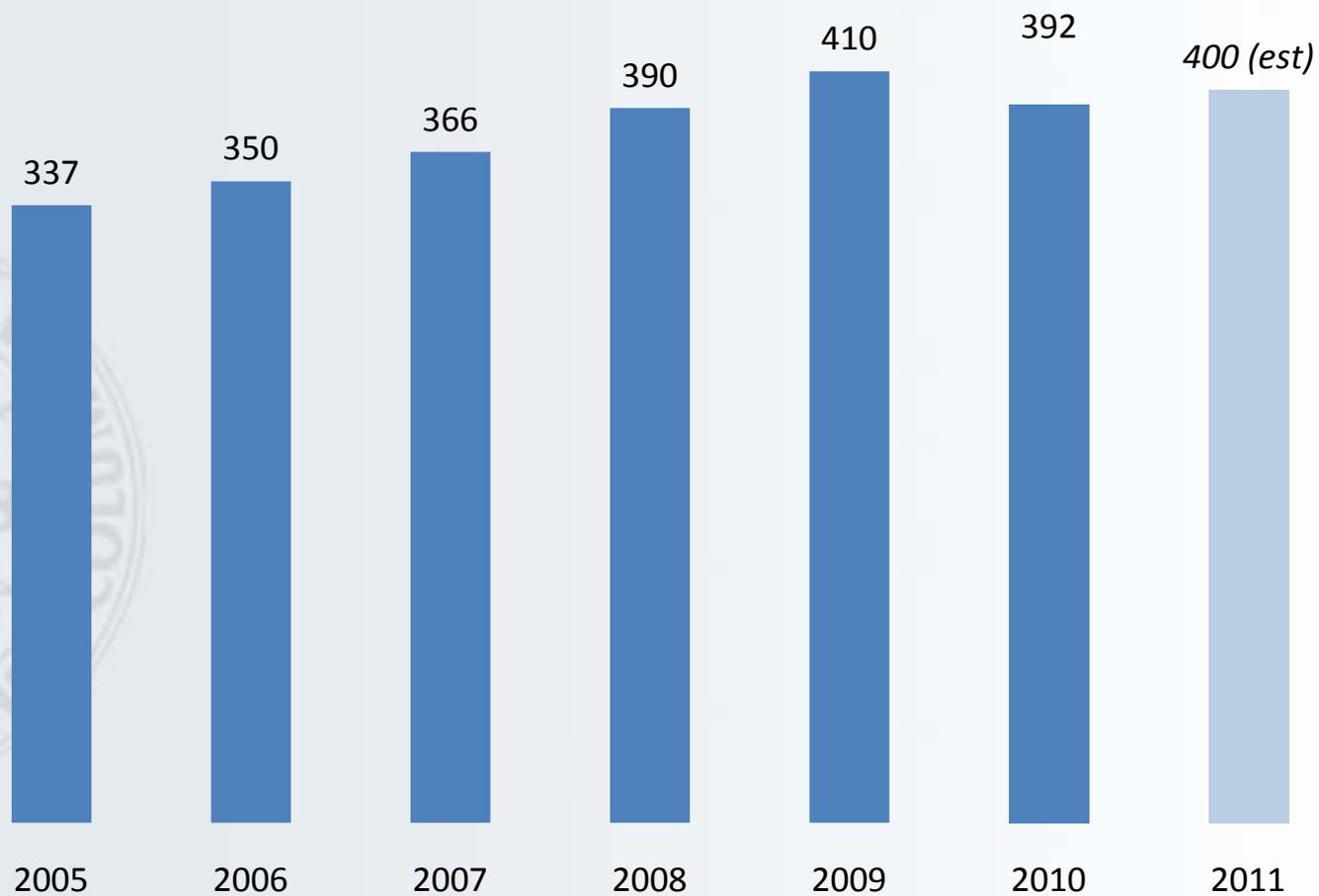
Department Highlights

- 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 slightly lower than 3.5 on three questions out of four. It continues to be the case that students value PLTC somewhat more highly than articling, while articling principals value articling somewhat more highly than PLTC.
- Both students and principals rated the value of articles at an average of 3.5 or higher this year and last, and 98% of the principals declared that their students were fit to practice law in 2010.



Key Activities

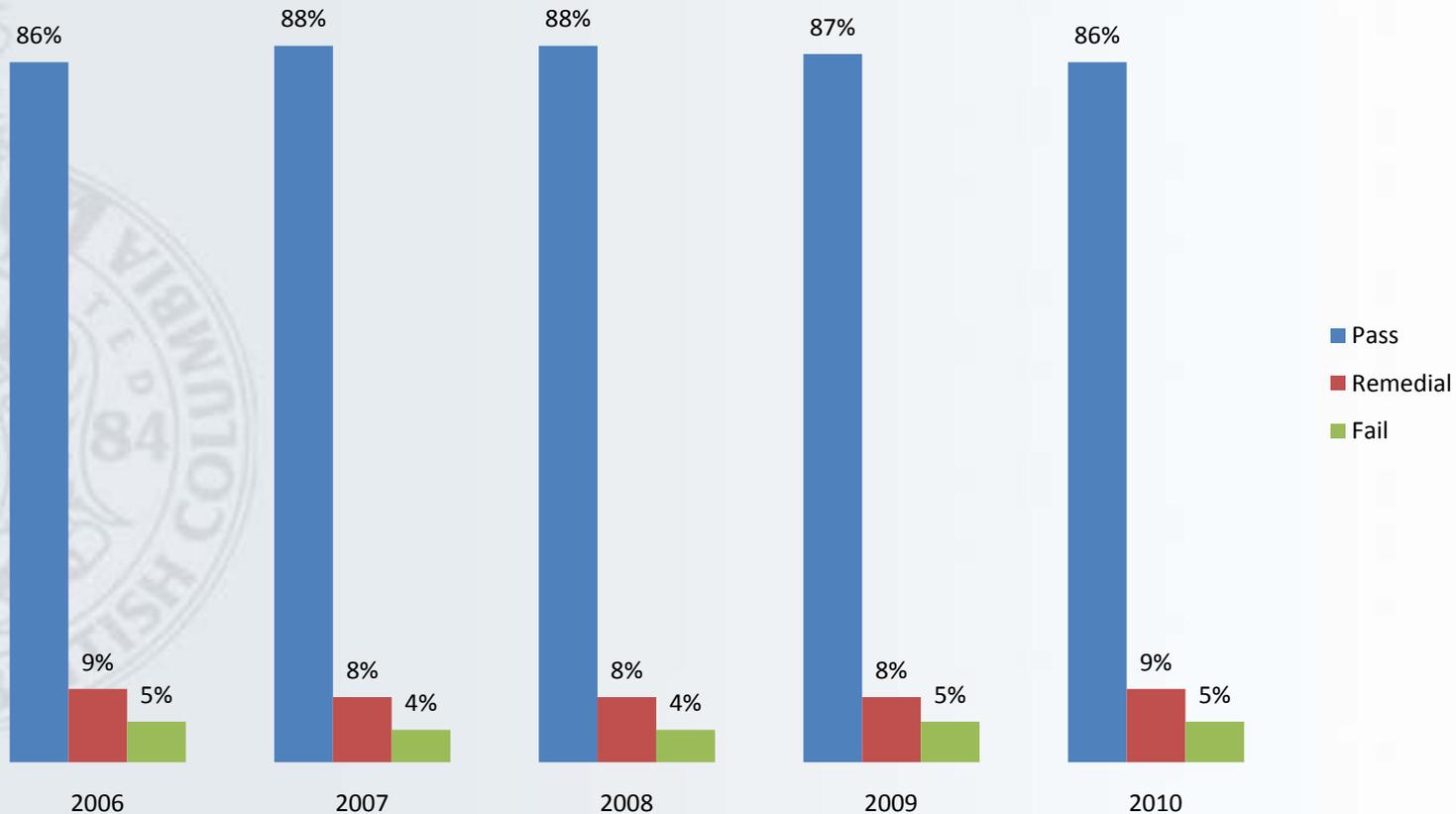
Number of Students





Key Performance Measures

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





Key Performance Measures

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





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)





Key Performance Measures

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

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.

In 2010, 99% of the principals declared their students fit to practice law.

The Law Society

of British Columbia



Practice Advice





Departmental Highlights

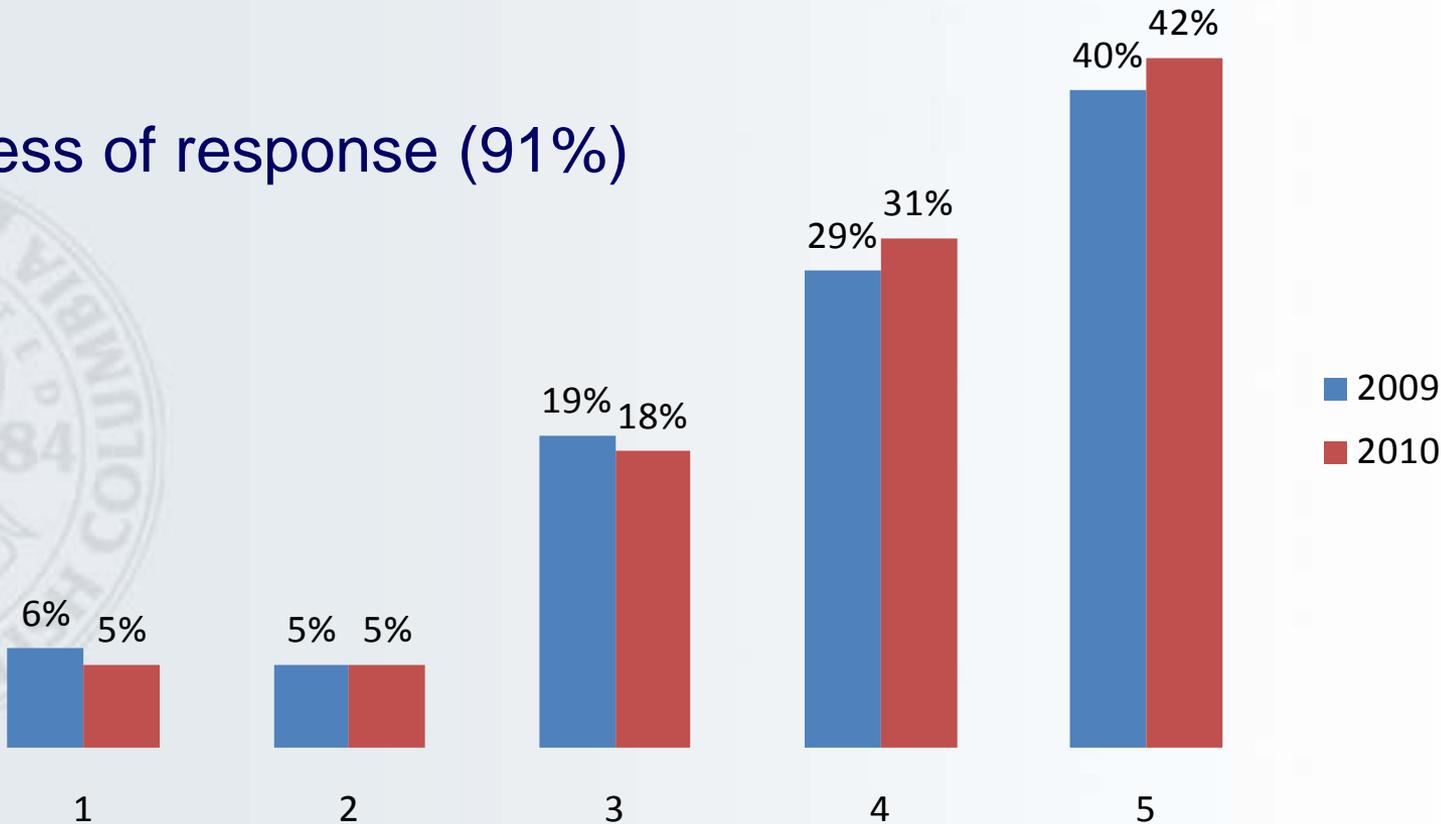
- The three Practice Advisors, and occasionally other staff lawyers, handled a total of 6,291 telephone and email inquiries in 2010 (6,253 by the Practice Advisors and 38 by other staff lawyers), an increase over the 6,122 in 2009.
- 91% of the lawyers who responded to a survey rated timeliness of response at 3 or better.
- 91% of the lawyers who responded rated quality of advice at 3 or higher.
- In rating satisfaction with the resources to which they were referred, 89% of the lawyers provided ratings of 3 or higher.
- In rating their overall satisfaction, 89% of the lawyers provided ratings of 3 or higher.
- The steady increases in telephone and email inquiries from year to year continue to place the Practice Advisors under significant pressure.



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 (91%)

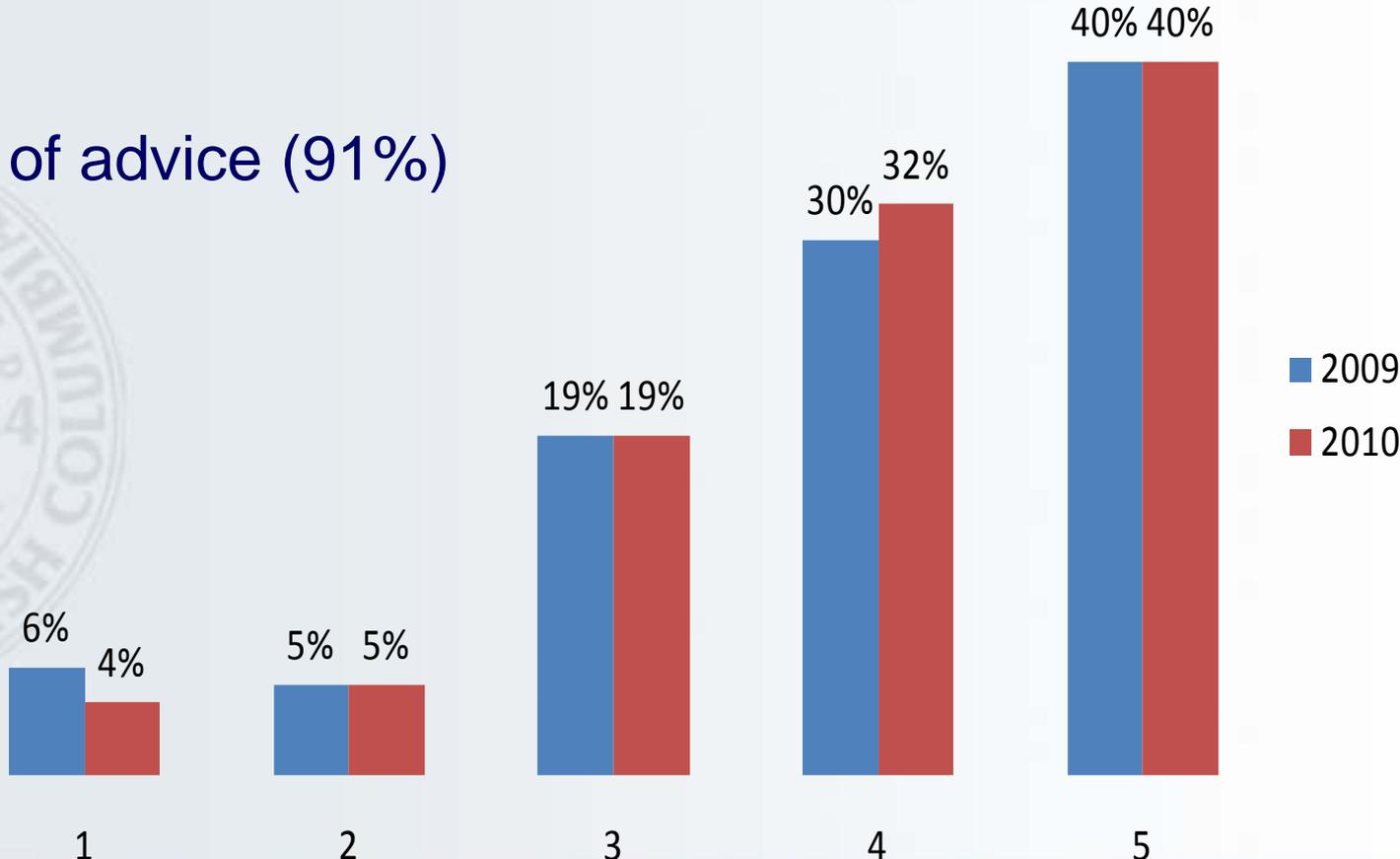




Key Performance Measures

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

Quality of advice (91%)

