



Agenda

Benchers

Date: Friday, January 29, 2016

Time: **7:30 am** Continental breakfast
8:30 am Call to order

Location: Bencher Room, 9th Floor, Law Society Building

Recording: *Benchers, staff and guests should be aware that a digital audio recording is made at each Benchers meeting to ensure an accurate record of the proceedings.*

OATH OF OFFICE:

The Honourable Chief Justice Robert J. Bauman, will administer an oath of office (in the form set out in Rule 1-3) to President David Crossin, QC, First Vice-President Herman Van Ommen, QC and Second Vice-President Miriam Kresivo, QC (individually) and all of the Benchers elected or appointed for the term commencing January 1, 2016 (en masse).

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Administer Oaths of Office	10	The Honourable Chief Justice Robert J. Bauman		Presentation
2	President's Welcome	10	President		

CONSENT AGENDA:

The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Benchers may seek clarification or ask questions without removing a matter from the consent agenda. Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Executive Support (Renee Collins) prior to the meeting.

3	Consent Agenda		President		
	<ul style="list-style-type: none"> Minutes of December 4, 2015 meeting (regular session) QC Appointments Advisory Committee Appointments 			Tab 3.1 Tab 3.2	Approval Approval



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
EXECUTIVE REPORTS					
4	President's Report	5	President	Oral report (update on key issues)	Briefing
5	CEO's Report <ul style="list-style-type: none"> Report on 2015 Key Performance Measures Revised 2015-2017 Strategic Plan 	30	CEO	Tab 5	Briefing
6	<ul style="list-style-type: none"> Briefing: Federation of Law Societies President Report from Law Society of BC's Member of the Federation Council 	10	Jeff Hirsch	Tab 6	Briefing
GUEST PRESENTATIONS					
7	2015 Employee Survey Results	15	Ryan Williams		Presentation
DISCUSSION/DECISION					
8	Truth and Reconciliation Commission Recommendations: Next Steps	10	President	Tab 8	Discussion
9	Equity and Diversity Committee: Justicia Project	10	Maria Morellato, QC	Tab 9	Discussion/Decision



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
REPORTS					
10	Report on Outstanding Hearing & Review Decisions	5	Herman Van Ommen, QC	<i>(To be circulated at the meeting)</i>	Briefing
11	Finance & Audit Committee: 2015 Enterprise Risk Management Plan - Update	15	Miriam Kresivo, QC	Tab 11	Briefing
FOR INFORMATION					
12	<ul style="list-style-type: none"> Letter from TRU Society of Law Students re LSBC Participation in FLSC Proposed National Assessment Regime 			Tab 12	Information
13	<ul style="list-style-type: none"> Letter from UBC Students Association re National Admissions Standards Assessment Proposal 			Tab 13	Information
14	<ul style="list-style-type: none"> Memo from Frederica Wilson re Non-discrimination provisions – Issues for Consideration 			Tab 14	Information
15	<ul style="list-style-type: none"> Proposed LSBC Draft Submission to the Special Committee for Reviewing FIPPA 			Tab 15	Information



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
<i>IN CAMERA</i>					
16	Outstanding Litigation Report			Tab 16	
17	TWU Litigation Update				
18	Notaries Update: Report from the Qualifications Working Group				
19	<i>In camera</i> <ul style="list-style-type: none"> • Benchers concerns • Other business 		President/CEO		



Minutes

Benchers

Date: Friday, December 04, 2015

Present: Ken Walker, QC, President
David Crossin, QC, 1st Vice-President
Herman Van Ommen, QC, 2nd Vice-President
Haydn Acheson
Joseph Arvay, QC
Satwinder Bains
Edmund Caissie
Pinder Cheema, QC
David Corey
Jeevyn Dhaliwal
Lynal Doerksen
Thomas Fellhauer
Craig Ferris, QC
Martin Finch, QC
Miriam Kresivo, QC
Dean Lawton
Peter Lloyd, FCPA, FCA
Jamie Maclaren
Sharon Matthews, QC
Nancy Merrill, QC
Maria Morellato, QC
David Mossop, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Sarah Westwood
Tony Wilson

Excused: Cameron Ward

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins
Lance Cooke
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Michael Lucas
Jeanette McPhee
Doug Munro
Jack Olsen
Lesley Small
Alan Treleven
Adam Whitcombe

Guests: Dom Bautista	Executive Director, Law Courts Center
Johanne Blenkin	CEO, Courthouse Libraries BC
Kari Boyle	Director of Strategic Initiatives, Mediate BC Society
Wayne Braid	CEO, The Society of Notaries Public of BC
Jeff Campbell, QC	2016 Vancouver County Bencher
Anne Chopra	Equity Ombudsperson, Law Society of BC
Dr. Catherine Dauvergne	Dean of Law, University of British Columbia
Aseem Dosanjh	Second Vice President, Trial Lawyers Association of BC
Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
Daniel Gallant	Thompson Rivers University Law Student
Brook Greenberg	2016 Vancouver County Bencher
Lisa Hamilton	2016 Vancouver County Bencher
Woody Hayes, FCPA, FCA	2016 Appointed Bencher
Gavin Hume, QC	Law Society of BC Member, Council of the Federation of Law Societies of Canada
Prof. Craig Jones, QC	Faculty of Law, Thompson Rivers University
Derek LaCroix, QC	Executive Director, Lawyers Assistance Program
Carmen Marolla	Vice President, BC Paralegal Association
Michael McDonald	Treasurer, Indigenous Bar Association
Steven McKoen	2016 Vancouver County Bencher
Christopher McPherson	2016 Westminster County Bencher
Adam Munnings	CBA, Co-Chair, Aboriginal Lawyers Forum
Susan Munro	Director of Publications, Continuing Legal Education Society of BC
Caroline Nevin	Executive Director, Canadian Bar Association, BC Branch
Wayne Robertson, QC	Executive Director, Law Foundation of BC
Mark Rushton	2016 Appointed Bencher
Rose Singh	Vice President, BC Paralegal Association
Michelle Stanford	2016 Kamloops District Bencher
Monique Steensma	CEO, Mediate BC
Prof. Jeremy Webber	Dean of Law, University of Victoria
Michael Welsh	Vice-President, Canadian Bar Association, BC Branch

1. Guest Speaker: The Honourable Chief Justice Robert J. Bauman

Mr. Walker welcomed the Honourable Chief Justice Bauman, who began his remarks noting the strong working relationship between the Law Society and the Courts, a relationship that helps create and maintain cohesion in the legal profession.

The Chief Justice outlined recent developments in the Court, including appointments to the Bench, caseload considerations and upcoming projects. He noted the increasingly challenging nature of the work, which he attributed to a very able Bar.

Specifically, the Court has been looking closely at self-represented litigants; in family matters particularly, filings by self-represented litigants has reached as high as 44% of total filings. Also being considered are Civil Rule reform initiatives, with which the Court is looking to simplify the Rules for lawyers and lay litigants as recommended by the National Action committee.

The Chief Justice himself has been engaged as First Vice-Chair of the Canadian Judicial Council, which provides oversight of judicial conduct, education and efficiencies in the administration of justice across the country. He has also been actively involved in the community, speaking to diverse groups and organizations.

He has been pleased to chair Access to Justice BC, whose mandate is to enhance access to justice across all socio-economic levels by supporting the development and implementation of access initiatives and removing access barriers. The committee was formed following the recognition by the National Action Committee that a culture shift is needed in the justice system, one that will require collaboration amongst a broad range of champions of change, and that will emphasize innovation and action. As chair, Chief Justice Bauman has brought together over 23 diverse organizations across many sectors, including healthcare, government, community outreach, dispute resolution, the legal profession and the judiciary. The committee strives to coordinate all efforts across all types of access initiatives; the area of family disputes has been identified as a key area within which access can be improved. The very fact that communication has begun amongst these diverse silos is a mark of success in itself.

The three main aims of the committee are to improve the justice experience, improve outcomes and ensure sustainability. Continuous improvement is a goal, with an emphasis on small, defined action within measurable time periods.

Chief Justice Bauman applauded the work of the Law Society, which he described as wide ranging and effective, noting that vigilant regulation itself is an effective access tool.

Specifically, he commended the Law Society for its work towards regulating other legal service providers, and its establishment of a Legal aid task force.

President's Introduction:

Mr. Walker thanked Chief Justice Bauman for his remarks. He also recognized the presence of the newly elected and appointed Benchers, and introduced them to the meeting. Additionally, he recognized and introduced guests Michael McDonald, Treasurer of the Indigenous Bar Association and Adam Munnings, co-chair of the CBABC Aboriginal Lawyers Forum and executive member of the Aboriginal Law Section. Finally, he thanked Ms. Rita Andreone for providing a helpful and informative presentation on Bencher Governance to the Benchers the previous day, and noted that there would be a showing of the short documentary, North Boys: The Story of Jimmy and Charlie after the Bencher meeting for those interested. The documentary chronicles the lives of two residential school survivors, and was shown at the recent Federation Conference focused on the Truth and Reconciliation Commission's Report and Calls to Action.

CONSENT AGENDA**2. Minutes****a. Minutes**

The minutes of the meeting held on October 30, 2015 were approved as circulated.

b. Resolutions

The following resolutions were passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules as follows:***1. In Rule 1-8, by rescinding subrules (5) and (7) and substituting the following:***

- (5) At least 60 days before an annual general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing a notice of the date and time of the meeting.
- (7) At least 21 days before an annual general meeting, the Executive Director must, by electronic or other means, make available to Benchers and members of the Society in good standing
 - (a) a notice containing the following information:
 - (i) the locations at which the meeting is to be held, and
 - (ii) each resolution received in accordance with subrules (6), and
 - (b) the audited financial statement of the Society for the previous calendar year..

2. ***In Rule 1-9, by rescinding subrule (2) and substituting the following:***
 - (2) The Executive Director may appoint a Bencher or a member of the Society in good standing to act as local chair of a location where the President is not present..
3. ***In Rule 1-11, by rescinding subrules (5) and (6) and substituting the following:***
 - (5) At least 21 days before a special general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing a notice of the meeting stating the business that will be considered at the meeting.
 - (6) The accidental omission to give notice of a special general meeting to any Bencher or member of the Society, or the non-receipt of that notice, does not invalidate anything done at the meeting.
4. ***In Rule 1-13***
 - (a) ***by striking the words in subrule (1) “Members of the Society” and substituting the words “Benchers, members of the Society”; and***
 - (b) ***by rescinding subrule (2) (c) and substituting the following:***
 - (c) appointed Benchers and persons given permission to attend the meeting by the President, who may be given a card for identification only..

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

1. ***By rescinding Rule 1-5 (6) by striking the words “a mail ballot” in both places that it occurs, and substituting the words “a ballot”.***
2. ***In Rule 1-6:***
 - (a) ***by rescinding the preamble to subrule (4) and substituting the following:***
 - (4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must make available to each member of the Society in good standing,
 - (b) ***by rescinding subrule (4) (b) and substituting the following:***
 - (b) a statement by the President or Vice-President, as the case may be, stating why he or she should not be removed from office, if that person wishes to have such a statement provided to each member, and, ***and***
 - (c) ***by rescinding subrule (6)) and substituting the following:***

(6) After the counting of the ballots is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

3. *By rescinding Rule 1-25 (1) and (2) and substituting the following:*

- (1) A member of the Society in good standing is eligible to vote in a Bencher election.
- (1.1) A member of the Society must not cast a vote or attempt to cast a vote that he or she is not entitled to cast.
- (1.2) A member of the Society must not enable or assist a person
 - (a) to vote in the place of the member, or
 - (b) to cast a vote that the person is not entitled to cast.
- (2) Only those members of the Society whose names appear on the voter list prepared under Rule 1-26 [*Voter list*], as corrected, are entitled to vote in a Bencher election.

4. *By rescinding Rule 1-27 (1) to (4) and substituting the following:*

- (1) By November 1 of each year, the Executive Director must make available to each member of the Society whose name is on the voter list prepared under Rule 1-26 [*Voter list*]
 - (a) a ballot containing, in the order determined under Rule 1-28 [*Order of names on ballot*], the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,
 - (b) instructions on marking of the ballot and returning it to the Society in a way that will preserve the secrecy of the member's vote,
- (2) The accidental omission to make the material referred to in subrule (1) available to any member of the Society or the non-receipt of the material does not invalidate an election.
- (3) For a ballot to be valid, the voter must
 - (a) vote in accordance with the instructions provided with the ballot,
 - (b) not vote for more candidates than the number of Benchers to be elected in the district,
 - (c) place the ballot in the ballot envelope and seal the envelope,
 - (d) complete the declaration and sign it,
 - (e) place the ballot envelope in the mailing envelope and seal the envelope, and
 - (f) deliver, or mail postage prepaid, the mailing envelope to the Executive Director.

- (4) The Executive Director may issue a replacement ballot to a voter who informs the Executive Director in writing that the original ballot has been misplaced or spoiled or was not received..

5. ***By adding the following rule:***

Electronic voting

1-27.1(1)The Executive Committee may authorize the Executive Director to conduct a Bencher election partly or entirely by electronic means.

- (2) The Executive Director
 - (a) may retain a contractor to assist in any part of an election conducted electronically,
 - (b) must ensure that votes cast electronically remain secret, and
 - (c) must take reasonable security measures to ensure that only members entitled to vote can do so.
- (3) A ballot may be produced electronically and, to cast a valid vote, a member must indicate his or her vote in accordance with instructions accompanying the ballot.
- (4) Rules 1-20 to 1-44 apply, with the necessary changes and so far as they are applicable, to an election conducted partly or entirely by electronic means..

6. ***In Rule 1-29:***

- (a) ***by rescinding the title and substituting “Rejection of ballots”;***
- (b) ***in subrule (1), by striking the words “A ballot paper must” and substituting the words “A ballot must”; and***
- (c) ***in subrule (2) (a), by striking the words “the ballot paper as printed by the Society” and substituting the words “the ballot provided by the Society”.***

7. ***In Rule 1-31:***

- (a) ***in subrule (1), by striking the words “for each election for Benchers” and substituting the words “for each Bencher election”; and***
- (b) ***in subrule (4) (b), by striking the words “a ballot paper is rejected” and substituting the words “a ballot is rejected”.***

8. ***By rescinding Rule 1-32 and substituting the following:***

Counting of votes

1-32 The Executive Director must supervise the counting of votes according to the following procedure:

- (a) the name of each voter who votes is crossed off the voter list, and all the ballots of a voter who submits more than one ballot must be rejected;
- (b) each voter declaration is read, and the ballot of a voter who has not completed and signed the declaration correctly is rejected;
- (c) the ballot envelopes containing ballots are separated by district, and mixed to prevent identification of voters;
- (d) for each district, the ballot envelopes are opened and the ballots removed;
- (e) ballots that are rejected according to the Act or these rules are kept separate;
- (f) all votes are counted and recorded unless void or contained in a rejected ballot.

9. *In Rule 1-36 (1), by striking the words “in an election for Bencher” and substituting the words “in a Bencher election”.*

10. *By rescinding Rule 1-37 and substituting the following:*

Retention of documents

1-37 The Executive Director must retain the ballots and other documents of a Bencher election for at least 14 days after the election or, if a review is taken under Rule 1-36 [Review by Executive Committee], until that review has been completed..

11. *In Rule 1-40, by rescinding subrule (2) and substituting the following:*

- (2) The rules respecting a Bencher election apply, with the necessary changes and so far as they are applicable, to a referendum under this rule, except that the votes need not be reported by districts..

12. *By rescinding Rule 1-43.*

c. Removed Items:

The following items were removed from the consent agenda for further consideration:

- 1. Memo from Mr. Hoskins to Benchers: Rules on Appointment of Panel and Review Board Chairs.

EXECUTIVE REPORTS

3. President's Report

Mr. Walker began by acknowledging the passing of former Law Society Treasurer Brian Wallace, QC, noting his hard work and dedication to the profession.

With this his last report, he also thanked those Benchers who have assisted him throughout the year at various official and professional events.

He reported on the Executive Committee meeting of November 18, 2016, at which the Committee received a report from Ms. Hilland regarding the formation of a steering committee to guide the Law Society through a consultation process with Indigenous community leaders. The Executive Committee deferred discussion of the student interview process until all members of the Committee could participate; however, Mr. Walker recognized the increasing number of interviews required of Benchers and reminded them that Life Benchers were available to assist. Also discussed were the refinements of the Strategic Plan and the regular Bencher Agenda review.

Mr. Walker acknowledged and thanked the Benchers for the important work done in the year on the Tribunal process, and stressed the importance of improving efficiency and remaining open to innovation. He also noted with pride the work done towards the proposed legislative amendment within challenging time constraints. He congratulated Benchers and staff for continuing to strive to improve and to have the courage to stand by convictions even in the face of challenge.

He expressed his gratitude to all Benchers, Mr. McGee and the many staff at the Law Society who have supported him during his Presidency. He also recognized the service of departing Benchers, and wished them well.

Mr. Welsh, Vice President of the CBABC, thanked Mr. Walker for his work and collaboration with the CBABC in the year, and presented him with a small gift in appreciation.

Ms. Dhaliwal also acknowledged Mr. Walker and on behalf of all the Benchers, expressed their appreciation for his leadership.

Mr. Walker then presented incoming President, Mr. David Crossin, QC, with his President's pin. In accepting his pin, Mr. Crossin noted that there would be a formal occasion upon which to recognize Mr. Walker's service to the Law Society as President, but took this opportunity to note Mr. Walker's leadership, modesty and unfailing good will which will be much missed around the Bencher table.

4. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers (attached as Appendix 1 to these minutes).

He began by thanking the Benchers, on behalf of all the staff, for all their important work throughout the year, with particular good wishes to those Benchers departing in 2015. He also welcomed new Benchers and looked forward to working with them in the year ahead.

He noted that, though this was his last report in 2015, his report in January, 2016 will cover the 2015 year-end review, including the key performance measures and budget figures. Though the latter will be covered in greater detail in January, he did note the financial pressure created this year by increasing hearing processing and litigation costs, and confirmed that the considerable efforts taken to manage that pressure appear to have been successful.

He highlighted the governance review process undertaken by the Federation, noting that a draft report will be presented in December to determine its readiness to be presented to Law Societies in March of 2016. As major issues have been worked out, pathways towards opportunities to harmonize efforts nationally have emerged.

Finally, with the presentation of a small gift, Mr. McGee thanked Mr. Walker for his collaboration with staff, his hard work, his kindness and his good humour throughout the past year.

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

Gavin Hume, QC briefed the Benchers as the Law Society's member of the Federation Council. He noted the upcoming Federation Council meeting scheduled for December 17, at which Federation Governance would be a key issue for discussion. The role of the Federation and the way in which that role affects the decision makers have emerged as focal points. Governance structure is also changing, with the addition of Presidents' and CEOs' Forums to help manage issues of national importance. Following this final governance review, the Federation will seek final approval from the Law Societies.

Also on the Agenda will be the National Admissions Standards Project, upon which the Law Society of BC has expressed concerns, anti-money laundering provisions and the Federation's role internationally. Mr. Hume also anticipates focus on improving communication between the law societies and the Federation to foster a common approach across the country, as well as discussion of the recently implemented Interactive Model Code.

Mr. Van Ommen also reported as the Law Society of BC's member of the National Requirement Review Committee, which had its first substantive meeting in November. He noted that the

Committee anticipates creating a report for later distribution, but that it will be some time before it is completed, in part to allow consideration of relevant appellate decisions that are expected in the coming year.

DISCUSSION/DECISION

6. Lawyer Education Advisory Committee Report to the Benchers on Admission Program Review

Tony Wilson, Chair of the Lawyer Education Advisory Committee, briefed the Benchers on the Committee's review of and recommendations for the Law Society's Admission Program. He began by thanking the members of the Committee for their hard work throughout the year.

To facilitate its review, the Committee surveyed approximately 500 PLTC students, and lawyers called to the Bar for less than three years, to gauge their levels of satisfaction with the Admission Program. The Committee also met with the Deans of BC's law schools, invited responses from the profession, held discussions with law firms, met with the designer of the Prairie provinces' CPLED program, examined the programs in Ontario, and considered programs in several other countries.

The result is the Committee's unanimous view that the Law Society of BC's PLTC program is highly successful, as reflected in the Committee's recommendations. However, the recently released Federation National Standards Admissions Assessment Proposal, which recommends a standardized assessment approach across the country, is not supported in its present form by the Committee. There may be further Federation developments, which the Committee will take into account. Mr. Wilson anticipates presenting the Committee's Report to the Benchers for discussion and decision at the March 2016 Bencher meeting.

In brief, the current recommendations include:

- maintaining articling, but monitoring availability of articling positions and consider recommending minimum articling pay;
- continuing with our 'gold standard' PLTC program, including the length of the term;
- holding off on recommending development of any online learning platform pending further development of effective and cost-efficient tools and platforms;
- consider revisions to rules around Articling Principals, including a reduction of the necessary years of experience.

Additionally, the Committee reviewed its recommendations in light of the recent Report and Calls to Action of the Truth and Reconciliation Commission (“TRC”), with a view to incorporating this important learning into PLTC. Recognizing the importance of acting, PLTC content will be developed in consultation with Aboriginal leaders.

Finally, Mr. Wilson underscored his Committee’s belief in the excellence of the PLTC program, and cautioned against any dilution of it to conform to the proposed national standards assessment program. Mr. Walker cautioned that, while we may not agree with the recommendations of the National Standards Assessment Proposal, we also do not want to isolate the Law Society of BC from other law societies nationally.

7. Truth and Reconciliation Commission: Call to Action #27: Proposal from the Lawyer Education Advisory Committee

In response to the TRC’s Call to Action #27, which specifically recommends that lawyers receive appropriate cultural competency training, Mr. Wilson on behalf of the Lawyer Education Advisory Committee moved (seconded by Ms. Matthews) that:

The CPD requirements, approved by the Benchers on September 9, 2011, be amended to include Aboriginal law and practice skills in the special two hour component, as follows:

At least 2 of the 12 hours must pertain to any combination of professional responsibility and ethics, client care and relations, practice management, and Aboriginal law and practice skills, including the Truth and Reconciliation Commission’s recommended “appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations,” and “skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”

Stand alone as well as embedded content satisfy the two hour ethics requirement.

Briefly, the recommendation is to include aboriginal cultural competency training as acceptable training to fulfill the two hour continuing professional development ethics requirement.

Mr. Wilson noted that certain courses currently offered by CLE include an aboriginal cultural competency component; Ms. Matthews also noted that the Courthouse Library Society has developed a comprehensive program that will be available in 2016.

In response to questions, Mr. Wilson confirmed that the proposal would not make such training mandatory, only an optional way to fulfill the ethics requirement. He also confirmed that this proposal is distinct from the intention to develop a mandatory program through PLTC for students.

The motion was approved unanimously.

Following the break, Mr. Crossin noted that, in response to the TRC Calls to Action, the Law Society has agreed to seek the guidance and hear the voices of indigenous leaders on how best to respond to these Calls to Action. Mr. Crossin emphasized that we must be respectful of this leadership and guidance both for major initiatives and smaller projects. He suggested that the resolution passed earlier was perhaps premature, and that we should first reach out to the indigenous community to ensure we articulate the vision appropriately with every step forward, regardless of its size.

Mr. Crossin moved (seconded by Mr. Richmond) that the Benchers reconsider and postpone their earlier motion to amend CPD requirements to allow cultural competency training to fulfill the annual two hour ethics requirement (as set out above), pending consultation with the indigenous community.

Mr. Walker called upon Mr. Adam Munnings, co-chair of the CBABC Aboriginal Lawyers subsection to help Benchers understand the issue from the indigenous lawyers' perspective. Mr. Munnings emphasized that the conversation around CPD credits, and the subsequent decision that was made, failed to include any aboriginal voices. He also related his concern that some of the CLE courses being discussed actually focused on aboriginal law, rather than on the injustices done to aboriginal people and the intergenerational effects of those injustices. He stressed the point that aboriginal people must be included in the conversation and in the process moving forward.

Mr. Walker thanked Mr. Munnings for his remarks, and reiterated on behalf of the Benchers that their intentions were to be respectful.

Following Mr. Munnings' remarks, it was observed that at issue were the principles of our engagement, not simply the motion at hand; we should allow an initial consultation process to design such principles before embarking on any initiatives. However, further discussion demonstrated that swift action was still valued by others.

Mr. Walker called upon Mr. MacDonald, member of the Board of the Indigenous Bar Association, who noted that the motion to reconsider the earlier motion, and examine the CPD credits issue in the larger context following consultation with indigenous groups, would be very well received by the Indigenous Bar Association. He acknowledged the good intentions behind

the quick action, but appreciated the Benchers' willingness to pause and rethink, given the importance of initial perceptions and processes in these first steps of engagement.

Mr. Walker thanked Mr. MacDonald, and reiterated that it is the Benchers' intention to 'do the right thing' and move forward respectfully and productively; hearing from Mr. MacDonald and Mr. Munnings will help the Benchers in that aim.

Some Benchers noted the importance of taking action and cautioned against excessive consultation. Others expressed concern that postponing the decision to revise CPD might lead to a lost opportunity to direct members to meaningful training that has been developed by CLE in consultation with Indigenous leaders. Still others strongly supported the motion to reconsider, noting the importance of starting the process in the most mindful, collaborative and respectful way.

After calling for a vote on the motion, Mr. Walker confirmed that the motion to reconsider was passed unanimously.

8. Ethics Committee: Family Law Task Force recommendations

By request of a Bencher, this item was moved from the Consent Agenda to allow for discussion.

Specifically, discussion of the recommendations concerning the proposed scope of practice of paralegals was sought. It was observed that the recommendation to limit paralegals' practice could be construed as contrary to our general goal of increasing access to legal services through other legal service providers.

On behalf of the Ethics Committee, Mr. Van Ommen as chair noted that the Ethics Committee were recommending the adoption of recommendations made by the Family Law Task Force. At issue are two key requirements:

- Designated paralegals may represent clients at mediation only where a lawyer is available to consult by phone; and,
- Final agreements drafted by paralegals are not binding until reviewed by a lawyer

He also discussed the Task Force's decision not to recommend paralegal representation at family arbitrations, given the similarities of arbitrations to trials. In response to a question,

Mr. Van Ommen confirmed that the profession had been consulted prior to the recommendations being made.

Mr. Walker confirmed the Benchers' agreement to vote on the proposed resolution, rather than return the item to the Consent Agenda.

Mr. Van Ommen moved (seconded by Ms. Merrill) that the series of recommendations to change the *BC Code* to give effect to concerns with respect to paralegal representation of family law clients that were identified by the Family Law Task Force, and the changes to the *BC Code* recommended by the Ethics Committee and attached as Appendix 2, be approved by the Benchers.

The motion was passed by unanimous vote.

9. Year-End Reports from the 2015 Advisory Committees

- **Access to Legal Services Advisory Committee**

Phil Riddell, Chair of the Access to Legal Service Committee, thanked the Committee members and staff for their hard work throughout the year. He summarized the work of the Committee, including the earlier decision not to pursue development of a program designed around the Manitoba family law project. In its stead, the Committee has worked with Mediate BC to develop a family law referral roster and a toolkit to provide independent legal advice and unbundled legal services to low income clients in mediation. Funding has recently been approved by the Law Foundation. Additionally, the Committee reviewed and made recommendations concerning contingency fee agreements in family law cases, and explored with LIF coverage for retired lawyers and judges to provide pro bono services.

- **Equity and Diversity Advisory Committee**

Satwinder Bains, Chair of the Equity and Diversity Committee, thanked the Committee members and staff for their hard work throughout the year. She summarized the work of the Committee this year, which included examining how the Committee can include other diversity groups in its work, widening its scope of work beyond gender issues. Additionally, it has and will continue to work on increasing cultural competency around the Bencher table and at PLTC.

- **Rule of Law and Lawyer Independence Advisory Committee**

David Crossin, QC, Chair of the Rule of Law and Lawyer Independence Advisory Committee, thanked the committee members and staff for their hard work throughout the year. He summarized the work of the Committee for the year, including its implementation of a more 'robust' articulation of the principles of Section 3 of the Legal Professions Act and how that intersects with Rule of Law issues. Additionally, he noted

the Committee's commitment to giving voice to Rule of Law issues, and the recent mandate given by Benchers in that regard.

REPORTS

10. Report on the Outstanding Hearing & Review Reports

Written reports on outstanding hearing decisions and conduct review reports were received and reviewed by the Benchers.

11. 2015-2017 Strategic Plan Implementation Update

Mr. McGee briefed the Benchers on the annual review of the Strategic Plan, which does not seek to reopen the plan, but refine it in light of ongoing progress and emerging priorities. He confirmed that this refinement of the plan does not disrupt or replace the day to day operations of the Law Society or the ongoing work of Advisory committees.

He referred the Benchers to the five priorities outlined in the Report, including the addition of the priority of addressing the Calls to Action from the Report of the Truth and Reconciliation Commission. He also noted one adjustment to the recommendations, which is to extend the time for the Notaries Qualifications Working Group to report back to Benchers to allow them to complete the work they have undertaken.

RCG
2015-12-04



CEO's Report to the Benchers

December 2015

Prepared for: Benchers

Prepared by: Timothy E. McGee

Best Wishes and Thanks

As this is the last Benchers meeting for 2015 I would like to take this opportunity on behalf of all staff to wish you all a very happy holiday season and to thank you for your many contributions and hard work throughout the year. I would also like to extend congratulations and a special welcome to the newly elected Benchers and to those re-elected for another term. For those Benchers not returning please accept our heartfelt thanks and appreciation for your outstanding service and support.

Strategic Priorities Discussion

In my last report I reviewed in detail the key areas for strategic review and discussion by the Benchers as we head into 2016 being year 2 of our 3 year strategic plan. These areas were the subject of extensive follow-up discussion at the most recent Executive Committee meeting and are on the meeting agenda with accompanying background material. As such, I will not cover them again in this report but I will provide some further observations and comments at the meeting.

Federation of Law Societies of Canada – Additional Highlights

A good portion of my focus and time since the last Benchers meeting has been spent on matters related to LSBC's relationship with the Federation, specifically the National Standards Assessment Project review (which will be touched on in the Lawyer Education Advisory Committee report on the Admission Program Review) and my work as a member of the Governance Review Committee of the Federation. I will provide updates and my comments on each of those projects as they arise at the meeting.

Record Year for New Calls to the BC Bar

This year will be a record year for the Law Society both in terms of the number of students graduating from our PLTC program and for the total number of lawyers called to the Bar in BC. While these results are consistent with recent trends it is also fitting that we are now completing an extensive review of our entire Admissions Program as part of the current strategic plan. The timing could not be better inasmuch as the

Benchers will have a fresh and current perspective to assist them in evaluating the options which are being developed at the Federation and when considering the rapidly evolving landscape of legal education, bar admission criteria and post call competency and CPD regimes in North America and internationally.

Financial Matters Update

At the last Bencher meeting we provided a third quarter financial update and year end forecast. The official year end results for 2015 will be prepared in February next year and presented to the Benchers at the meeting in March. At this stage I can report that we are seeing some positive signs as we go through the final few months of 2015 and we expect our year end forecast to hold or possibly improve. We will provide a better view of our most likely year end position at the meeting in January.

2015 Employee Survey

We have recently closed our annual employee survey for 2015. Our participation rate was a strong 82% although this was down from last year's exceptional rate of over 90%. A new feature in this year's survey was a section asking respondents to indicate their usage levels of various technologies and computer resources and to evaluate their skill levels in those areas. These responses will be used to assist our Skills Enrichment Project which is designed to help all staff achieve a high minimum level of computer literacy and technology skills through training and support. The survey results will be compiled by TWI Surveys Inc. in the coming weeks and we will report to the Benchers in the new-year.

Capital Project Builds Character

As you know we are in the midst of a major capital renewal project regarding the replacement of our aging and finicky two building elevators. I am pleased to report that this project is on time and on budget. The first new elevator is expected to be on line within the next 2 weeks. The second elevator will then be shut down for replacement and should be on line by mid to late January. Thanks to all who have built both character and fitness during this milestone project!

Timothy E. McGee
Chief Executive Officer

BC Code Recommended Changes by the Ethics Committee

BE IT RESOLVED to amend rule 6.1-3.3 of the Code of Professional Conduct for British Columbia as follows :

i. by rescinding rule 6.1-3.3 and by substituting new rule 6.1-3.3 which states:

“6.1-3.3 Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

- (a) to give legal advice;
- (b) to represent clients before a court or tribunal, other than a family law arbitration, as permitted by the court or tribunal; or
- (c) to represent clients at a family law mediation.”

ii. By rescinding commentary [1] and by substituting new commentary [1] which states:

“[1] Law Society Rule 2-13 limits the number of designated paralegals performing the enhanced duties of giving legal advice, appearing in court or before a tribunal or appearing at a family law mediation.”

iii. Following commentary [1] by inserting the following words as commentary [2]:

“[2] Where a designated paralegal performs the services in rule 6.1-3.3, the supervising lawyer must be available by telephone, and any agreement arising from a family law mediation must be subject to final review by the supervising lawyer.”