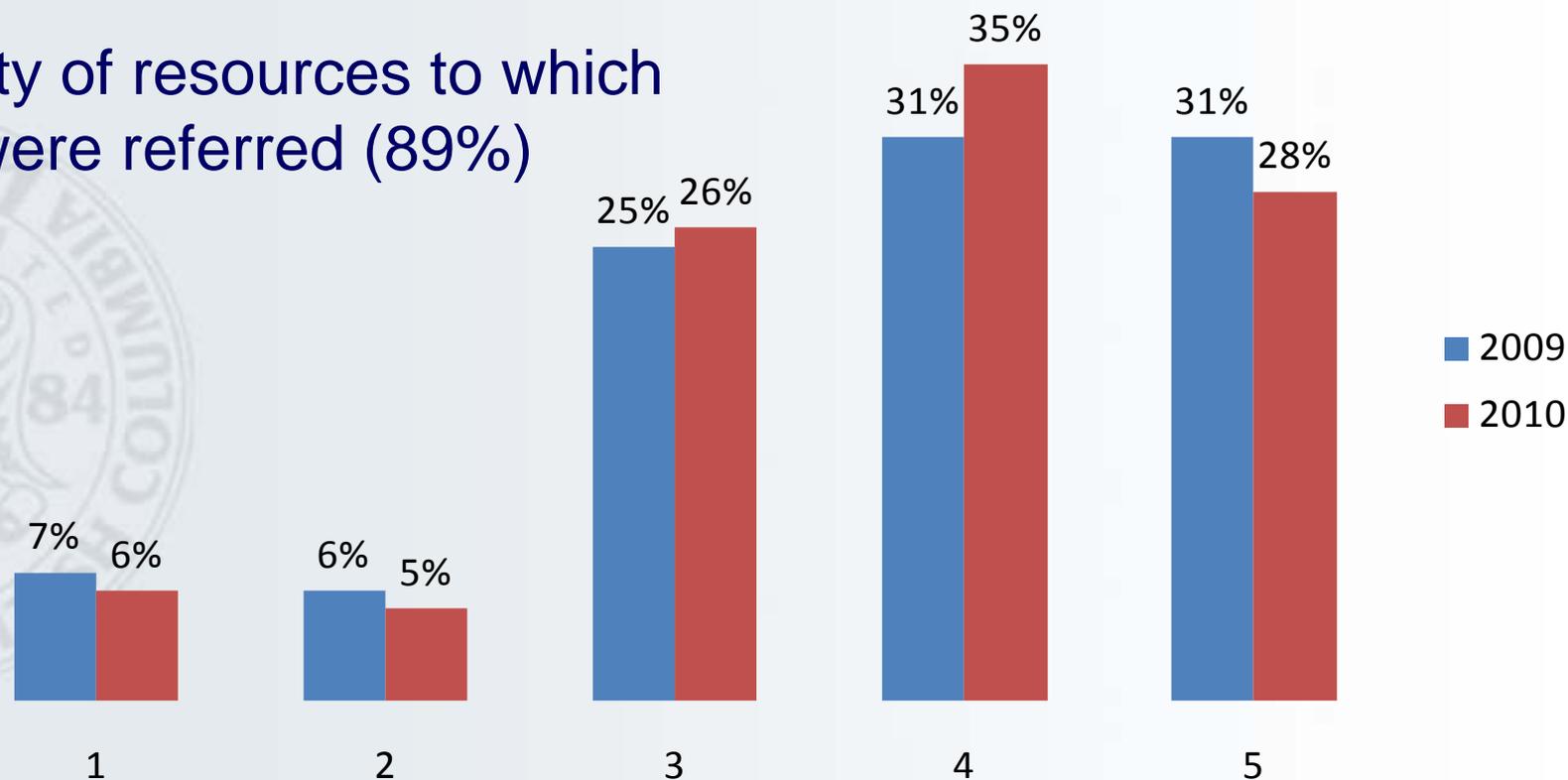




Key Performance Measures

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

Quality of resources to which you were referred (89%)

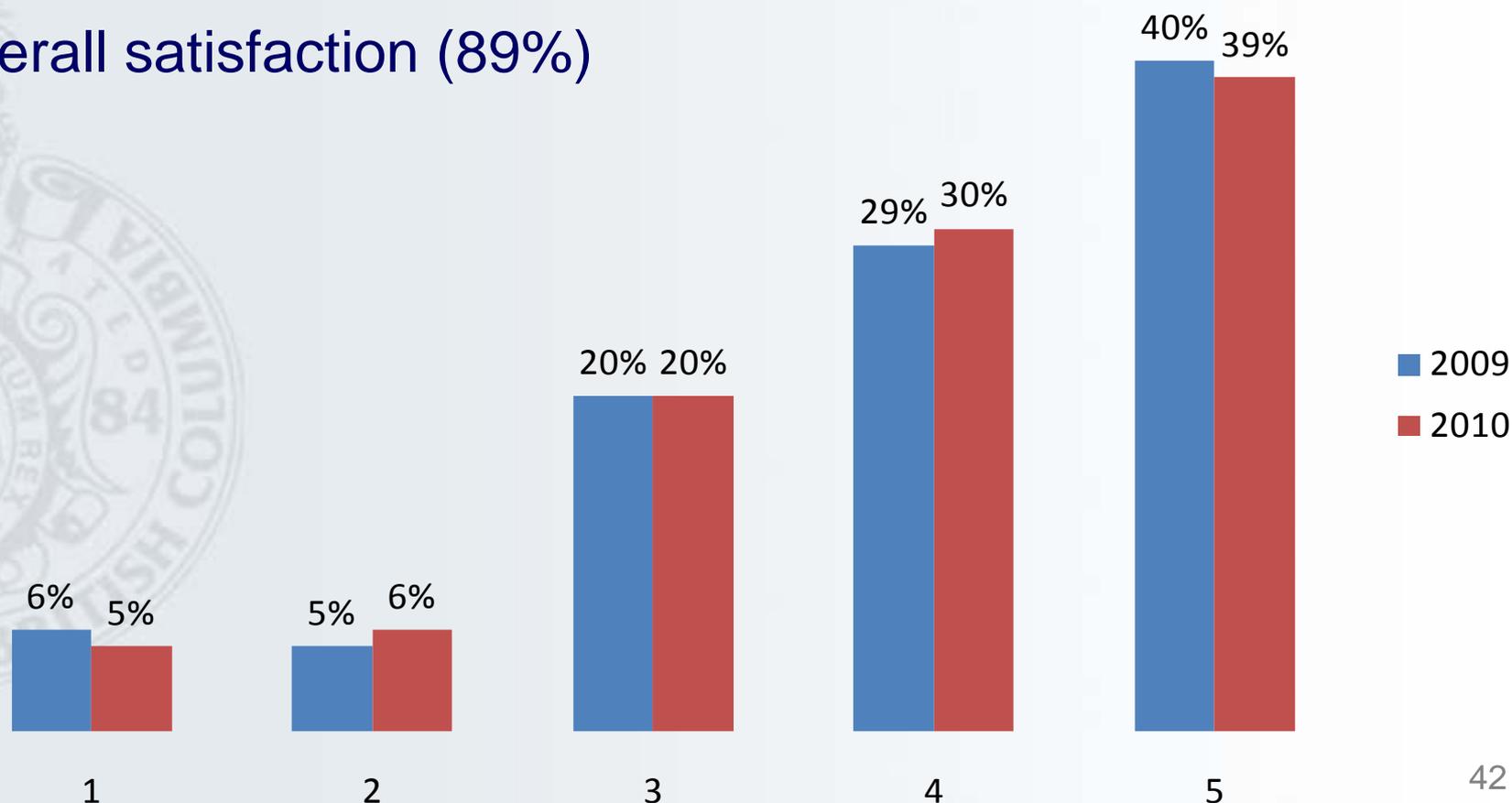




Key Performance Measures

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

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.

In 2010, 27 Practice Standard referral files were completed and closed. 22 of 27 lawyers whose Practice Standards files were completed and closed improved by at least one point.

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. While none of the ratings for the online courses met the KPM target of 90% at 3 or higher on a 5 point scale, this year 85% of the respondents rated the Succession and Emergency Planning compared with 82% last year. 86% of the respondents rated the Practice Refresher course at 3 or better, compared with 85% last year. The Small Firm Practice Course (82.3%) rating is approximately 7% lower than for 2009, which may relate to the increased number of lawyers taking the course in late 2010 to complete their CPD requirement. The rating for the Bookkeeper Support Program remained the same at 85% and there was a very slight decline in the proportion of respondents who rated the Practice Locum program at 3 or better, from 82% to 81%.



Key Performance Measures

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

- In 2010, 27 Practice Standards referral files were completed and closed.
- 22 of 27 lawyers who Practice Standards files were completed and closed improved by at least one point.



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

26 of the 27 lawyers finished at a rating of 3 or higher. The minimum threshold for a successful closure was a 3.

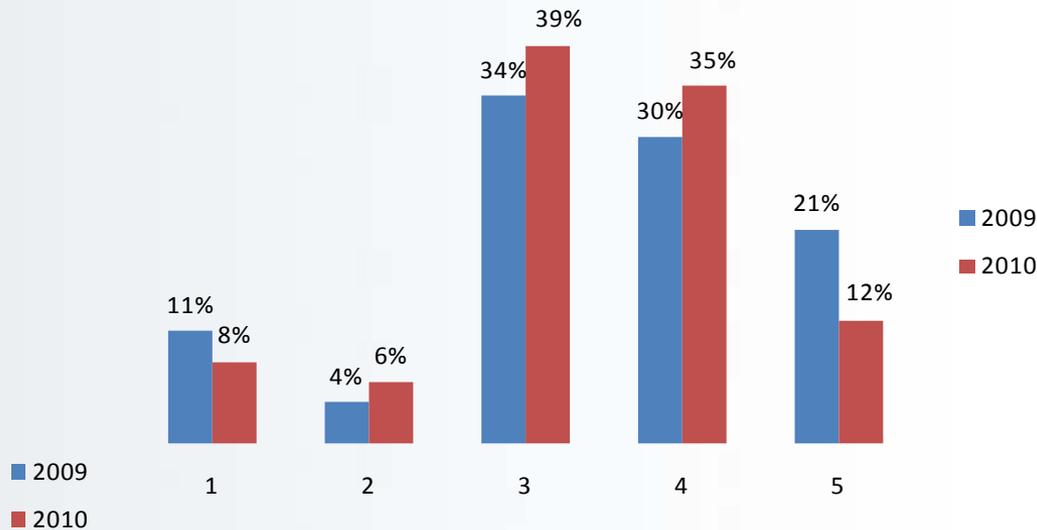
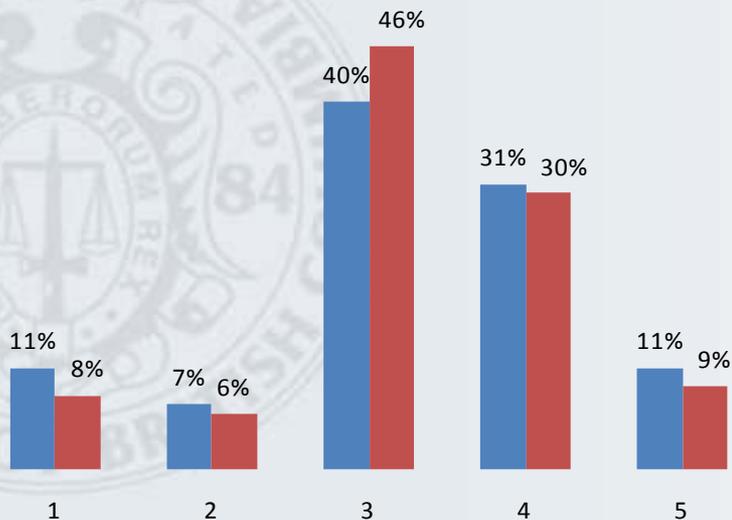
26 of the 27 referrals were completed at an efficiency rating of 3 or higher, including the 22 referrals with improvement of at least one point. Of the other 5 referrals, 1 file was closed without an efficiency rating of 3 after the lawyer was ordered by the Practice Standards Committee to cease practice until he resolves his personal problems. Of the remaining 4 lawyers whose referral files were closed at an efficiency rating of at least 3, 2 lawyers self-corrected their issues before the practice review with no further remediation required and the files were closed within 6 months; 1 discontinued private practice; and 1 with a communication skills problem was found by the Committee to be irremediable and put on notice that future complaints could be referred to discipline.



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 (85%)



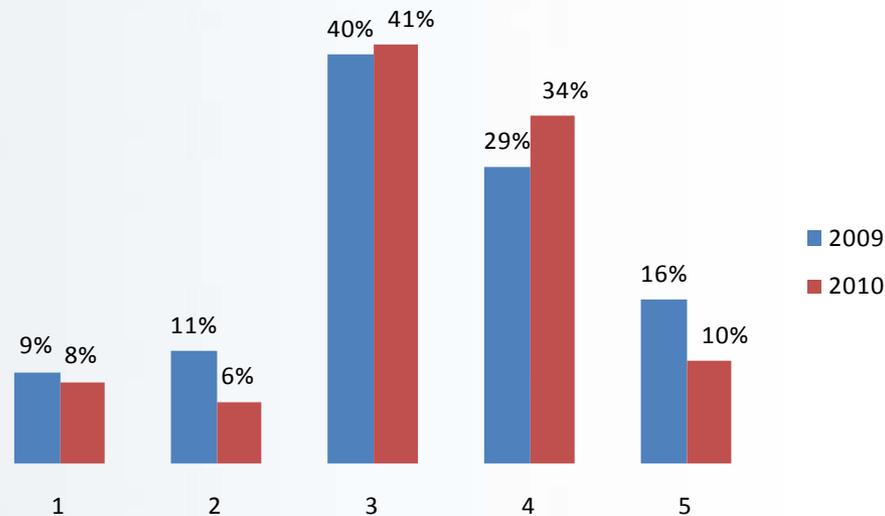
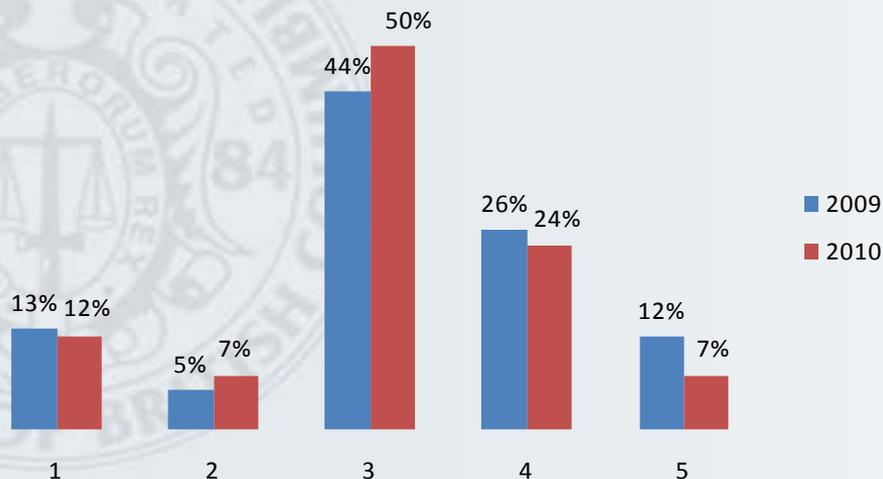
Practice Refresher Course (86%)



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 (81%)



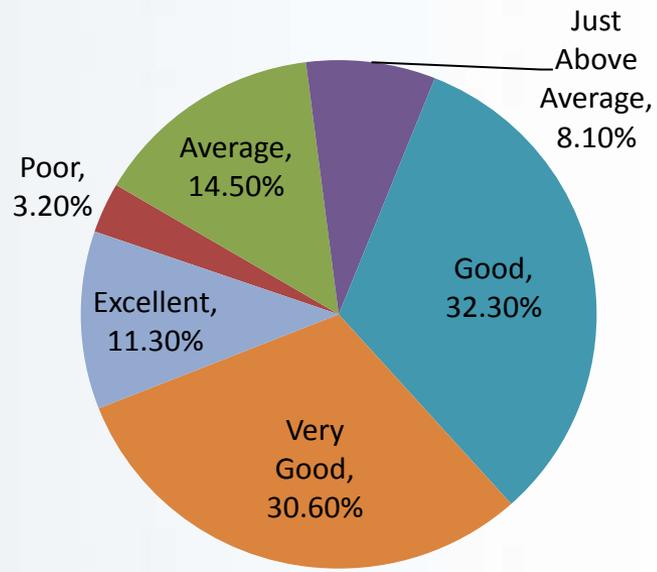
Bookkeeper Support Program (85%)



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*
(82.3% 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 goal of the Policy & Legal Services department is to ensure that the Benchers, Committees, and Task Forces have timely, relevant and balanced information, analysis and advice to enable them to make good decisions.

To assess how effective the department is in meeting this goal, the department reports on two broad measures. The first group of measures is whether the Benchers were able to make policy decisions on the information before them and whether decisions by hearing panel are reviewed and reversed. The second group of measures asks the Benchers to evaluate the support and advice they receive from the department.

In 2010, the Benchers were asked to make 43 policy decisions and made decisions in 41 cases and referred 2 decisions back for further work. The target for this measure is 1:1 ratio and so the target was not met. It may be that the target is too ambitious or the measure too broad since there may be a number of reasons why the Benchers do not make a decision which do not directly relate to whether the Benchers received timely, relevant and balanced information, analysis and advice.

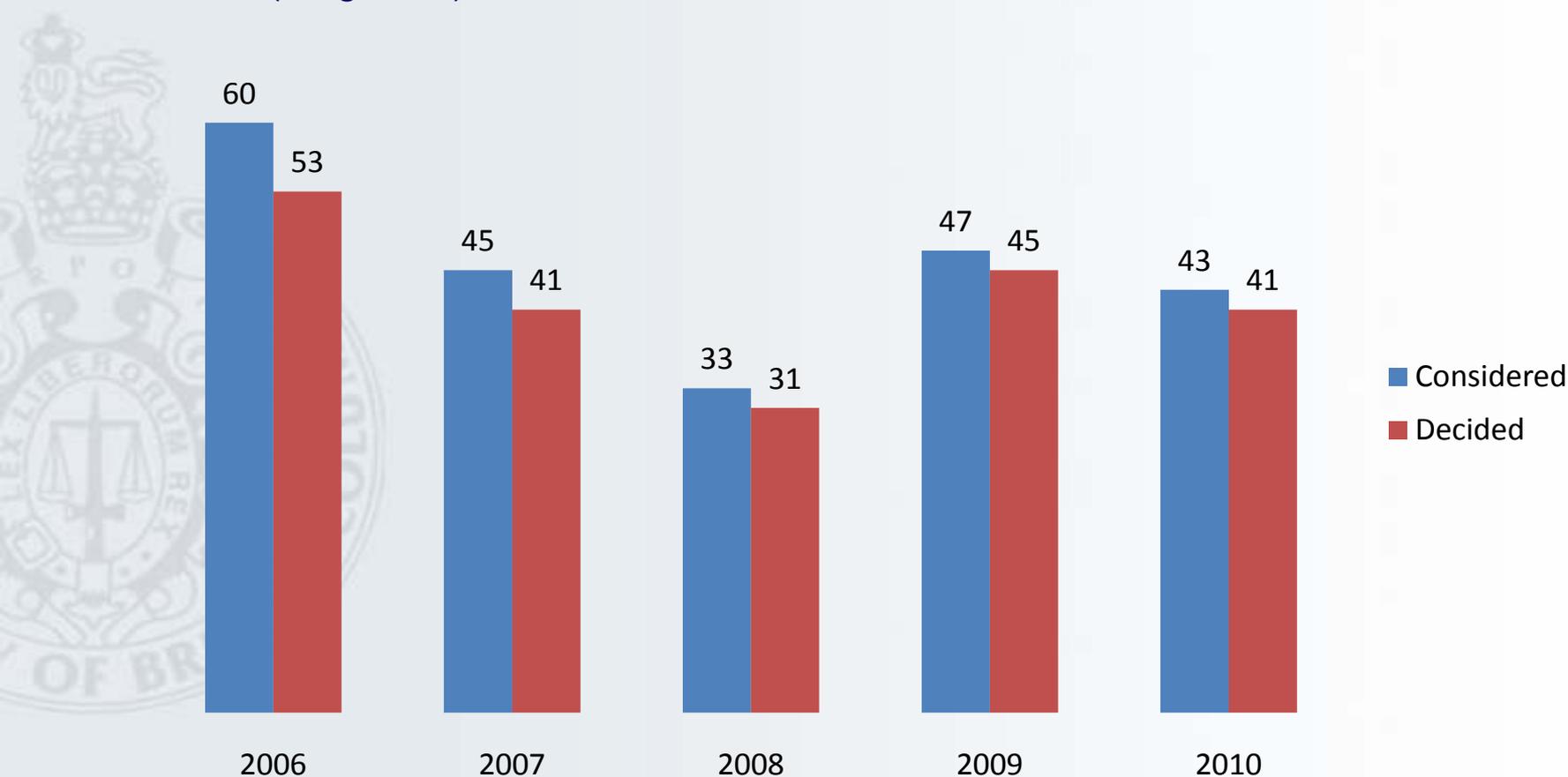
There were 31 hearing reports issued in 2010, of which 3 were reviewed and reversed on review. The target for this measure is a ratio of 1:0:0, so the target was not met in 2010. We should expect that, given the complexity of the decisions hearing panels must make, there will be reasonable grounds for review and that, on occasion, the review will result in the decisions of a hearing panel being reversed.

Based on the 2010 Bencher survey, the department met all the key performance measure targets for support and advice. In particular, the Benchers were much more positive this year about the orientation and training they received, with an average rating of 4 on the 1 to 5 scale this year compared to a 3.23 average rating last year.



Key Performance Measures

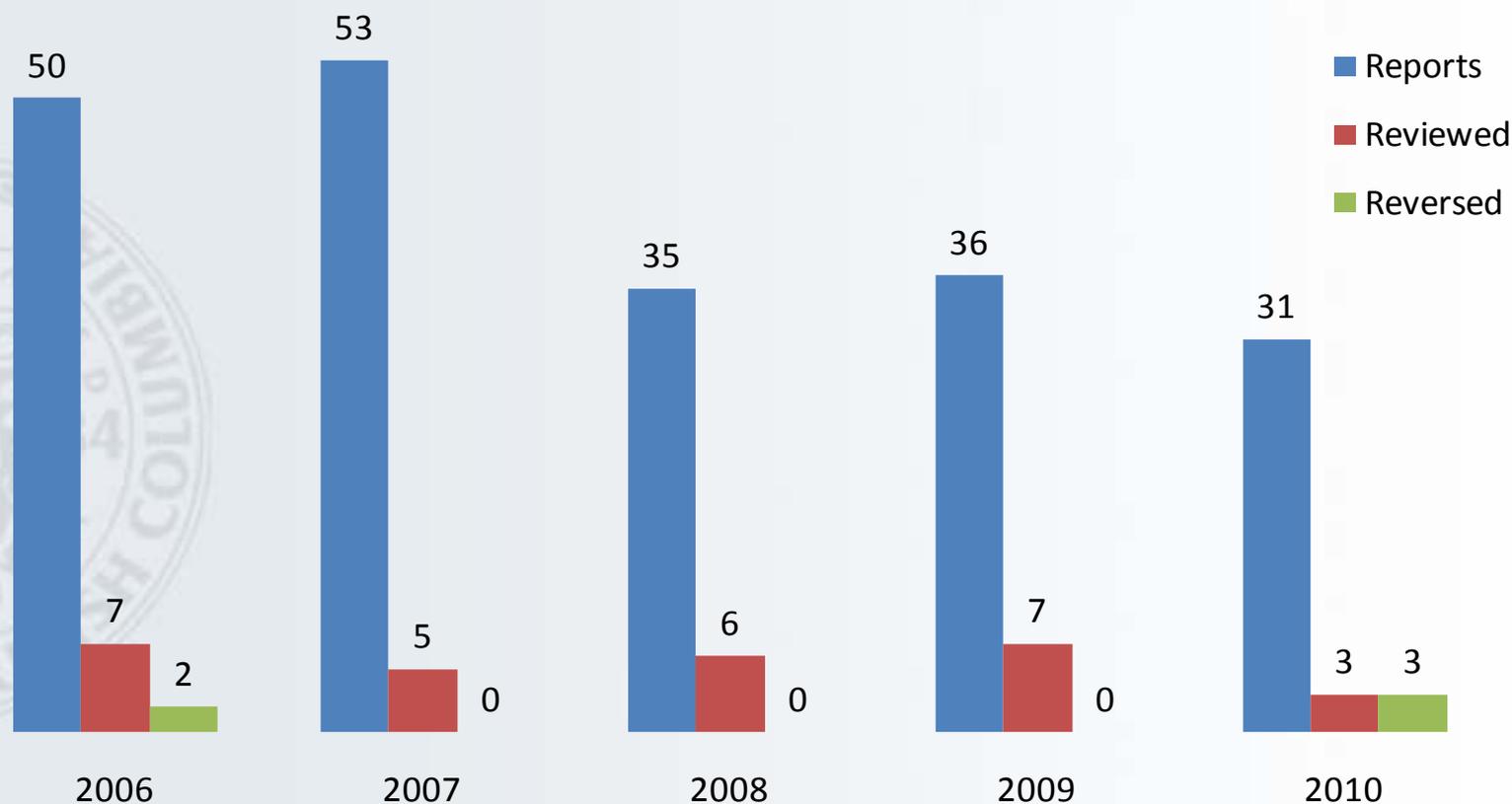
Ratio of policy matters prepared by or with the assistance of policy staff and considered by the Benchers to policy decisions made by the Benchers in respect of those matters. (Target 1:1)





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)





Key Performance Measures

On the annual appraisal questionnaire, Benchers 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:

	2010	2009	2008
Directors of the Law Society	4.3	4.2	4
Policy makers and rule makers for the profession	4.3	4.6	4.5
Advisors to individual lawyers	3.7	3.8	4
Adjudicators in Discipline and Credentials matters	4	4.2	4.2



Key Performance Measures

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

	2010	2009	2008
The Benchers have a full and common understanding of their roles and responsibilities	4.3	4.33	4.4
The Benchers understand the Law Society's statutory mandate, its mission and objectives	4.7	4.72	4.4
The Benchers receive appropriate orientation and training	4	3.23	3.6
Benchers receive sufficient, timely information to keep them abreast of key issues	4.3	4.16	N/A

The Law Society

of British Columbia



Lawyers Insurance Fund





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



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 2010. 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 assessing 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. Insured lawyers demonstrate a high rate of satisfaction (80% choose 4 or 5 on a 5 point scale) in Service Evaluation Forms.

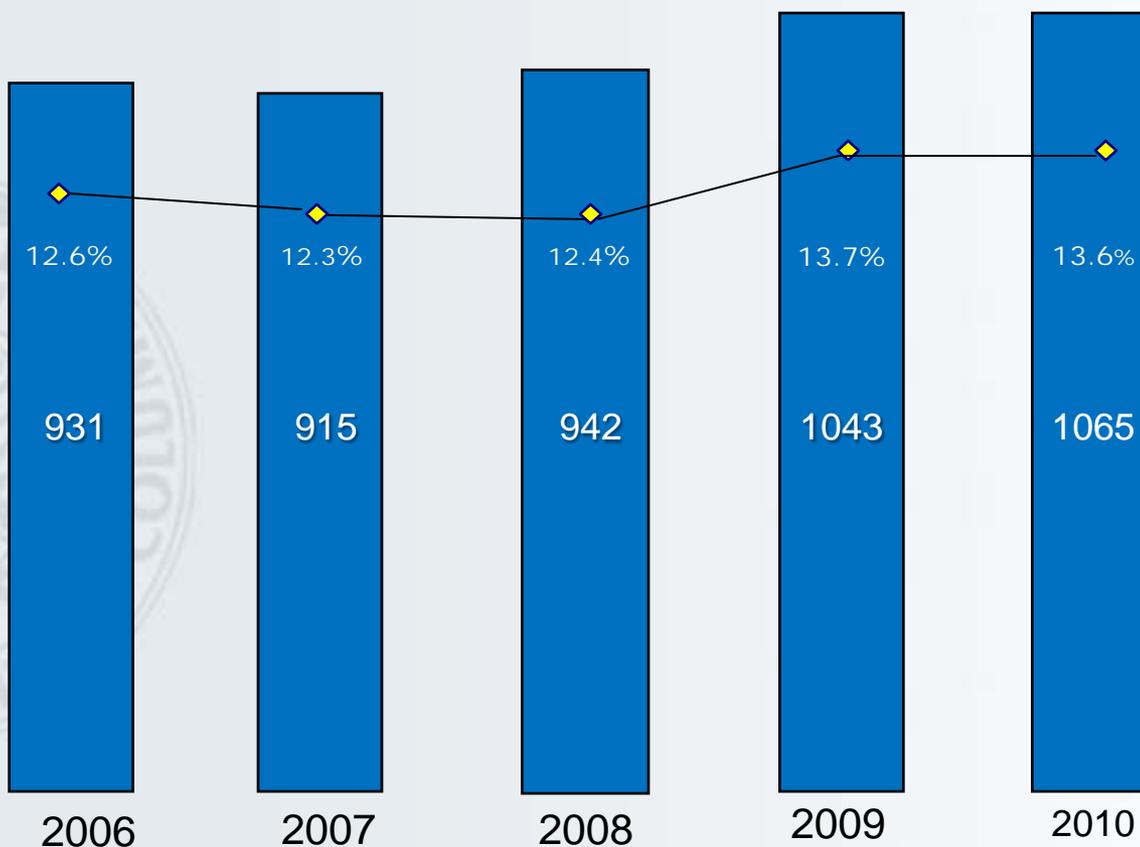
In 2010, 97% of insureds selected 4 or 5.