RESOLUTION 2

BE IT RESOLVED to amend Appendix B of the Code of Professional Conduct for British Columbia as follows :

Following paragraph 7 by inserting the following words:

“Commentary – designated paralegals and family law mediation

[1] The purpose of this commentary is to provide guidance to supervising lawyers who are considering sending a designated paralegal to represent a client at a family law mediation.

[2] Designated paralegals are permitted to represent a client at family law mediations in circumstances the supervising lawyer deems appropriate. However, family law mediations present unique challenges and before permitting a paralegal to represent a client in such processes the supervising lawyer must:

- (a) determine whether the designated paralegal possesses the necessary skill and knowledge to act in the matter (consistent with the general obligation for determining whether to delegate work to the designated paralegal);
- (b) ensure that there is no prohibition at law that prevents the designated paralegal from representing the client. For example, consider the restrictions in the Notice to Mediate Regulations regarding who has the right to accompany a party to a mediation;
- (c) obtain the client's informed consent to the use of the designated paralegal.

[3] It is prudent for the supervising lawyer to advise the mediator and the other party, through their counsel if they are represented, that the designated paralegal will be representing the client and provide the name and contact information for the supervising lawyer.

[4] In addition to considering the process in Appendix E of the BC Code, lawyers should consider the following before permitting a designated paralegal to represent a client at a family law mediation:

- Mediation requires as much competency of the legal representative as is required before a court or tribunal. The supervising lawyer must bear this in mind when determining when it is appropriate to have a designated paralegal represent a client;
- Family law is a unique area of law in which many other areas of law intersect. In addition, clients are often dealing with considerable emotional stress and in some cases come from environments where family violence exists. It is an area of practice fraught with risks that both the lawyer and the designated paralegal need the skills and knowledge to identify and properly manage. Considerable skill is required to represent a client effectively at a family law mediation. A supervising lawyer should ensure the designated paralegal has received specific training in representing a client at a family law mediation. It is prudent to have the designated paralegal shadow the lawyer for several sessions and then have the lawyer shadow the designated paralegal for his or her first few sessions.

[5] Despite more family law matters being directed to consensual dispute resolution processes rather than to court, it remains essential that those processes and the settlements that arise in them be fair. It is important, therefore, for both the supervising lawyer and the designated paralegal to understand the case law surrounding circumstances in which settlement agreements have been set aside by the court on the grounds that the settlement was unfair.

(6] Lawyers must review any settlement agreement arising from a family law mediation where their designated paralegal represented the client and to have such agreements be provisional only until such time as the lawyer signed off on it. This provides an opportunity for review and an additional safeguard for the client. The lawyer would also be prudent to advise the client about this process as a standard part of the retainer agreement.”

RESOLUTION 3

BE IT RESOLVED to amend Appendix E of the Code of Professional Conduct for British Columbia as follows :

Following item 4 of “A checklist for assessing the competence of paralegals” by inserting the following words:

“Screening for family violence

1. The *Family Law Act*, SBC 2011, c. 25 requires family dispute resolution professionals to screen for family violence. Lawyers who practise family law are strongly encouraged to take at least 14 hours of training in screening for family violence, and lawyers who are acting as family law mediators, arbitrators or parenting coordinators are required to take such training.
2. While designated paralegals do not fall within the definition of family dispute resolution professionals, lawyers who delegate to designated paralegals the ability to give legal advice in family law or represent clients in the permitted forums are strongly encouraged to ensure the designated paralegal has at least 14 hours of training in screening for family violence.
3. If a designated paralegal has reason to believe family violence may be present, it is essential the paralegal bring this to the supervising lawyer’s attention so the lawyer can turn his or her mind to the issue and the potential risks associated with it.

Designated paralegals giving legal advice

1. As part of the process of supervising a designated paralegal, a lawyer should instruct the designated paralegal as to the key aspects of what giving sound legal advice involves.
2. Giving legal advice and independent legal advice involves consideration of process and of the content of the advice. As a matter of process the lawyer, or designated paralegal, must obtain the relevant factual information from the client. This requires the skill of focusing on necessary factual material, rather than an exhaustive and costly exploration of all potential facts no matter how tangential they may be. Once the lawyer, or designated paralegal, has the factual foundation, he or she advises the client of the legal rights, obligations and/or remedies that are suggested by the facts. Finally, the lawyer should make a recommendation as to the preferred course of conduct and explain in clear terms why the suggested course is preferred.

3. When a lawyer is training a designated paralegal it is essential to instruct the paralegal as to the proper process for ensuring the paralegal is imparting sound and cost effective legal advice to the lawyer's client."



Memo

To: Benchers
From: Executive Committee
Date: January 20, 2016
Subject: **Law Society Representation on the 2016 QC Appointments Advisory Committee**

1. Background

Historically, each Fall two members of the Law Society appointed by the Benchers participate in an advisory committee that reviews all applications for appointment of Queen's Counsel, and recommends deserving candidates to the Attorney General. The Benchers' usual practice, on the recommendation of the Executive Committee, is to appoint the President and First Vice-President to represent the Law Society.

The other members of the QC Appointments Advisory Committee are the Chief Justices, the Chief Judge, the Deputy Attorney General and the CBABC President.

In recent years, this QC appointment process has begun in the spring, with the result that the Law Society representatives have participated before being officially appointed. To remedy this, we are recommending earlier consideration of these appointments.

2. Recommendation

The Executive Committee recommends that the Benchers appoint President David Crossin, QC and First Vice-President Herman Van Ommen, QC as the Law Society's representatives on the 2016 QC Appointments Advisory Committee.



CEO's Report to the Benchers

January 2016

Prepared for: Benchers

Prepared by: Timothy E. McGee

Introduction

This is my first CEO's report to the Benchers for 2016 and I would like to wish you all the very best for the New Year. I would also like to extend a warm welcome on behalf of all the staff to our new President David Crossin, QC and to both our new and returning Benchers. We look forward to working with all of you in the coming year.

In my report this month I provide a year-end perspective on 2015 as well as a preview of the challenges and opportunities which I believe we will encounter in 2016.

2015 Year End Perspective

To gauge our progress and success in any year we pay special attention to several measures and indicators. These are our Key Performance Measures, our Strategic Plan, our Annual Budget, our Employee Survey and our annual Operational Priorities Plan. I refer to each of these in turn below. Overall, I would characterize 2015 as a solid year but with some unexpected tough challenges, particularly in the area of increasing complexity and cost in our regulatory processes and in our efforts to advance the strategic goal of improving access to justice through empowering non-lawyer legal service providers.

Key Performance Measures (KPMs)

Please find attached to this report a presentation on the results of our KPMs for 2015 (*Tab 1*). I will speak directly to this report at the Benchers meeting and members of the Executive Team will be available to answer any questions.

The Law Society is unique among law regulatory bodies in Canada in that it has established key performance measures for each of its core regulatory operations the results of which we post on our website and include in our discussions with media, government and other stakeholders. The KPMs serve three important purposes, first, they are a dashboard for the Benchers to monitor progress against desired outcomes for our various regulatory operations, second, they demonstrate institutional transparency so that the public and others can objectively determine whether we are being successful as a public interest institution, and third, they are a tool for management to continually assess the impact of our decision making and operational strategies relative to our goals.

We achieved an overall achievement rating of 87% on our KPMs for 2015 including a 100% achievement rating in the all-important area of Professional Conduct and Discipline. This was particularly impressive given the increased demands and complexity of files those departments handled in 2015. We will be analyzing the results in all areas to better understand the causal factors so that we can confirm the things that are working well and look for ways of innovating where there are opportunities for improvement.

2015 – 2017 Strategic Plan

Please find attached a copy of the 2015 – 2017 Strategic Plan which has been annotated to describe the status of active initiatives in 2015 (*Tab 2*).

As 2015 was the first year of the current 3 year plan some items are still in the planning phase while others were actively underway. In particular, the Law Firm Regulation Task Force made significant progress against its work plan in the year and is well positioned to make progress in 2016. There was considerable work undertaken in 2015 to explore the possible merger of our regulatory operations with the Notaries. In particular, the Qualifications Working Group made significant inroads into the topic of matching requests for expanded practice areas with appropriate training and assessment. However, this was a difficult file on a number of fronts and important work remains in 2016 to determine the future prospects for success. Also notable in 2015 was the report of the Lawyer Education Committee on our bar admissions program including PLTC. The findings of that report will be a critical touch point as we continue to work with the other law societies in Canada (through the auspices of the Federation's National Admissions Standards Assessment Project) to determine if a single, harmonized approach to bar admissions is feasible. Planning was completed in 2015 to establish the Legal Aid Task Force and their work will begin shortly.

Annual Budget

While the final accounting for our year-end financial position is not yet complete we expect to end the year more positive than our most recent forecasts and likely positive to budget overall. This is after accounting for extraordinary budget pressures in 2015 coming mainly from additional external counsel costs incurred in the year to handle greater complexity and frequency of regulatory files in particular discipline, professional conduct and legal defense. We were able to significantly offset this pressure in the year by implementing tough cost control and cost saving measures and we also benefited from unanticipated revenue gains, which contribute to the bottom line. To better

understand the growing demands for counsel work in our regulatory areas we worked closely with the Executive Committee in 2015 in identifying causal factors and trends and we will use our analysis to better inform budget planning for 2017.

Employee Survey

The results of the 2015 annual Employee Survey will be presented at the meeting by Ryan Williams, the President of TWI Surveys Inc., our survey administrator. The Executive Team will also be on hand to answer any questions you may have.

The Law Society is a leader among Canadian regulatory bodies in offering all of our employees the opportunity to give online feedback on a wide range of matters related to their engagement and our organizational success. This is the tenth consecutive year for our survey and over the years the results have led to the development of a number of programs and initiatives to better engage our staff. The participation rate and overall engagement scores for 2015 while down slightly over last year's record numbers are still strong and indicate we continue to have a good foundation for success. However, we will be paying special attention in 2016 to feedback that suggests that additional resources may be needed to assist staff and that we continue to need to look at ways to provide better career development training and opportunities.

2015 Operational Priorities

In past years, including 2015, I have shared with the Benchers management's top 5 operational priorities for the ensuing year. These are matters which, in each year, we designate as being over and above our day to day responsibility to perform our core regulatory functions. Typically these priorities are chosen to improve our operational capabilities and we engage staff and managers in cross departmental teams (working groups) to get the job done.

I have attached a copy of my mid-year (June 2015) report to the Benchers on the status of these items (*Tab 3*). What follows below is an update to year end.

1. Knowledge Management Project

This project is now known as "Lynx – linking LSBC". Since mid-year the implementation team conducted an all employee needs assessment to determine current usage levels of knowledge management tools and to determine what our priorities should be. This

resulted in the adoption of two recommendations for immediate action, and 10 recommendations for further review and development in early 2016. Recommendations to be started immediately are a rebuild of the LSBC external website and enhancements to the search functions of “Lex” our internal staff website. Both will improve the user experience by improving content and navigation capabilities. As part of our RFP for the external website we will be seeking input from the Benchers and other external user groups.

2. Computer Literacy Working Group

The report and recommendations of the working group have now been reviewed and approved by the management team and we are starting the initial roll out.

All employees will be directed to on-line computer skills training modules specifically designed for the needs of their particular job requirements and responsibilities. We are providing an in house “help desk” to assist staff as they embark on the skills training. The customized aspect of this roll out is key. That is staff have self-assessed their current competencies against a wide range of computer skills and programs used in the office and their respective managers have indicated what specific skills are “must haves” for those positions. Matching up the required skills with the current competency levels for each staff allows for an efficient allocation of time and resources. We expect this will work out to roughly 12 hours of primary training per employee per year and likely additional time to practice and perfect techniques. The training is on-line and is available 24/7 and can be completed wherever there is connectivity.

While everyone is already busy and not everyone embraces training with the same enthusiasm our goal is to ensure that this investment, over time, will improve the quality of our work and give us the confidence to maximize the many benefits of available and emerging technologies.

3. Public Issues Voice Working Group

The working group has made seven recommendations, including identifying means and opportunities for staff to communicate more effectively with the profession and the public about the Law Society’s role and our day-to-day programs and services. The recommendations also encourage staff to use an internal online discussion forum to share their ideas and perspectives on topics and issues connected to our mandate.

This initiative builds on our belief that the diverse backgrounds of our staff coupled with

their work experience at the Law Society represents a special resource of ideas and perspectives which may assist us in various aspects of our work. As this discussion evolves at the staff level we will consider ways that this resource might be of assistance to the work of relevant Benchers committees and task forces.

4. Core Values Working Group

The final report of the working group was presented to staff at the inaugural Staff Forum of the year held on January 19, which was also attended by President Crossin, 1st VP Herman van Ommen QC and 2nd Vice President Miriam Kresivo QC. Each member of the working group participated in the presentation describing and explaining the reasons and rationale for settling on “Integrity and Excellence” as the 2 core values to guide us in our work and in our relationships at the Law Society. For each core value the working group also described certain behaviors which based on the consensus of their discussions would best exhibit the values in our day-to-day activities.

I have set out below the precis of the Core Values and the related behaviors which are now posted on Lex our internal staff website.

Integrity

- We are *accountable* and take personal responsibility at all levels and act in ways that exemplify what we expect of each other
- We apply *transparent* processes and constructively manage difficult situations with courage and candour
- We are *fair*, and impartially apply our policies, procedures and practices, and are compassionate in our treatment of colleagues
- We value *diversity*, inclusiveness and equality, fostering a collegial work environment
- We are *reliable* and can be counted on every day to provide the highest standard of professional behaviour

Excellence

- We are *innovative*, using our skills and knowledge to implement new or improved strategies or processes
- We commit to *quality performance* in all areas of our work
- We apply *teamwork* by supporting one another as we work towards shared goals
- We appreciate and *recognize* our successes

I would like to have the working group repeat their full presentation on the Core Values project to the Benchers at a future meeting. I think you would find the background work and analysis fascinating and also an example of staff engagement at its finest.

5. E- Voting and Webcasting Capability

We remain committed to developing a highly reliable and resilient e-voting platform for our annual general meetings and elections. The 2015 AGM demonstrated our ability to provide webcasting of the event and, although a relatively small number of people signed on to the webcast, it demonstrated proof of concept and paved the way to join webcasting with e-voting at future AGMs. We also expect to implement e-voting in time for the November 2016 Bencher election. The 2015 mid-year report of the Governance Committee raised privacy and confidentiality concerns about the use of US providers for e-voting but we have since learned that our preferred US provider can facilitate voting without the need for any personal information from voters. We expect that we can move forward with both these initiatives this year.

Outlook for 2016

Observations on the External Environment

1. Turbulent Market Conditions

As we head into 2016 it is obvious that turbulent and uncertain economic conditions will be with us for a good portion of the year. The price of oil and its negative impact on the Canadian dollar and the decline and volatility in the stock markets are among the main environmental factors which are likely to persist in 2016.

These conditions will impact businesses both public and private, big and small, and individuals as well. Lawyers and law firms will not be exceptions. We also know from experience that in difficult economic times we tend to see an uptick in reported claims in the insurance area and in complaints. This is not an exact science and the correlation isn't one to one with the value of the dollar or interest rates but it is a pressure that we expect will build on these areas the longer the conditions persist. There is usually a lag in the impact of adverse market conditions and resort to our regulatory processes so our challenge will be to monitor this carefully and make adjustments as necessary to minimize any adverse impacts on our operations.

2. Regulatory Models in the Spotlight

If you have been following our media briefing service in the past year you will know that a huge amount of time and effort is being spent by regulatory bodies and commentators in Canada and around the world debating the need for changes in law regulation. Prominent in this debate are the topics of alternative business structures (ABSs), outcome or principled based regulation, regulation of law firms, regulatory forbearance (e.g. abolishing unauthorized practice regulation), professionalization of adjudicative functions, and the overhaul of bar admission regimes.

I would say the best way to characterize this debate is with a question: “Should law regulators, lead, follow or get out of the way?” My response to that question would be “yes”. That is, it is probably a combination of all three depending on the activity and depending on how well we are able to assess what actions (or inactions) by the Law Society are most consistent with the public interest.

Fortunately, I think the Law Society is well positioned in 2016 to make informed decisions regarding many of these choices. For example, our Law Firm Regulation Task Force is drilling down into several of these areas to equip the Benchers to consider options and outcomes. Similarly, the Lawyer Education Advisory Committee has just completed an extensive evaluation of our bar admission program and the Benchers will be asked to further consider options for joining a different type of regime in the interests of a harmonized, national approach. Not as easily, we will need to come to grips with the options for expanding the role of non-lawyer legal service providers as a response to the need for greater access to affordable legal services.

However, even though we are well positioned now we cannot be complacent that change occurring elsewhere will not impact our options in the future. So we will continue to hear the calls for innovative reforms and new directions as necessary responses to changes in the profession and the expectations of the public. We will need to listen to those calls and be open to change but also be able to critically assess what role we can best play to advance reforms which will truly serve the public interest. That is the definition of strategic discussion and debate and one which we need the Benchers to have frequently in 2016.

3. Increased Complexity in Regulatory Matters

A clear trend at our Law Society and at our sister law societies across the country is the increasing complexity of investigative and discipline files and the litigiousness of the

participants. This is a development which, if it continues throughout 2016, will require us to rethink our resourcing and operational policies to ensure we can meet the demands of what may be the “new normal” in these areas. As part of our response, we are doing a cost/benefit analysis relating to the optimum mix of expenditure on external counsel versus performing the same work in house. We will be reviewing this with the Executive Committee early in the year so that the findings can form part of the budget planning process for 2017.

4. National Focus on the Truth and Reconciliation Report

With the recent release of the report of the National Truth and Reconciliation Commission and the announcement by the federal government of the National Enquiry into Missing and Murdered Indigenous Women it is fair to say that this critical topic will be on the minds of Canadians and at the top of media reporting throughout 2016 and beyond. The Benchers have already declared their firm desire to consult and respond to the calls for action relating to lawyers and the legal profession and this is on the agenda for the upcoming meeting. There will be much to learn and absorb on many fronts relating to this in 2016 and we look forward to rising to that challenge.

Key Internal Considerations

Looking ahead to 2016 from an operational perspective, I believe we will continue to benefit from strengths in 3 particular areas, our people, our systems and our strong financial model. As you know from my monthly reports, we pay much attention to these areas, which are critical enablers of our performance and our success as an organization.

Because we have many important initiatives underway, such as the new Legal Aid Task Force, the Truth and Reconciliation report response, the National Education Assessment Project and our on-discussions with the Notaries, to name a few, we will need to be nimble and to engage the Benchers effectively to ensure we have the support necessary at all stages to justify moving forward.

Finally, we have committed to enhancing the frequency and effectiveness of our engagement with the profession, the media and others in 2016. This has already started with the President’s first blog positing on Bill C-51, a related article from the Rule of Law and Lawyer Independence Committee in the most recent edition of The Advocate, and the outreach and the upcoming cross-province tour of the Law Firm Regulation Task Force. There will no doubt be other opportunities for us to pursue this

commitment throughout the year and I look forward to reporting to you on those as they develop.

Timothy E. McGee
Chief Executive Officer

The Law Society *of British Columbia*



Key Performance Measures

Report on 2015 Performance

Presented to Benchers - January 29, 2016



Table of Contents

	Page
Bellwether Measures.....	4
Professional Conduct and Discipline.....	7
Custodianships.....	18
Trust Assurance.....	23
Credentials, Articling & PLTC	31
Practice Advice	38
Practice Standards	44
Lawyers Insurance Fund	51



Background

This is the ninth time that the key performances measures of the Law Society of British Columbia have been reported. The key performance measures are reviewed each year at the Benchers meeting.

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*



Bellwether Measures



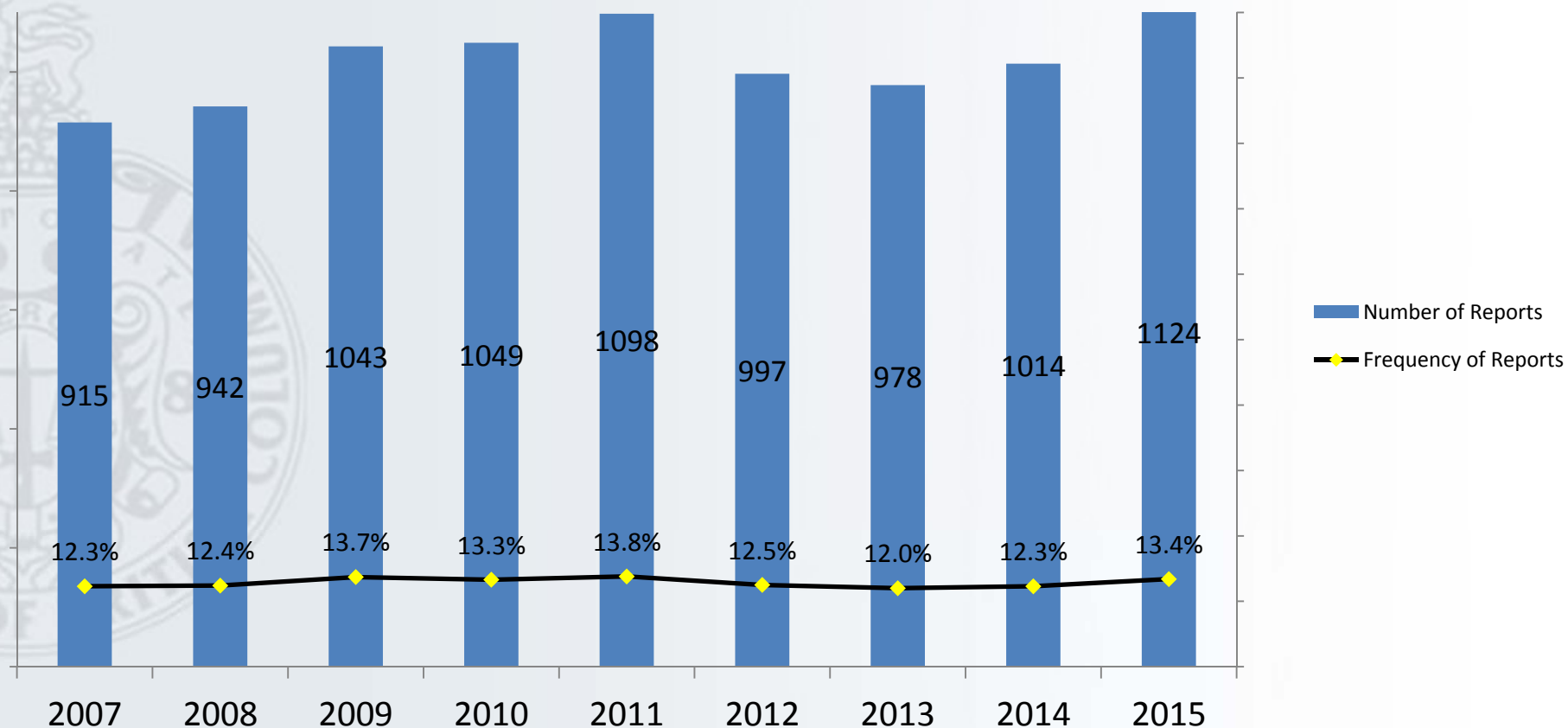
Frequency of Complaints

The number of complaints divided by the median number of practising lawyers



Frequency of Insurance Reports

The number of reports divided by the median number of insured lawyers



The Law Society *of British Columbia*



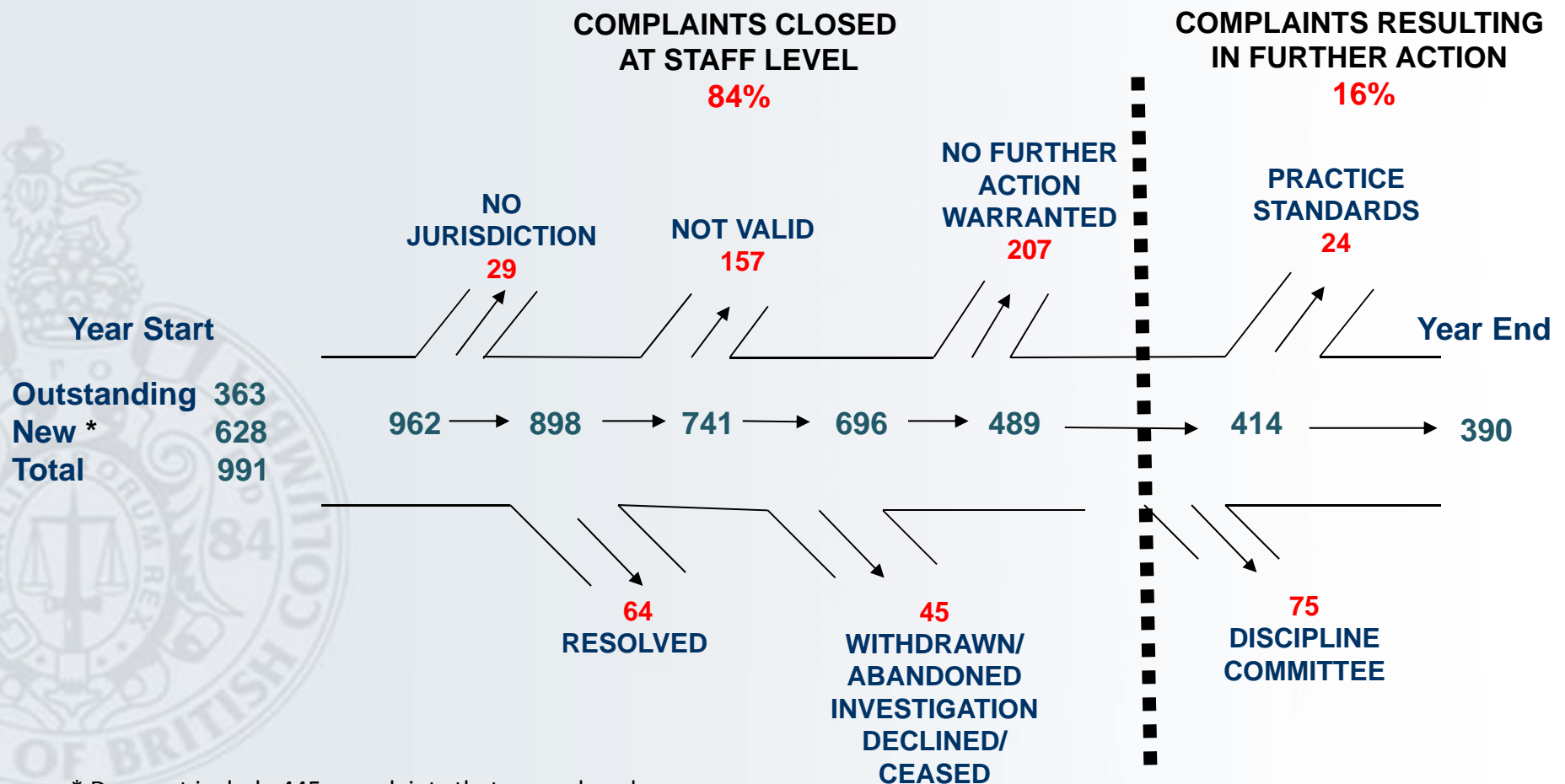
Professional Conduct and Discipline



Department Highlights

- In 2015, Professional Conduct received 628 substantiated complaints and closed 601 complaint files. An additional 445 intake files were closed as unsubstantiated. The Department also handled 1,481 telephone inquiries in 2015.
- We are exceeding all targets for complainant satisfaction. Two of the 2015 KPM results have improved and two are holding steady, as compared with 2014.
- The Department continues to perform well against the national standards for timelines. As an example, 91% of the complaint files closed in 2015 were completed in less than one year and 97% were completed within 18 months. Both of these percentages surpass the Federation of Law Societies of Canada National Discipline Standards of 80% and 90% respectively.
- Both the CRC and the Ombudsperson continue to be satisfied with our complaints handling processes and procedures.

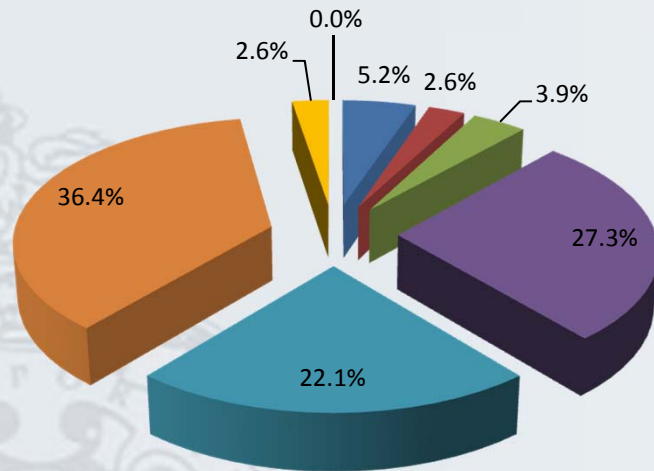
2015 Complaints Results



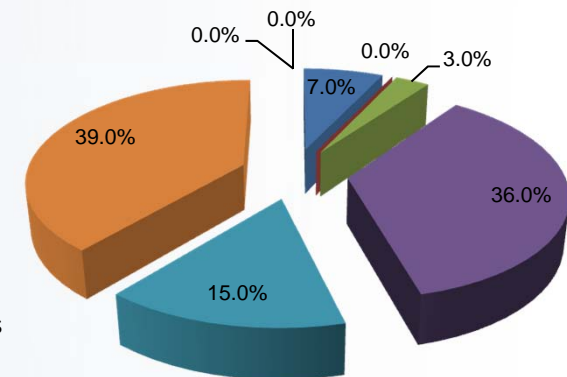
* Does not include 445 complaints that were closed as unsubstantiated intakes