Key Activities

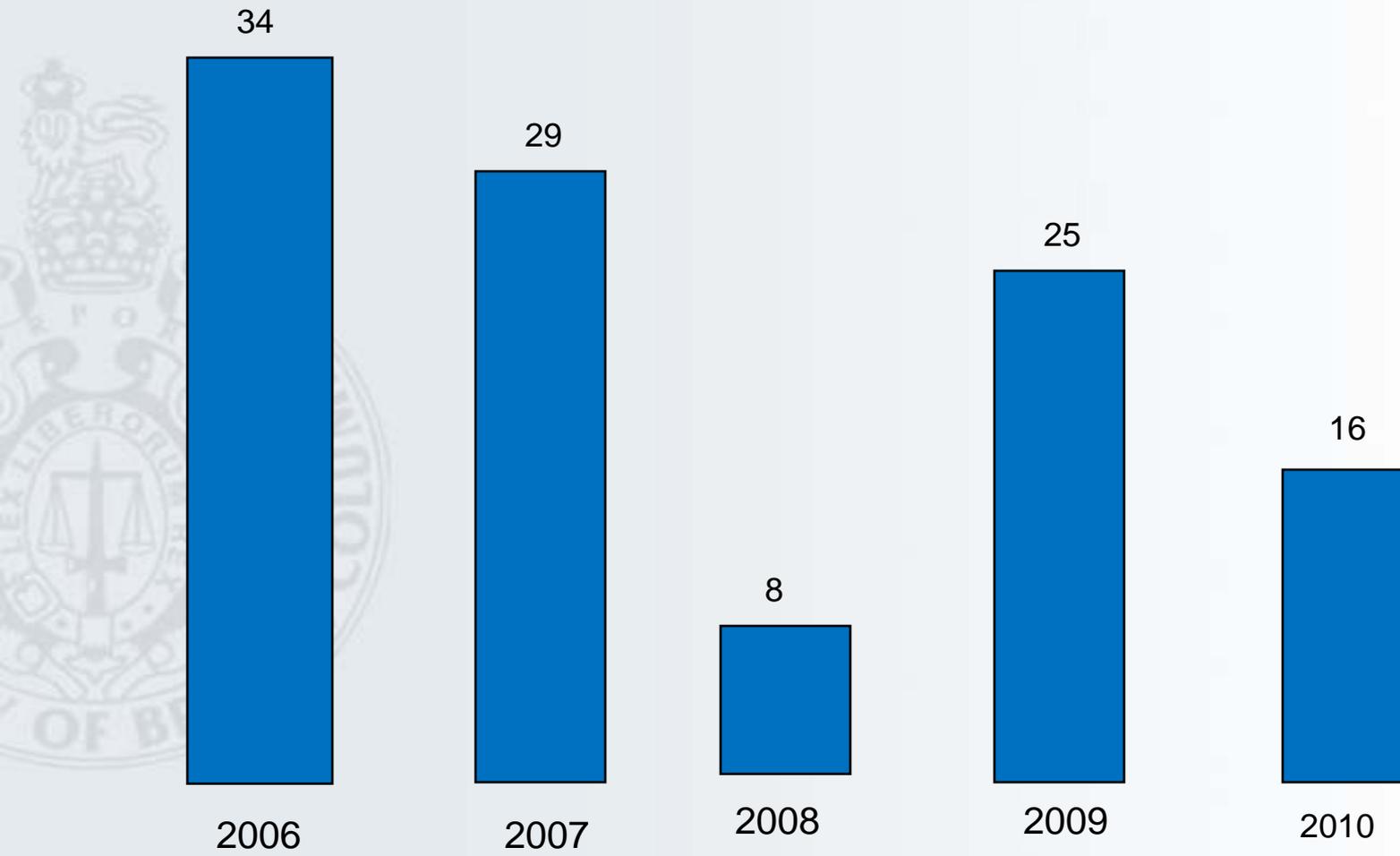
PART A – Number and Frequency of Reports

- Number of Reports
- ◆ Frequency of Reports



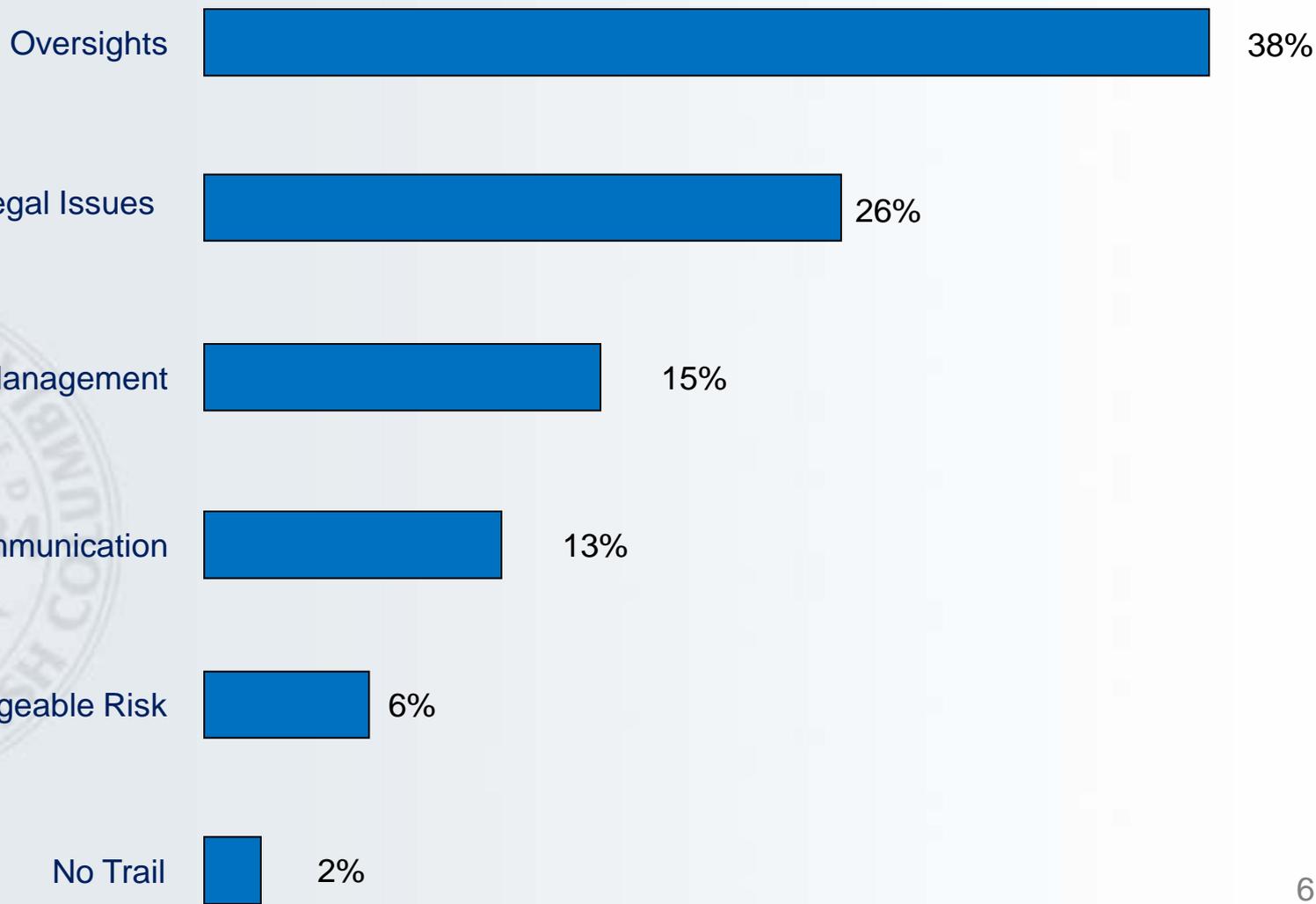
Key Activities

PART B – Number of Reports



Key Activities

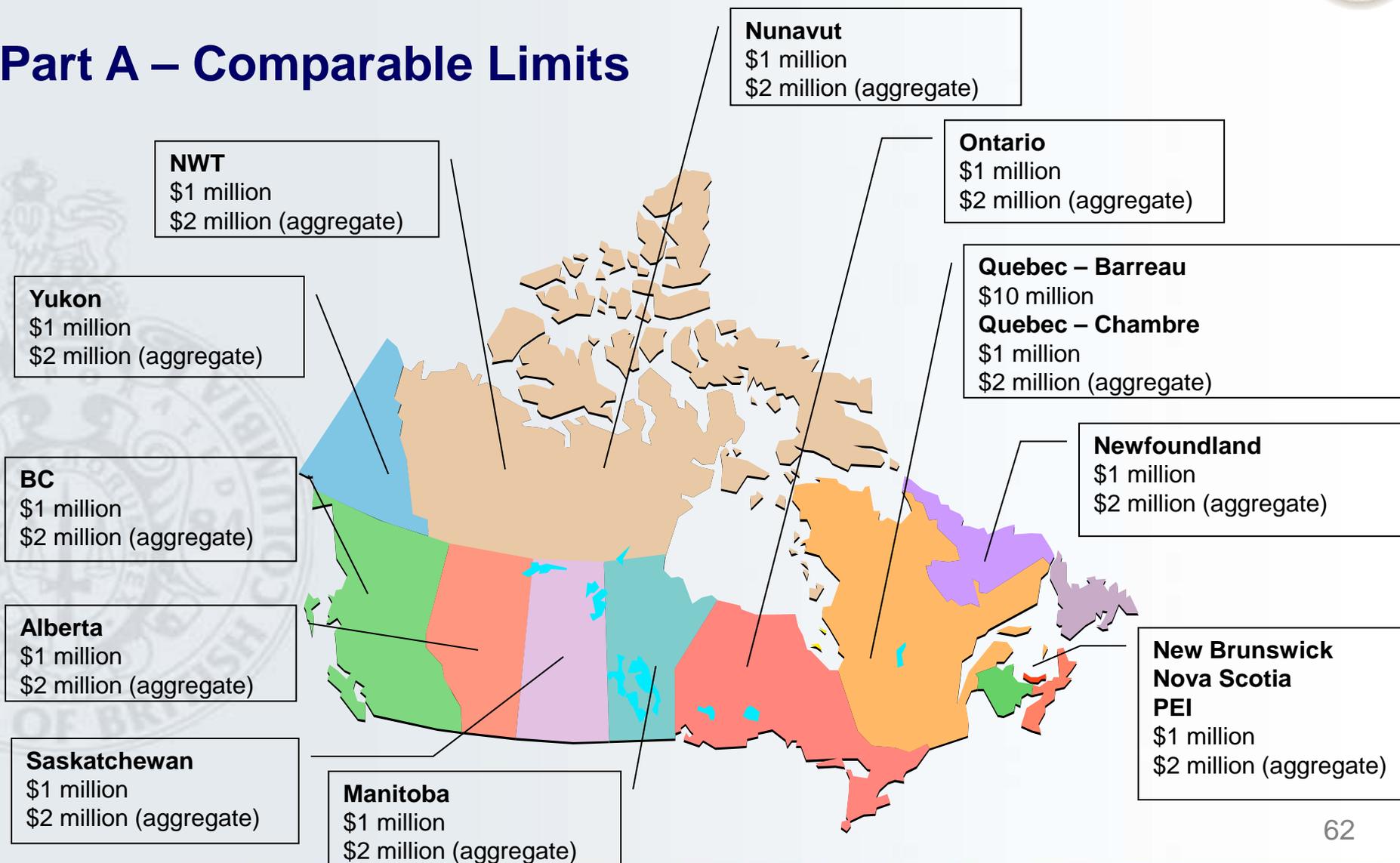
Causes of Reports





Key Performance Measures

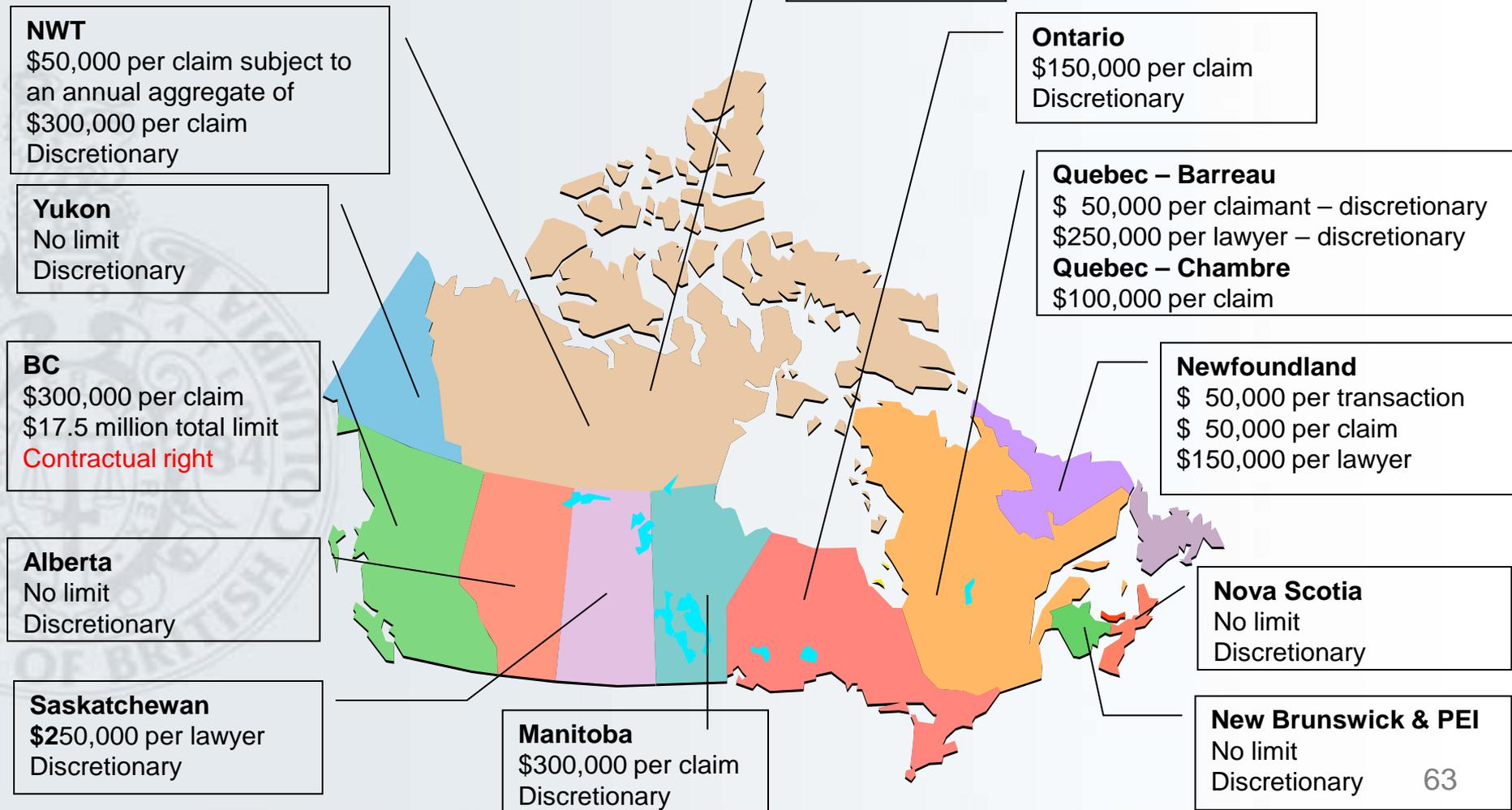
Part A – Comparable Limits





Key Performance Measures

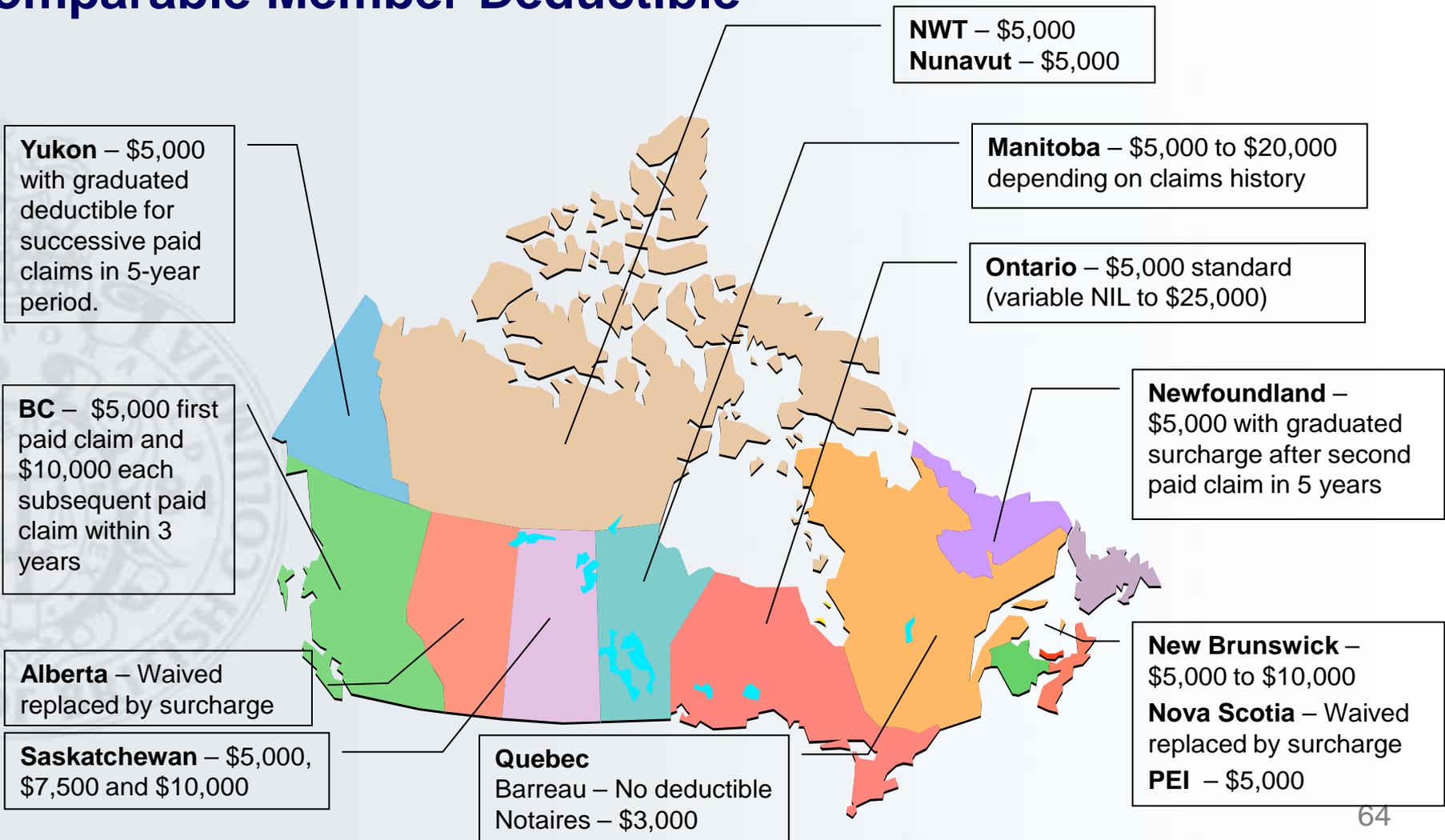
Part B – Comparable Limits





Key Performance Measures

Comparable Member Deductible





Key Performance Measures

Comparable Current Insurance Premium





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

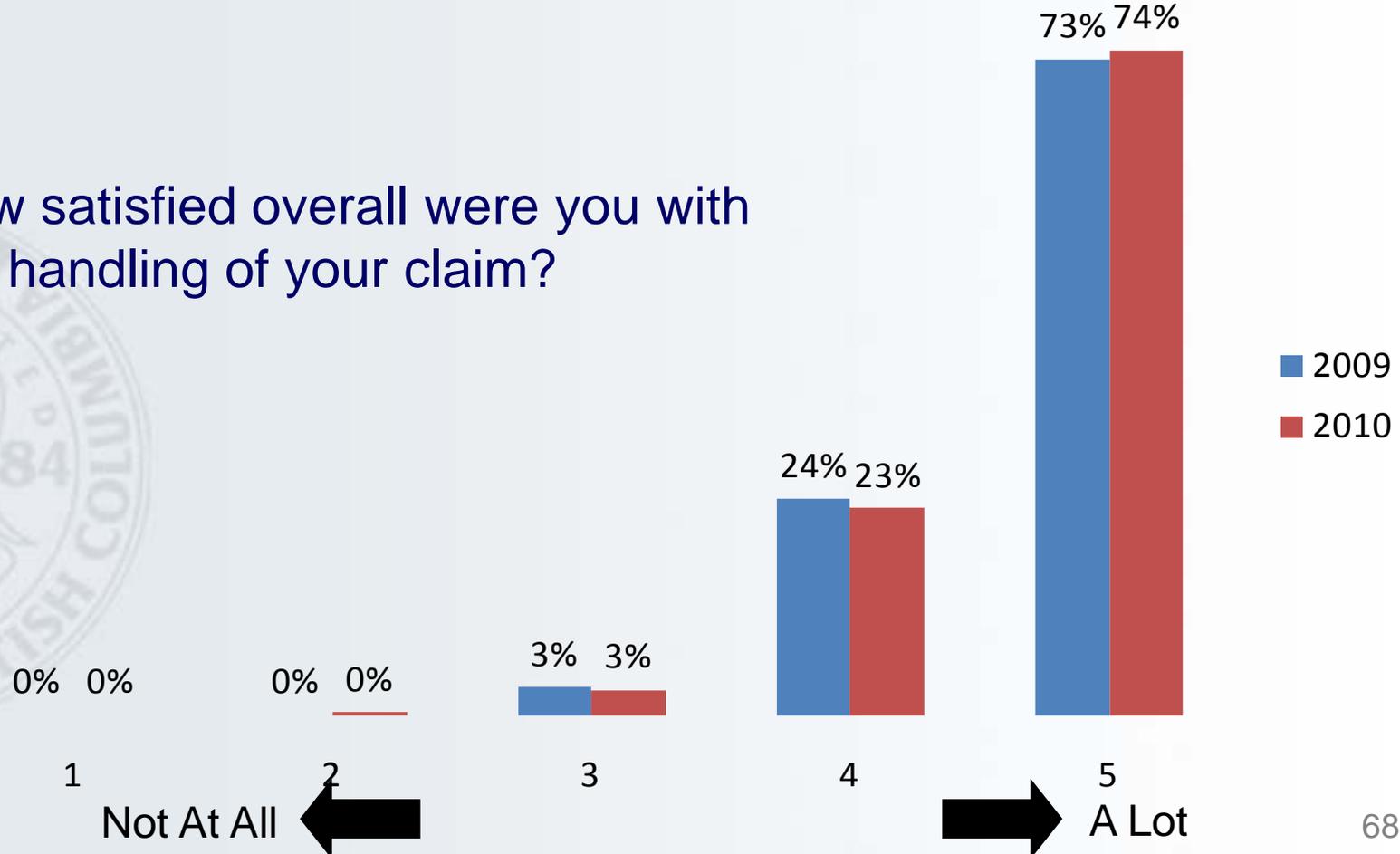
“The Insurance program continues to be managed and staffed with a knowledgeable and passionate group, who work in a highly co-operative atmosphere, due in part to excellent leadership. File loads are on the high side given the complexity of these types of claims and the fact that most Claims Counsel 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?



To Benchers
From Lesley Small
Date February 23, 2011
Subject **Regional Call Ceremonies**

The Executive Committee recently considered whether public awareness of the role of the Law Society would be raised by having more Benchers attend regional call ceremonies, and what budgetary considerations ought to be taken into consideration.

Current Practice

Staff currently organize four ceremonies in Vancouver on a yearly basis, and invitations are sent out to the Benchers advising of the scheduled dates. On average, six to eight Benchers (including the incumbent President) attend each ceremony (although staff call on Life Benchers on short notice when it appears that Bencher attendance will be insufficient). For the most part, it is the Vancouver and Westminster County Benchers who attend the Vancouver ceremony, although an out-of-town Bencher who is in Vancouver on other matters will attend, if convenient.

All other ceremonies are organized by the local Benchers, and the only involvement by staff is to provide the call certificate and a roll book to sign. Most ceremonies are organized four to six weeks in advance, although some are conducted on short notice.

Victoria has also formalized four call and admission ceremonies per year that occur shortly before or after the Vancouver ceremony, and the dates are posted. Approximately 50 candidates are called in Victoria on an annual basis. Excluding Victoria, statistics indicate 19 regional ceremonies in 2007, 22 in 2008, 23 in 2009 and 17 in 2010.

Underlying Question

The call ceremony is the final step in a candidate's pursuit of becoming a lawyer, and the occasion for celebration with family, friends, staff and other lawyers from their community. Regional call ceremonies were designed to ensure that candidates, at no additional expense, could enjoy that celebration in their own communities. As such, the Executive Committee considered whether a potential increase in the attendance of Benchers at local call ceremonies would be an effective means for Benchers to reach out to the public.

A Change to the Current Practice

The Executive Committee decided that, for the most part, the status quo will be maintained in relation to call ceremonies. Specifically, staff will continue to organize the

Vancouver call ceremonies and send out invitations to the Benchers. Given the size and location of the Vancouver call ceremonies, all local Benchers are encouraged to attend as well as out-of-town Benchers, if convenient. Regional call ceremonies will continue to be organized by the local Bencher with access to Law Society staff for assistance, where necessary, with the following provisos:

1. All regional call ceremony locations and dates will be posted on the website and BencherNet as soon as they are known to staff
2. If a Bencher, other than the local Bencher, wishes to attend a regional ceremony, the Bencher must contact the President. In considering a Bencher request to attend, the President will generally take the following criteria into consideration:
 - a. whether there is any specific or special connection to the region or the persons involved;
 - b. the number of Benchers already scheduled to attend;
 - c. the overall scope and scale of the event, for example whether it is intended as an intimate vs. wide open event;
 - d. the reasonable budget impact for attending, including any event costs, travel, accommodation and things of that nature.
3. Other factors taken into consideration will be the strategic priorities set by the Benchers and whether Bencher attendance will enhance those goals including, for example, the focus on the retention of Aboriginal lawyers in the legal profession.

Victoria Call Ceremonies

Given that Victoria has over the years formalized the call and admission ceremonies to four per year that occur shortly before or after the Vancouver ceremony, and that approximately 50 candidates are called in Victoria on an annual basis, the Executive Committee noted that it may be worth considering whether additional staff resources should be expended to assist the local Benchers with the organization of these events. Further discussions are scheduled to take place with the local Benchers in this regard and the results of those discussions will be brought back to the Benchers at a later date.

Un Voyage au Québec February 2011

Report to the Benchers – Kathryn Berge, Q.C.

Day 1–February 17, 2011

My Quebec CBA Mid-Winter meeting odyssey began on Thursday, February 17, 2011 when I left home at a bracing 5:30 am for a 7 am flight from Victoria to Vancouver, before flying to Montreal and then to Quebec City. I took with me my computer, including materials to finish my preparations for the February 17 Executive Meeting. Once on the plane we enjoyed a relaxing 45 minutes waiting on the tarmac, during which time I read the Globe and Mail and then prepared myself mentally to dive into completing my review of the material. Once airborne, after almost another full hour, I finally looked over to my right and was surprised to see CBA BC Branch's Carolyn Nevin sitting immediately opposite to me. It still clearly was a touch early for both of us.

Upon our late arrival in Quebec City we were welcomed by sheets of freezing rain and high winds. I jumped into a cab, raced to my special boutique hotel that my daughter had found on the internet through Trip Advisor (#1 in Quebec City; #3 for Business Travel), and asked where I could find the promised resources to hook up to the Executive meeting. If you take the word "boutique" to mean "special", it was very special indeed. It turned out that the "recommended for business" facilities amounted to a desk consisting of a 16 x 16" wobbly table (the sort generally only previously seen in prairie-watering holes), and a telephone that mysteriously would not connect to any form of conference call. The good news is that the lack of amenities led to me not being charged for the stay at all.

Day 2 – February 18, 2011

The next morning we rose rather late and had a very good breakfast (probably the reason that this hotel is so highly recommended on Trip Advisor and not for their business centre facilities). I had a further opportunity to test out the faulty office equipment in a conference call regarding some actual client work.

In the afternoon we presented ourselves at the airport to be driven out to the conference destination. I got the last seat on a shuttle headed up to the destination of the Mid-Winter meeting, "Le Manoir Richelieu", in Charlevoix Quebec, electing to leave my daughters behind to fend for themselves on the next shuttle – all to ensure that I arrived in time for that evening's "Soirée Quebécoise".

Blessed with a spot in the front seat, I had the chance to brush up on my Charlevoix Quebec French vocabulary by trying to converse with the shuttle driver, a retired Quebec City forensic police officer. The hotel is actually located over two hours up the St. Laurence River from Quebec City. It could have been a wonderful drive through a part of our country I have always wanted to see. This was not to be. As my driver-policeman turned to show me the spectacular

beauty of various locations, we were plunged into an incredible bank of true Quebec pea-soup fog. As we sailed forward on this highway with ever-decreasing visibility, utter silence reigned in the back of the van. Finally, some hours hence, we arrived. My conclusion drawn from the trip is that we must be one determined profession to go to these lengths to get together.

Unlike most other CN-CP hotels, this one was not originally located on the rail line. It was originally a steamship hotel reserved for guests needing a break before heading further up, or I suppose down, the St. Lawrence. It is, however, typically picturesque and beautifully situated on the banks of the river.

Once ensconced in my room at the Manoir, I had exactly seven minutes to change before leaving on the one-and-only shuttle heading to the said Soirée Quebecoise. Leaving my room, I immediately ran into M. and Mme. Brun. At the Soirée, Bencher Catherine Sas and her husband Paul were also present. I knew that there was going to be Quebecois entertainment as a key part of the evening. I had been hoping to be able to report to you that our two fellow Benchers regaled the crowd with their step-dancing. I was disappointed in this, but otherwise the evening was excellent. We feasted on pea soup, tourtière and sugar pie. Entertainment followed, provided by a three-sibling Quebecois trio of very talented musicians using fiddles, guitars and a keyboard to play the widest-possible range of Quebec-inspired musical entertainment – from Gilles Vignault to Vivaldi.

Upon jumping back onto the shuttle I learned that that our assigned room was (think of the luck) immediately opposite the hospitality suite.

Day 3 February 19, 2011

The evening at the hospitality suite having been survived, I arrived at Council at 8:30 am sharp, only to learn that it had started at 8:00. The highlight of the morning was the panel on Northern issues. To put it in context, the current CBA National President, Rod Snow, is from the Northwest Territories. In his campaign to be President, he promised to “bring Northern issues to the CBA”. This panel was a major plank in the fulfillment of this earlier commitment:

The first speaker was Justice John Vertes, Senior Judge of the NWT Supreme Court. He is an Osgood grad (a friend of Art Verlieb?) and has been in the NWT for approximately 30 years.

He noted that there have been many significant changes to the NWT in his years there, the most notable being the following:

- The establishment of a fully representative legislature;
- Land ownership has now been almost completely determined due to the various settlements between the federal government and aboriginal groups. The settlement of land claims has resulted in the Courts now playing a major role in the in enforcement and interpretation of those treaties. These modern treaties are having a great impact on the institutional and governance arrangements –

they seem to have a quasi-constitutional status independent of federal and territorial constitutional imperatives; and

- There are now a lot more jury trials and a lot more crime than when Justice Vertes arrived in the North.

Other important facts to note:

- Size of the NWT = approximately the size of India;
- 14 aboriginal groups;
- Population now 55% aboriginal: 5 Dene and 2 Inuit groups;
- 11 official languages;
- Since 1955 the courts have gone out the communities to hold hearings there;
- There is a lot of tension between formal and substantive aboriginal equality;
- The impact of widespread Fetal Alcohol Syndrome in the population is having a major impact on the feasibility of operating within a standard legal framework. In late February, 2011 a major national consultative meeting has been organized under the impetus of the CBA President Snow, to discuss the various options that might be available to address this challenge;
- Anyone who can speak one official language can sit on a jury -- there are many challenges created by the need to translate complex legal terms into these official languages. A new lexicon is being developed by interpreters;
- A verdict can be a community decision -- having a local jury who understands the subtlety of the local community is of great benefit, particularly for people who have been traditionally excluded from decisions that affect them. There is great benefit now realized from being part of the decisions that fundamentally affect the local communities;
- Justice Beverly Browne (former and first Senior Judge of the Nunavut Court of Justice) pioneered the involvement of elders on the Bench;
- A question was asked about the status of the Yukon, NWT and Nunavut Territorial Assemblies – these are analogous to the colonial legislatures in the colonies of Britain and work on the basis of delegated jurisdiction only. Therefore, was it Justice Vertes' view that there is no "Crown in the Right of the NWT"? Justice Vertes confirmed that this was correct: the North now has a patchwork quilt of regional self-government arrangements whose relationship is with the federal and not the territorial government.

The second speaker on the panel was Professor Byers, a UBC professor of Political Science who holds the Research Chair in International Law and Politics. He appeared through the magic of Skype set up and operated by his 10 year old son – as the good professor's plane from Vancouver never even got off the ground due to more foul weather. Professor Byer's topic was the status of various international territorial disputes affecting Canadian arctic boundaries. He made the following points:

- Only 5 comparatively advanced countries span the entire Arctic;

- There are only two ongoing disputes, one involving Hans Island and the other involving a maritime dispute in the Beaufort Sea. This latter dispute is between the US and Canada regarding the interpretation of an old treaty between the UK, and Russia (and affecting Alaska). It seemed that little was really happening in respect of either of these matters;
- There is a possible future dispute between Canada and Russia regarding some seabed territorial boundaries. Currently, the science available cannot agree as to how to determine this dispute and resolution may have to await the development of anticipated but currently-unavailable technology. Therefore, due to the impossibility of a current scientific determination, various scientists are looking at the option of a joint submission to the UN on the continental dispute;
- This leaves only the perennial question of rights to the Northwest Passage as a real ongoing dispute. Professor Byers likened Canada to the English aristocrat who owns a piece of prime land over which others have been granted the right of passage. We are limited in practical terms since (particularly due to the melting of the polar ice) we cannot enforce full jurisdiction over the Passage. The US takes the position that it is an international strait. That being said, there have been only two vessels that have ever passed without Canadian permission (two US Coastguard icebreakers) and our sovereignty is generally acknowledged. With climate change and the opening of the Passage to a greater degree as well as much increased international shipping, the danger of pollution from use of the Passage has multiplied (for example, from exposure to waste and fuel pollution as the passage is used to transport thousands of passengers, etc.). One of the key arguments in favour of Canada's claim to sovereignty is that the indigenous populations of the area have taken the position in international negotiations that they wish Canada to control the Passage.