2015 Discipline Committee Dispositions

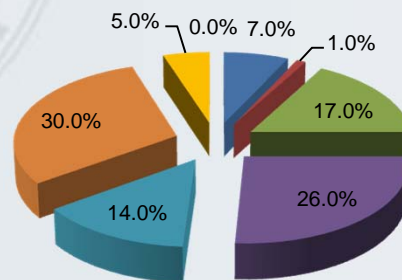
2015



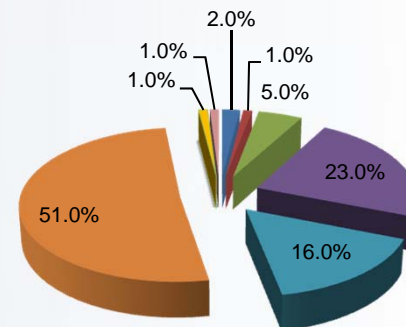
2014



2013



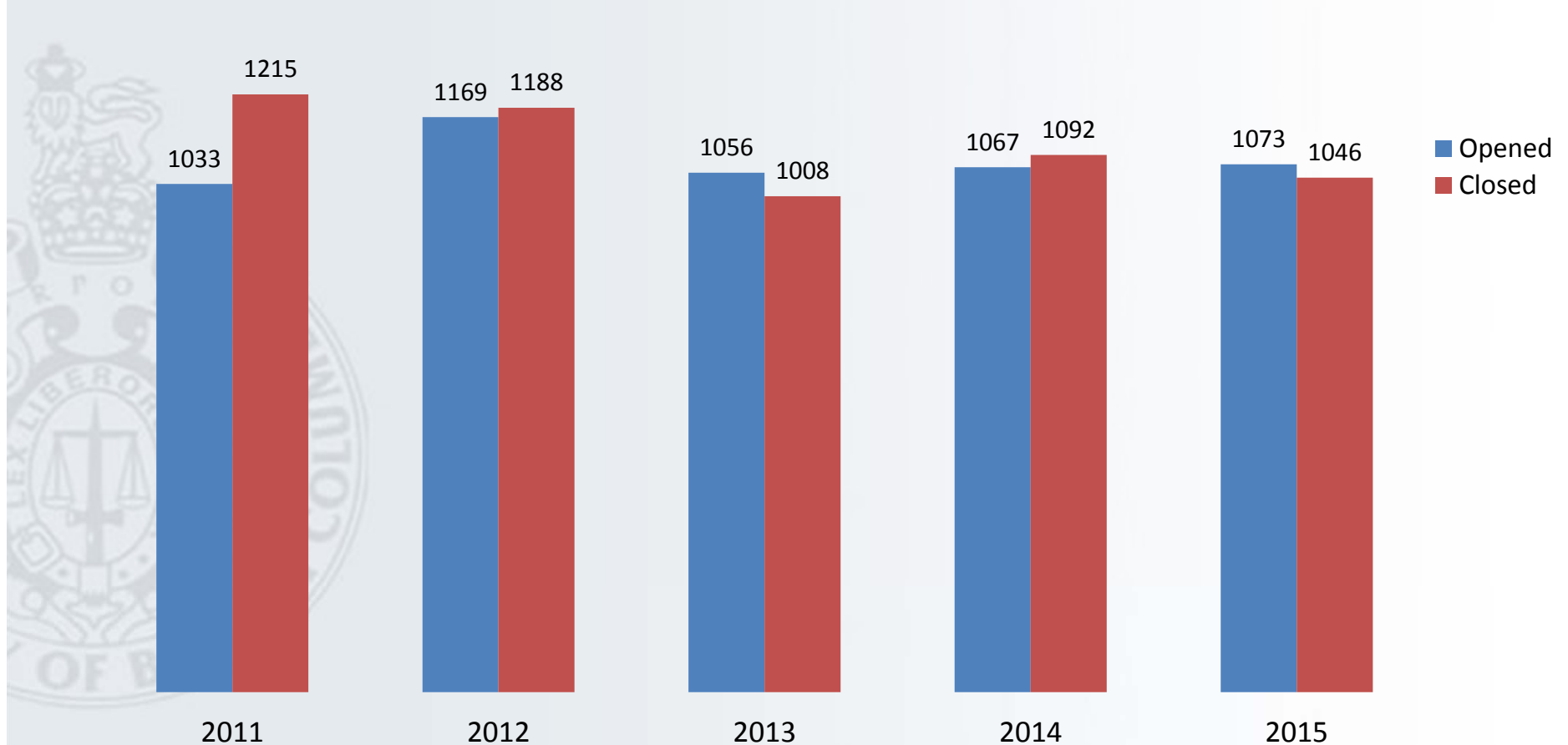
2012



10

Key Activities

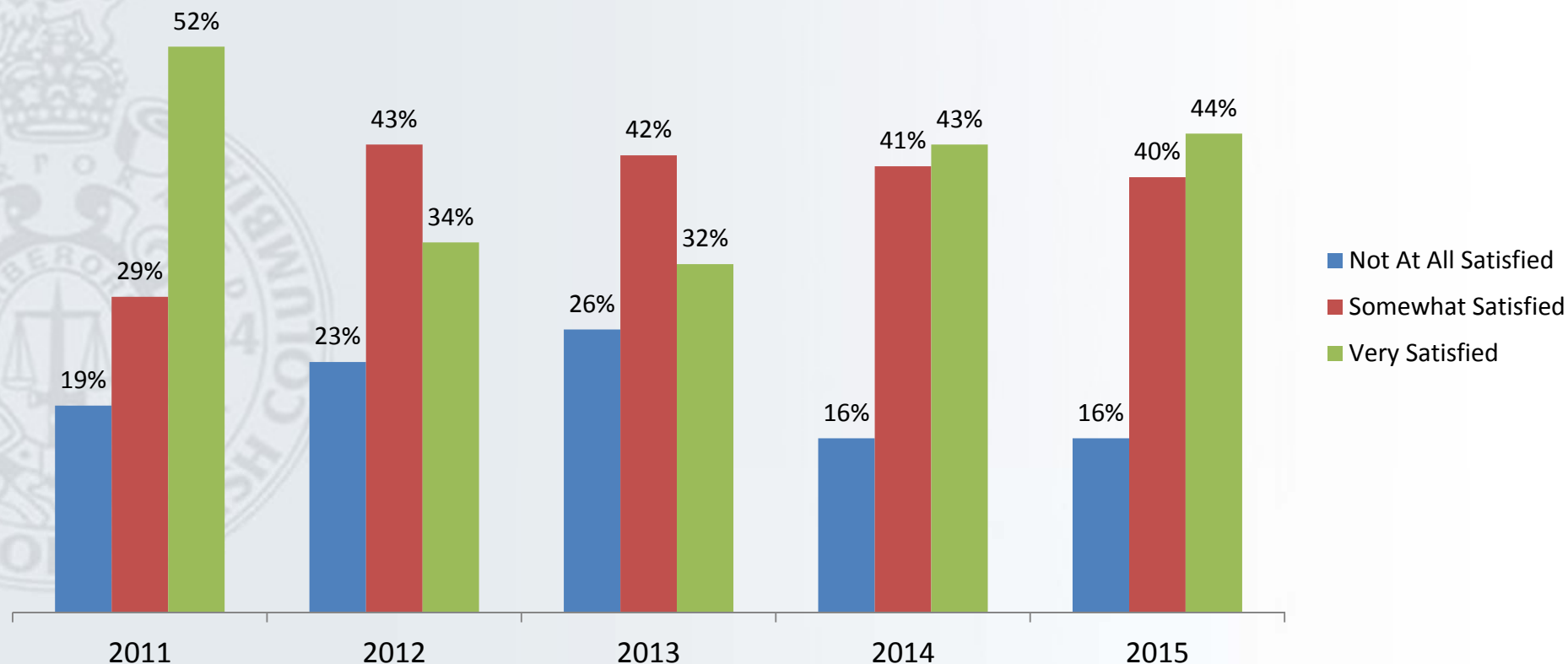
Number of Member Complaints Opened and Closed Each Year



Key Performance Measures

At least 75% of Complainants express satisfaction with timeliness

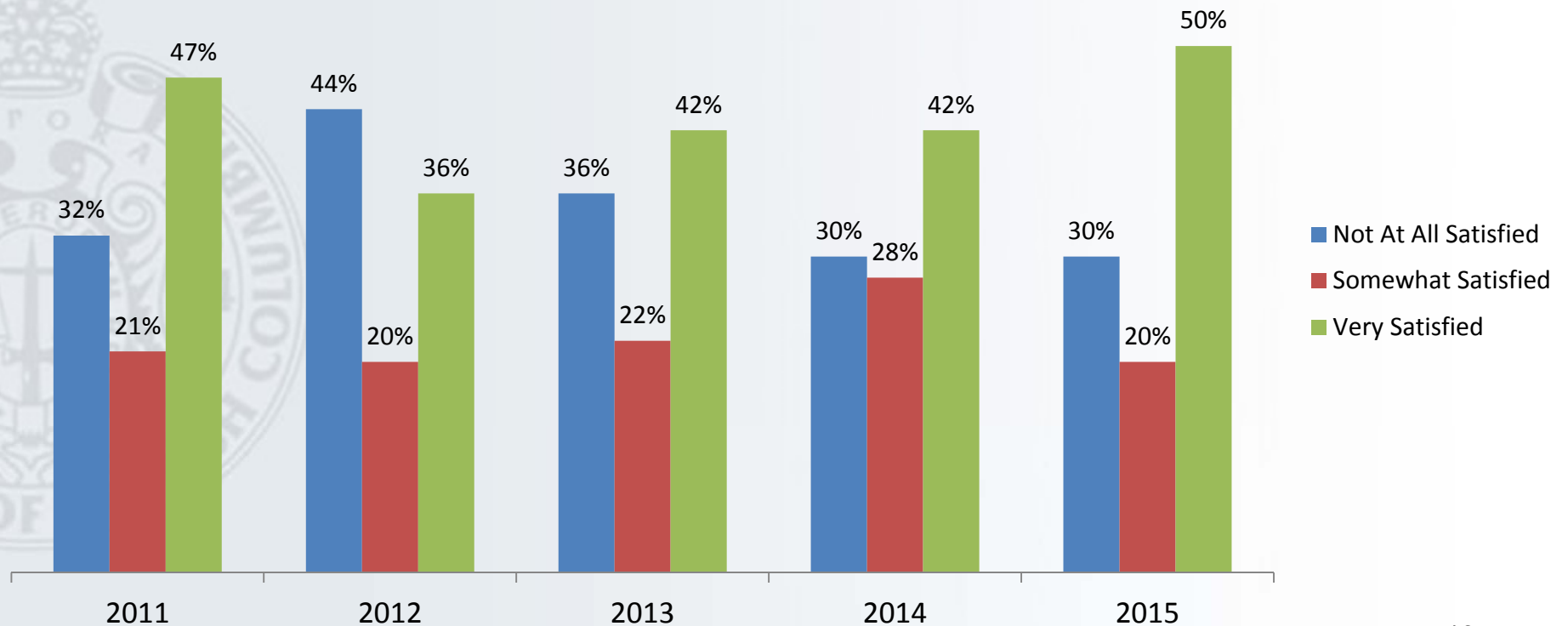
2015	84%
2014	84%
2013	74%
2012	77%
2011	81%



Key Performance Measures

At least 65% of Complainants express satisfaction with fairness

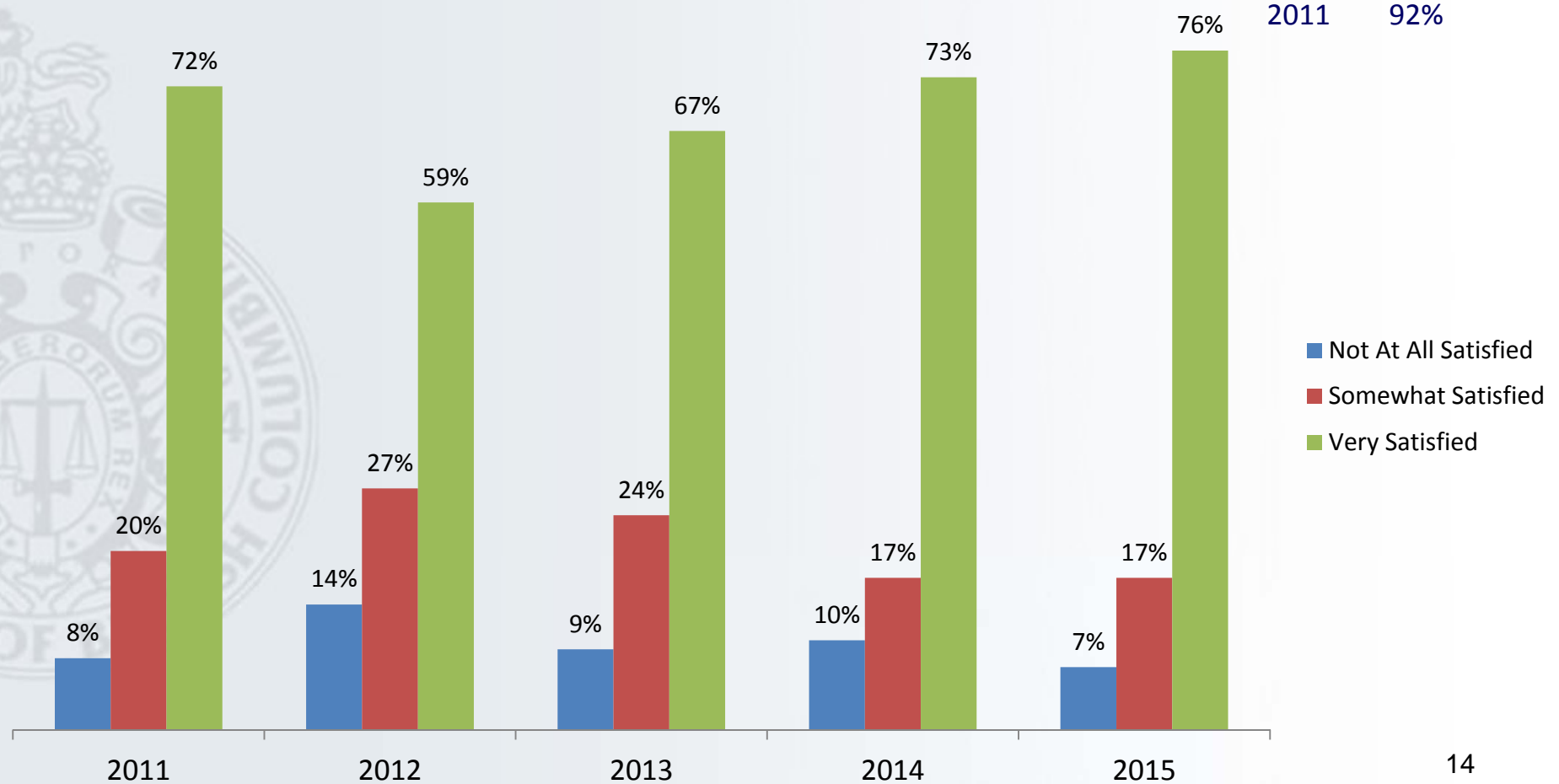
2015	70%
2014	70%
2013	64%
2012	56%
2011	68%



Key Performance Measures

At least 90% of Complainants express satisfaction with courtesy

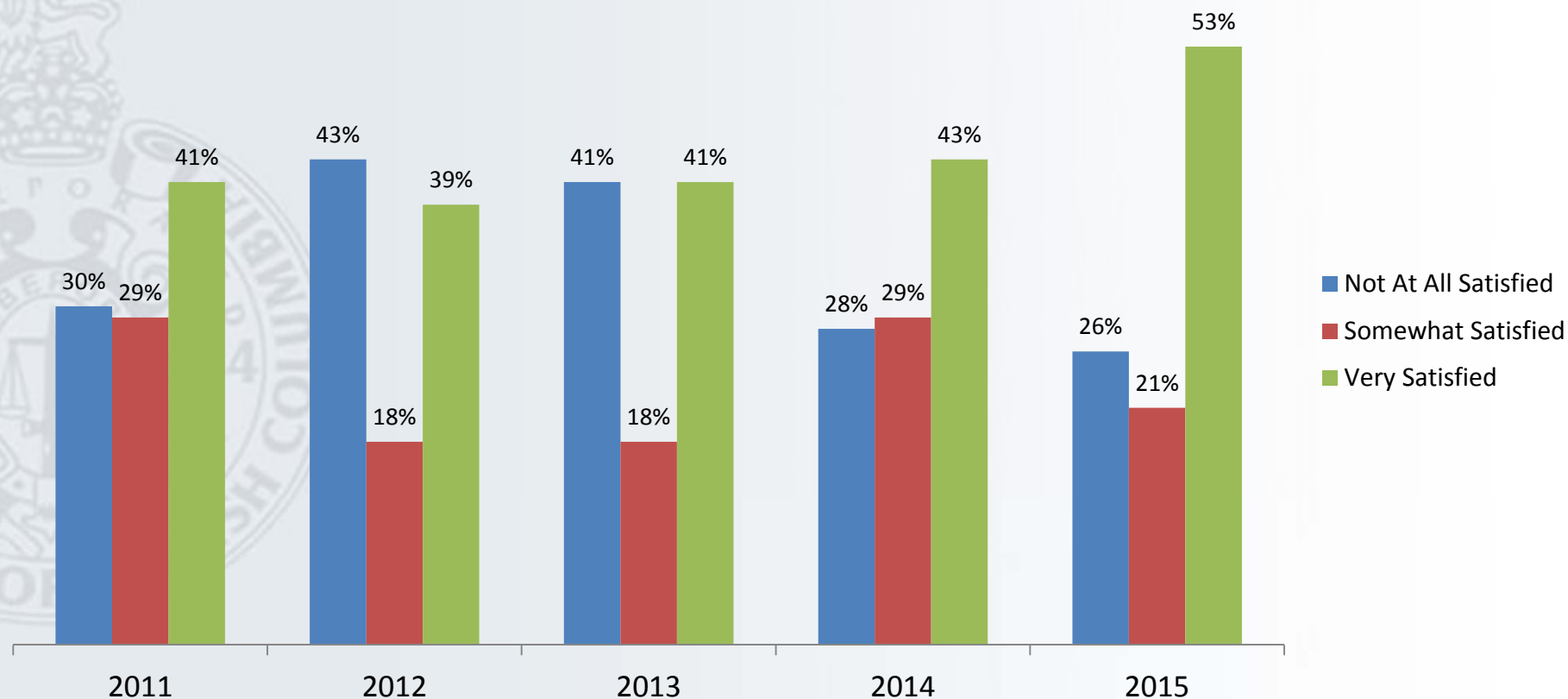
2015	93%
2014	90%
2013	91%
2012	86%
2011	92%



Key Performance Measures

At least 65% of Complainants express satisfaction with thoroughness

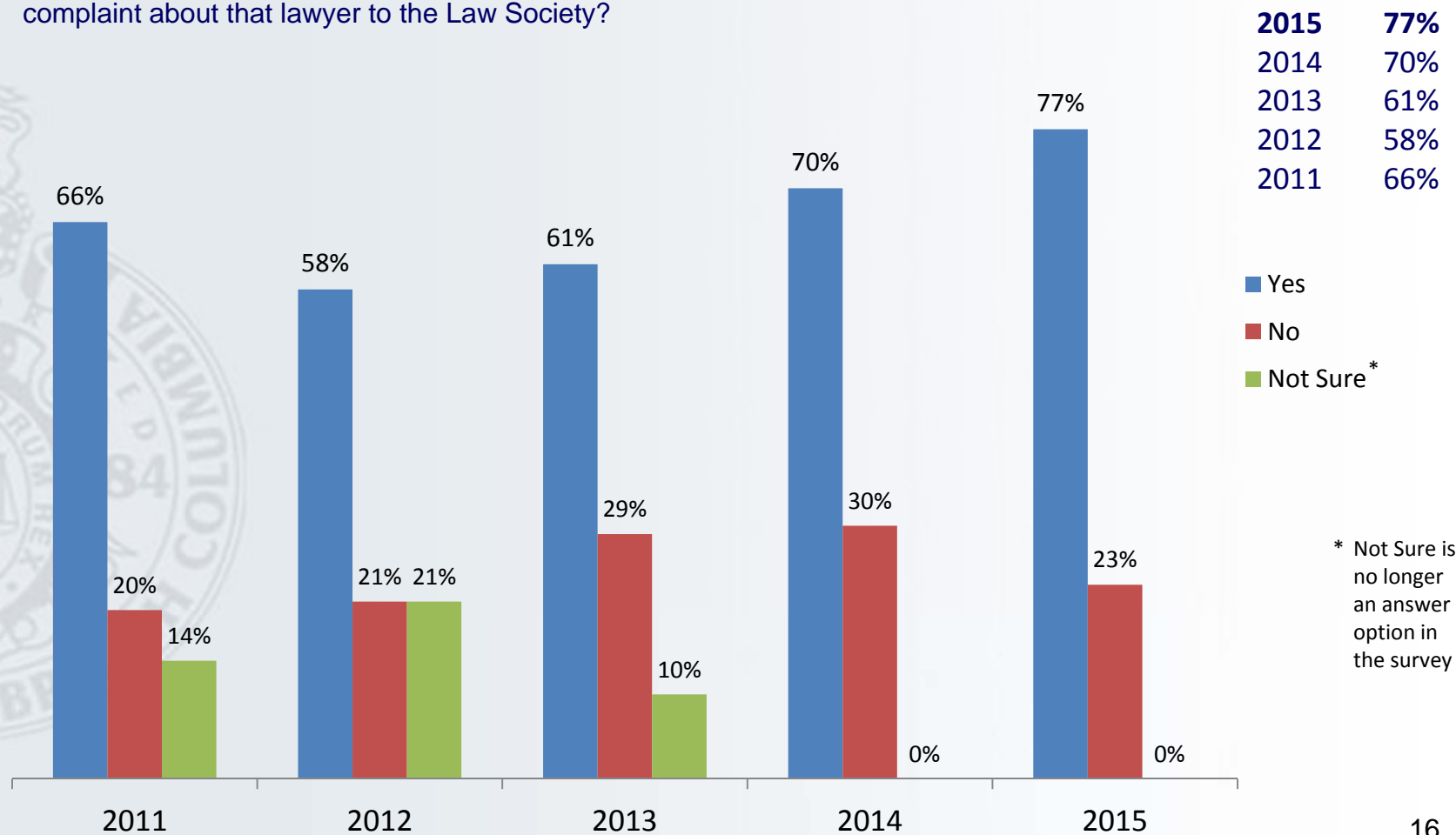
2015	74%
2014	72%
2013	59%
2012	57%
2011	70%



Key Performance Measures

At least 60% of Complainants would recommend the complaint process

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?



Key Performance Measures

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

In 2015, three enquiries were received from the Ombudsperson concerning our complaint investigation process, compared with seven enquiries received in 2014. Of those three files, one was closed, and two remained open at the Office of the Ombudsperson, at the end of 2015. The Ombudsperson has not taken issue with any of our processes.

In 2015, the Complainants' Review Committee considered 43 complaints as compared to 80 in 2014. The Committee resolved to take no further action on 40 of those files on the basis that the staff assessments were appropriate in the circumstances. Three referrals were made by the CRC to the Discipline Committee which resulted in: no further action; a referral back to staff for further investigation; and one referral is still pending.

The Law Society *of British Columbia*



Custodianships

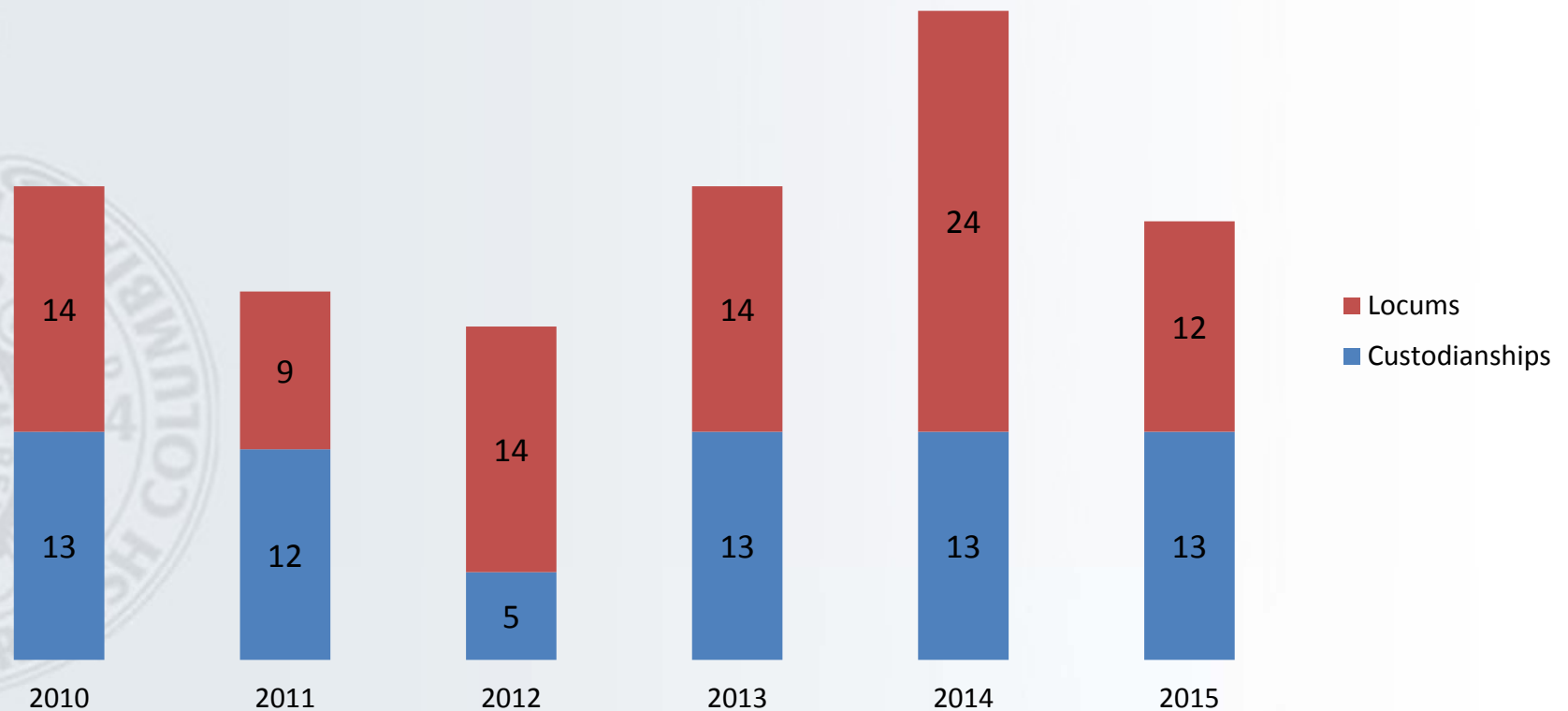


Department Highlights

- In 2015, the Law Society was appointed as a custodian over 13 practices (11 by court order; 2 by agreement) and staff coordinated 12 locum placements, eliminating the need for a Law Society custodianship in those cases.
- Discharges were granted on 8 custodianships during the year. There were 34 custodianships under administration at year end for 2015.
- The number of practices requiring new custodian appointments has remained constant over the last three years. However, due to an increase in the number of large and/or complex custodianships, the number of new appointments has exceeded the number of discharges the past two years. This has resulted in an increase in the number of custodianships remaining under our administration from 25 at the end of 2013 to 34 at the end of 2015.
- In 2015, 88% of clients who responded to our survey were satisfied with the way in which we dealt with their matter.

Key Activities

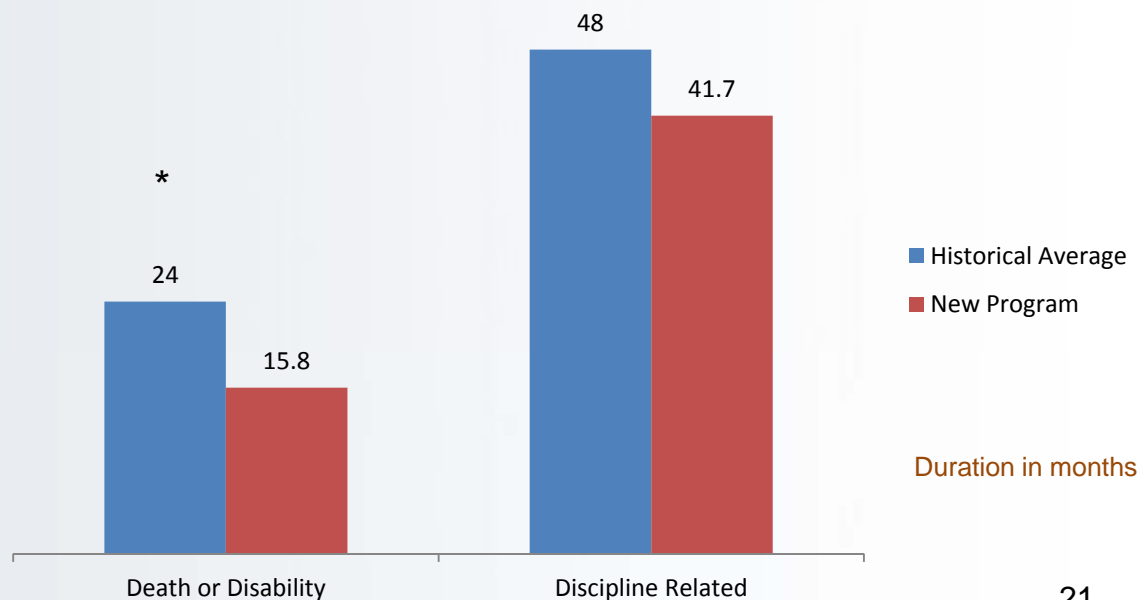
New Custodianships and Locums By Year



Key Performance Measures

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

* This KPM is divided into two parts (custodianships arising from death or disability and custodianships which are discipline related). The KPM was met for both parts in 2015.



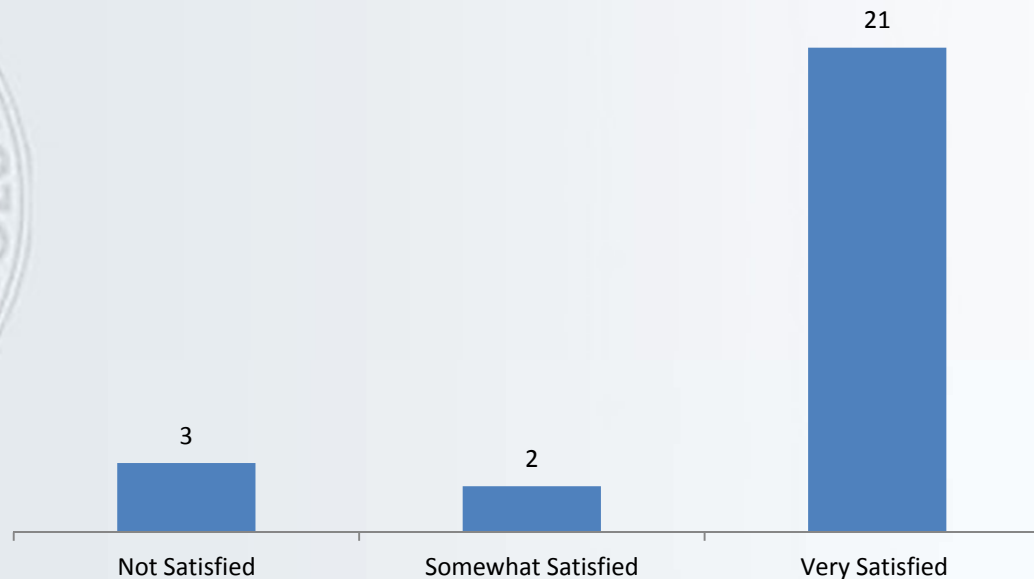
21

Key Performance Measures

90% of clients surveyed are satisfied with the way in which the designated custodian dealt with their client matter.

Degree of satisfaction with the way in which the designated custodian dealt with your client matter

2015	88%
2014	100%
2013	83%
2012	87%



The Law Society *of British Columbia*



Trust Assurance



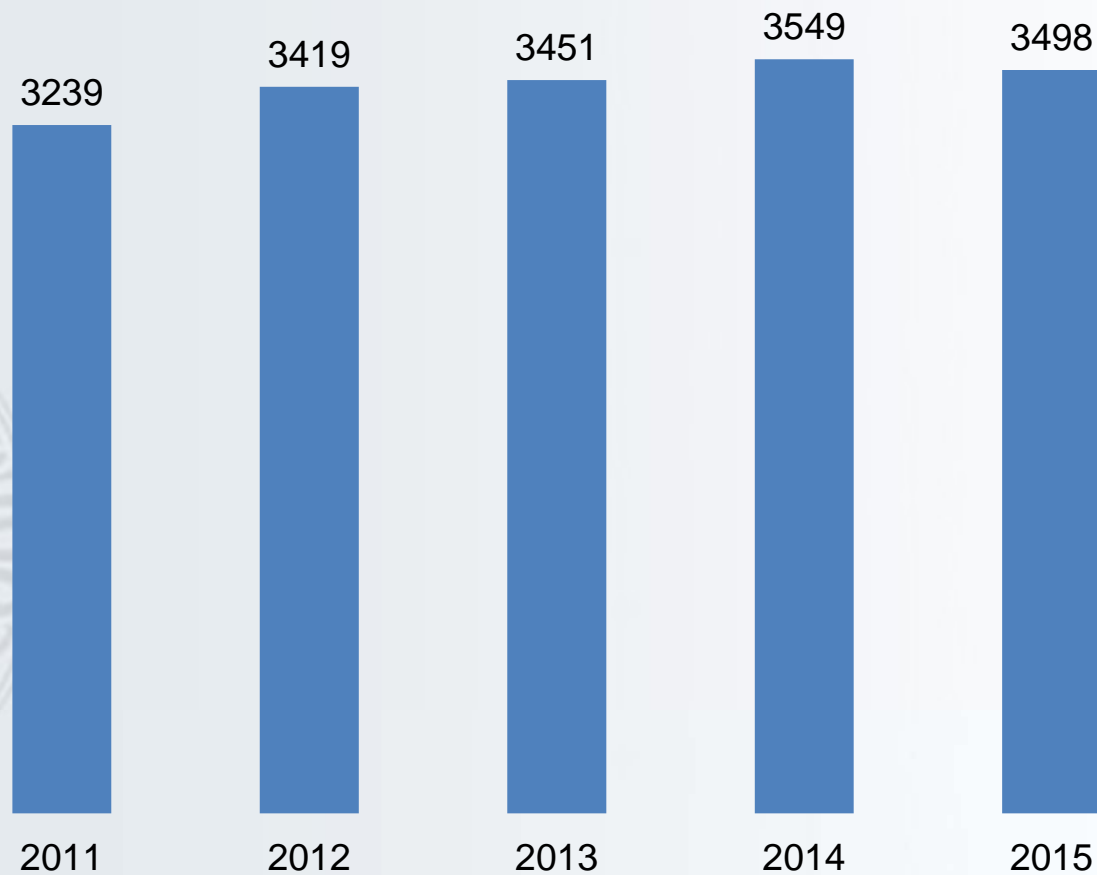
Department Highlights

- In addition to conducting trust compliance audits and reviewing annual law firm trust reports, the Trust Assurance Department also performs file monitors when necessary, to ensure deficiencies noted during the audits are corrected.
- The department provides guidance on trust related matters through direct correspondence with the membership, formal presentations to various external groups, and through the development of information resources such as the Trust Accounting Handbook and Checklists available on the Law Society website.
- Reviewed approximately 3,500 trust reports in 2015, similar to past years.
- Performed 461 compliance audits in 2015, a decrease from last year due to staff changes, and the department has completed approximately 4,445 since the inception of the trust assurance program.

Department Highlights

- There was a small decrease in the number of financial suspensions in 2015, compared to 2014.
- As well, a small decrease in referrals in 2015 compared to 2014, but relatively stable results compared to recent years.
- Performance on key compliance questions remained relatively stable in 2014 (the last complete year for trust reports) as measured by the percentage of self-reports allowed compared with those who were required to provide an accountant's report.

Number of Trust Reports

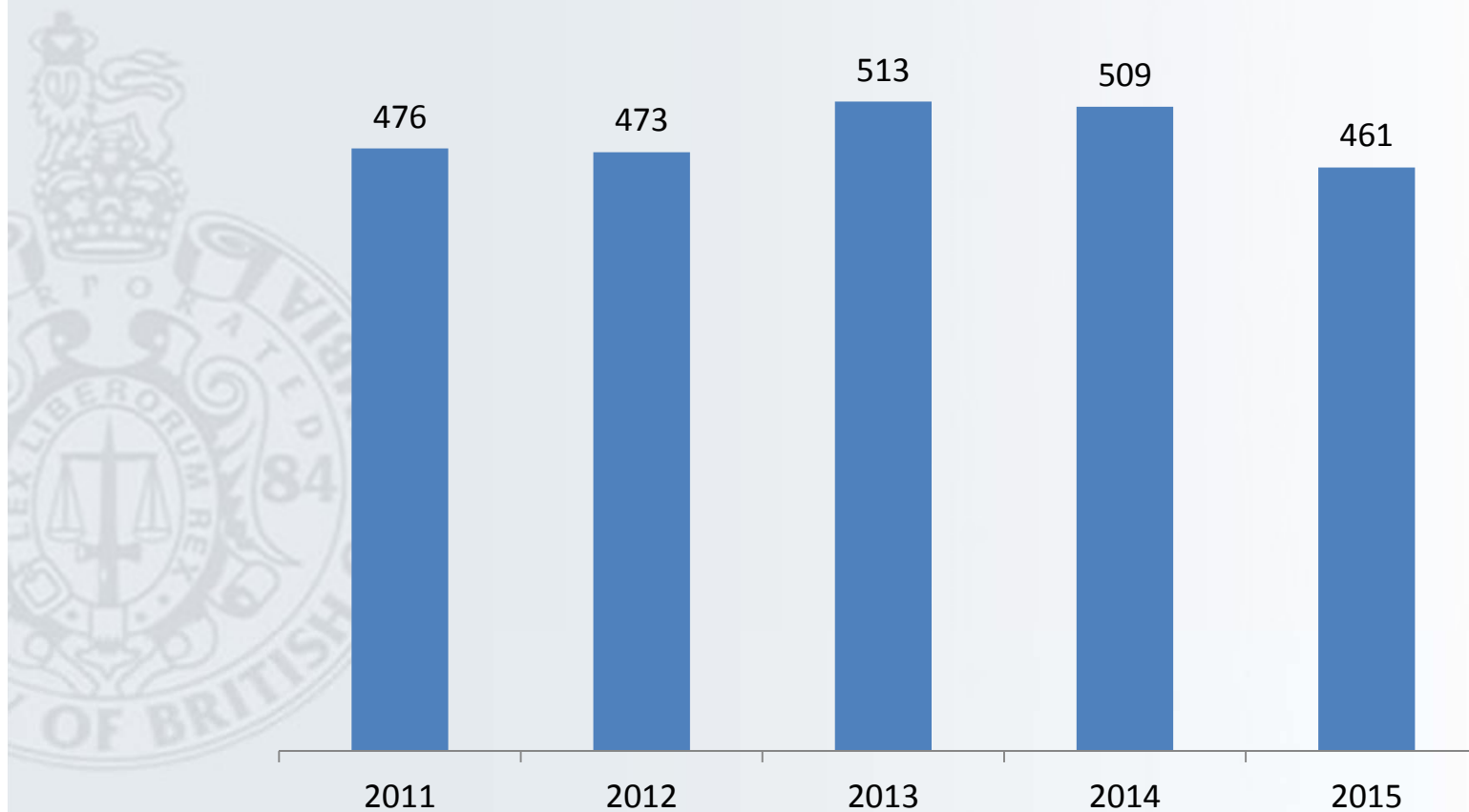


* Projected figure, as due dates for Trust Reports ending in the final quarter of 2015 have not yet passed

*

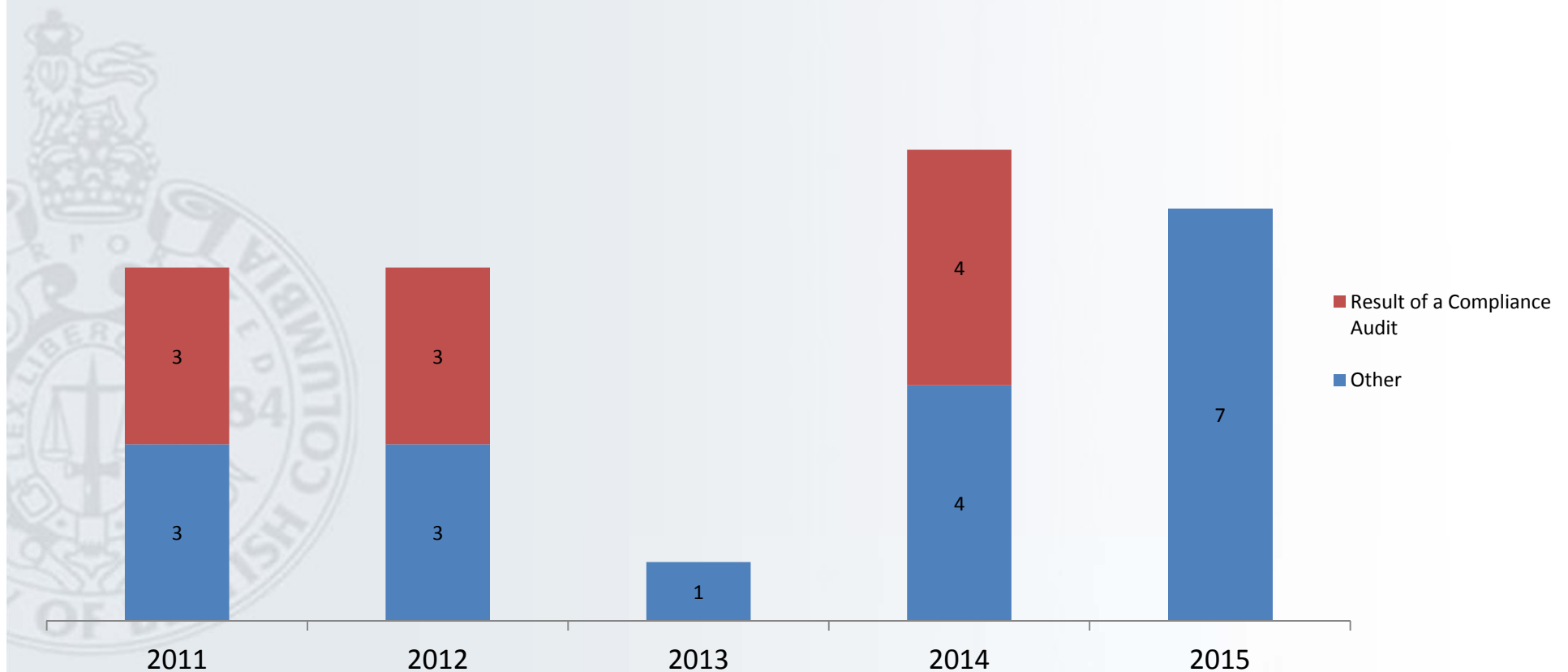
Compliance Audits

Number of compliance audits performed



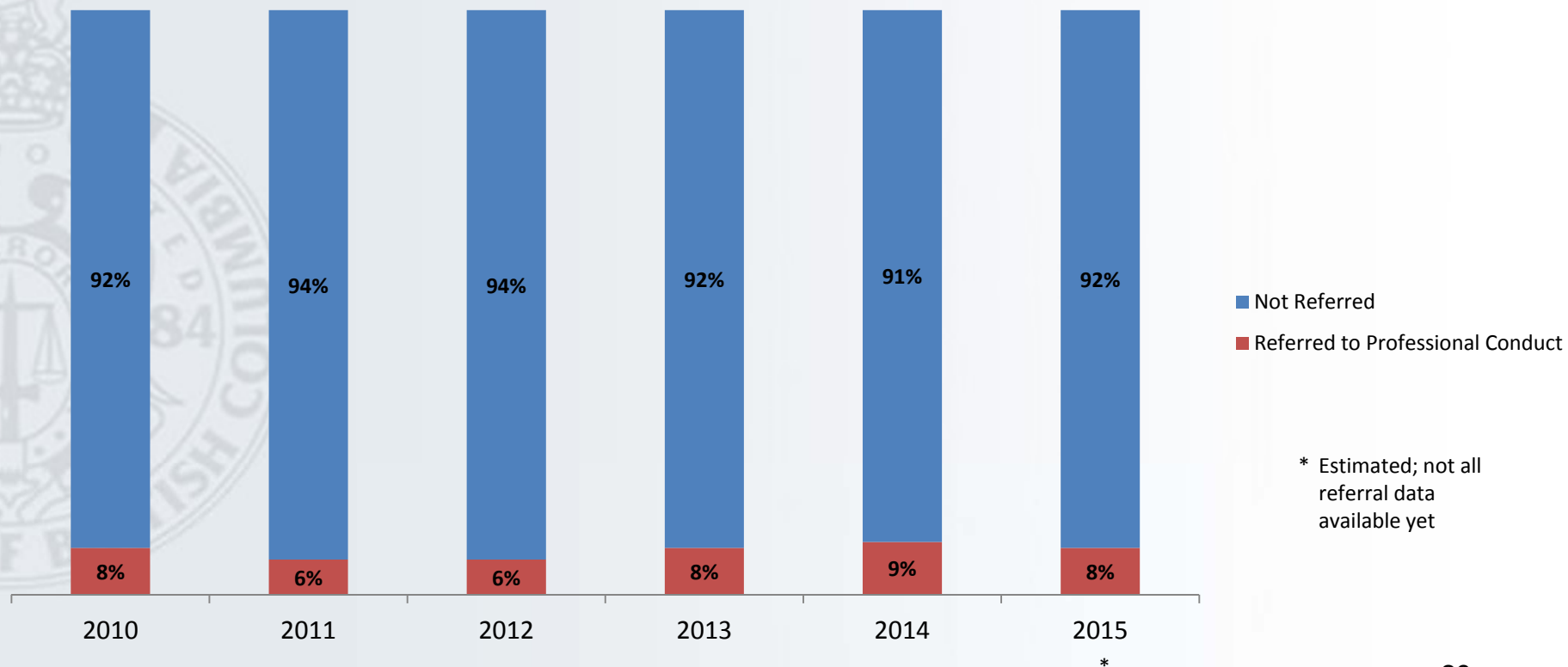
Key Performance Measure

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



Key Performance Measure

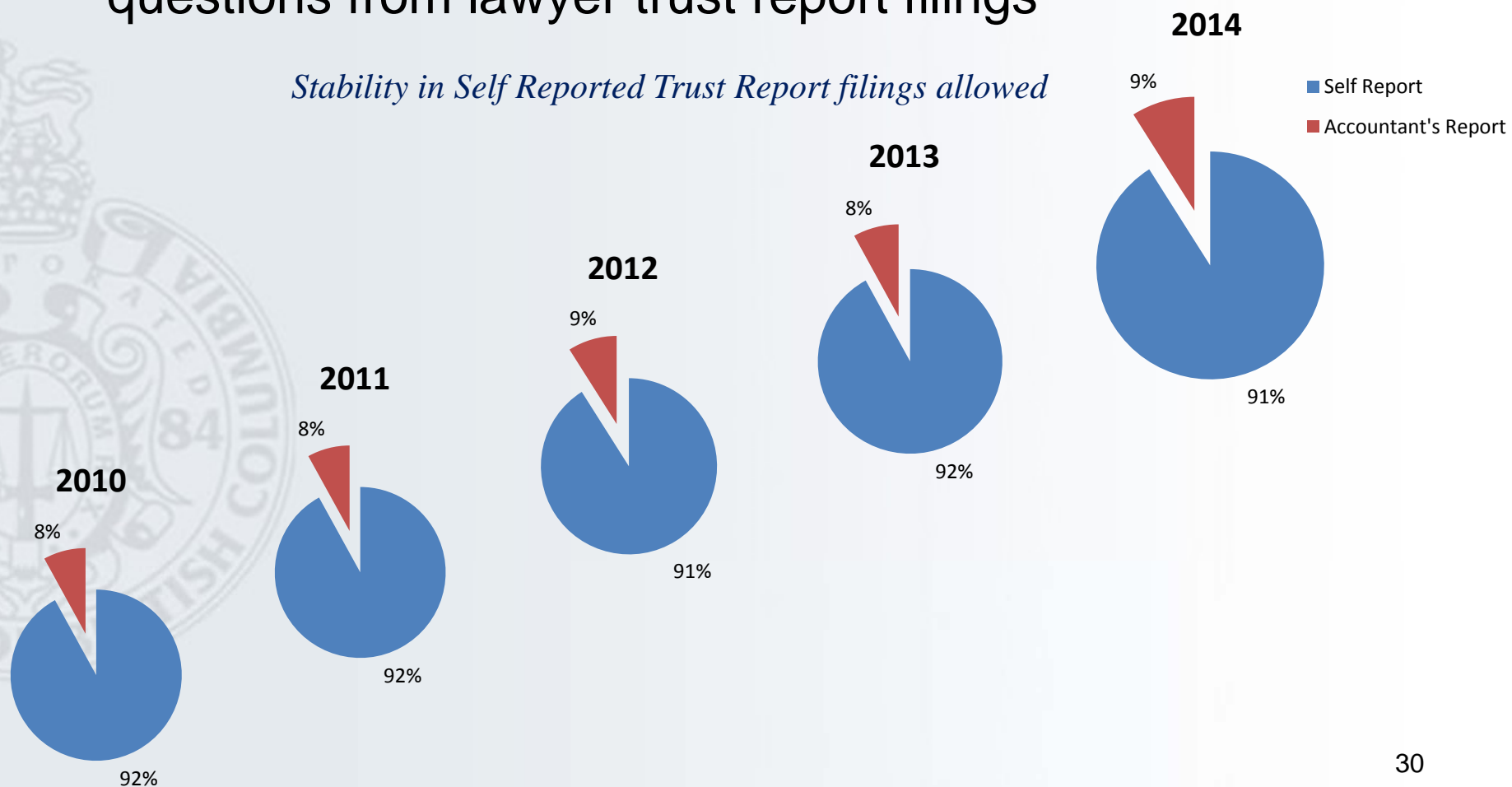
Long term reduction in the percentage of referrals to Professional Conduct department as a result of a compliance audit.



Key Performance Measure

Improved performance on key compliance questions from lawyer trust report filings

Stability in Self Reported Trust Report filings allowed



The Law Society *of British Columbia*



Credentials, Articling and PLTC



Department Highlights

- PLTC's live 10-week legal skills training course for articulated students saw registration increase to a new high of 490!... up from 460 in 2014, 441 in 2013 and 409 in 2012.
- The 2nd floor was renovated to add a 7th PLTC classroom.
- PLTC's new Travel & Accommodation Bursary program, generously funded 100% by the Law Foundation of BC granted 17 bursaries ranging from \$1,000 to \$5,000.
- After the success of PLTC's revised live mock civil trial in 2014, by popular demand, PLTC is adding a new live mock criminal trial commencing February 2016.
- The PLTC student portal continues to expand, providing quick online access for students to legislation, class schedule, lesson plans, practice material, assignments, notices, video lectures and panel discussions as well as student results. Soon students will be able to privately view videos of their own mock performances.

Department Highlights

The Credentials Department deals principally with

- applications for membership, student membership, return to practice, reinstatement, practitioners of foreign law, and inter-jurisdictional practice,
- administration of the articling program, including Benchers interviews, articling reports and preparation of the call to the bar ceremonies,
- the Continuing Professional Development (CPD) program,
- accreditation of family law mediators, arbitrators and parenting coordinators,
- applications for law corporations, LLPs and multi-disciplinary practices,
- management of the annual membership renewal process, including the annual fee, insurance and annual practice declaration,
- disposition of unclaimed trust funds,
- Juricert registrations and support.

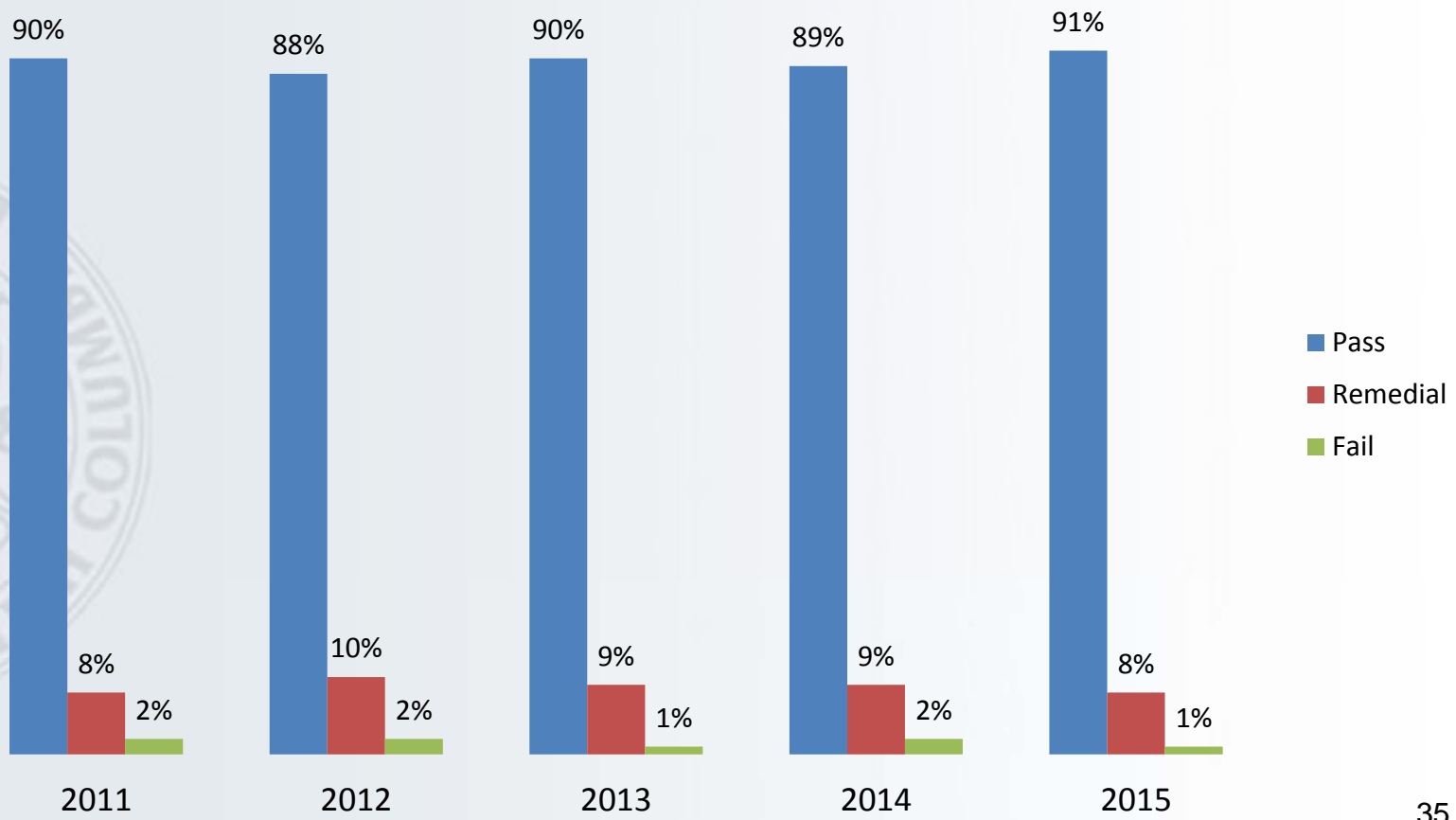
Key Activities

Number of PLTC Students



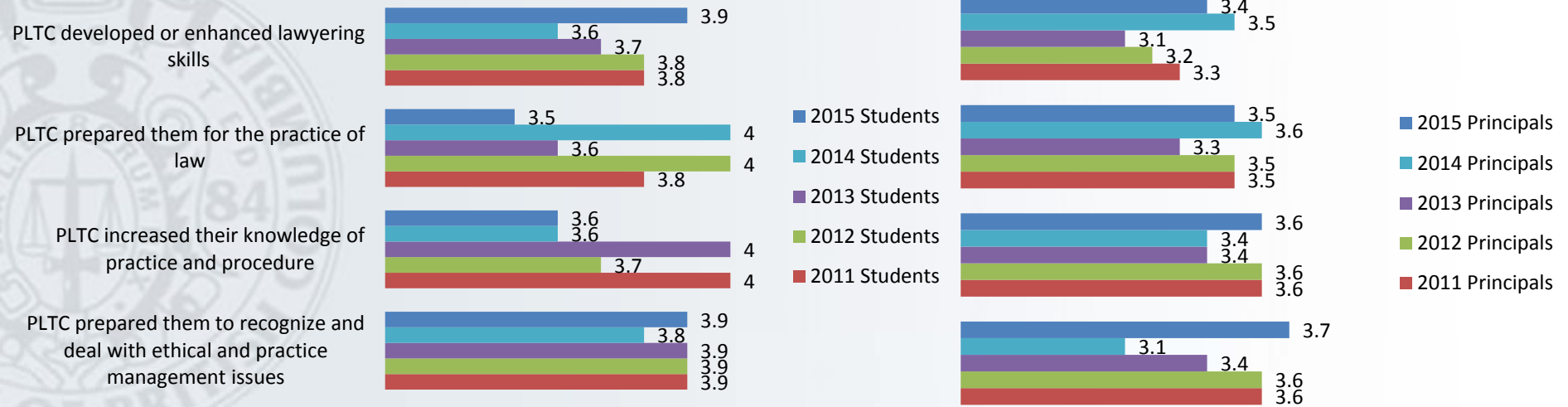
Key Performance Measures

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



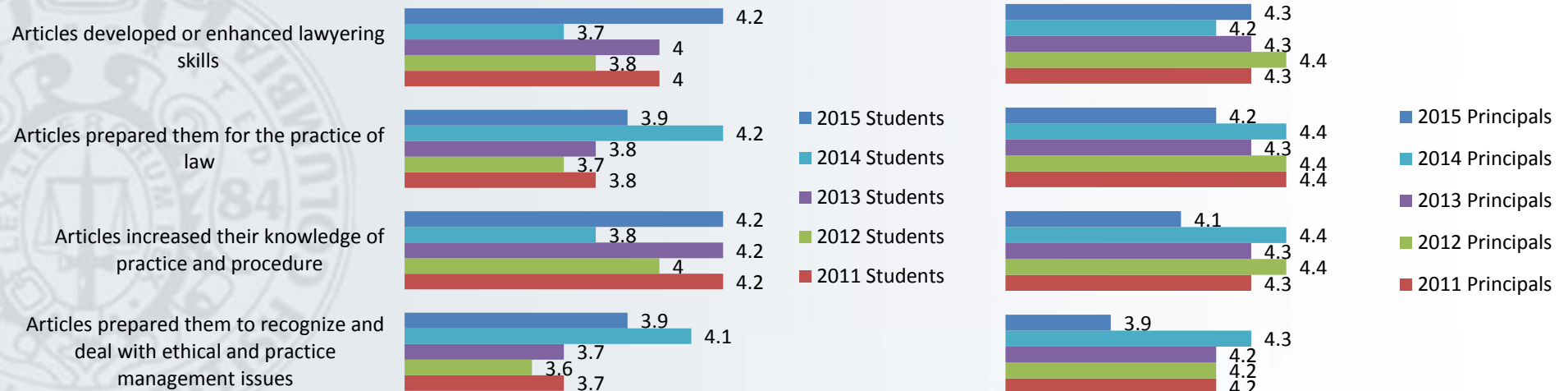
Key Performance Measures

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)



The Law Society *of British Columbia*



Practice Advice



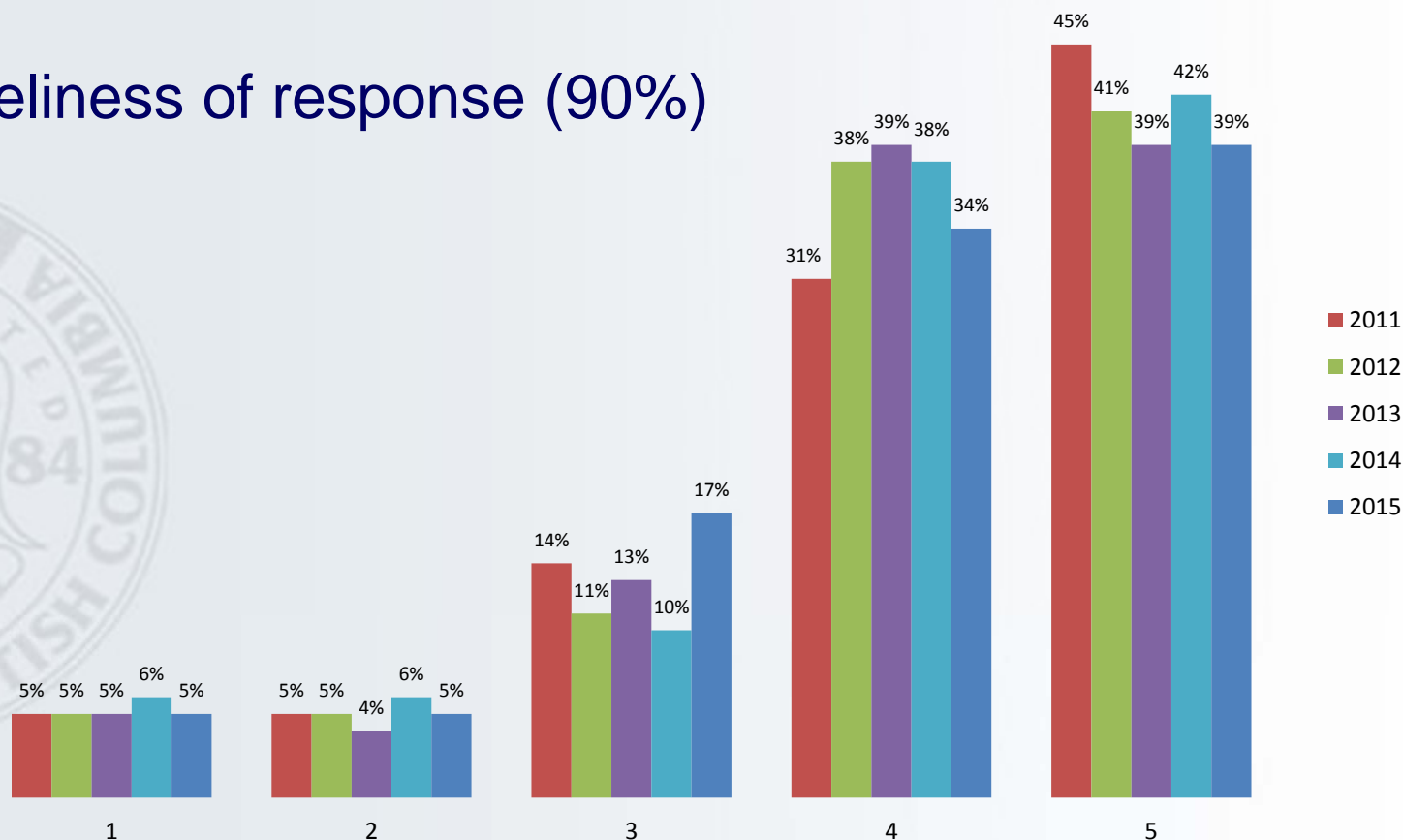
Department Highlights

- The Practice Advice department, which includes four Practice Advisors (two are half-time) and one paralegal, handled a total of 5,962 telephone and email inquiries in 2015, compared to 6,197 in 2014.
- 90% of the lawyers who responded to a survey rated timeliness of response at 3 or higher.
- 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, 88% of the lawyers provided ratings of 3 or higher.
- In rating their overall satisfaction, 89% of the lawyers provided ratings of 3 or higher.

Key Performance Measures

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

Timeliness of response (90%)

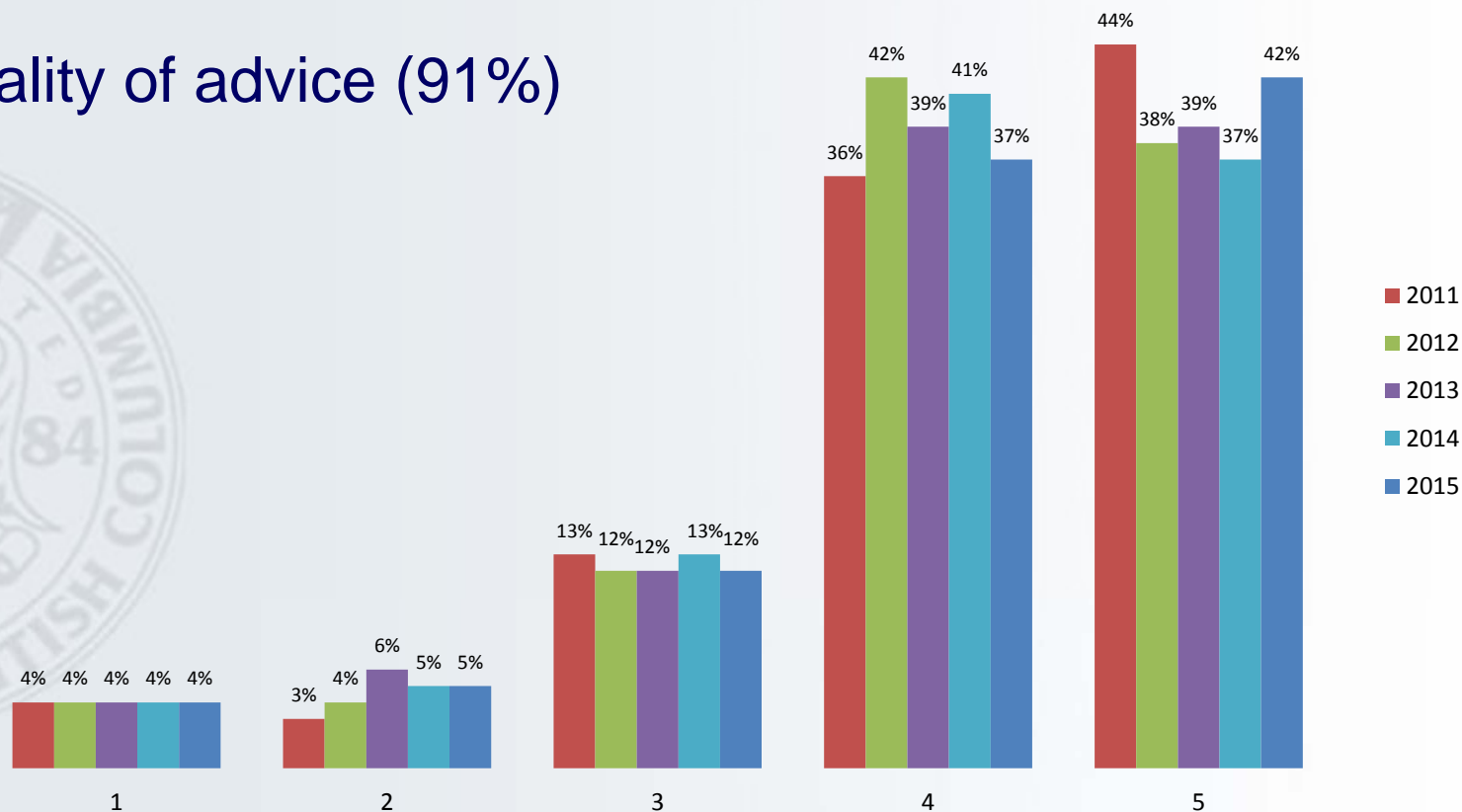


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Key Performance Measures

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

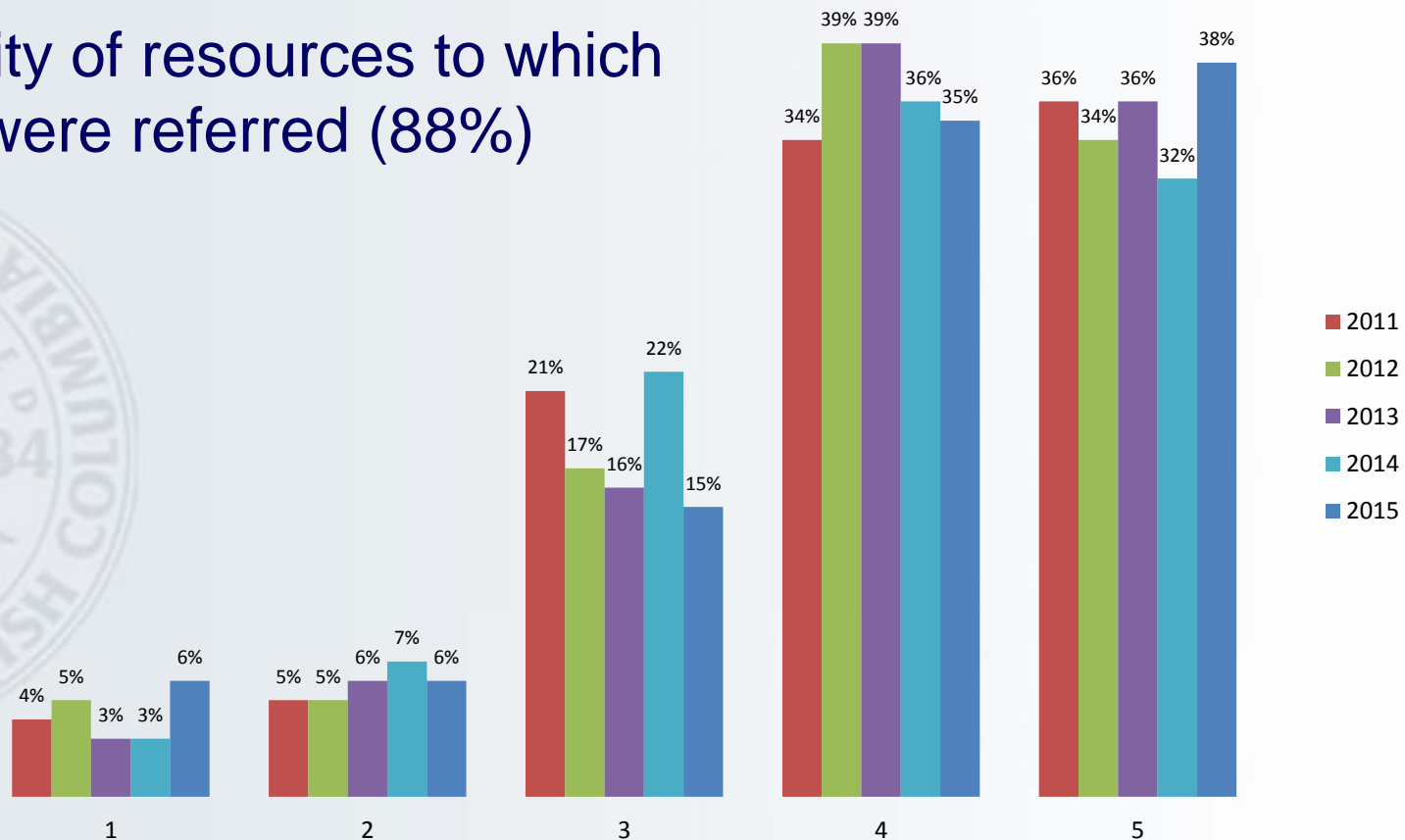
Quality of advice (91%)