Throughout the balance of the Council meeting, snappy two-minute reports regarding various national committees were delivered. A few key points:

1. The Law for the Future Fund has funded only two projects in 2011:
 - a. A project of the CBA Standing Committee on Equity for measuring diversity and equality in law firms. It is expected to be very useful;
 - b. The CBA BC Branch has been given the largest grant of the year of \$40,000 in anticipation of the March Report from the Public Commission on Legal Aid. The grant is to be used for implementation of the conclusions of that Report when received.
2. The Standing Committee on Equity has succeeded in its request to have all CBA members asked to self-identify for various diversity criteria, upon the annual renewal of their memberships. The process is expected to be in place by mid-2011. A pointed follow-up question was asked from the floor about what the CBA National was doing itself to address the question of equity within the organization and not just in relation to the profession.

Presentation and debate of Council Resolutions then followed. It struck me that the following were particularly relevant to the Law Society:

- A. The National Labour and Employment Law Section proposed the attached resolution mandating that all governments ensure that all administrative tribunal members be given systematic and mandatory training regarding Charter principles and remedies. The point was made that not all tribunal members have legal training, let alone Charter training and participants in matters before tribunals should not have to come before to a superior court to obtain Charter relief.
- B. The National Pensions and Benefits Law Section proposed a resolution dealing with protection of RRSP and RIFs. The resolution called for all provinces and territories which do not have RRSP and RIF protection as yet to put such protection in place. (The resolution would not be applicable to BC which has this protection now.) Opposition to the resolution came from a Winnipeg lawyer specializing in bankruptcy and insolvency. His objections were based upon the fact that, unlike a registered pension, a registered owner of an RRSP or RIF has control over deposits and withdrawals in and out of the plan. At present, the Bankruptcy Act does protect RRSP/RIF assets but only if the registered owner makes an assignment in bankruptcy. Protection of all RRSPs and RIFs from all creditors irrespective of bankruptcy is an entirely different matter, and places the rights of the RRSP/RIF owners over the rights of entitled creditors. A vigorous debate ensued, which resulted in an amendment proposed by an opponent to the resolution (which he assured us he would vote against); a curious moment. A new motion to table was proposed in order to allow consultation with the National Family Law Section to assess the impact on collections of child and spousal support. This motion to table was contentious in itself but was ultimately carried.
3. Another resolution created an Access to Justice Committee overseeing existing National committees on Legal Aid and Pro Bono, to coordinate and promote access to justice for the middle class. (I thought that perhaps they had heard of David Mossop's Advisory Committee and want to emulate it.)

Various addresses were given by Ron MacDonald on behalf of the Federation (general comments and greetings, well-delivered), and Miles Corbin (Deputy Minister of Justice and Deputy AG of Canada). The Deputy spoke of the importance of Madam Justice McLaughlin's committee on access to justice and welcomed the creation of the CBA National Standing Committee on this topic.

Following Council, virtually everyone repaired to the hotel gym and indoor and outdoor hot pools, for the reason that almost all winter activities had been cancelled due to the weather and sheet-ice that had formed everywhere due to the aforementioned freezing rain. Cross-country skiing, snowshoeing and even the skating were cancelled. All walkways along the St. Lawrence and around the hotel were closed, with the exception of one heavily-gravelled path which provided a tour of the various hotel parking lots.

The evening brought the President's Dinner where I had the chance to sit with a table of Albertans and catch up on all of the provincial gossip.

Day 4 February 20, 2011

The morning brought more Council business, a hot breakfast buffet and speeches by the two candidates for National Second Vice-President in what appears to be a close race. This year, Quebec elects the Second Vice-President. It is a particularly crucial election as this particular Second Vice-President will be backing up our own Mr. Brun. Results will be available shortly.

There was an interesting report regarding the CBA Nationals Legal Professional Assistance Conference. It operates a 24-hour hotline available to any member coping with workplace stress. To give you an idea of the interest in the work of this Conference, they are having an upcoming webinar which is sold out at 4000 registrants. The 2011 LPAC conference is planned for September in Kamloops – heads up to Ken Walker.

The organization has approved new Principles of Conduct Guidelines to govern internal conduct within the CBA National. A copy is attached.

The meeting ended before noon. Attendees were shuffled into a large bus and driven back in blazing winter sunshine through the beautiful Quebec tableau. Remember that this is Cornelius Krieghoff country – one could see old Quebec around every corner. Click on the link and you will see what we saw –

[http://www.bing.com/images/search?q=cornelius+krieghoff&qpvt=cornelius+krieghoff&FORM=I
GRE](http://www.bing.com/images/search?q=cornelius+krieghoff&qpvt=cornelius+krieghoff&FORM=I GRE)

So ends my report.

Faithfully submitted,

Kathryn

Application of *Canadian Charter of Rights and Freedoms* by Administrative Tribunals

Application de la *Charte canadienne des droits et libertés* par les tribunaux administratifs

WHEREAS the administrative justice system covers important aspects of the lives of Canadians, including immigration, taxation, income support and disability compensation, licensing, professional governance, employment health and safety regulation, labour relations, employment standards, marketing and distribution, land use, intellectual property, the environment and human rights;

WHEREAS the evolution of the case law since 1982 has cemented the direct relationship between the *Canadian Charter of Rights and Freedoms*, its remedial provisions and administrative tribunals;

WHEREAS in *R. v. Conway*, the Supreme Court of Canada:

- reaffirmed the notion that “[w]e do not have one *Charter* for the courts and another for administrative tribunals”;
- acknowledged that “not only [should] expert tribunals [...] play a primary role in the determination of *Charter* issues falling within their specialized jurisdiction, but also that in exercising their statutory discretion, they must comply with the *Charter*”;

ATTENDU QUE le système de justice administrative traite d’aspects importants des vies des Canadiens et des Canadiennes, dont l’immigration, la fiscalité, la sécurité du revenu et les prestations d’invalidité, l’octroi de licences, la gouvernance professionnelle, la santé et la sécurité au travail, les relations de travail, les normes du travail, le marketing et la distribution, le zonage, la propriété intellectuelle, l’environnement et les droits de la personne;

ATTENDU QUE l’évolution de la jurisprudence depuis 1982 a consolidé la relation directe entre la *Charte canadienne des droits et libertés*, ses dispositions réparatrices et les tribunaux administratifs.

ATTENDU QUE, dans *R. c. Conway*, la Cour suprême du Canada a :

- réaffirmé la notion qu’« [i]l n’y a pas une *Charte* pour les cours de justice et une autre pour les tribunaux administratifs »;
- reconnu que « les tribunaux spécialisés devaient non seulement jouer un rôle de premier plan dans le règlement des questions liées à la *Charte* et relevant de leur compétence particulière, mais également se conformer à la *Charte* dans l’exercice de leur pouvoir discrétionnaire »;

- recognized “the practical advantages and constitutional basis for allowing Canadians to assert their *Charter* rights in the most accessible forum available”;
- held that every administrative tribunal with authority to deal with questions of law has the jurisdiction to apply the *Charter* and to issue remedies in accordance with it;
- reconnu « les avantages pratiques et le fondement constitutionnel de la solution qui consiste à permettre aux Canadiens de faire valoir les droits et les libertés que leur garantit la *Charte* devant le tribunal qui est le plus à leur portée »;
- déterminé que tout tribunal administratif investi du pouvoir d’appliquer la loi a compétence pour appliquer la *Charte* et d’accorder des réparations conformément à celle-ci.

WHEREAS obtaining a remedy based on the *Canadian Charter of Rights and Freedoms* before an administrative tribunal is the only effective way many Canadians have to enforce their fundamental rights and freedoms, thus helping to ensure access to justice for all;

WHEREAS tribunal members at all levels must now be knowledgeable of basic principles pertaining to the content and application of the *Canadian Charter of Rights and Freedoms*;

BE IT RESOLVED THAT the Canadian Bar Association urge the federal, provincial and territorial governments to develop and implement a systematic program of mandatory training and continuing education with respect to the *Canadian Charter of Rights and Freedoms* for all members of tribunals with the authority to deal with legal questions, to give practical effect to the recognition of their jurisdiction to apply the *Canadian Charter of Rights and Freedoms*.

ATTENDU QUE d’obtenir réparation en vertu de la *Charte canadienne des droits et libertés* devant un tribunal administratif est le seul moyen efficace pour de nombreux Canadiens et Canadiennes de faire valoir leurs libertés et droits fondamentaux, contribuant ainsi à assurer l’accès à la justice pour tous et toutes;

ATTENDU QUE les membres de tribunaux administratifs de tous paliers doivent désormais connaître les règles de base relatives au contenu et à l’application de la *Charte canadienne des droits et libertés*;

QU’IL SOIT RÉSOLU QUE l’Association du Barreau canadien exhorte le gouvernement fédéral et les gouvernements provinciaux et territoriaux à élaborer et à mettre en œuvre un programme systématique et obligatoire de formation et d’éducation permanente qui porte sur la *Charte canadienne des droits et libertés* et s’adresse à tous les membres de tribunaux administratifs investis du pouvoir d’appliquer la loi, et ce, afin de donner un effet pratique à la reconnaissance de leur compétence en

Resolution 11-01-M

Résolution 11-01-M

matière d'application de la *Charte canadienne des droits et libertés*.

Moved by National Administrative Law Section and National Labour and Employment Law Section

Proposée par la Section nationale du droit administratif et par la Section nationale du droit du travail et de l'emploi



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

CBA Principles of Conduct

Purpose

The Canadian Bar Association is committed to the highest principles of fairness, honesty and integrity. These Principles of Conduct apply to volunteer activities within the CBA and supplement the governing rules for members of the legal profession.

The CBA recognizes the historical role of codification of rights, freedoms and responsibilities in breaking down barriers to participation. It seeks the participation of new members and volunteers from every sector of the legal profession.

These Principles promote confidence and credibility in the CBA among members, volunteers, employees and the public. They are intended to ensure volunteers and staff are welcomed and treated as valuable, integral members of the CBA's governance, management and operations.

Scope

These Principles apply to all volunteers acting in any capacity on the CBA's behalf. To the extent that they do not conflict with the CBA Policy Manual for employees, employees are also expected to follow the Principles.

Principles of Conduct

1. to act with integrity, honesty, transparency and in good faith in the CBA's best interests;
2. to comply with the requirements of human rights and constitutional laws in force in Canada, the provinces and territories;
3. to seek consensus through open discussion and debate, with appropriate consideration and respect for legitimate dissent;
4. to participate in CBA activities constructively, in cooperation with other volunteers and CBA employees;
5. to respect the fundamental premise that all volunteers give generously of their time and talents;
6. to refrain from making inappropriate or unwarranted demands on CBA resources, including the time of other volunteers and employees, financial and information technology resources, and physical plant and facilities;
7. when possible, to promote new talent, gender balance and diversity, in support of the achievement of the CBA mission statement and strategic plan; and
8. to treat employees, volunteers, members and guests with courtesy, respect and dignity.

Reporting and Resolving Misconduct

CBA volunteers and employees may confidentially bring to the attention of the Chief Executive Officer, allegations and evidence of misconduct on the part of any other CBA volunteer or employee. The Chief Executive Officer shall investigate the matter as he or she believes appropriate in the circumstances, but in all cases must be informed by both sides of a dispute in the course of that investigation. The Chief Executive Officer shall attempt to resolve the dispute

quickly and informally to the satisfaction of both parties and in a manner consistent with these Principles. If the complainant requests that his or her identity not be revealed, that request shall be honoured, even though it may hinder effective investigation. Any investigation will take into account and respect:

1. confidentiality;
2. the underlying goals of these Principles, including maintenance of a safe and respectful workplace;
3. the privacy entitlements of the parties;
4. the value of an apology;
5. recognition of the serious implications for reputation due to unsubstantiated complaints;
6. proportionality with respect to the alleged misconduct;
7. harm done in the workplace, to the CBA's work, and to the individuals involved; and
8. the risk of future adverse outcomes if the misconduct is not discouraged or stopped.

Where the allegations are with respect to the Chief Executive Officer, the First Vice President shall investigate the matter as above.

For allegations with respect to a volunteer or the Chief Executive Officer, if the dispute cannot be resolved quickly and informally, the complainant may request that the matter be brought to the CBA Executive Officers. The Chief Executive Officer must prepare the reference in writing, describing the incident and the results of the informal investigation, including each party's position. The Executive Officers may determine any appropriate steps that should be part of their review procedure and that should be taken to protect the confidentiality of the investigation. The parties are entitled to attend the Executive Officers' meeting at which the matter is discussed. The names of the parties directly involved shall not be recorded in the meeting minutes unless the parties request it. The Executive Officers may direct the Chief Executive Officer to take any further action they deem necessary.

Confidentiality of Information

In the course of day-to-day business, volunteers and employees may receive sensitive information relating to, among other things, CBA plans, practices, programs, methodology, pricing, finances, customers, volunteers, members and staff. This information must be kept confidential.

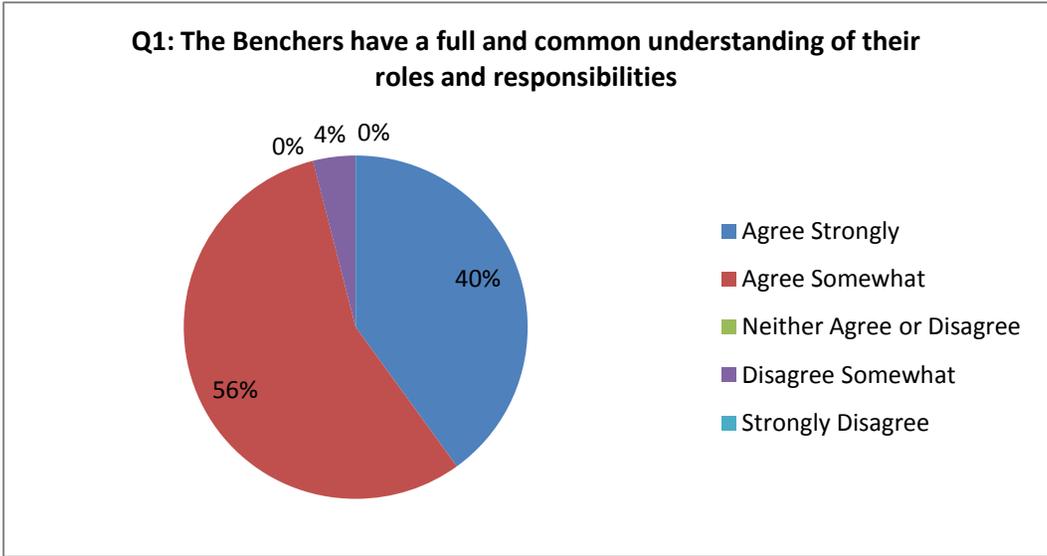
No one shall have access to private information of members without compliance with CBA privacy policies. No one shall have access to private information of employees without a clear and relevant purpose pertaining to CBA business. Requests for private information of members shall be directed to the Director of Membership. Requests for private information of employees shall be directed to the Director of Human Resources.

Display of these Principles

These Principles shall be displayed in a prominent location in the public reception area of the CBA office and posted on the CBA website.