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

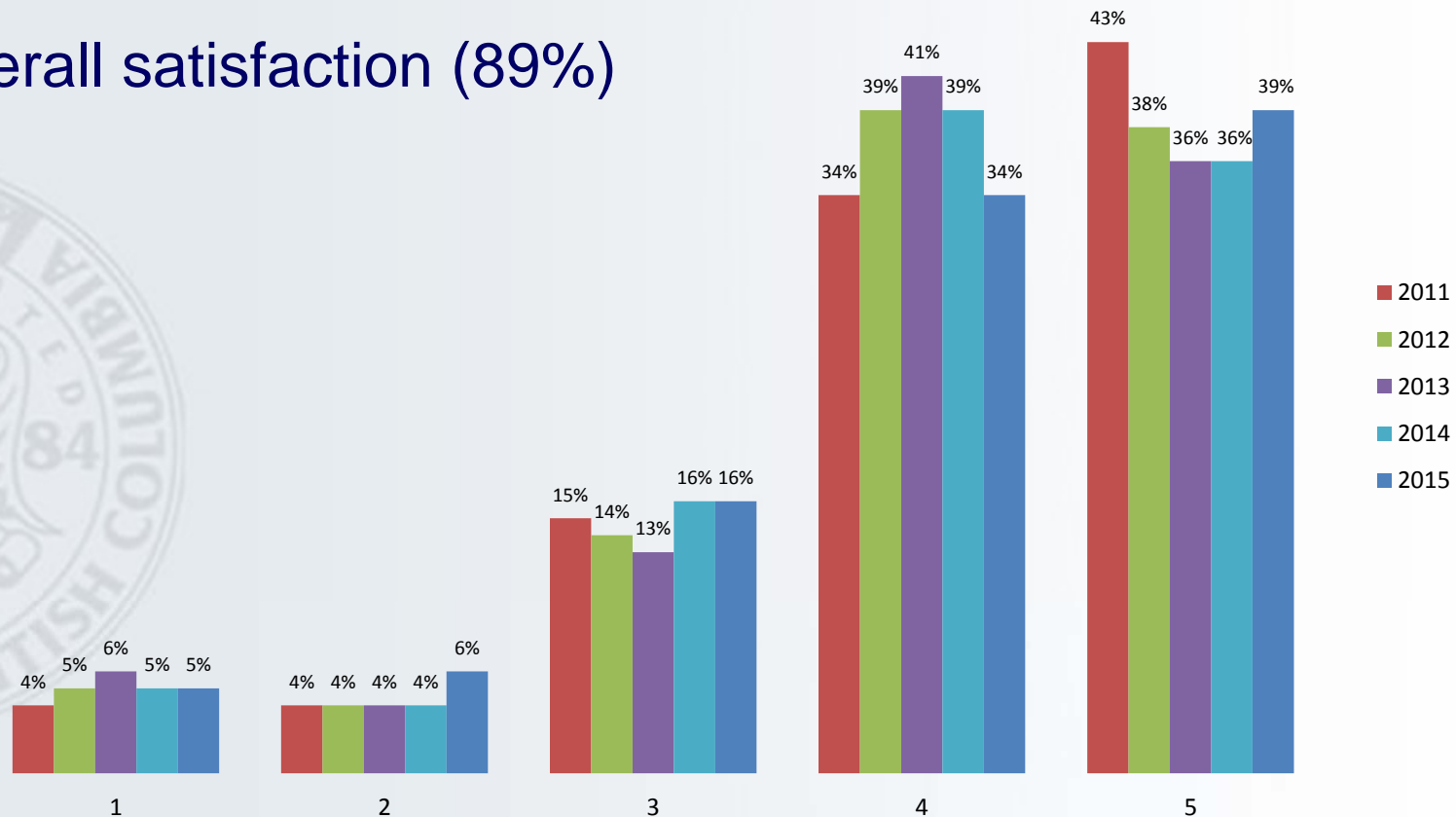
Quality of resources to which you were referred (88%)



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



Department Highlights

The Practice Standards program is a remedial program that assists lawyers who have difficulty in meeting core competencies and who exhibit practice concerns, which may include issues of client management, office management, personal matters, and substantive law. The Practice Standards Department conducts practice reviews of lawyers whose competence is in question, and recommends and monitors remedial programs.

The Department also supports lawyer effectiveness by overseeing the operation and enhancement of the following Benchers-approved online lawyer support programs. All exceed the KPM Target except for the Practice Locums Program, which historically continues to track positively but not as strongly as the other programs.

- Small Firm Practice Course
- Practice Refresher Course
- Practice Locums Program
- Bookkeeper Support Program
- Succession and Emergency Planning Program

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 any one of the following categories:

1. Office management
2. Client relations and management
3. Knowledge of law and procedure
4. Personal/other

94%* of the lawyers for whom Practice Standards files were completed and closed improved by at least one point.

*The one lawyer who did not improve by at least one point is no longer in practice.

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 in any one of the following categories:

1. Office management
2. Client relations and management
3. Knowledge of law and procedure
4. Personal/other

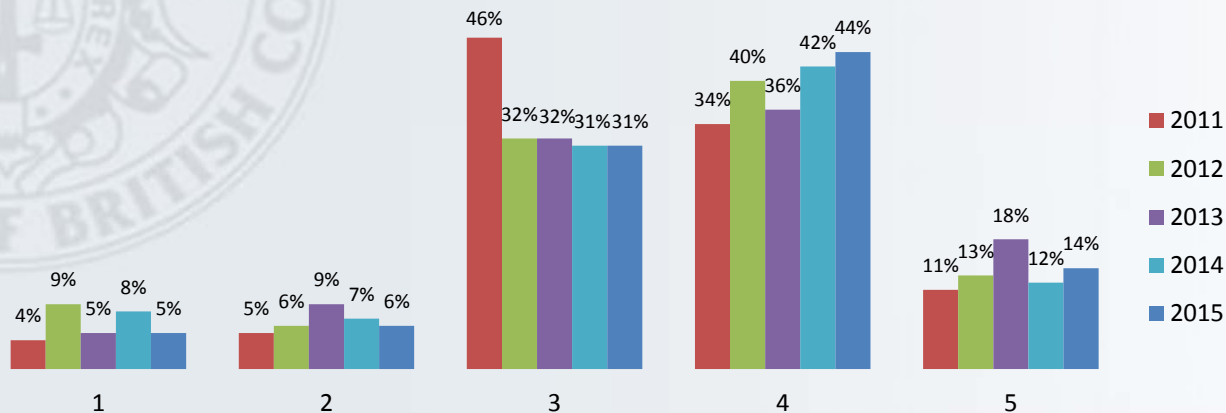
94%* of the 17 referrals were completed at an efficiency rating of 3 or higher.

*The one lawyer who did not complete their referral at an efficiency rating of 3 or higher is no longer in practice.

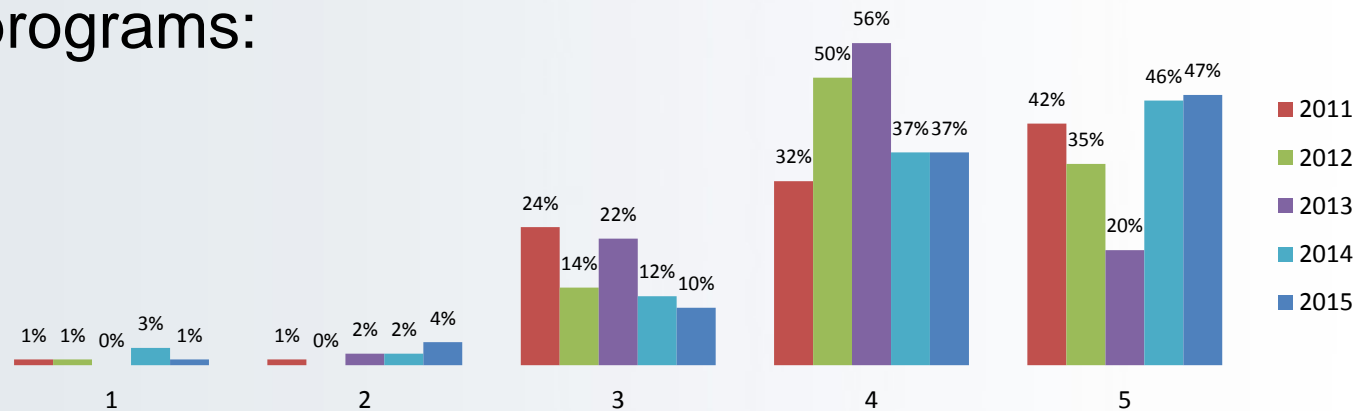
Key Performance Measures

At least 85% 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 (89%)

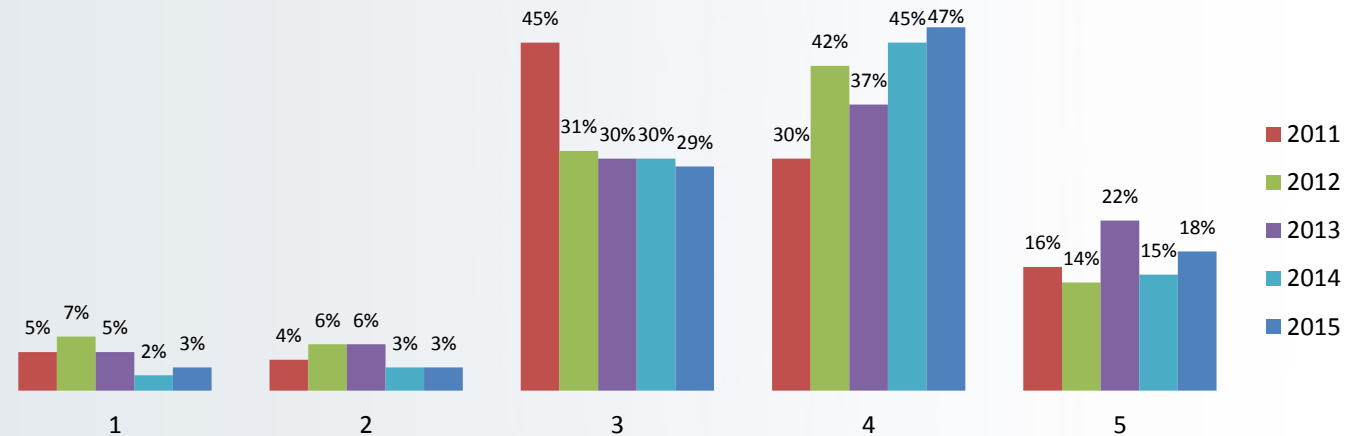


Practice Refresher Course (95%)



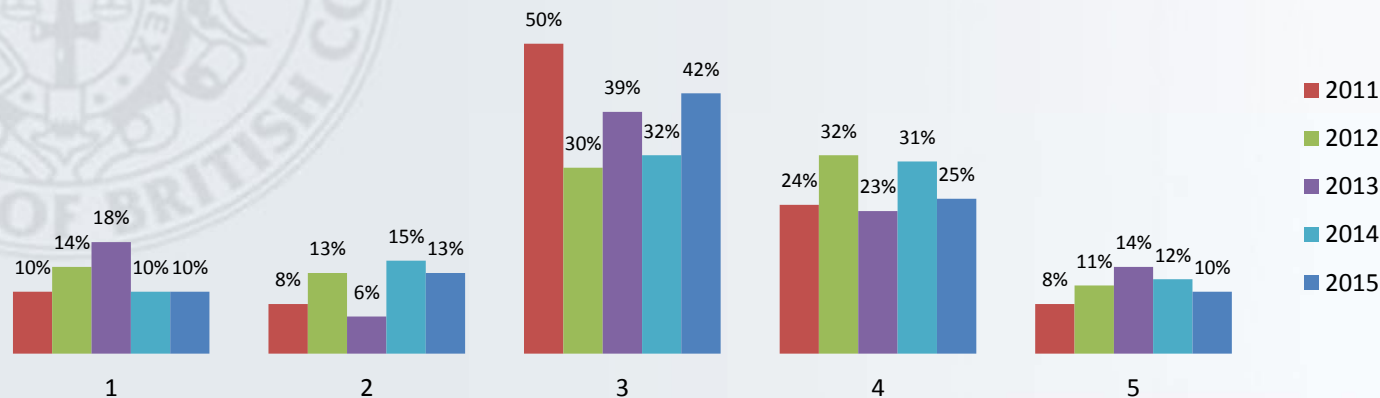
Key Performance Measures

At least 85% 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 (77%)

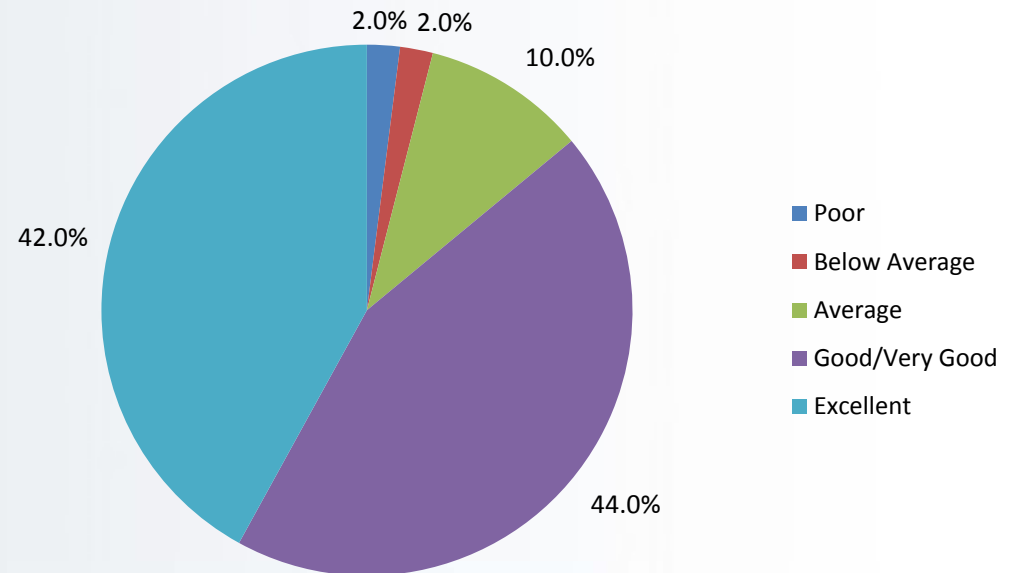
Bookkeeper Support Program (94%)



Key Performance Measures

At least 85% 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
(96% at 3 or higher)



2015

The Law Society *of British Columbia*



Lawyers Insurance Fund



Department Highlights

LIF's Goal

Our goal is to maintain a professional liability insurance program for BC lawyers that provides reasonable limits of coverage for the protection of both lawyers and their clients and exceptional service, at a reasonable cost to lawyers. This is within an overarching objective of maintaining a financially stable program over the long term, in the interest of the public and the profession. 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 additional fee for this.

Department 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 2015. 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 on whether LIF is meeting its goals:

Third party auditors declared “The goal of resolving claims in a cost effective manner balancing the interests of the insured lawyer, the claimant and the Law Society members is clearly being met - or exceeded - by this collegial and passionate group.”

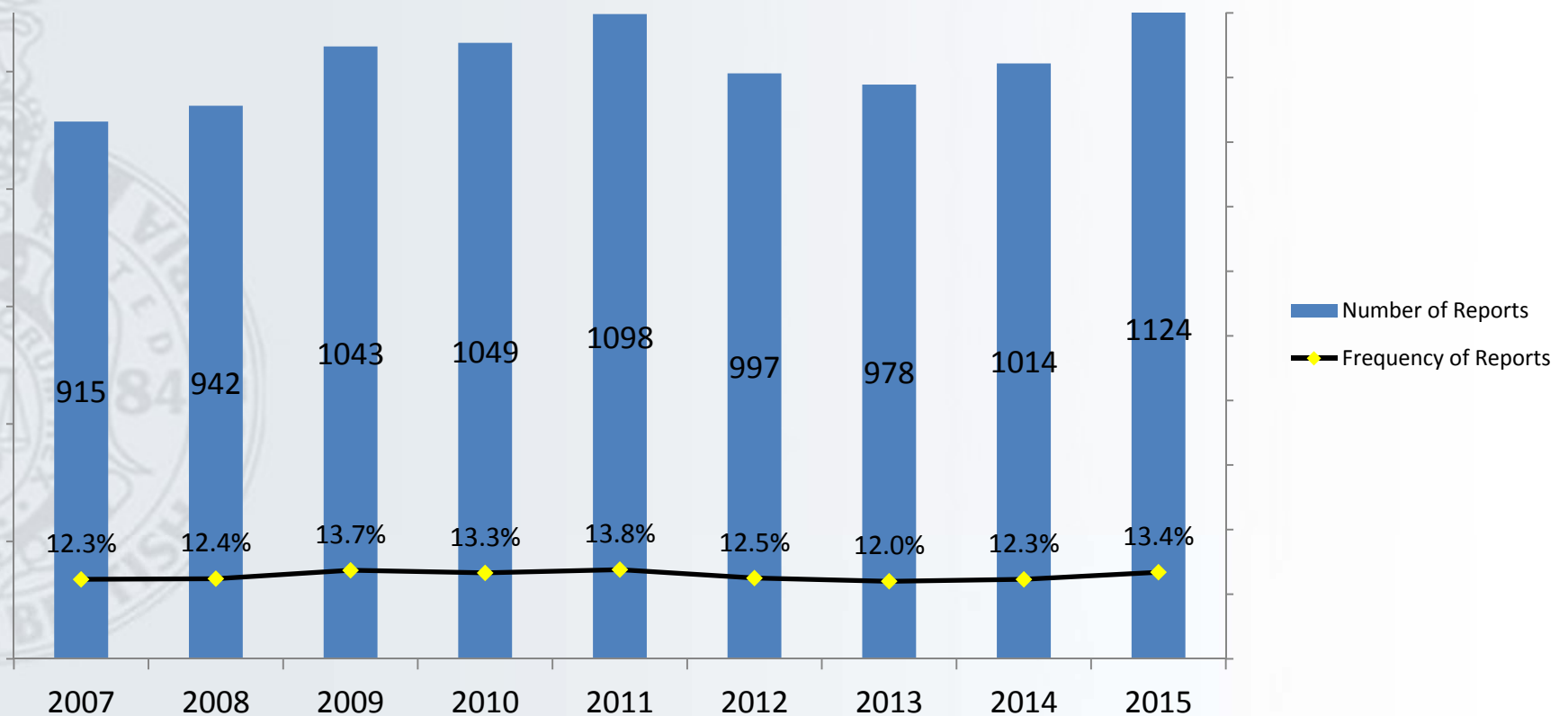
4. Insured lawyers demonstrate a high rate of satisfaction (90% choose 4 or 5 on a 5 point scale) in Service Evaluation Forms.

In 2015, 98% of insureds selected 4 or 5.

Frequency of Insurance Reports

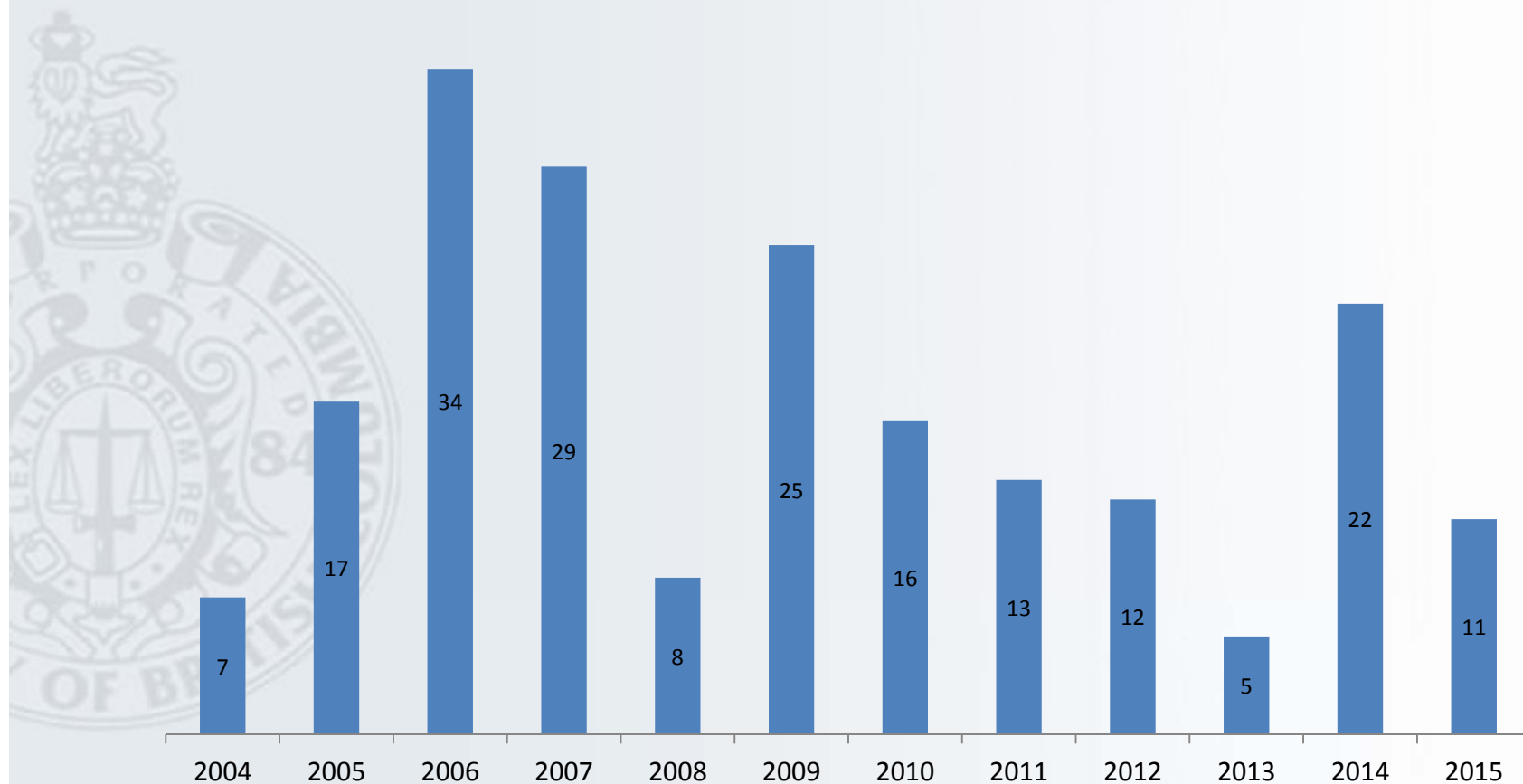
Part A - Number and Frequency of Reports

The number of reports divided by the median number of insured lawyers



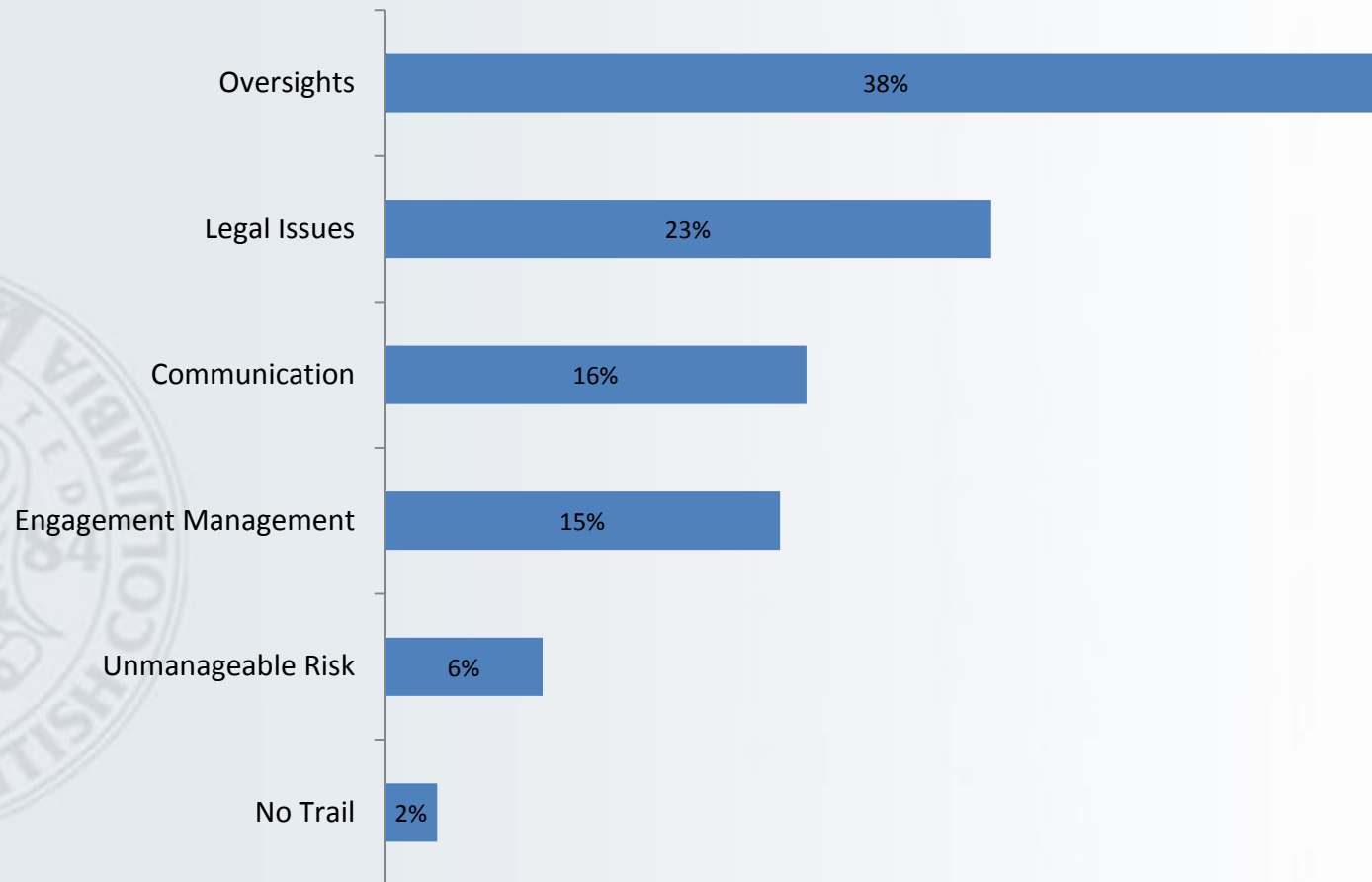
Key Activities

Part B - Number of Reports



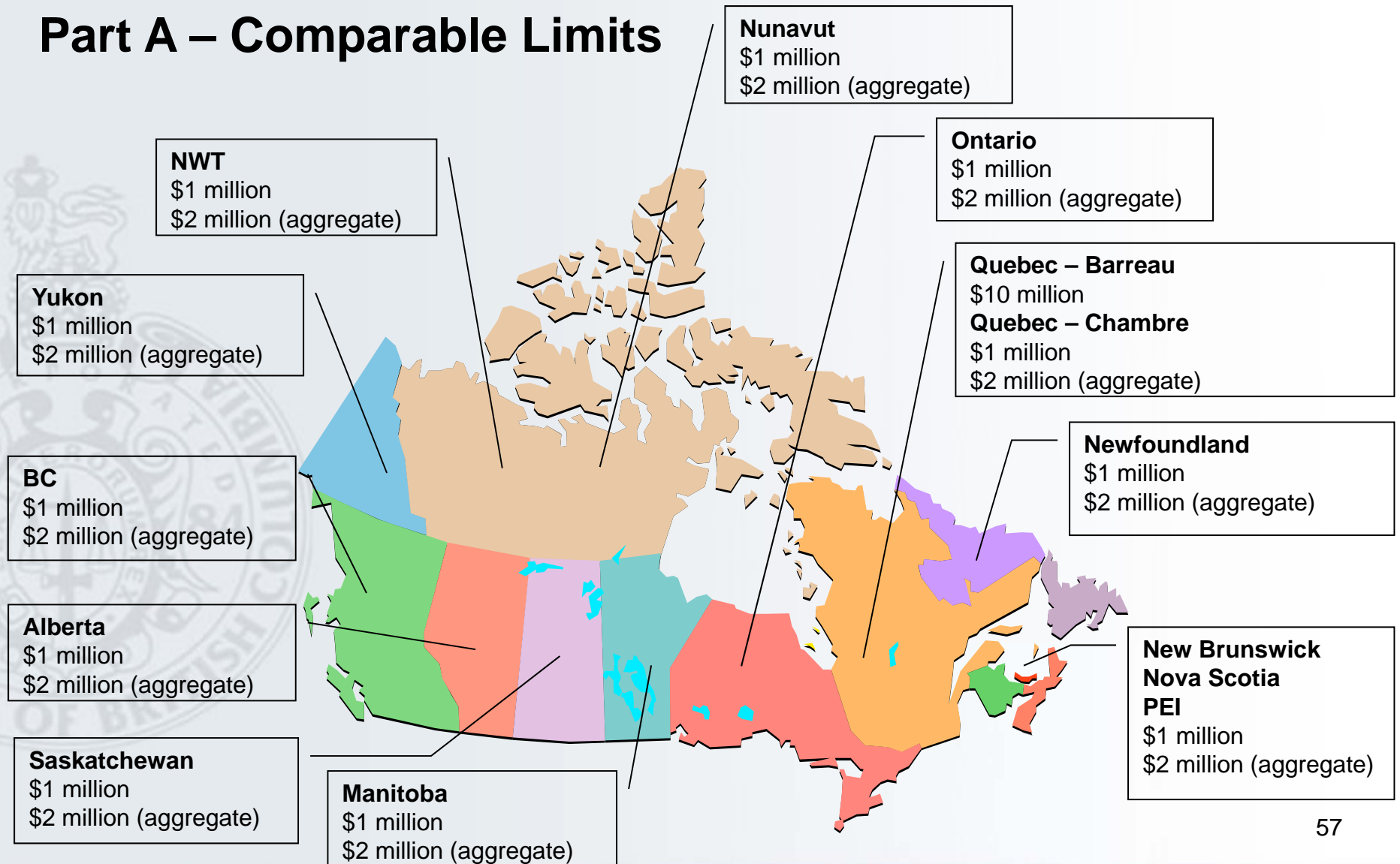
Key Activities

Part A - Causes of Reports



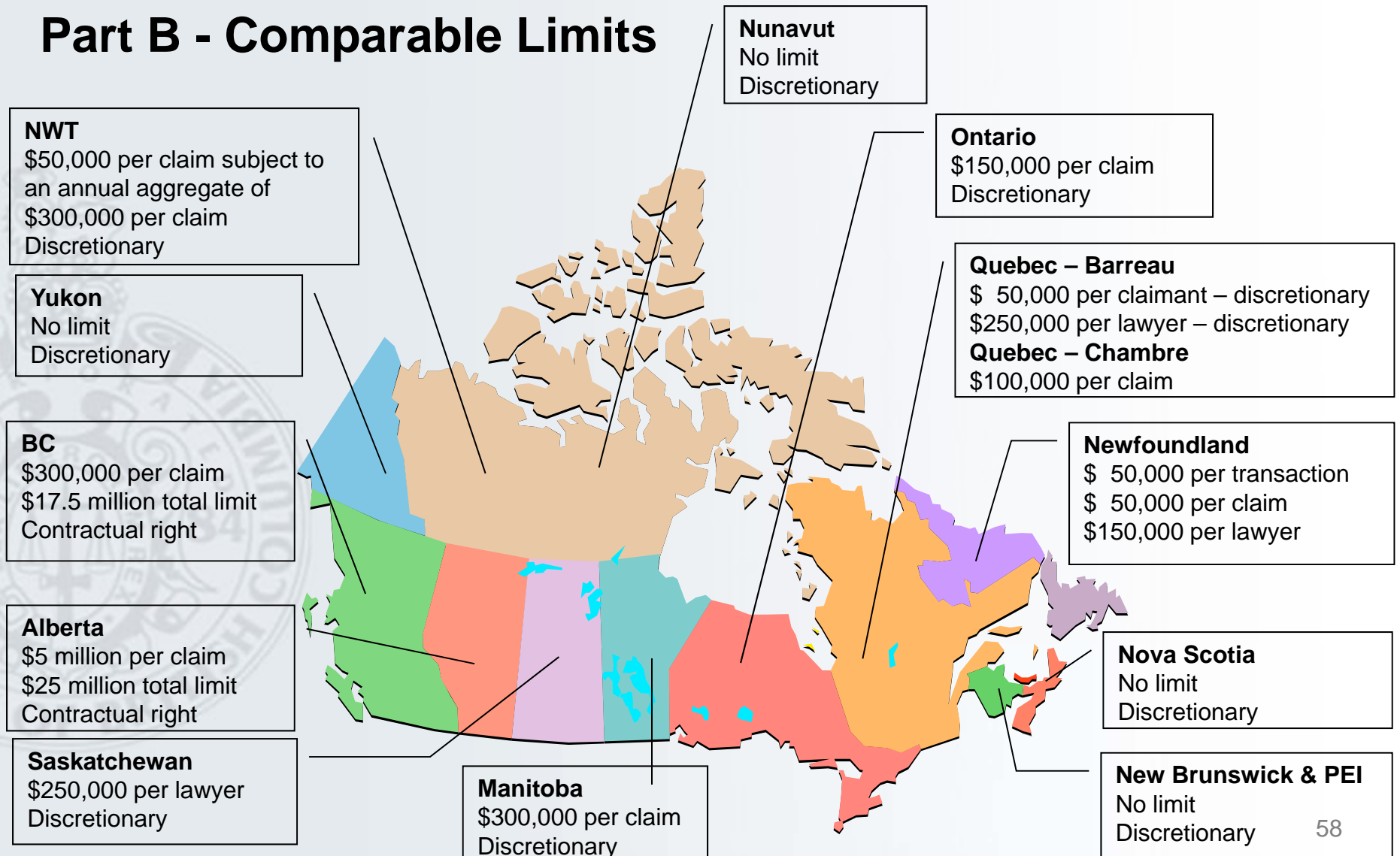
Key Performance Measures

Part A – Comparable Limits



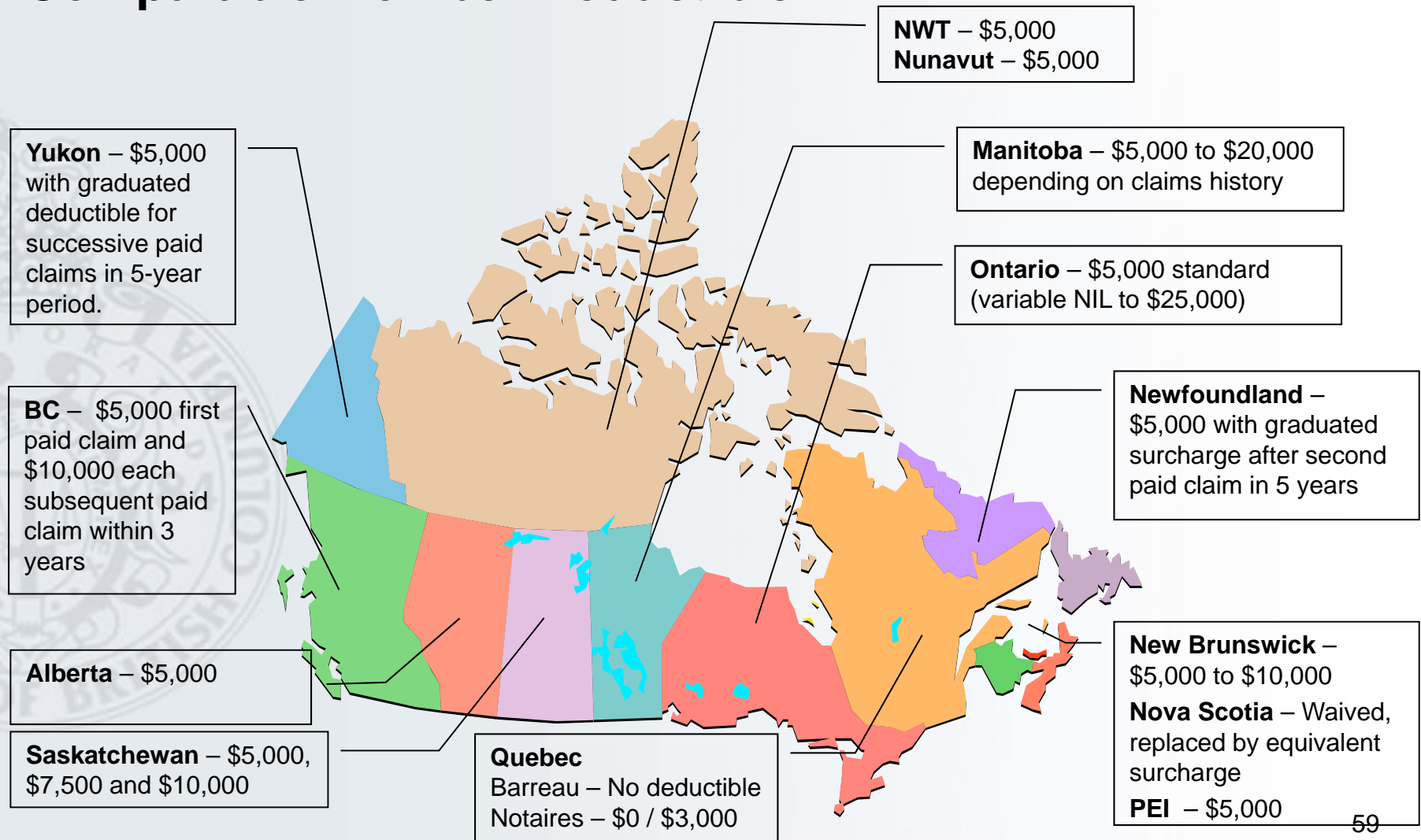
Key Performance Measures

Part B - Comparable Limits



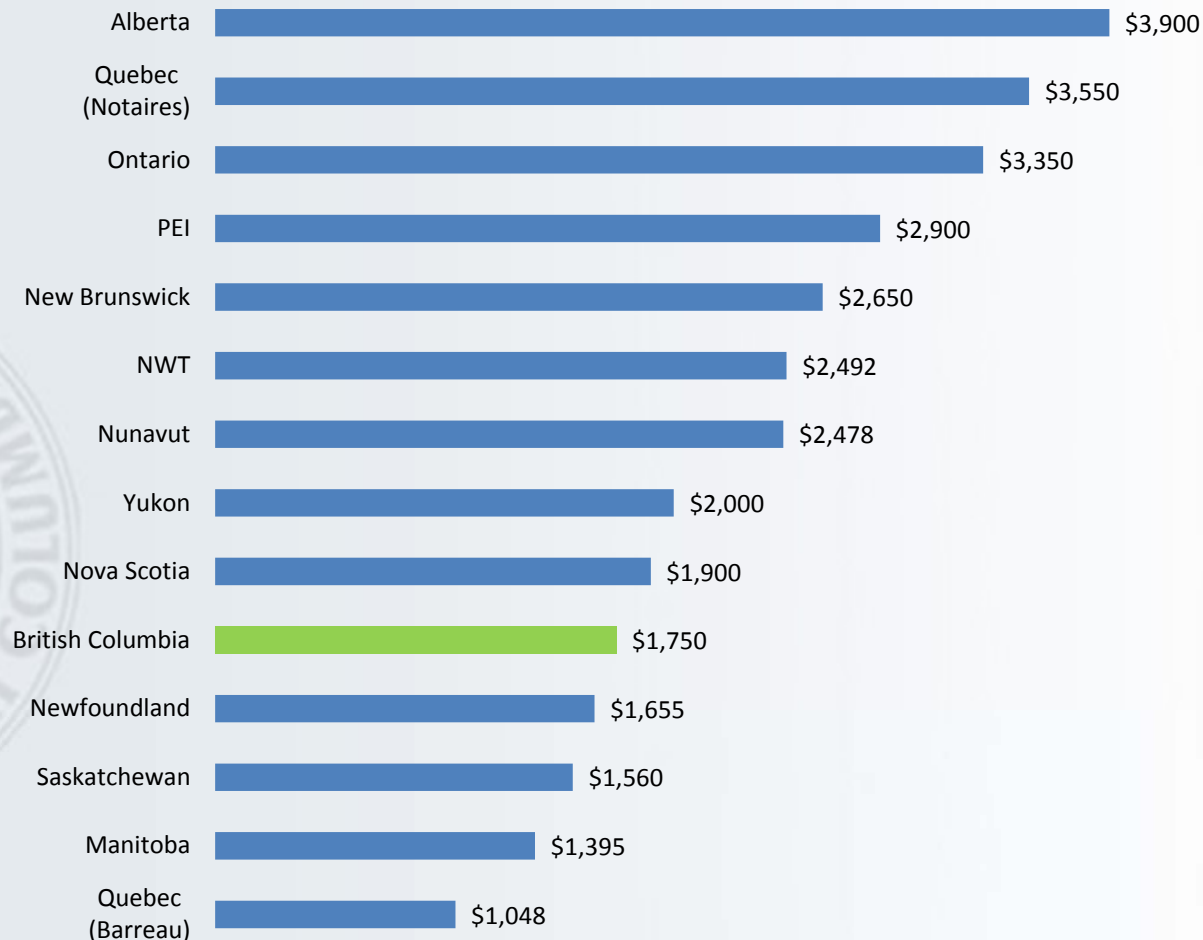
Key Performance Measures

Comparable Member Deductible



Key Performance Measures

Comparable Current Insurance Premium



Key Performance Measures

Outside claims audit every 5 years: obtain opinion

2011 C. Hampton and W. Bogaert Audit Findings

“...we can say with certainty that the claims handling goals are institutionalized in the claims documents, procedures and files, and are almost routinely met in the day to day handling of claims.”

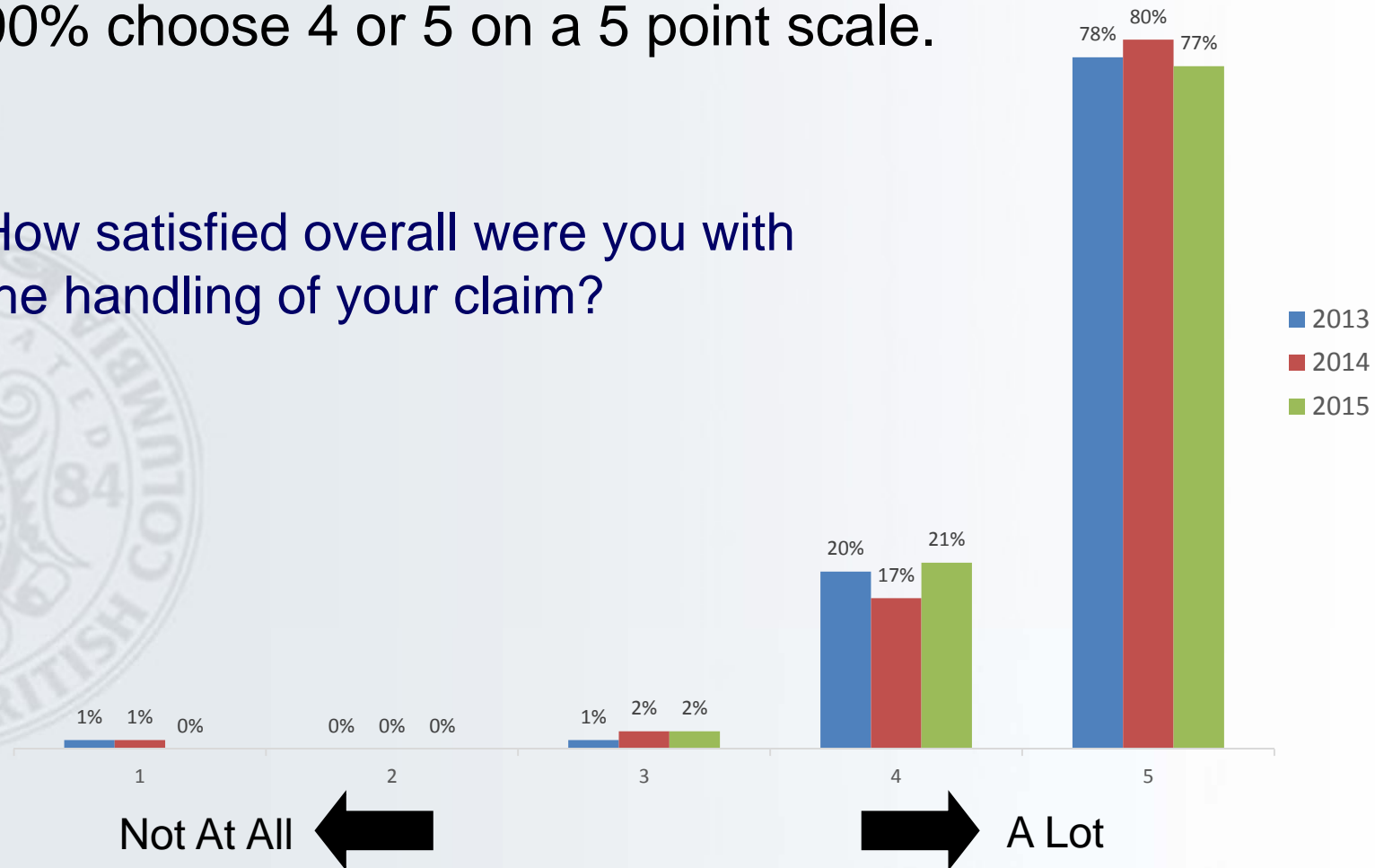
“...the materials we have reviewed strongly evidence the desire of Lawyers Insurance Fund management for continuous improvement and excellence, to provide even better service to its insureds and to be even more cost effective in its claims handling and resolution.”

“In summary, we found a very experienced, skilled, creative and motivated staff and management performing tremendously and at a high level of effectiveness. The goal of resolving claims in a cost effective manner balancing the interests of the insured lawyer, the claimant and the Law Society members is clearly being met – or exceeded – by this collegial and passionate group.”

Key Performance Measures

Results of Service Evaluation Forms:
90% choose 4 or 5 on a 5 point scale.

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



The Law Society

of British Columbia



2015 – 2017 Strategic Plan

Our Mandate

Our mandate is to uphold and protect the public interest in the administration of justice by:

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

Our Goals

To fulfil our mandate in the next three years, we have identified three specific goals:

1. The public will have better access to legal services.

We know that one of the most significant challenges in Canadian civil society today is ensuring that the public has adequate access to legal advice and services.

2. The public will be well served by an innovative and effective Law Society.

We recognize that the public expects and deserves effective regulation of the legal profession. To meet that expectation, we will seek out and encourage innovation in all of our practices and processes in order to continue to be an effective professional regulatory body.

3. The public will have greater confidence in the rule of law and the administration of justice.

We believe that the rule of law, supported by an effective justice system, is essential to Canadian civil society. The legal profession plays an important role in maintaining public confidence in both the rule of law and the administration of justice. We recognize the importance of working with others to educate the public about the rule of law, the role of the Law Society and the legal profession in the justice system and the fundamental importance of the administration of justice.

1. The public will have better access to justice.

Strategy 1–1

Increase the availability of legal service providers

Initiative 1–1(a)

Follow-up on recommendations from the December 2014 report of the Legal Services Regulatory Framework Task Force toward developing a framework for regulating non-lawyer legal service providers to enhance the availability of legal service providers while ensuring the public continues to receive legal services and advice from qualified providers.

Status – January 2016

The Legal Services Regulatory Framework Task Force made recommendations in December 2014 that outlined seven areas of law in which new classes of legal service providers could be permitted to practice.

The Task Force recommended that the Benchers seek a legislative amendment to permit the Law Society to establish new classes of legal service providers and there have been discussions with the Ministry of Justice and Attorney General to that end. Further information on this initiative is contained in the memorandum attached to this Update.

Initiative 1–1(b)

Continue work on initiatives for advancement of women and minorities, including through the Justicia Program and the Aboriginal Mentoring Program.

Status - January 2016

Initiatives on both Aboriginal and Gender continue through the Aboriginal Mentoring Program and the Justicia Program. Efforts have been made to improve diversity on the bench and work is underway to consider ways to encourage more involvement of equity seeking groups in Law Society governance.

Strategy 1–2

Increase assistance to the public seeking legal services

Initiative 1–2(a)

Evaluate the Manitoba Family Justice Program and determine if it is a viable model for improving access to family law legal services in British Columbia.

Status - January 2016

The Access to Legal Services Advisory Committee determined that the Manitoba project was not viable to duplicate in BC. It preferred a proposal by Mediate BC to set up a roster to match family law mediators with lawyers prepared to provide unbundled independent legal advice to participants in mediation. Mediate BC has sought funding from the Law Foundation to support the creation of the project and the Committee, as part of its annual meeting with the Law Foundation to discuss the \$60,000 access to justice fund, supported the proposal. The Committee's December 2015 report to the Benchers provides greater detail, and it is anticipated we will know whether the proposed project has been granted funding at that time.

Initiative 1–2(b)

Examine the Law Society's role in connection with the advancement and support of Justice Access Centres.

Status - January 2016

Staff wrote to the Deputy Attorney General following up on issues and a substantive reply has not yet been received. Further work will depend on the nature of the reply. In the meantime, staff continues to monitor activities concerning development of JACs.

Initiative 1–2(c)

Examine the Law Society's position on legal aid, including what constitutes appropriate funding and whether other sources of funding, aside from government, can be identified.

Status - January 2016

The Legal Aid Task Force has been created by the Benchers. A mandate has been approved, and the task force members have been appointed. The first meeting is expected shortly.

2. The Law Society will continue to be an innovative and effective professional regulatory body.

Strategy 2–1

Improve the admission, education and continuing competence of students and lawyers

Initiative 2–1(a)

Evaluate the current admission program (PLTC and articles), including the role of lawyers and law firms, and develop principles for what an admission program is meant to achieve.

Status - January 2016

A report with recommendations has been prepared by the Lawyer Education Advisory Committee and was presented for information at the December 4 meeting of the Benchers, with discussion to follow at a later meeting.

Initiative 2–1(b)

Monitor the Federation's development of national standards and the need for a consistent approach to admission requirements in light of interprovincial mobility.

Status - January 2016

The Federation's National Admission Standards Project Steering Committee recently circulated a proposal concerning proposed national assessments. The Lawyer Education Advisory Committee's Report to the Benchers under Initiative 2-1(a) includes an analysis and recommended response.

Initiative 2–1(c)

Conduct a review of the Continuing Professional Development program.

Status - January 2016

This topic will be considered by the Lawyer Education Advisory Committee in 2016.

Initiative 2–1(d)

Examine Practice Standards initiatives to improve the competence of lawyers by maximizing the use of existing and new data sources to identify at-risk lawyers and by creating Practice Standards protocols for remediating high risk lawyers.

Status - January 2016

Work on this project is underway. To date we have gathered evidence on the impact of remediation and its duration, and the effectiveness of remediation in reducing lawyer complaints and increasing competence. The data analysis will be completed in late January 2016. In 2016, work will be undertaken on gathering / analyzing a series of recommendations.

Initiative 2–1(e)

Examine alternatives to articling, including Ontario’s new legal practice program and Lakehead University’s integrated co-op law degree program, and assess their potential effects in British Columbia.

Status - January 2016

The Lawyer Education Advisory Committee’s discussions about these programs are underway as part of its examination of the current admission program. The Committee’s conclusions form part of its Report under Initiative 2-1(a).

Strategy 2–2**Expand the options for the regulation of legal services*****Initiative 2–2(a)***

Consider whether to permit Alternate Business Structures and, if so, to propose a framework for their regulation.

Status - January 2016

The Law Society has done a preliminary report, and information has been gathered from Ontario, which is undertaking its own analysis of ABSs, and the UK and Australia, which have permitted ABSs. The Law Society is

monitoring consideration of ABSs currently taking place in the Prairie provinces.

No task force has yet been created to examine the subject independently in BC.

Initiative 2–2(b)

Continue the Law Firm Regulation Task Force and the work currently underway to develop a framework for the regulation of law firms.

Status - January 2016

The Law Firm Regulation Task Force has been created. A consultation paper and survey have recently been completed and targeted consultations in various centres around the province will take place starting in February 2016.

Initiative 2–2(c)

Continue discussions regarding the possibility of merging regulatory operations with the Society of Notaries Public of British Columbia.

Status - January 2016

Discussion on this topic continues. Working Groups have been created to (1) examine educational requirements for increased scope of practice for notaries (as proposed by the notaries) and (2) examined governance issues that would arise in a merged organization. Further updates on this initiative are expected in the spring.

Strategy 2-3

Respond to the Calls to Action in the Report of the Truth and Reconciliation Committee, 2015

Initiative 2-3(a)

The Benchers will:

1. Seek opportunities to collaborate with Aboriginal groups and other organizations to further examine the Recommendations and identify strategic priorities;

2. Embark upon the development of an action plan to facilitate the implementation of relevant Recommendations;
3. Encourage all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues); and
4. Urge all lawyers in British Columbia to read the TRC Report and to consider how they can better serve the Indigenous people of British Columbia.

Status - January 2016

Discussions have begun on how to implement this strategy and in particular how to best engage in appropriate consultation with Aboriginal communities and representatives.

3. The public will have greater confidence in the administration of justice and the rule of law.

Strategy 3–1

Increase public awareness of the importance of the rule of law and the proper administration of justice

Initiative 3–1(a)

Develop communications strategies for engaging the profession, legal service users, and the public in general justice issues.

Status - January 2016

The Communications department has developed a communications plan, and it is being engaged to, for example, obtain interviews on local radio stations on relevant issues.

Initiative 3–1(b)

Examine the Law Society's role in public education initiatives.

Status - January 2016

Work on this initiative has not yet formally commenced, although the Rule of Law and Lawyer Independence Advisory Committee, in connection with the 800th anniversary of Magna Carta, completed a successful essay contest for high school students in 2015 and is actively considering how this initiative might be continued on an annual basis.

Initiative 3–1(c)

Identify ways to engage the Ministry of Education on high school core curriculum to include substantive education on the justice system.

Status - January 2016

Some work has begun by, for example, creating the high school essay competition on Magna Carta referred to above. Work on engaging directly with the Ministry of Education has not yet begun.

Strategy 3–2

Enhance the Law Society voice on issues affecting the justice system

Initiative 3–2(a)

Examine and settle on the scope and meaning of s. 3(a) of the *Legal Profession Act*.

Status - January 2016

This topic was introduced for discussion at the Benchers Retreat in May, 2015. The information gathered at that retreat is being considered by the Rule of Law and Lawyer Independence Advisory Committee with a view as to how it can be incorporated into Law Society policy.

Initiative 3–2(b)

Identify strategies to express a public voice on the justice system, including public forums.

Status - January 2016

A proposal from the Rule of Law and Lawyer Independence Advisory Committee was approved by the Benchers in July 2015. The Committee prepared its first comment – a commentary for *The Advocate* on the issues that pervasive surveillance raised for lawyers.

A staff working group has been struck by the Chief Executive Officer in order to engage staff on how the Law Society may express a public voice on issues, which reported to the Management Group in January 2016.

Appendix A – CEO's Report to the Benchers, June 2015

2015 Operational Priorities Plan

At the beginning of each year I present management's top 5 operational priorities for the ensuing year. When I present these to the Executive Committee and the Benchers I always emphasize that these priorities do not derogate from our day-to-day responsibility to perform our core regulatory functions to the highest standards. However, in each year there are certain items that are designed to enhance our operational capabilities and which require extra attention and focus to ensure success. The priorities for 2015 (in no particular order) are set out below with a brief status update at mid-year.

1. Knowledge Management Project

We are committed to the development and implementation of an organization wide knowledge management system. Knowledge management involves capturing and sharing knowledge with the goal of making that knowledge easily accessible through a range of distribution methods. Knowledge includes facts, information, expertise and skills, as well as the theoretical and practical understanding of a subject, acquired by a person through experience or education.

Because so much of what we do at the Law Society involves the development, evaluation and sharing of knowledge having a modern, effective system for doing so is a critical operational tool and also part of the Law Society's strategic goal to be a more innovative and effective regulator. The knowledge management project is looking at this capability from a broad perspective including, for example, our practice support and advice group, our PLTC program, our policy group and communications.

In 2014, the working group researched knowledge management systems and set the mandate and definition of the project. In May 2015, a Senior Project Management Specialist was appointed and detailed project planning began. In a staff wide contest to name the Knowledge Management project we received over 170 entries and the winner will be announced next week. We are expecting that the implementation of a new knowledge management capability will take several phases with initial roll-out commencing in 2016.

2. Computer Literacy Working Group

We believe that computer literacy and being able to fully exploit the benefits of technology in everything we do will enhance our effectiveness as an organization. Consequently, we have established a cross departmental working group to develop a plan which will have as one of its goals the attainment of a new, high minimum standard of computer/technical literacy for all our staff.

We recognize that this direction might be daunting for some staff who have less training and skill in this area today. This is why we are focusing on a cooperative, supportive approach so that, no matter what an individual's current skill level may be, they will be supported in achieving a new higher competency level within an achievable timeframe.

I can report that the Computer Literacy Working Group has been busy so far this year in defining a base skill level as well as the competencies expected above and beyond this level based upon the requirements of specific positions. This work has included examining the models of other organizations and evaluating the learning platforms used to achieve the goals. The working group is planning to deliver a report on its findings and provisional recommendations for discussion this fall.

3. Public Issues Voice Working Group

The Public Issues Voice Working Group was created as one of the means to support Initiative 3-2 (b) of the Strategic Plan namely "Identify strategies to express a public view on the justice system, including public forums". The working group is focusing on how to communicate more effectively with the public regarding the role of the Law Society and broader justice system topics and issues.

This working group is comprised of staff with diverse interests and backgrounds and is chaired by Michael Lucas our Manager of Policy and Legal Services. The group has had two meetings to date and more are scheduled. We are hopeful that the perspectives of the working group and any recommendations from it will complement and be useful to the Rule of Law and Lawyer Independence Advisory Committee as it follows up on this topic of discussion at last month's Benchers retreat.

4. Core Values Working Group

All staff adhere to a code of conduct as part of their employment with the Law Society. The code refers to workplace values and our mission and is incorporated into our annual performance review process. But we are aware that since the code of conduct was established almost 15 years ago we have seen shifts in our demographic profile and changing workplace habits and expectations. With those changes we felt now was a good time to re-examine, refresh and perhaps restate the values under which we agree to serve as Law Society staff.

The mandate of the working group is to identify and develop a set of values that are aligned with and support the Law Society's mandate, mission and strategic plans and create a common bond for staff. The group has consulted broadly within the organization and has conducted workshops and discussion forums as part of its work. At the time of writing the working group is finishing its report and recommendations. I look forward to sharing this with you at the meeting in July.

5. E-Voting and Webcasting Capability

We are committed to the development of a highly reliable and resilient e-voting and webcasting capability for our annual general meetings. In the past several months, we have been actively addressing issues such as the need for voting security, verification and audio/visual quality across different platforms and receiving devices. In addition, both the Governance Committee and the Act and Rules Committee have been working with staff to ensure that our plans are within the ambit of the existing member authorization to move in this direction. I understand the Governance Committee expects to make recommendations regarding the conduct of this year's 2015 annual general meeting and future general meetings in its mid-year report to the Benchers in July.

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Memo

To: Benchers
From: Andrea Hilland
Date: January 18, 2016
Subject: Truth and Reconciliation Commission Update

Background

The Truth and Reconciliation Commission (TRC) recently released its Executive Summary Report (Report),¹ including 94 recommendations (Recommendations)² to redress the legacy of residential schools, and to offer guidance for reconciliation.

At the October 30, 2015 Benchers meeting, the Benchers unanimously agreed that addressing the challenges arising from the TRC Recommendations is one of the most important and critical issues facing the country and the legal system today. The Benchers committed to the immediate implementation of key initiatives:

1. Seeking opportunities to collaborate with Aboriginal groups and other organizations to further examine the Recommendations and identify strategic priorities;
2. Embarking upon the development of an action plan to facilitate the implementation of relevant Recommendations;
3. Encouraging all lawyers in British Columbia to take education and training in areas relating to Aboriginal law (the Law Society's mandatory continuing professional development program recognizes and gives credit for education and training in areas relating to Aboriginal issues); and
4. Urging all lawyers in British Columbia to read the TRC Report and to consider how they can better serve the Indigenous people of British Columbia.

At the December 4, 2015 Benchers meeting, the Benchers discussed amending the CPD requirements to include Aboriginal law and practice skills in the two hour "ethics" component to encourage BC lawyers to obtain cultural competency training as recommended by the Truth and

¹ http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Exec_Summary_2015_05_31_web_o.pdf.

² http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf.

Reconciliation Commission. Representatives from the Indigenous Bar Association and CBA Aboriginal Lawyers Forum in attendance recommended that the Law Society should seek input from the Aboriginal community before taking any actions regarding the TRC Recommendations. The Benchers agreed to do so.

The Benchers understand the need for Aboriginal involvement in developing a strategic approach for the implementation of TRC Recommendations within the Law Society's purview. There is a tension between the desire to take immediate action, and ensuring that any actions taken are respectful of Aboriginal perspectives. This memo provides some guidance on the development of a steering committee to inform the Law Society's response to relevant TRC Recommendations.

1. Goals/objectives

This consultation arises from the Law Society's desire to implement the TRC Recommendations that pertain to the legal profession in British Columbia – in line with key initiatives 1 and 2 set out above. The Law Society intends to consult with members of the Aboriginal legal community to identify the TRC Recommendations that pertain to the legal profession, and to develop an action plan specifying tangible steps to implement relevant Recommendations. In the longer term, this may lead to the formation of a task force or permanent advisory committee.

2. Scope

The scope of the consultation should be clarified at the outset to manage expectations throughout the consultation process, and to keep the discussions on track and progressing toward meaningful and implementable outcomes. The Law Society's credibility is dependent on its ability to follow through with commitments made during the consultation process. Therefore, the scope should line up with the Law Society's broad mandate to uphold and protect the public interest in the administration of justice by:

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articulated students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.³

³ Section 3 of the *Legal Profession Act*, SBC 1998, c. 9.

Two Recommendations make specific reference to the training of lawyers and law schools.⁴ However, the Law Society's mandate is broad, and its role goes beyond assuring a common foundation of knowledge and skills for lawyers. Consultation is intended to identify the TRC Recommendations that pertain to the legal profession in BC, set strategic priorities, and develop an action plan with concrete steps to implement relevant Recommendations.

3. Creating a steering committee

David Crossin, QC has suggested that a steering committee be struck to focus on converting the relevant Recommendations into a strategic plan of action which specifies short, medium, and long term goals as well as tangible steps to effectively implement relevant Recommendations. The objective of the steering committee should be to identify tangible steps that the Law Society can take to implement relevant TRC Recommendations – not to develop further recommendations.

It was suggested that a steering committee should be a manageable size (e.g. 6 or 8 people), including Benchers as well as representatives from Law Society of BC Advisory Committees (e.g. Access to Justice, Legal Education, and Equity and Diversity), Aboriginal legal organizations (e.g. the Canadian Bar Association Aboriginal Lawyers Forum and Indigenous Bar Association), and other well-respected members of the Aboriginal legal community with expertise in subject matter related to the TRC Recommendations.

Assuming that the consultation will be limited to the Law Society's role in implementing relevant TRC Recommendations, informants with a connection to the legal profession should be consulted, as opposed to representatives from political organizations (such as the Assembly of First Nations, First Nations Summit, Union of BC Indian Chiefs, or First Nation governments or Band Councils). It would be optimal to get representation from:

- a broad range of First Nations and Métis representatives;⁵
- different regions of the province;
- Aboriginal legal professional organizations (e.g. CBA Aboriginal Lawyers Forum and Indigenous Bar Association); and
- well respected and high profile Aboriginal legal professionals with expertise in subject matter addressed in the TRC Recommendations.

⁴ Recommendation 27 states: "We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal-Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism." Recommendation 28 calls upon Canadian law schools to provide the same training.