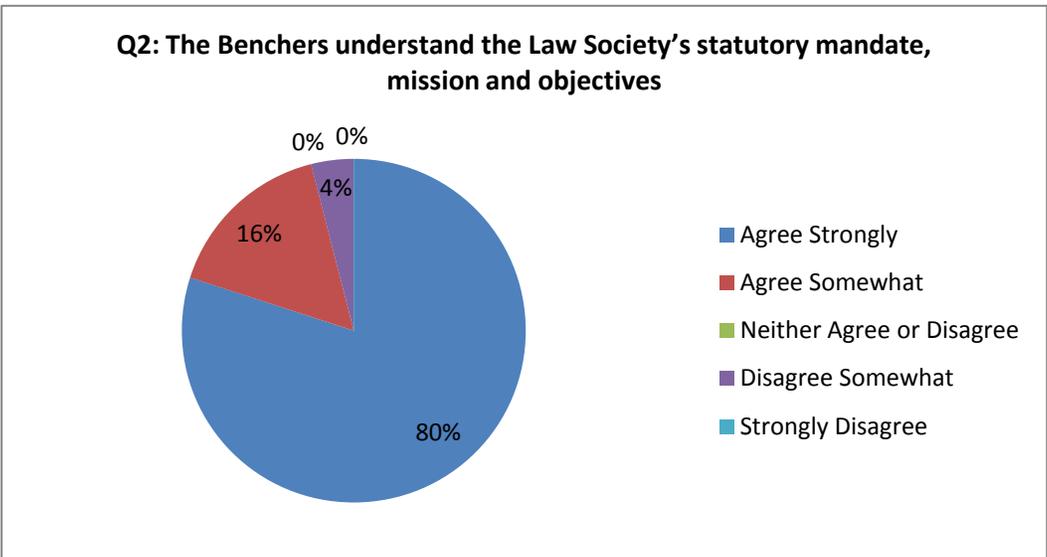
31 Benchers, 25 respondents

1. The Benchers have a full and common understanding of their roles and responsibilities



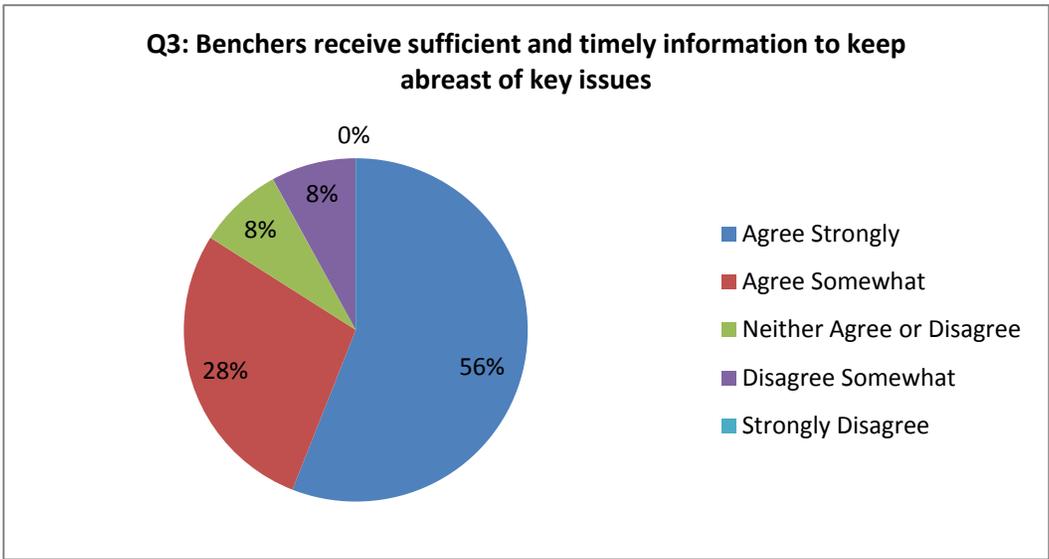
1				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
10	14	0	1	0

2. The Benchers understand the Law Society’s statutory mandate, mission and objectives.



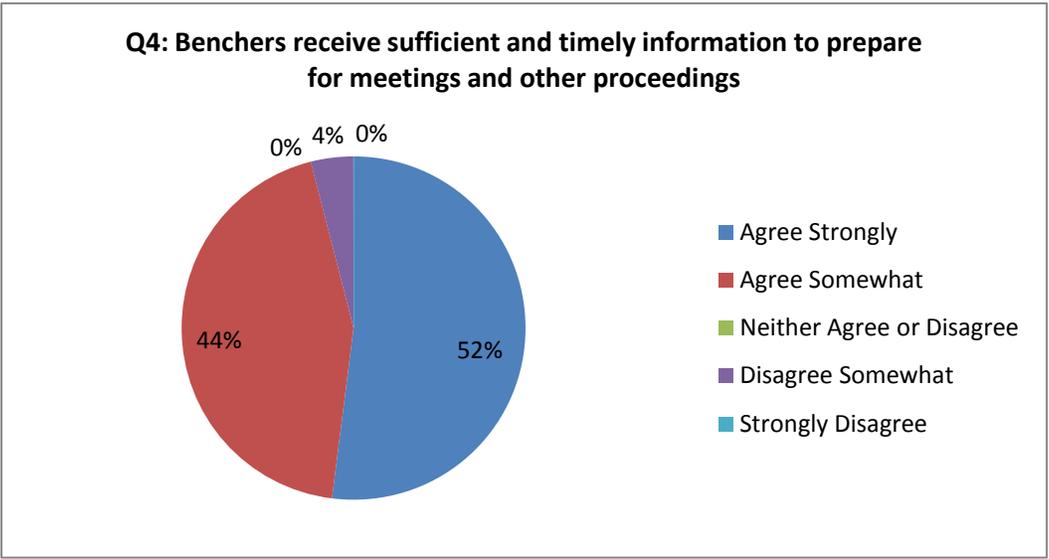
2				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
20	4	0	1	0

3. Benchers receive sufficient and timely information to keep abreast of key issues.



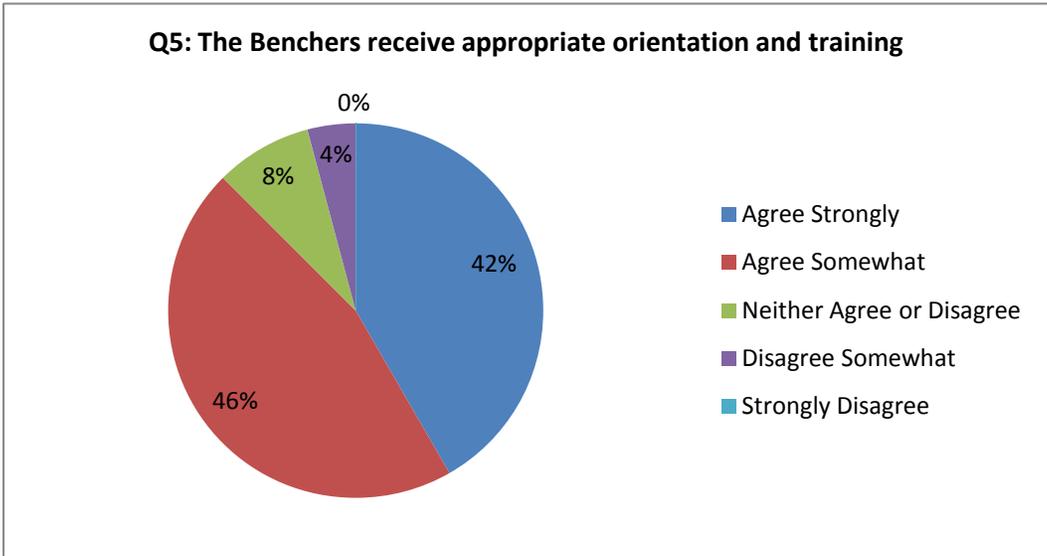
3				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
14	7	2	2	0

4. Benchers receive sufficient and timely information to prepare for meetings and other proceedings.



4				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
13	11	0	1	0

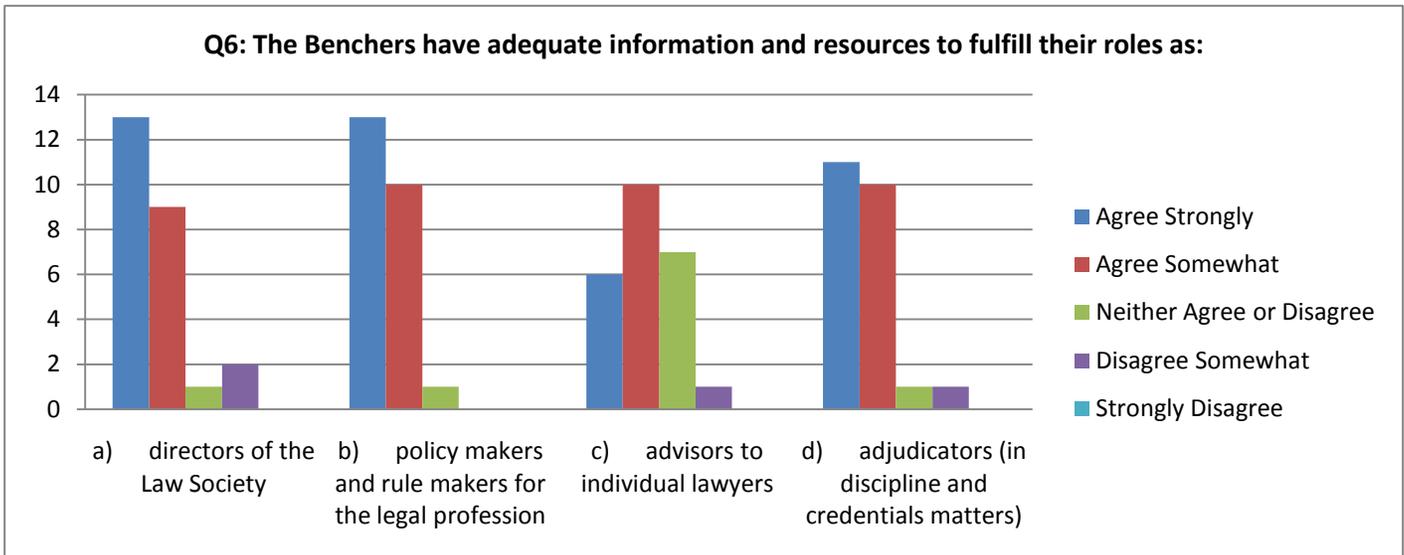
5. The Benchers receive appropriate orientation and training



5				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
10	11	2	1	0

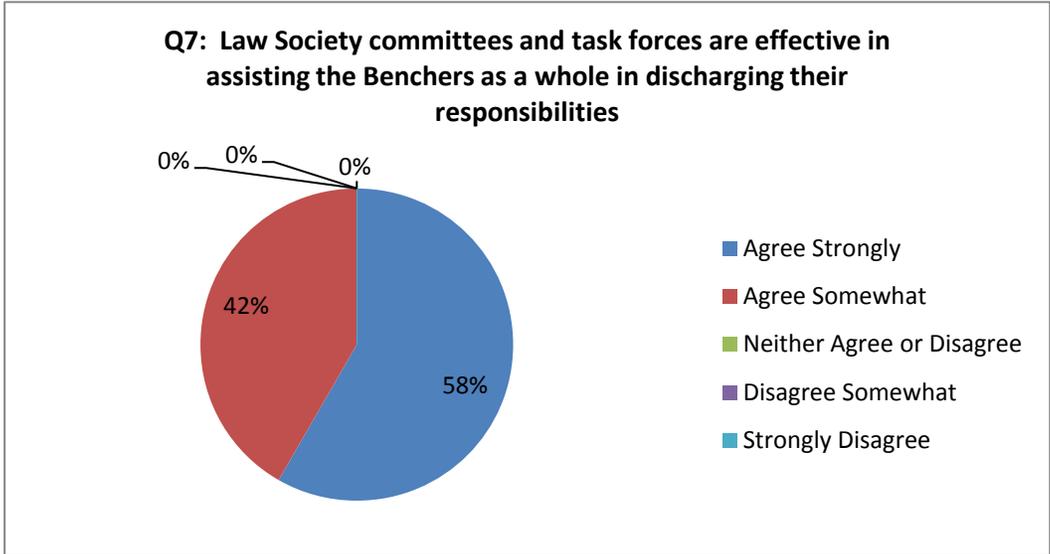
6. The Benchers have adequate information and resources to fulfill their roles as:

- a) directors of the Law Society
- b) policy makers and rule makers for the legal profession
- c) advisors to individual lawyers
- d) adjudicators (in discipline and credentials matters)



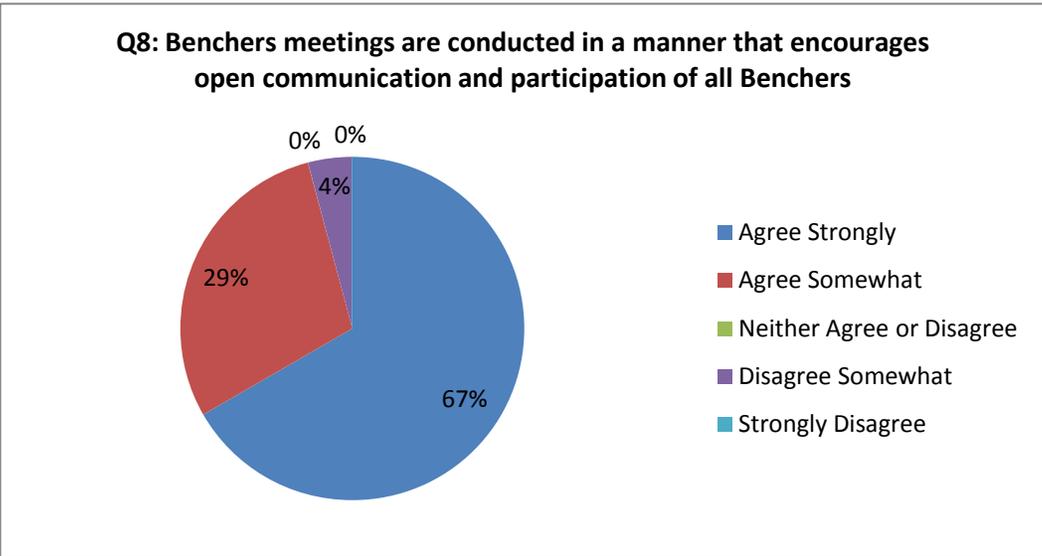
6				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
13	9	1	2	0
13	10	1	0	0
6	10	7	1	0
11	10	1	1	0

7. Law Society committees and task forces are effective in assisting the Benchers as a whole in discharging their responsibilities.



7				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
14	10	0	0	0

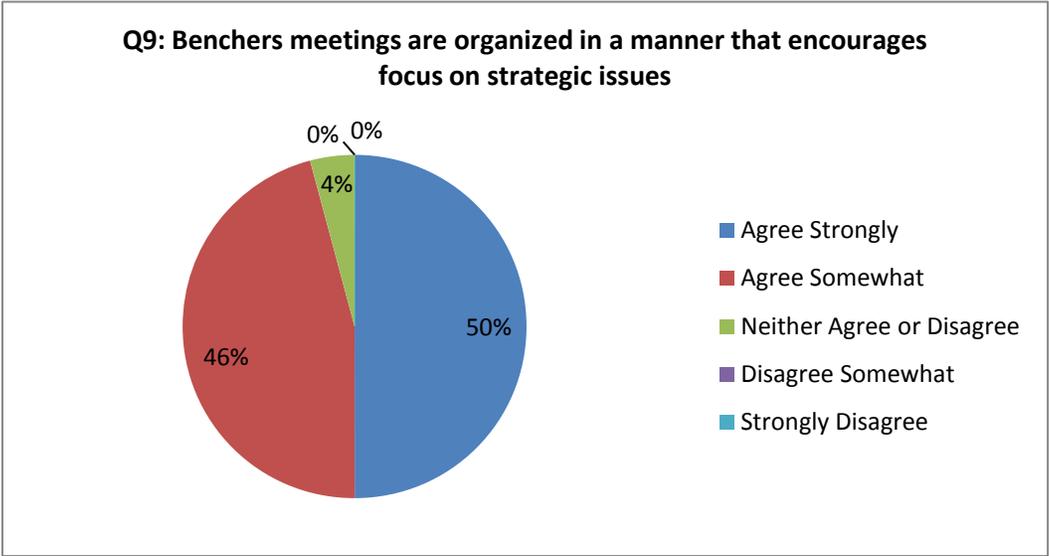
8. Benchers meetings are conducted in a manner that encourages open communication and participation of all Benchers.