⁵ Inuit do not have historical connections to BC and do not have any legal claims in BC at present, so their representation would have lower priority than First Nations and Métis communities with historic connections to BC.

Participants should understand the Law Society's mandate, be connected to the Aboriginal legal community in BC, and have strong collaborative experience.

The objective of the steering committee would be to inform the Law Society's response to the TRC Recommendations, rather than conducting additional consultations with Aboriginal communities. Steering committee members held in high regard by Aboriginal communities should be selected with the understanding that these representatives would be trusted to identify and convey the perspectives and concerns of Aboriginal communities to inform the work that will be done by the steering committee. Steering committee members would be encouraged to seek input from Aboriginal constituents, but the Law Society would not be expected to conduct formal consultations with various Aboriginal communities. Of course, the Benchers could consider Aboriginal community consultations if the steering committee recommends them.

4. Preparing for consultations

It would be disrespectful to approach Aboriginal informants with a pre-formed idea or initiative that was developed without their input. On the other hand, it would be equally troublesome to approach them without adequate preparation. Before consultation begins, the Law Society should have a clear sense of what the goal of the consultation is, how the input provided will be factored into decisions, and how the consultation process will lead to meaningful and tangible results that will benefit Aboriginal peoples.

To prepare for the consultations, Law Society representatives involved in the consultation process should read the TRC Recommendations and identify the Recommendations that are within the Law Society's purview. Law Society staff should generate a matrix to outline potentially relevant Recommendations and the Law Society's role with respect to these Recommendations as a starting point for the steering committee.

5. Next steps

Possible next steps include:

1. Identifying steering committee members and inviting them to participate in the steering committee;
2. Polling participants for their availability to attend an in-person meeting, and scheduling a meeting based on the highest availability of participants;
3. Once the meeting is scheduled an agenda package with discussion points and background information should be circulated, including:
 - a. the TRC Recommendations;

- b. briefing memos and a matrix of TRC Recommendations within the Law Society's purview (prepared by Law Society staff);
- c. draft terms of reference for the steering committee;
- d. proposed timelines; and
- e. next steps.

In the longer term, the steering committee will likely be helpful in informing a thorough consideration of how to reconcile the Law Society's Strategic Plan with relevant TRC Recommendations (e.g. at a Benchers meeting designated to that topic).

Memo

To: Benchers
From: Andrea Hilland
Date: November 10, 2015
Subject: Justicia Model Policies and Best Practice Materials

Recommendation

1. This memo recommends that the Benchers endorse best practice materials for business development, partnership, and leadership (attached). The attached materials were prepared by representatives from law firms participating in the Justicia in BC Project, and have been endorsed by the Equity and Diversity Advisory Committee. The intention is to place these materials on the Law Society's website and encourage lawyers to use them, as appropriate.

Background

2. The Justicia Project has been actively underway in British Columbia since 2012. It is a voluntary program, facilitated by the Law Society of British Columbia and undertaken by law firms, to identify and implement best practices to retain and advance women lawyers in private practice. It was created in response to evidence that women leave the profession at a higher rate than men in the first ten years of practice. Justicia's Diversity Officers have been selected by participating firms. Andrea Hilland is coordinating regular meetings among the Diversity Officers, which are also attended by Michael Lucas, Jamie Maclaren, and representatives from the Canadian Bar Association of BC's Women Lawyers Forum.
3. The Project is proceeding in two phases. Phase one is directed at national firms with offices in BC, as well as large regional firms. Phase two will be directed at all other BC firms.
4. Phase one of Justicia has already seen tremendous success. All seventeen firms that were targeted for participation in phase one have committed to developing and implementing best practices to facilitate the retention and advancement of women in private practice.
5. The Justicia Diversity Officers have created focus groups to meet regularly to develop recommendations in six areas:
 - Improving parental leave policies;
 - Enhancing flexible work arrangements;

- Tracking gender demographics;
 - Adopting initiatives to foster women's networking and business development;
 - Promoting leadership skills for women; and
 - Developing paths to partnership initiatives.
6. The Benchers have already approved the best practice materials on parental leave, enhance flexible work arrangements, and tracking gender demographics at the December 5, 2014 Bencher meeting. These policies are available on the Law Society's website, and firms are encouraged to adopt them as appropriate.
 7. The second set of resources which highlight best practices regarding business development, leadership skills, and partnership initiatives for women are now complete, and attached for your consideration. The attached best practices guides were endorsed by the Equity and Diversity Advisory Committee on September 24, 2015.

Next Steps for Justicia in BC

8. Law Society staff and Justicia Diversity Officers are meeting with the Continuing Legal Education Society to explore opportunities to develop educational resources to promote the Justicia model policies and best practice materials.
9. A communications strategy has been developed to encourage smaller and more regional firms to participate in the Justicia Project.

/Attachments



COMMITTED TO
JUSTICIA
ON S'Y ENGAGE

A Guide to Business Development for Women Lawyers

June 2015

Contents

1. Introduction	4
Who this guide is for	4
The importance of business development for women lawyers	4
What is business development?	6
Why women succeed at business development	7
2. Business Development Challenges for Women	8
Self-promotion	8
The “ask”	8
Time	9
Converting personal relationships into professional relationships	9
Traditional networking	10
Less access to male power brokers	10
3. Elements of Business Development Success	11
Self-promotion	11
Developing a personal brand	12
Best practice: career coaching	13
Suggested reading	13
4. Marketing	14
Creating a marketing plan	14
Whom to market to	15
Choosing a target market	16
Researching your target market	16
Marketing to referral sources	17
Making time to market	18
Effective Ways to Approach Business Development	20
<i>Writing, publishing, and speaking engagements</i>	21
<i>Speaking engagements</i>	22
<i>Tips for public speaking</i>	24
<i>Other ways to raise your profile</i>	24
Suggested reading	25

5. Online Marketing With Web-based and Mobile Technologies	25
What kinds of online marketing is right for you?	26
<i>Social networking</i>	27
<i>Blogs and Twitter</i>	28
<i>Websites</i>	30
<i>A word about rules, confidentiality, etc.</i>	30
Suggested reading	31
Building your internal network	33
Join external organizations	33
Follow-up with your new contacts	35
Use your personal network	36
7. Generating Business	36
Attributes of successful rainmakers	36
Deciding when to ask for work	38
Making the pitch	38
Tips for successful pitching	39
Preparing to ask for work	39
Suggested reading	40
8. Maintaining Client Relationships	41
Some strategies for building client loyalty	41

1. Introduction

Who this guide is for

The Law Society of British Columbia's Justicia Project is a precedent-setting project designed to promote the retention and advancement of women lawyers in private practice. Originating in Ontario, the project has made its way across the country and into BC. The Justicia Project has identified business development as an area that is critical to the advancement of women in the law. This guide is intended to be a practical resource for women and law firms. In it we have compiled numerous business development strategies designed specifically for the needs of women lawyers in private practice. We have consulted the existing literature, drawn upon interviews with women who have excelled in the area of business development, and used our own experience to create what we hope will be a useful and relevant resource.

This guide is intended for women who want to improve their business development skills and a resource for lawyers who mentor women. It is also a guide for law firms who want to understand how to better support and retain women lawyers. The strategies outlined are designed to be implemented in firms of varying sizes and in different geographic regions throughout BC.

The importance of business development for women lawyers

The ability to market oneself is an essential skill for any lawyer in private practice. It is not enough to be intelligent and hardworking; in order to be successful, lawyers must also create a personal brand and learn how to generate new client business and ensure an ongoing flow of business from such clients. Law firms cannot exist without clients, and most firms handsomely reward those lawyers who generate business for the firm. The competitive nature of the legal market today means that it is increasingly important for all lawyers to focus on business development at every stage of their careers.

Most lawyers and many law firms understand the reality that it takes more than being a great lawyer to be successful. Yet, many firms still underemphasize the importance of honing business development skills from an early stage in your career. The result is that associates who do not early on learn the importance of developing client business struggle to become partners as this is often a prerequisite for partnership. In firms where this is not a prerequisite to partnership, such new partners are left without the necessary skill set to taken on the new responsibility for generating new work. In *Juggling the Big 3 for Lawyers: A Career-Building Plan to Develop Your Personal Brand, Client Business, and Leadership Mindset*, Jennifer Overhaus describes observing a phenomenon in which the billable hours of new partners decrease dramatically

soon after they make partner, as other partners choose to delegate their client work to less expensive associates, leaving a hole in the new partner's billable hour stream. Unfortunately some lawyers never recover from this dip and end up leaving the firm after only a couple years as a partner.¹

It is important for all lawyers, even the newest associates, to engage in business development activities. As an associate, beginning to develop a client base will inevitably help speed advancement within the firm. Associates should maintain their network of friends and professional relationships, even if those relationships do not currently seem like they may result in work or referrals. The transition from associate to partner will be smoother for those who have already begun to build up a book of business. In some firms, the move from an associate to a partner *requires* an established book of business. Most law firms expect partners to maintain a book of business sizeable enough to generate work for themselves and others. Many larger firms now have "non-equity" partnership categories for newer partners, to give them time to grow their book of business to a size that is required to become an equity partner.

Throughout the project, Member firms canvassed their clients to understand what is most critical to them in their selection of external counsel. Overwhelmingly, clients emphasize the importance of getting to know individual lawyers. Positive character traits (such as intellectual horsepower, approach, organizational skills, responsiveness etc.) and a lawyer's knowledge of an industry or area of law were highlighted as important selection criteria. In other words, beyond the impression clients may have of a particular firm, they are still heavily influenced by the personal engagement and affiliations they have with individual lawyers within that firm. Clients may gravitate towards a firm for their broad market reputation but in most cases will select and retain specific lawyers based on, not only expertise but more subjective criteria such as the personal relationship the client has with the lawyers working on that client's file.

While firm-led marketing programs may provide a foundation to business development, every lawyer who hopes to build a profitable and sustainable business practice should become active and visible in the market in their own right. The personal efforts you make to define, develop and grow your practice throughout your career will be essential to long term success.

Business development can be a source of great personal and professional rewards. Having a client base means having more freedom to manage your own practice.² You will be able to

¹ Jennifer Overhaus, *Juggling the Big 3 for Lawyers: A Career-Building Plan to Develop Your Personal Brand, Client Business, and Leadership Mindset* (London, England: ProvechZiel Ltd, 2009) at 9.

² Theda C Snyder, *Women Rainmakers' Best Marketing Tips 2nd edition* (American Bar Association, 2010) at v.

control your own workflow and the types of files and projects you work on since you will not depend on others for work allocation. Additionally, the ability to generate work can give you leverage to negotiate for the things you want, be it a committee seat or a change to the firm's policies.³ It also brings financial rewards. In many firms, compensation of equity partners is based at least partially on the size of one's book of business. All of these advantages contribute to greater career satisfaction.

What is business development?

At its most basic, business development is about creating and nurturing relationships. It requires creating a personal brand and a marketing plan in order to build up a professional network. A business development strategy is a long-term strategic approach that enables you to make connections and develop authentic relationships with current and prospective clients so that you can ask for business in the right ways at the right times.

Tracy LaLonde, a partner at Akina Corporation, explains that business development grows out of two key concepts: (1) developing authentic relationships (2) so that you can solve people's problems.⁴ Business development is about more than pitching your services to potential clients. In fact, aggressive pitching can be counterproductive if the authentic relationship is not yet in place. Similarly, Overhaus explains that strong professional relationships are built up gradually, and they can develop in any number of ways.⁵

Ultimately, you cannot assume that anyone is going to hand you the clients you need to build up your practice; however, with planning and determination, anyone can succeed at business development. The most successful rainmakers have no greater talent for "sales" than anyone else, but they are proficient at connecting with people, and they understand how to turn relationships into business.⁶ Selling yourself successfully does not depend on charisma or on having a certain personality type, but it may require that you develop some new skills in addition to the technical legal ability that you have already worked so hard at perfecting.

Anyone can acquire the skills to be successful at business development. Even if you dislike networking and self-promotion, you can still market yourself in ways that suit your personality. The business development strategy that you pursue should fit with your values and reflect who

³ Ida Abbott, *Women on Top: The Woman's Guide to Leadership and Power in Law Firms* (Thomson Reuters, 2010) at 67.

⁴ Tracy Lalonde, "Coaching Your Lawyers in Business Development" *ALI-ABA Live Video Webcast* (January 24, 2012).

⁵ *Supra* note 1 at 123.

⁶ *Ibid.* at 193.

you are. Choose business development activities that play to your strengths. For instance, if you dislike making small-talk at formal networking events, but are comfortable behind a podium, you might decide to make public speaking a core element of your marketing plan. Writing and publishing can be effective ways of raising your profile, too. Other lawyers find one-on-one coffee and lunch meetings to be very effective

Each lawyer will have her own business development strategy that is uniquely suited to her strengths and personality-type. The focus of your business development efforts will also depend on what stage you are at in your career. At the junior level, business development is about maintaining relationships with your current network, skills development and establishing a reputation for good work and dependability that will lead to repeat work referrals. It is also about maintaining relationships with your external business and professional networks and building relationships with client representatives at your level. At the mid-level, it is about focusing on building new relationships in a clear target market and maintaining existing relationships.⁷

Why women succeed at business development

Business development is neither masculine nor feminine. Successful business development requires behaviours that are stereotypically male as well as behaviours that are typically seen as female. “Strong business developers naturally combine the ‘feminine’ behaviors of being empathic and asking open-ended questions with the ‘masculine’ behaviors of confidence and self-promotion.”⁸ Women are often thought to be skilled at interpersonal relationships. Additionally, women tend to be perceived as more trustworthy than men, and trust is essential to obtaining client business. As a woman, it may be easier for you to establish that relationship of trust with clients.

Your gender may even be an advantage that helps you stand out as unique in a sea of male lawyers. Increasingly, the in-house counsel and businesspersons who make up law firms’ client base are women. Women clients may prefer to take their business to firms that promote women lawyers. If your gender helps you get your foot in the door, take the opportunity and use it to your advantage. For instance, you may be invited to attend a sales pitch because your firm wants to include a woman on the team. If this is the case, it may be a mutually beneficial arrangement both for you and your firm. Once you are on the team, you can show them that

⁷ *Supra* note 4.

⁸ K Brady, “Marketing and Client Development Activities” *Law Practice Today* (February 2009) online: <<http://apps.americanbar.org/lpm/lpt/articles/mkt04091.shtml>>.

they were wise to include you by demonstrating your superior legal, problem solving and relationship building skills.

*Nothing beats the power and autonomy of your own robust book of business. . . .
Don't be afraid to chart your own course.*

-Nicole Garton, Lawyer and Mediator, Heritage Law

2. Business Development Challenges for Women

While women can possess unique advantages for business development, they may also encounter some common challenges. Some of the most common difficulties women face in obtaining client business are addressed in this section.

Self-promotion

Some women feel uncomfortable talking to others about their skills and achievements. Women may be socialized from a young age to project modesty rather than confidence. Some women may believe that their achievements are not impressive enough to be worth talking about. Imposter syndrome, the belief that you do not deserve the successes you have achieved, affects both men and women, but it is thought to be especially common among successful female professionals.

[Don't be afraid to fake it until you make it.] Read Lean In and put your hand up.

-Nicole Garton, Lawyer and Mediator, Heritage Law

The “ask”

If the thought of calling someone to ask for work makes your heart pound, you are not alone. Many successful rainmakers agree that asking for business is one of the hardest parts of a lawyer's job.⁹ Even so, asking for work is crucial. You may have an impressive network and be highly proficient at developing relationships, but it won't serve you well if you never ask for business. The “ask” is how you convert your network of contacts into clients. People will never know that you want their business unless you tell them.

My observation is that men find it easier to ask for work and to market themselves. I think that some of the social conditioning we get as girls and women causes many women to feel uncomfortable with the idea of business development. The direct and indirect messages we get discourage us from being assertive, drawing attention to ourselves, promoting ourselves, etc. usually

⁹ *Supra* note 2 at 115.

means that business development appears counter intuitive, or downright unpleasant.

-Nicole Byres, Q.C., Partner, Miller Thomson LLP

Time

All lawyers are busy people, and women are often the busiest of all. After juggling the needs of the clients and all the other demands on their time, many women realize that they have limited time left over for business development.

Ask any working professional mother, and if she's honest she'll admit that balance is an illusion and moments of calm are punctuated by moments of futility. Embrace the challenge and don't expect it to be easy. Nothing worth having ever is.

-Nicole Garton, Lawyer and Mediator, Heritage Law

Sacrificing business development in order to have enough time for other activities would be a mistake, however. Busy lawyers who want to build successful and profitable practices must carefully evaluate how they spend their time in order to avoid low-value work and focus instead on the activities that will lead to the highest returns. Business development is high-value work and should be prioritized accordingly.

I'm not sure I can use the word 'balanced' as that would imply that everything I do is planned out and executed in correct proportions. I prefer the term "juggle". I think that the most important thing is to recognise that business development is really important and that after a few years of practise you have to turn your mind to business development: what short and long term strategies will you employ, and mapping out a timetable or plan for executing your strategy. Since there will always be more work and personal commitments to fill your day, you have to consciously plan and set aside time to do this.

-Nicole Byres, Q.C., Partner, Miller Thomson LLP

Converting personal relationships into professional relationships

Some women may have a large network of personal friends, but they do not make use of those friends as professional contacts, either because they do not know how to, or they do not feel comfortable doing so. In general, women may be less likely than men to see their friends as potential clients or referral sources.

Women are often less comfortable asking for work after building a relationship, and men may ask for work before first building the relationship. To be effective, both are important.

-Lisa Vogt, Q.C., Partner, McCarthy Tétrault LLP

Traditional networking

For many people, the archetypical client development activity is still men on the golf course or at a baseball game. Some women may avoid business development activities such as these because they do not feel at ease in these traditionally male environments. A further challenge is that traditional networking activities normally take place on evenings or weekends, when lawyers may hope to spend time with friends and family.

Ultimately, quality of service, commitment and loyalty to our clients are key regardless of gender. It is sometimes more difficult for women when the relationship development efforts focus on golf or poker games, particularly if the client is male; but there are alternative activities, that may be family oriented, that work well with such clients. As well, many in-house counsel are now women, and so the opportunities are greater than ever before to connect socially with female clients.

-Maria Morellato, Q.C., Partner, Mandell Pinder LLP

Less access to male power brokers

At a junior level, women may assume that it is not worthwhile to engage in business development activities if they do not have access to influential people. They may feel uncomfortable networking with more senior lawyers, many of whom are men. However, the reality is shifting as more and more women leave private practice in favour of general counsel and in-house positions.

Most of the clients that I reach out to are corporations, capital providers and entrepreneurs and most in senior positions with those organizations are men. In the last 3-5 years though, I have started to see a shift to working with more women who are in senior positions, are in GC or other senior in house positions and otherwise responsible for retaining lawyers. That is a tremendously positive shift, and one that I believe is the single most important change that will have long term positive effects for women in private practice. Initially, as those numbers change, it means that more senior lawyers will realize that they should be adding women lawyers to client teams "to reflect the client".

-Valerie Mann, Managing Partner, Lawson Lundell LLP

3. Elements of Business Development Success

Self-promotion

Getting the recognition that you deserve requires making sure that the right people hear about your achievements. Catalyst research has found that women who did more to make their achievements known advanced more, were more satisfied with their careers, and had greater compensation growth.¹⁰ Don't assume that high-quality work will speak for itself. In order to win clients and generate business, it is important to talk to people about your successes.

I think it takes a little longer for women to find their own voice. It also is not a natural inclination for women to self-promote. I know when one of my male colleagues has been working on a significant (or even not so significant) transaction or trial. I know because they tell me or they tell 10 other people who tell me. I don't hear that from women. In fact, I often have to seek out that information just so that I can congratulate them on a job well done. It is important for firms to celebrate success of women in the firm and to promote that success internally. If you are too shy or reserved to promote your own success, then find someone like a practice group leader, mentor or managing partner to do it for you.

-Valerie Mann, Managing Partner, Lawson Lundell LLP

Many women are uncomfortable with self-promotion. They tend to attribute their success to other people rather than taking the credit they deserve, or they avoid taking credit for fear of being seen as showing off. However, with well-developed interpersonal skills, it is possible to talk about one's achievements without alienating others.

Tips for effective self-promotion

Write down your achievements. By identifying and recording your achievements you will be able to easily convey the information that you want known about yourself. See Appendix 1 for a 12-question self-evaluation that you can use to map out your skills and achievements. Developed by communication consultant Peggy Klaus, the questionnaire is also available online at www.bragbetter.com.¹¹

Take advantage of informal opportunities to talk about your accomplishments. When a client asks you what is new, be prepared with a response. During

¹⁰ Christine Silva & Nancy Carter, "Women Don't Go After the Big Jobs with Gusto: True or False?" *Harvard Business Review* (13 October 2011) online:

< http://blogs.hbr.org/cs/2011/10/women_dont_go_after_the_big_jo.html >.

¹¹ Peggy Klaus, *Brag! The Art of Tooting Your Own Horn Without Blowing It* (New York: Warner Books Inc, 2003) at 22.

meetings, highlight your accomplishments in subtle ways, always making sure to pay attention to your audience and be respectful of your listener's time.

Never downplay your successes. If someone gives you a compliment, thank them. Don't minimize your achievements by saying, "Oh, it was no big deal. I had a lot of help."

Promote others and give compliments. People will likely return the favour. Consider teaming up with a colleague and agreeing to support each other by making sure that the right people hear about each other's professional successes.¹² However, don't rely entirely on other people to promote you. Klaus cautions that while it is worthwhile to advocate for other people, you must also be an advocate for yourself.¹³

Get a sponsor. A sponsor is a senior individual who uses his or her clout to champion your advancement. You can attract the attention of potential sponsors by doing excellent work, then ask them to help you make sure that the right people hear about your accomplishments.

Very few women were doing corporate/commercial law at a high level when I started. We often got mistaken for the "secretary". Smile and carry on – they will figure it out. A sense of humour takes you a long way. Don't look for issues, look for solutions.

-Anne M. Stewart, Q.C., Partner, Blake, Cassels & Graydon LLP

Developing a personal brand

Be strategic about your brand – consider what special attributes or strengths you can market or which will differentiate you and what you can offer, from other lawyers in your area. Identify your preferred sector or type of potential clients and then look for ways to meet or get in front of them.

-Nicole Byres, Q.C., Partner, Miller Thomson LLP

Establishing a personal brand is an important part of self-promotion. A brand is what differentiates you from other men and women who offer the same services you do.¹⁴ You already have a personal brand – your brand is defined by the qualities that people think of when they think of you. Be strategic about developing your brand so that your brand sends the message that you want to convey.

¹² Susan Van Dyke, "Women lawyers, business development and hockey" Canadian Bar Association Practice Link (July 2010) online: <http://www.cba.org/CBA/practicelink/careerbuilders_advancement/women.aspx>.

¹³ *Supra* note 13 at 11.

¹⁴ Ajay K Sirsi, *Marketing: A Roadmap to Success* (Toronto: Pearson Education Canada, 2010) at 88.

Steps for developing a personal brand

Determine what your brand is currently. Conduct a self-analysis, and ask yourself how others might see you.¹⁵

Decide what your ideal brand would be. How do you want your clients or colleagues to describe you to others? Start by answering the following questions for yourself¹⁶

- Who are you?
- What is your skill?
- What do you promise to deliver?
- How will you add value?
- What is your experience and record?

Create an individual brand message. Sometimes called an “elevator speech” your brand message is a short statement that encapsulates who you are and what you do. It should incorporate your strengths, talents, and skills. It should not sound like a recitation of your resume.¹⁷

Best practice: career coaching

Career coaching is an emerging best practice in law firms. Organizations committed to retaining and advancing women are putting in place coaching and career-pathing programs for new partners and promising associates. Coaching can be especially helpful for women who may self-deselect when they do not observe many women in top positions at their organization. A career coach can help women lawyers develop their individual brand and improve their self-promotion skills. Some firms already retain a coach or may be willing to pay for a coach for an associate or new partner. Other lawyers choose to make this career investment themselves.

Suggested reading

Jennifer Overhaus, *Juggling the Big 3 for Lawyers: A Career Building Plan to Develop Your Personal Brand, Client Business, and Leadership Mindset* (London UK: ProvechZiel Ltd, 2009).

Peggy Klaus, *Brag! The Art of Tooting Your Own Horn Without Blowing It* (New York: Warner Books Inc: 2003).

Carol Wilson, *Best Practice in Performance Coaching: A Handbook for Leaders, Coaches, HR Professionals and Organizations* (2007).

¹⁵ *Supra* note 2 at 22.

¹⁶ *Supra* note 1 at 205.

¹⁷ Ritu Bhasin, “Impactful Business Development – How to Capture, Communicate and Build Your Professional Brand” Women’s Law Association of Ontario Hanging out Your Shingle Series (21 February 2012).

4. Marketing

All lawyers should know some basic marketing principles and develop a simple marketing plan. This section will show you how.

Creating a marketing plan

A marketing plan sets out your goals and outlines the marketing activities you will use to achieve those goals. Entrepreneurs with a written marketing plan have been proven to be more financially successful than those without such a plan.¹⁸ You should draft a basic marketing plan for yourself, even if you will be the only person to look at it. The format will be determined by your practice area and by whether or not other people will rely on your marketing plan. If you need to develop a formal plan, there are tools available for purchase.¹⁹

Marketing plan goals should be tailored to your practice area, your personal strengths, and the stage you are at in your career. You may find it useful to organize your goals into short, medium, and long-term goals. In thinking of appropriate marketing goals, it may be helpful to first come up with a long-term vision for your law practice.²⁰

If you work in a medium to large firm, you might consider discussing your marketing plan with your practice group leader to ensure that your marketing plan is in line with the firm's goals and plans. It will be easier to attain your goals if others in your firm are supportive of your efforts. Further you may find that the firm might be willing to provide financial support of your marketing plan if it aligns closely with the firm's goals.

Goals should be both specific and verifiable, meaning it is possible to determine when they have been attained.²¹ When creating the plan, you should consider what inputs are required to achieve your goals. The following are examples of possible marketing goals that are both specific and verifiable:

- Get 5 new clients by the end of the year
- Increasing billings by 15% this year over last year
- Get one high-profile litigation file in the next 3 years
- Cultivate 2 new referral sources over the next 6 months

¹⁸ *Supra* note 2 at 1.

¹⁹ One US-focused marketing planning tool specifically designed for lawyers is *The Profitable Law Office Handbook: Attorney's Guide to Successful Business Planning*, available for purchase at <<http://www.lawbiz.com>>; see also "Individual Marketing Action Plan" in *The Women Lawyer's Rainmaking Game: How to Build a Successful Law Practice* (West Legalworks, 2007) c 2 at 12.

²⁰ Sara Holtz, *Bringin' In the Rain* (Granite Bay, CA: Client Focus, 2008) at 11-12.

²¹ *Supra* note 2 at 1.

Another useful marketing planning tool for lawyers is the Marketing Roadmap,²² developed by the Akina consulting corporation. The Marketing Roadmap sets out your existing network, and lists your marketing activities. See Appendix 2 for this tool.

Finally, remember to revise your marketing plan from time to time. Update your marketing plan at least once a year, if not more frequently.

Formulate a business development plan that articulates a team approach (if you work with other lawyers) as well as your individual business development objectives: what work would you like to do and for whom? Set targets. What initiatives can the team pursue together? What specifically can you do to strengthen the team?

-Maria Morellato, Q.C., Partner, Mandell Pinder LLP

You absolutely have to be resilient and optimistic. Sales cycles in legal services are long, and in some practice areas very long. If the first 25 doors do not open when you knock, try the next 25. The effort and the persistence will bear fruit, but it can feel from time to time like you are not making any headway. I would suggest setting goals. It's amazing how quickly a month, a quarter and a year can fly by and you look back and wonder what you have accomplished. When you review what you have done each month, you will realize that you are in fact making headway. Throughout my practice, even from the beginning, I always set annual goals (growth of X%, etc.) and always met it. That makes you realize that even in those periods where you are doing a lot of door-knocking and not getting new mandates that you are actually progressing.

Valerie Mann, Managing Partner, Lawson Lundell LLP

Whom to market to

Some groups will be more receptive to your marketing efforts than others. People who already know you and know the quality of your work are much more likely to hire you or send you a referral than are people with whom you have no existing professional relationship. For this reason, Sara Holtz suggests marketing to the following four groups, listed in order of priority:²³

- Your existing clients
- Existing clients of your firm
- Existing referral sources
- Possible internal referral sources within your firm
- Strangers

²² Adapted from Tracy Lalonde, “Coaching Your Lawyers in Business Development” *ALI-ABA Live Video Webcast* (January 24, 2012).

²³ *Supra* note 22 at 18.

Choosing a target market

Your time is valuable, so it is important to focus your marketing efforts on a targeted group of people. The practice of choosing a target market is called segmentation.²⁴ Everyone has different needs; however you cannot solve everyone's legal problems. Segmenting your potential client base will enable you to employ a focused and efficient marketing strategy by concentrating on potential clients who all have similar legal needs.

If unsure how to choose a target market, start by answering the following questions:

- What type of legal work do you want to do, or do you do?
- What is your ideal client? Think about the following factors: size, geographic location, type of legal work, specific industry focus, individual or institutional clients, and specific ethnic communities.²⁵
- Who do you like to work with? If your target clients are people who you enjoy spending time with, then marketing activities will be more enjoyable.²⁶

Once you have chosen one or two target markets, fill in the chart at Appendix 3 and keep it with your marketing plan.²⁷

While carving your own niche is not the only way to excel at our firm, I knew that successful independent business development would be the highest reward. I focused on what I thought was a better future for me. I had absolutely no interest in being dependent on anyone else in the firm. Because I was going into areas that the firm had not been present in, such as technology transactions, and venture capital, and in the early days - fund formations, I had to develop a credibility in those areas first. I did not have anyone else here to work with on developing the space, so I spoke and chaired conferences targeted at that area of the law and industry, networked in industry groups, and joined boards. I started to take on clients and mandates which had a multiplier effect.

-Valerie Mann, Managing Partner, Lawson Lundell LLP

Researching your target market

The next step after deciding on a target market is to learn as much as you can about your client base. Once you have a solid understanding of the needs of your client base, you will be able to offer appropriate services.

²⁴ *Supra* note 16 at 52.

²⁵ *Supra* note 22 at 10.

²⁶ Silvia L Coulter, *The Woman Lawyer's Rainmaking Game: How to Build a Successful Law Practice* (West Legalworks, 2007) at 2-22.

²⁷ Adapted from Tracy Lalonde, "Coaching Your Lawyers in Business Development" *ALI-ABA Live Video Webcast* (January 24, 2012).

Try to answer the following questions about your clients:²⁸

- Who are your clients and potential clients?
- Where do they work?
- What associations do your clients belong to? What are they reading?
- What is important to them?
- What are their problems and concerns?

Market research can be done informally.²⁹ Take every opportunity to talk to your clients about their problems and concerns. Periodically ask your clients how business is going. Follow the news and subscribe to industry publications. Attend industry events or trade shows.

One of the advantages of targeting clients from a particular industry is that you can become an expert on your client's business. This is an effective business development strategy. The most successful women rainmakers report that they have a good understanding of their clients' business.³⁰

Marketing to referral sources

Focusing on business development was a challenge for me. I love the intellectual challenge of practicing law, but had less interest in "building a network" which seemed artificial. Once I realized that a functioning network could be a supportive community, and that to build one was simply nurturing relationships with interesting people, business development was no longer work.

-Lisa Vogt, Q.C., Partner, McCarthy Tétrault LLP

Relationships with the people who regularly refer work to you must be cultivated and developed, just like your client relationships. Anyone can be a referral source, not just other lawyers. The following groups of people are likely referrals sources:³¹

- Satisfied clients
- People who have referred clients to you in the past
- Former colleagues
- People with whom you have a strong professional relationship

²⁸ *Supra* note 16 at 28.

²⁹ *Ibid.* at 29.

³⁰ Catherine Alman MacDonagh and Marcie L. Borgal Shunk, "Women Rainmakers: Keys to Business Development Success" (December 2007) CBA PracticeLink, online: <http://www.cba.org/cba/practicelink/leadership_marketing/women_rainmakers.aspx>.

³¹ *Supra* note 22 at 23.

- Law firms that do not compete directly with you
- Any law firm that cannot act in a matter due to a conflict of interest, or that is simply too busy to take on more work

Make a practice of always letting clients know that you appreciate referrals. Satisfied clients are usually happy to refer more business to their lawyer. Whenever someone refers business to you, send them a personal note to thank them.

You do get to a certain point where you will find that referrals generate more business. If you have done something for a client and they are happy with the working relationship, then they will recommend you to others that they know. Your network continues to grow, and if you spend time and attention on that network, you will find that business continues to increase.

-Valerie Mann, Managing Partner, Lawson Lundell LLP

It helps to be specific when you request referrals. Describe what kind of referrals you want, and tell the other person what you would like them to do.³² The referral source is more likely to follow through if you ask them to do something specific, such as introducing you to someone.