8				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
16	7	0	1	0

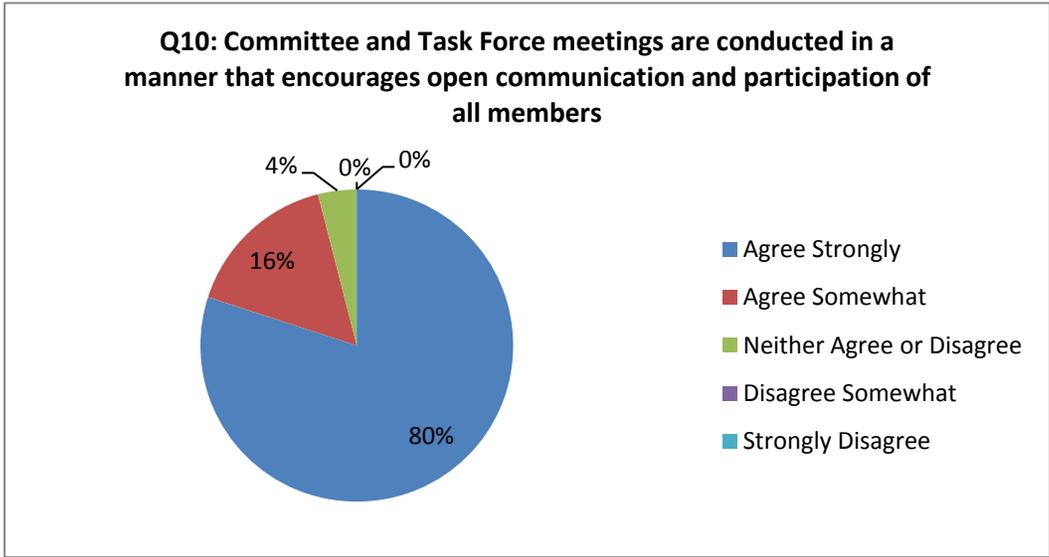
9. Benchers meetings are organized in a manner that encourages focus on strategic issues.

14004



9				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
12	11	1	0	0

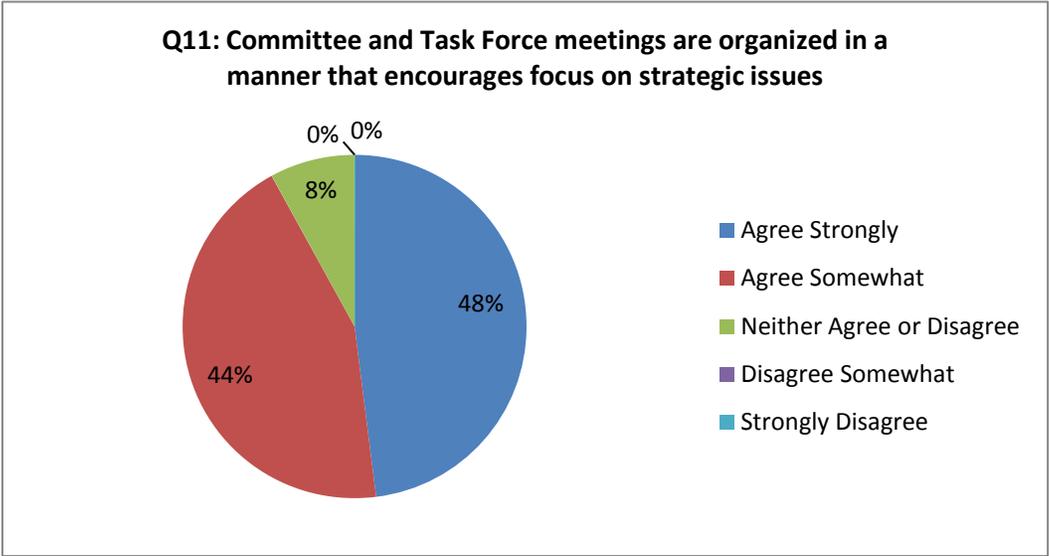
10. Committee and Task Force meetings are conducted in a manner that encourages open communication and participation of all members.



10				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
20	4	1	0	0

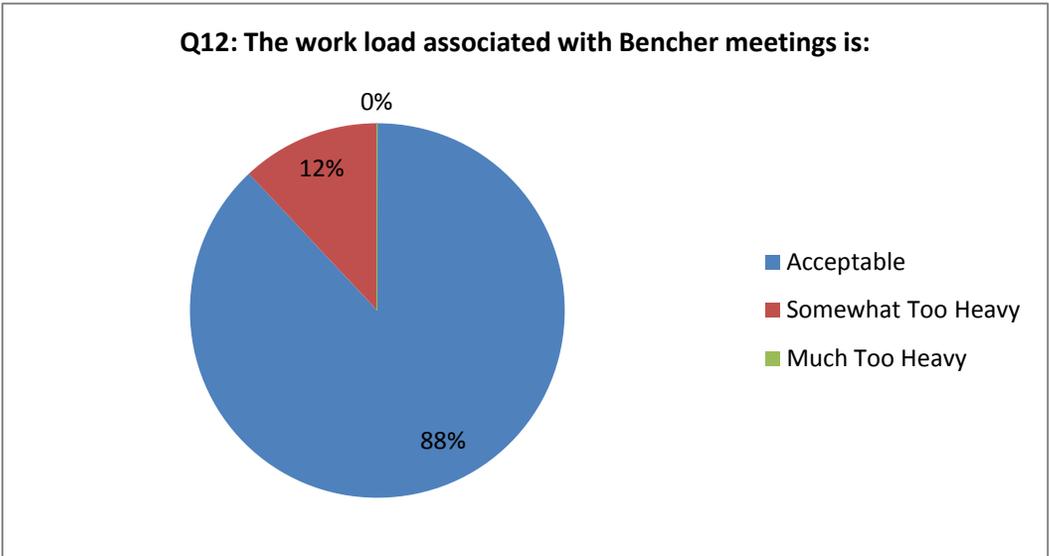
11. Committee and Task Force meetings are organized in a manner that encourages focus on strategic issues.

14005



11				
Agree Strongly	Agree Somewhat	Neither Agree or Disagree	Disagree Somewhat	Strongly Disagree
12	11	2	0	0

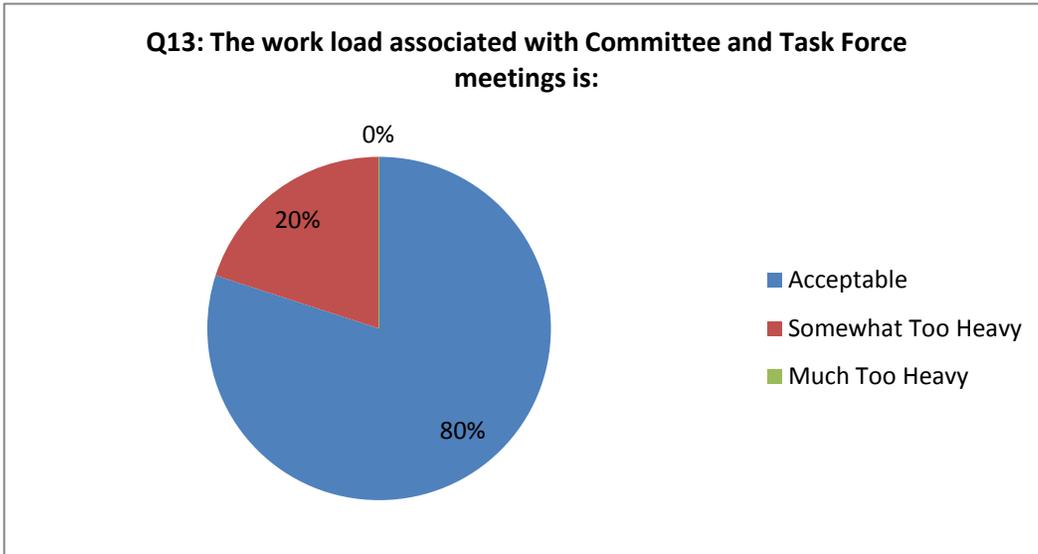
12. The work load associated with Bencher meetings is:



12		
Acceptable	Somewhat Too Heavy	Much Too Heavy
22	3	0

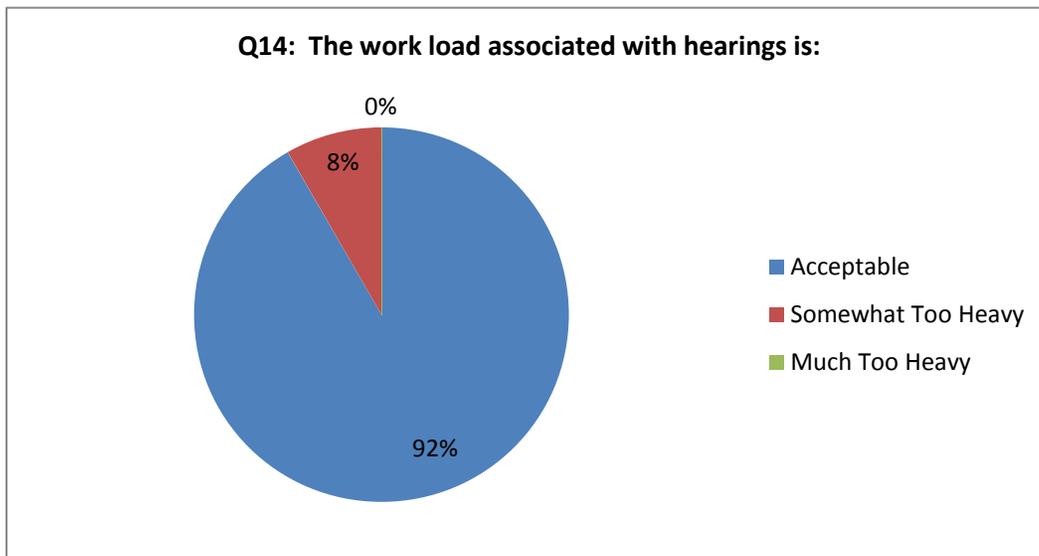
13. The work load associated with Committee and Task Force meetings is:

14006



13		
Acceptable	Somewhat Too Heavy	Much Too Heavy
20	5	0

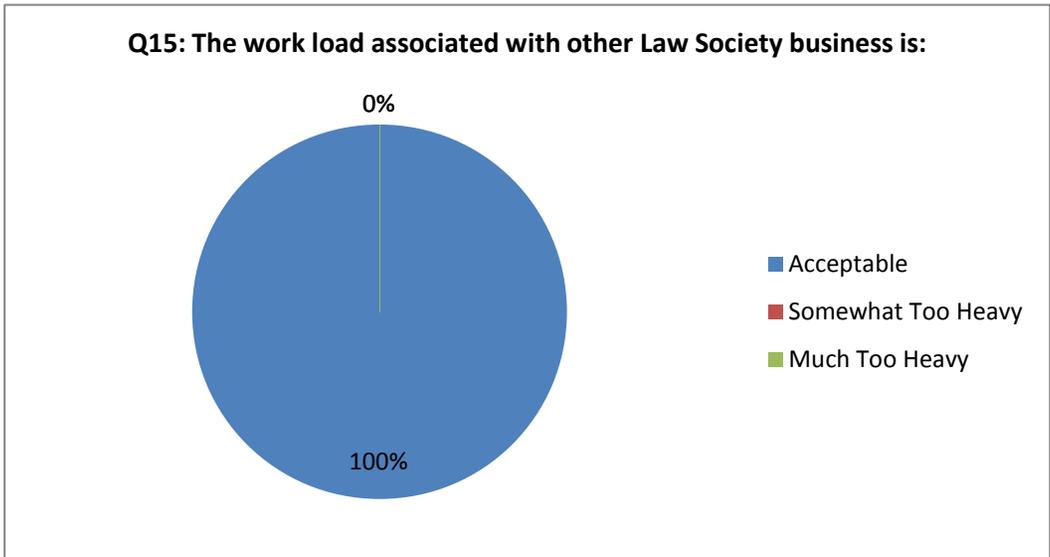
14. The work load associated with hearings is:



14		
Acceptable	Somewhat Too Heavy	Much Too Heavy
22	2	0

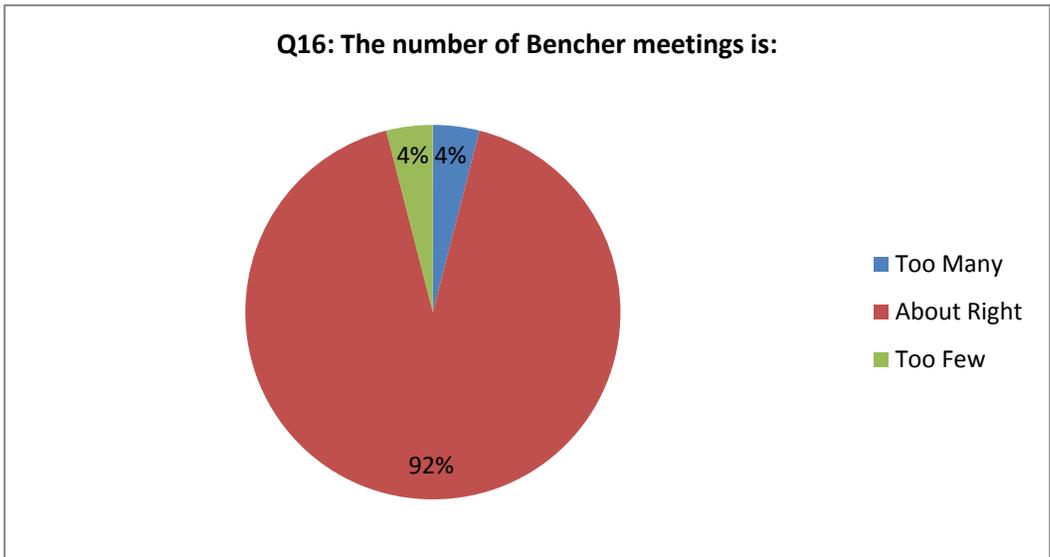
15. The work load associated with other Law Society business is:

14007



15		
Acceptable	Somewhat Too Heavy	Much Too Heavy
25	0	0

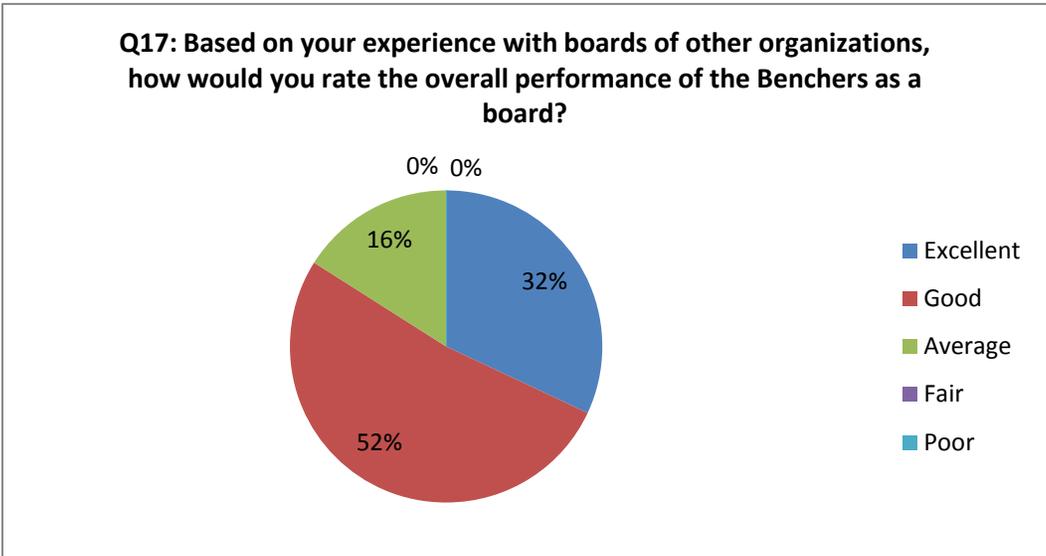
16. The number of Bencher meetings is:



16		
Too Many	About Right	Too Few
1	23	1

17. Based on your experience with boards of other organizations, how would you rate the overall performance of the Benchers as a board?

14008



17					
Excellent	Good	Average	Fair	Poor	
8	13	4	0	0	