Making time to market

What you absolutely cannot do, and I have seen this happen, is drop business development activities first. Too often, I have seen lawyers who have the best of intentions to attend a networking function, or write a blog or some other form of outreach and they ditch it at the last minute in favour of (i) client work; and (ii) personal obligations. While balancing between competing demands is really difficult, and there will always be the urgent and unscheduled client matter, just simply running out of time in a day should not be a sufficient excuse to miss an event. Plan what you will attend, and participate in it. Make sure that it will be of value to your practice and set goals for it. If you are time-constrained because of various obligations in your life, then try to schedule in key business development initiatives as if they were actual client work.

-Valerie Mann, Managing Partner, Lawson Lundell LLP

Making time for marketing is one of the most common business development challenges reported by lawyers.³³ The following are a few steps you can take in order to maximize your marketing efficiency and make the most of your valuable time.

³² *Ibid.* at 81.

³³ *Supra* note 28 at 2-21.

Know which clients are most likely to give you work. A “high-potential” client is someone who is likely to need your services, open to hiring you, and fits the profile of your ideal client.³⁴ Spend most of your marketing time on these people.

Spend less time on low-value activities. On average, each additional hour per week spent on business development activities results in an additional \$30,000 in origination revenue.³⁵ Recognize the value of business development and prioritize it over other activities if necessary.

Look for ways to turn what you are already doing into marketing activities.³⁶ When you read the daily newspaper, look for articles that might be of interest to others and forward them with a brief note. When you attend meetings sit next to someone who you would like to know better and engage them in conversation.

Market to people you like. If your target market is composed of people who you like and enjoy spending time with, then marketing can be enjoyable instead of being another burden on your limited time.

I am truly interested in other people: how they think, what they care about, how they approach problems. Business development for me has always been about building relationships, and that just starts with a conversation, an ability to listen and genuine interest. You have to build the relationship before you ask for work. And it's always easier to ask for work if you first learn something about your client or prospective client, and then find something you can do for them: e.g. connect them with someone they need to know.

-Lisa Vogt, Q.C., Partner, McCarthy Tétrault LLP

Incorporate business development into your personal activities.

Schedule time for business development. If you say you will get to business development when you have time, it is never going to happen. If you find that you are simply not making time for business development, block off a regular time in your calendar each week for business development activities and stick to it.

During my first five years of practice I tried to focus my business development activities around meal times and evenings as those are natural breaks during the day. At a minimum I would have lunch with someone different every working day of the week and often have the odd breakfast or dinner meeting as well. My work would always be done

³⁴ *Supra* note 22 at 24.

³⁵ *Supra* note 32.

³⁶ *Supra* note 22 at 85.

promptly as that was my marketing calling card – as it should be for every lawyer.

-Dominic Petraroia, Q.C., Managing Partner, Farris, Vaughan, Wills & Murphy LLP

Decide for yourself why you want to market. If you are just doing it because your firm wants you to, or because you have heard it is something all lawyers should do, you are unlikely to be motivated to make the time for marketing. Know your own reasons for wanting to market, whether it is money, security, influence or something else.³⁷

Effective Ways to Approach Business Development

Many lawyers engage in writing and speaking to build their profiles and generate business. Another common business development strategy is to increase your visibility in the profession and in the media. The latter can be fraught with pitfalls and if the budget allows at your firm, consultation with marketing experts to ensure you aren't misquoted or portrayed in the wrong light in the media is highly recommended.

Think about what you like to do and tailor your business development strategy to make the most of your strengths. By choosing activities that play to your strengths, it is possible to succeed at business development without going too far outside of your comfort zone. Try to go outside of your comfort zone (by about 10%), so that you are challenging yourself and developing new skills. You may find that you are, in fact, an engaging speaker.³⁸

I have always been aware of the need to build a client base. I began initially by focusing on acquiring solid practice skills. My first step was to “market” my legal skills to other members of my own firm who could keep me busy and mentor my professional development. As my self-confidence grew I then reached out to become involved in various professional and charitable groups in our community so as to not only contribute to those groups but also to expand the circle of people who I knew and who would know me.

I focused my efforts in three main areas. Firstly, I tried to provide exceptional service to any existing clients I had in hopes that they would refer others to me. Secondly, I built relationships with outside sources of referrals such as accountants and bankers. Thirdly, I became very involved in community/charitable organizations which spread awareness of myself and my legal skills amongst local centres of influence.

³⁷ *Ibid.* at 94.

³⁸ *Ibid.* at 4.

-Dominic Petraroia, Q.C., Managing Partner, Farris, Vaughan, Wills & Murphy LLP

Writing, publishing, and speaking engagements

Writing is a good way to raise your profile and become known as an expert in your field. In the early years of practice, being perceived as a go getter and an “expert” in a particular area can generate a great deal of business and, more importantly, garner the respect of your peers who can and likely will be referral sources in the future. Writing may also lead to invitations to speak at conferences and events. Writing is time consuming, however, and getting published can be difficult. Therefore, it is important to be strategic in order to ensure you get the most out of your efforts.

In the first 5 years of practice I was fortunate to be one of the first women practicing law in Victoria in some time and got some publicity through the local papers, even though at that time I was with the government. That led to introductions and invitations to events and organizations.

In the next stage of practice, I became more active in the community and was again lucky enough to start a firm of all women on Broad Street in Victoria, where we were quickly designated as the Broads on Broad Street, and since we all were practicing Family Law and we became well known (almost famous) throughout the community.

After that period, I continued to focus on volunteer Boards in the community and participation in Professional organizations, all of which continues to increase my visibility in the profession.

-Trudi Brown, Q.C., Partner, Brown, Henderson Melbye

Develop expertise and profile in your area/s of law: write and publish articles, speak at CLE's, offer workshops, do pro bono work, and last but not least, share the benefits of this “no fee” work with clients.

-Maria Morellato, Q.C., Partner, Mandell Pinder LLP

Tips for writing and publishing

Choose your topic carefully. Write about something pertaining to an area in which you want to do legal work or in which you are currently working and wishing to expand.³⁹

³⁹ *Supra* note 2at 81.

Save time by converting work you have already done. Repurpose a legal brief or memoranda into an article. Often you can publish the same piece with minor changes in more than one place.

Make sure your work is seen by the right audience. Legal magazine or journals are a good place to publish if you are writing for other lawyers, but not if you are hoping to reach potential clients. Newsletters and blogs (more on social media below) are an excellent way to disseminate short papers to current and/or potential clients to demonstrate your expertise in a particular area and provide a “tickler” of legal advice to prompt a call for more information.

If unsure what to write about, write a descriptive piece about new developments in your field of law. Descriptive articles are easier to write than analytical articles, and if you can be the first one to talk about a recent change in the law, you are more likely to get broad readership.⁴⁰

Be timely. When writing about current developments in the law, don’t delay. Publish it as quickly as you can.

When you get published, let people know. Send the article to anyone who might be interested, and include a link to your article on your firm’s website.

Have a good picture. Include a nice professional headshot with your publications so that you become recognizable.

Speaking engagements

Writing and speaking frequently go together. Many of the challenges associated with publishing are also true of speaking engagements.

Your local CBA branch in your area of practice and CLE and other continuing legal education organizations are always looking for volunteers to write papers and sit on panels at various education events throughout the year. In the early years of your practice, you may start by writing papers for a partner who has been asked to present in his/her area of expertise. If that is the case, ask the partner to ensure your name appears on the paper and better yet, that you attend with him/her at the presentation. Next time the organization calls, volunteer to do the paper and the speaking engagement.

Speaking engagements need not be outside your firm. Speaking to the other lawyers in your firm at in house continuing legal education in your area of expertise raises your profile within your firm. This is particularly important for young lawyers in larger urban firms where profile

⁴⁰ *Supra* note 2 at 82.

in the firm can be critical to developing a book of business from lawyer cross referrals. Being seen as the “go to” person within your own firm in a particular area can be a powerful business development tool.

Finally, speaking engagements to a particular industry group, for example, one targeting the insurance industry, about a timely new case that may impact their business practices, are another way of generating new business. These events can be held at your firm or a meeting room at a local hotel and can be very effective in building relationships. Lunch being provided and the short time commitment beings asked of your invited guests will attract interested business people who will appreciate the effort and the information provided to them. This can, however, be expensive and may not be as suitable for the smaller firms. Further, these events do not usually generate new business right away. The key is follow-up and over time, the relationship building that is crucial to successful business development.

I embrace the idea of developing business by showcasing knowledge. In the early years of my legal career I published several articles and started teaching tax to accounting students, which helped me to develop confidence and my own style of presenting. As I became more senior, I stopped teaching tax to accounting students – replacing that with presentations to other professionals, who soon became referral sources.

-Lori Mathison, Managing Partner - Vancouver, Dentons Canada LLP

Alternatively, and at no cost, is seeking out community organizations which may be interested in having a lawyer come speak to their group on a topic of interest to them. These speaking engagements can be particularly effective in building business and a referral network for lawyers engaged in personal legal services like family law, estate planning, elder law, small business, real estate conveyancing, personal injury, and the like.

...Develop your profile outside your firm's domain: write and publish articles/papers, in regard to latest developments in your area of practice; offer to write papers with a senior lawyer for a CLE and/ or other publications including relevant trade magazines; consider how the internet might be used as a tool to distribute such work- again, seek the guidance, direction and approval of your firm as appropriate in developing your profile.

...Become known as an expert within your firm and with your firm's client base by distributing synopses of the latest cases and legislative changes in your area of practice (it is important to team-up with your principal, mentor or practice group in this regard; seek the guidance and advice of senior counsel on how best to implement such a business development or “cross-selling” plan).

-Maria Morellato, Q.C., Partner, Mandell Pinder LLP

Tips for public speaking

Weigh the costs and benefits of speaking. Before you agree to a speaking engagement, consider how long it will take to prepare, and whether the payoff will be worth it. Consider who the audience will be and how much exposure you will get beyond the live audience.⁴¹

Write your own introduction. In your introduction, tell the audience how you help people with problems like theirs.⁴²

Invite clients and prospects.

Create a holdback, such as an article or a checklist. Offer to send it to anyone who requests it after your presentation.

Spend time talking to people one-on-one both before and after your presentation.

Re-use your speech. Deliver the same speech at different events, or repurpose it as an article, blog post, podcast or client alert.

Other ways to raise your profile

Being quoted in the newspaper can be an effective way to raise your profile, but as noted above, this must be carefully executed. Consider working with your firm's communication department to notify the industry or legal media about your publications or speaking engagements. Remember to consult your firm's media policy before agreeing to talk to a reporter.

Another effective way to increase your visibility is to be profiled in the legal media. Surprising to some, your inclusion in such publications can be orchestrated with the assistance of your colleagues since many of these organizations name "experts" in particular areas based on votes for the peer group. Several publications, such as L'expert and Best Lawyers in Canada regularly publish profiles of leading lawyers in various areas.

My priority during my first 5 years of practice was simply becoming the finest lawyer I could be, with my "clients" being the partners and senior lawyers who gave me work; learning as much law and business acumen as possible, and building trust and credibility with those lawyers was the critical piece. In years 5 to 10 that relationship building extended to clients, but also lawyers outside the firm (e.g. by participating in CBA subsection meetings... and the critical piece here is participating, not just attending) and other industry consultants (e.g. real estate brokers,

⁴¹ *Supra* note 22 at 114.

⁴² *Supra* note 2 at 83.

appraisers, surveyors, bankers), all of whom expanded my network and therefore my ability to assist my clients. And finally, in years 10 +, joining the boards of community organizations extended my reach, and was also personally rewarding. Had I been more strategic, I should have joined one or more industry boards.

-Lisa Vogt, Q.C., Partner, McCarthy Tétrault LLP

Suggested reading

Sara Holtz, *Bringin' In the Rain: A Woman Lawyer's Guide to Business Development* (Granite Bay, CA: ClientFocus, 2008).

Ajay K Sirsi, *Marketing: A Roadmap to Success* (Toronto: Pearson Education Canada, 2010).

5. Online Marketing With Web-based and Mobile Technologies

Modern marketing is increasingly focused on the effective use of digital tools such as websites, blogs, social media, client relationship management systems, apps, etc. Now that virtually all businesses are using web-based and mobile technologies, it is no longer a question of “if” you should use such technologies for marketing and business development, but “when and how”. Consider this survey data collected from in-house lawyers (a key target of lawyer and law firm marketing); in-house lawyers of all ages report using social media,⁴³ and one survey found that 51.4% of in-house counsel are less likely to hire an outside lawyer who does not have an online presence.⁴⁴

Compared with traditional media, web-based and mobile technologies offer a broader reach, frequency, usability, immediacy and permanence to marketing efforts. These technologies create highly interactive platforms through which individuals and communities share, co-create, discuss and modify user-generated content.

Online marketing tools are especially useful for women lawyers who are not comfortable with traditional networking opportunities offered by firms, and because they provide new ways for women to engage in business development while balancing work with personal and family obligations. For example, web-based and mobile technologies offer opportunities for women to

⁴³ Loeb & Loeb and Amos Content Group, “Achieve Measurable Lead Generation, Increased Brand Awareness and Business Development Through Social Media” 2012 Legal Marketing Association Annual Conference (16 March 2012).

⁴⁴BTI's How Clients Hire: The Role of Legal Directories and Online Lawyer Profiles (BTI Consulting Group, 2011) at 26.

stay engaged while away on leave, and to on-ramp back into practice when they return. In one example, the authors of *Social Media for Lawyers: The Next Frontier* began blogging as a way to build up their law practices after spending time raising children. For both women, their blogs brought them recognition as experts in their fields and led to further business development opportunities.⁴⁵

What kinds of online marketing is right for you?

Online marketing tools can help you to build your reputation, connect with clients or potential clients – all important objectives in business development. However, because online tools have different characteristics, they should be used strategically, with a particular goal or purpose in mind. Below is a list of some of the few possible types of online tool, and the goals that can be achieved using such resources:

Social Networking: Share and exchange information and ideas, engage and/or connect with virtual communities and networks, stay in touch with clients and potential clients, collect data and feedback. LinkedIn is the most used business social networking site. While users can be ‘passive’ by just posting content, engaging the interactive functions maximizes the marketing value of this tool.

Electronic Newsletters and Blogs: These tools provide platforms to share current information which is of particular value or interest to your target audiences, boost your visibility and builds your reputation as a thought leader in a particular area of the law.

Twitter: Another form of social networking service which allows for the exchange and sharing of information, in 140 characters or less! The objective is to engage large number of ‘followers’ in target audience through engaging in interactive, thought leadership. Because it is virtually impossible for Twitter accounts to be engaging and relevant to a broad range of people, personal Twitter feeds are more effective than ‘firm’ Twitter posts. Twitter requires frequent ‘tweets’ of quality content of interest to potential market in order to optimize efforts.

Web-sites: Repository or landing place for your/your firm’s brand, contact & profile information, as well as useful, high-quality, and targeted content (such as blogs and electronic newsletters) for clients and potential clients.

Search Engine Optimisers/Analytics: Custom designed tools, used in conjunction with the above noted tools to ‘mine’ data or information such as type of user accessing your content, frequency of visits, etc. in order to further customize content and marketing initiatives.

⁴⁵ Carolyn Elefant & Nicole Black, *Social Media for Lawyers: The Next Frontier* (American Bar Association, 2010) at xvii.

Best practices for Online Tools

Social networking

LinkedIn (<http://www.linkedin.com>) is designed specifically for professional networking. It has the largest user base of any business-focused social networking service.⁴⁶ Conference organizers regularly use LinkedIn to get ideas for potential speakers, and it has become common for employers to consult the LinkedIn profiles of job applicants. Potential clients might want to consult your LinkedIn profile prior to meeting you for the first time.

LinkedIn users can create an individual profile that functions as an online curriculum vitae. Your profile should include information about what kind of work you do, as well as your past work experience and education. You can also connect with other users and share information with your contacts. Marketing consultant Amy Knapp has created a “LinkedIn Strategy Worksheet” to help lawyers get the most out of their LinkedIn accounts.⁴⁷ She suggests considering the following questions:

- In what specific area of law do you want to be the go-to professional?
- What are the titles of people with whom you would like to connect? Who among your existing contacts falls into this category?
- Where is the greatest market opportunity in the next 12 to 18 months?
- Which other colleagues or professionals are doing business with your target group?
- If a potential client were to search for a lawyer using Google, what might he or she type in the search bar?

The full worksheet is available online.⁴⁸ Other tips for an effective LinkedIn page are as follows:

- Ensure that your profile includes a professional photo;
- Create a complete profile that includes a description of your prior work;
- Be cognizant of Law Society rules regarding describing yourself as an ‘expert’ within any particular practice area;
- Keep the content up to date; and

⁴⁶ Adrian Dayton & Amy Knapp, *Linked in and Blogs for Lawyers: Building High Value Relationships in a Digital Age* (West LegalEdcenter, 2012) at 1.

⁴⁷ *Ibid.* at 20.

⁴⁸ <http://www.knappmarketing.com/linkedinworksheet>

- Proof read content – typos and grammatical mistakes detract from your brand and reputation.

In contrast to LinkedIn, Facebook (<http://facebook.com>) has more of an emphasis on personal rather than professional networking; however, Facebook can still be a useful resource for lawyers. Facebook provides an easy way to stay in touch with a large group of friends and acquaintances. You can use Facebook to reconnect with former classmates or colleagues that you may have lost touch with over the years. It can also help you remember your contacts' birthdays and milestone events, such as weddings or births. Some lawyers are able to use Facebook to generate business. In a recent issue of *Law Practice Magazine*, Michele RJ Allinotte writes that she uses Facebook for business purposes and that it brings in new clients and leads.⁴⁹

Every social network brings a different strength or angle to content distribution. For Facebook, those strengths are a greater frequency of relationships built upon "real life" personal ties and a stronger alignment between these relationships and one's local community.

-Steve Matthews, President and Founder, Stem Legal Web Enterprises Inc.

Blogs and Twitter

Legal blogs have become an important source for up to date legal news and analysis, and legal bloggers occupy an important place in the profession. Prominent legal bloggers are often asked to contribute to print journals and invited to speak at conferences. If you enjoy writing, blogging can be an effective way to establish your reputation as a leader in your chosen practice area. However blogging requires a significant time commitment. In order to be successful, a blog should publish new content at least once a week.

When starting a new blog, try to target the blog's subject and audience as narrowly as reasonably possible. There is virtually no market for "general interest" law blogs that are all things to everyone. The world, and especially the legal market, is highly fragmented, and readers demand the ability to access only the subjects they want. Accordingly, your blogs should drill down to as deep a level of subject specificity as possible: e.g., not just litigation, but class actions; not just class actions, but class action defense; not just class action defense, but faulty heart medication class action defense.⁵⁰

A good law blog starts by identifying a tight focus, determining what it will cover – and, perhaps just as importantly, what it won't. It also identifies its audience, asking: Who, exactly, are you writing for? What,

⁴⁹ Michele RJ Allinotte "Finding Friends (and clients) on Facebook" *American Bar Association Law Practice Magazine* (January-February 2012).

⁵⁰ Steve Matthews, President and Founder, Stem Legal Web Enterprises Inc. <http://www.stemlegal.com/> .

precisely, do they care about? Perhaps the number-one rule of successful content marketing is that you must write for your readers, not for yourself. The regular application of this rule will shape what you write about and how you write it. Are you targeting senior corporate counsel or everyday consumers? You cannot use the same tone, language and approach for both.

-Steve Matthews, President and Founder, Stem Legal Web Enterprises Inc.

The authors of *LinkedIn and Blogs for Lawyers* offer some suggestions to help generate ideas for blog posts:⁵¹

- What challenges are your potential client's facing?
- What interesting articles have you read lately, and what can you add?
- How do other industries deal with the same challenges that your clients are facing?
- What kinds of questions have you received lately from readers or clients?
- What interests you about your practice area?
- What mistakes have you made and what did you learn?
- What are some current trends in your industry?

In addition to blogging, lawyers can also consider using Twitter. Twitter format necessitates a form of communication that is very streamlined and direct, however Twitter is an effective tool for distributing information to a wide audience, and it is also a useful tool for research as it is possible to track a particular subject and to keep up to date on new developments⁵²

Blogging and tweeting frequently go together. Tweeting is more instantaneous than blogging. While your blog posts can live online forever for future clients to read, your tweets will probably only be read by people who are already following you. You can use Twitter to announce when you publish new content on your blog, or you can use it to send out short announcements that do not merit a lengthy post.

A good lawyer Twitter feed keeps two things in mind: (1) it's all about the clients, and (2) it's not all about the lawyer or her firm. By all means, circulate your personal content through Twitter; but if your Twitter feed contains only your content, you risk appearing boring and narcissistic. Engagement on Twitter is a must, and that starts by following and having conversations with other industry leaders; tweeting or retweeting their posts at least as much as your own. Build a strong list of online

⁵¹ *Supra* note 49 at 83.

⁵² Daniel Schwartz, "I Tweet. Therefore, I Am." *Law Practice Magazine: The Social Media Issue* (January-February 2012)

sources that will help you 'break' the latest industry news, and invest your time regularly in the medium.

-Steve Matthews, President and Founder, Stem Legal Web Enterprises Inc.

Websites

The world of online marketing has reached a point where every law firm should have a website. For many people, Google has replaced the phone book, without a website, you lose the opportunity for clients to find you.⁵³ Even if all of your clients come from referrals, it is still important to have an online presence. Potential clients commonly get more than one name from a referral source and visit the lawyers' respective websites before deciding who to contact.⁵⁴

If you do not yet have a website, you can hire a web designer to create a simple one for you for a few hundred dollars. The following are a few things to keep in mind when considering setting up a website.

Think about your website through the eyes of your clients. Avoid legal jargon. Clients want to know how you help people with problems like theirs, so put that information in a prominent place.⁵⁵

Write an effective biography. A good bio should address who you are and how you got to where you are, whom you act for, and what you do.⁵⁶ It is important that individual law firm bios be updated at regular intervals.

Include your picture. It is common practice for lawyers to include a professional headshot with their online biography.

Include your contact information. Visitors to your website should be able to quickly find out where your office is located and **how to get in touch with you.**

A word about rules, confidentiality, etc.

It should go without saying that your use of technology must comply with Rule 4.3 in the Code of Professional Conduct for BC, as well as your firm's social media policy. In addition, the following are a few best practices for social media:

⁵³ Pat Yevics "Adding New Tools to Your Marketing Toolbox" *ABA General Practice, Solo & Small Firm Division Technology eReport* (June 2010).

⁵⁴ Anne Bothwell, "Web Sites as Branding Tools: Quick tips for Creating a Positive Experience for Prospects" *Law Practice Magazine* (January-February 2009).

⁵⁵ Allison C Shields "What Makes a Good Lawyer Biography?" (6 June 2012) online: Slaw <<http://www.slaw.ca>>.

⁵⁶ *Ibid.*

The biggest concern with social media for most lawyers is confidentiality. You must protect client confidentiality when blogging, just as you would if you were writing an article to be published in print media. The best practice is to not write about your clients at all, even with identifying information removed, unless you have the client's consent.

All the rules regarding lawyer advertising also apply to online activity. For instance, in British Columbia, lawyers cannot refer to themselves as specialists unless they comply with [NTD: Nicole to confirm BC Law Society Rule etc.] Ensure that your LinkedIn profile does not state that you are an "expert" or "specialist" unless you are so certified.

Read and follow your firm's social media policy. Your firm may have a policy that limits social media use. Check the policy before you start blogging or interacting with clients online. While it is not against the Rules of Professional Conduct in British Columbia, it is not recommended to "friend" your clients on Facebook. Additionally, when communicating with clients, keep in mind that online forms of communication are not secure.

Suggested reading

Adrian Dayton & Amy Knapp, *Linked in and Blogs for Lawyers: Building High Value Relationships in a Digital Age* (West LegalEdcenter, 2012).

Carolyn Elefant & Nicole Black, *Social Media for Lawyers: The Next Frontier* (American Bar Association, 2010).

6. Building Relationships

At its root, everything you do to develop your business is about building relationships. This section focuses on how to make connections with people and how to develop strong relationships. If you have a large and diverse network of contacts, opportunities and clients will naturally come your way. If you walk into a networking event hoping to land the perfect client, you are likely setting yourself up for disappointment. Your goal starting out should just be to meet new people and get to know them.

Business development is all about building trusted relationships, demonstrating and clear and sincere interest in the 'other person' and getting to know them as people before you would ever think of them as a potential client. Always ask 'how can I help you' and then follow through.

Sue Paish, Q.C., President and CEO, LifeLabs Medical Laboratory Services

There are numerous ways to meet people and build your network. By using your strengths, it is possible to connect with potential clients and referral sources without going too far outside your comfort zone.

If you enjoythen try
Meeting new people	traditional networking, i.e. cocktail parties
Talking to people one-on-one	taking people out for lunch or coffee
Research and writing	publishing articles
Public speaking	Presenting at conferences or teaching
Online media	Social media and blogging

When work is busy, it is difficult to make time for networking and business development activities. However, it is important that time is made each week for business development as networking efforts tend to be more successful if they are done regularly rather than in frantic bursts after long periods of dormancy. Because you will want to try and participate in networking and business development while trying to balance a busy practice and personal obligations, it is important that you consider your opportunities, and proactively and strategically decide which activities will be the most fruitful and the best fit for you.

My business development style is predominately centered around building relationships with clients, perspective clients and centres of influence. Accordingly, when I am not in the office working on files I am out of the office meeting people and involved in community affairs.

-Dominic Petraroia, Q.C., Managing Partner, Farris ,Vaughan, Wills & Murphy LLP

I developed my business by getting involved in many aspects of my community - volunteer Boards, Professional clubs and organizations, and getting involved in my professional organizations, and attending all lawyer centered events.

-Trudi Brown, Q.C., Partner, Brown, Henderson Melbye

Building your internal network

A good place to start networking, especially for junior lawyers, is within your firm. The following are some ideas for ways to raise your internal profile:

- Join committees and attend firm events
- Take advantage of professional development opportunities offered by your employer, such as lunchtime lectures
- Consider whether there are any opportunities to offer professional development seminars to others in your firm
- Eat your lunch in the cafeteria or break room, or make plans to go out for lunch with colleagues

My first step was to “market” my legal skills to other members of my own firm who could keep me busy and mentor my professional development. As my self-confidence grew I then reached out to become involved in various professional and charitable groups in our community so as to not only contribute to those groups but also to expand the circle of people who I knew and who would know me.

-Dominic Petraroia, Q.C., Managing Partner, Farris ,Vaughan, Wills & Murphy LLP

Join external organizations

In addition to getting involved in the firm, begin to build up your profile in the legal community. Join organizations, and be an active member. Sign up for mailings and attend events. Find ways to get involved in the organization’s operations by joining committees or offering to speak at events.

The following are some ideas for types of organizations to join:

- Bar associations and other professional organizations
- Organizations that your clients belong to, such as industry associations
- Any organization that you have a genuine interest in
- Join a board of a volunteer organization

Tips for networking at social events

The following are some tips for traditional stand-up networking events:

Ask open-ended questions to prompt conversation. Some examples of conversation openers are: “What do you think of the event / the speaker / the venue?” “How are you enjoying the conference?” or “How did you first get involved in this organization?”⁵⁷

Be interested, not interesting.⁵⁸ The secret to being a great conversationalist is to figure out what interests the other person. Express genuine interest in what she or he has to say by listening actively. While straightforward in theory, doing this well takes practice.

Be positive. People like to be around positive people, so don’t complain or express negativity when you are making a first impression.⁵⁹

If you don’t know anyone at the event, introduce yourself to someone. Eighty eight percent of people consider themselves to be shy in social situations.⁶⁰ If you are nervous about approaching someone, remind yourself that the other person is probably shy too, and they will be relieved that you made the first move. Look for someone standing alone and be his or her “saviour”.

Set yourself a goal as to how many people you will meet. Often people stay within their comfort zone and speak to only those people that they came with or already know well. Once you have decided to dedicate time to an event, you will want it to be worthwhile. Try to push yourself to meet more people.

Don’t engage in aggressive self-promotion the first time you meet someone. The first step is to get to know the new contact. Using the hard sell too early is usually counterproductive.⁶¹

Prepare some topics to talk about before you go. Read up on current events to get ideas for conversation topics. Look at the most commonly read news source in your region so that you will have a common frame of reference with the other attendees.

Attend with a colleague. But make sure that you both understand that you are going to support each other in meeting other people. Don’t spend the entire event talking to the colleagues that you came with.

⁵⁷ *Supra* note 28 at 3-26.

⁵⁸ *Supra* note 1 at 126.

⁵⁹ *Ibid.* at 343.

⁶⁰ Susan Roane, *What Do I Say Next?: Talking Your Way to Business and Social Success* (New York: Warner Books Inc: 1997) at 237.

⁶¹ *Supra* note 1 at 353.

Ask someone to introduce you. Pair up with someone more senior, or someone who is simply good at networking, and ask them to introduce you to their contacts.

If someone seems like a good connection, plan a definitive next step. Try some variation of the following: “I’d be interested to talk more about the challenges you are facing in x industry. Could we continue this conversation over lunch sometime in the next month?” Then collect the person’s card and follow up with them.⁶²

Develop a system to record a contact’s interests/details. It can be difficult to remember the details of your discussions at a networking event at your next meeting with a contact. Develop a system to take notes so that you can ask a personal and meaningful questions the next time you see them. For instance, if you were told that they were going on a holiday in Hawaii, you can ask about their trip at your next meeting. Some people find that the “notes” section in Outlook works well for this purpose.

Focus on developing an authentic and sincere working relationship with the client. Let them know you care - mean it, show it and maintain your objectivity and professionalism.

-Maria Morellato, Q.C., Partner, Mandell Pinder LLP

For more tips on making small talk, see *How to Work a Room* by Susan Roane.

Follow-up with your new contacts

In most cases a new connection will not become an important business contact after the first meeting, or even the first several meetings. Experts say that it takes an average of seven contacts before a sale is made.⁶³ Chances are that someone you meet for the first time won’t have any legal work to give you right away, but if you keep in touch with a prospect over months or years, eventually some opportunity for work will arise.⁶⁴ Therefore making plans to follow-up with the people you meet should be an integral part of any networking activity.

Below is a list of ideas for keeping a new relationship going:

- Send a note after a first meeting
- Send articles of interest with a personal note
- Make plans to meet for lunch or coffee or drinks
- Send information about your firm

⁶² *Supra* note 4

⁶³ *Supra* note 22at 54.

⁶⁴ *Supra* note 28 at 1-10.

- Send your organization's newsletter
- Invite the contact to an event hosted by your organization
- Invite the contact to connect with you on LinkedIn or other social media
- Send holiday cards
- Introduce the contact to someone you think they should know
- Call to ask for advice about an area of their expertise

Use your personal network

Most women already have a large group of personal contacts who could be potential referral sources, or even clients. Yet many women resist networking with their friends out of concern that they might be taking advantage of the friendship. Sara Holtz recommends changing your mindset. If the friend is a businessperson she or he will understand the need for people to market their services.⁶⁵ Asking a friend for business does not mean that you do not value the friendship or that you don't respect the boundaries between friendship and business. If you don't feel comfortable working with your friend yourself, consider referring him or her to a colleague.⁶⁶

Suggested reading

Theda C. Snyder, *Women Rainmakers' Best Marketing Tips*, 2nd ed (American Bar Association, 2003).

7. Generating Business

The ultimate goal of all of your business development efforts is to generate client business. The majority of time during the sales process should be spent on relationship building and preparation, but at some point it will be necessary to actually ask for work. This section addresses the question of when and how to make the pitch, and how to address concerns.

Attributes of successful rainmakers

In a law firm, a rainmaker is a partner who is able to maintain a book of business large enough to generate work for the firm. Some women may think that they cannot be a rainmaker because they do not see themselves as the type of smooth-talking, back-slapping male partner typically associated with the role. However, this stereotype does not accurately describe what it takes to

⁶⁵ *Supra* note 22 at 77.

⁶⁶ Deborah Epstein Henry, "Business Development Beyond Rubber Chicken Dinners," online: Women's Online Resource Centre <<http://rc.lsuc.on.ca/jsp/worc/index.jsp>>.

be a rainmaker. The ability to generate business does not depend upon having a talent for sales, or being connected to a “good old boys” network. Most rainmakers don’t see themselves as “selling” at all. Instead they see themselves as helping people find appropriate solutions to their legal problems.

There is no single personality type necessary for being a rainmaker and there is no single type of approach that is successful in developing work, but there are certain qualities that are associated with higher originations. All of these are attributes that can be improved with practice. Furthermore, these qualities are many of the same qualities associated with being a successful lawyer.

People who are most successful at generating business are:

Knowledgeable about their clients’ business – one study found that women lawyers who said they understood many aspects of their clients business reported 100% higher originations than those who did not;⁶⁷

Good listeners – they give clients focused attention, and make them feel valued and understood;⁶⁸

Empathetic – they are able to shift perspective to understand how their clients see the world;⁶⁹

Confident – they are comfortable promoting themselves because they believe that the services they are offering will help achieve the client’s goals;

Effective negotiators – studies show that rainmakers score higher than service partners on measures of “ego drive,” which is the ability to persuade others for the sake of persuading;⁷⁰

Resilient – they do not dwell on rejection, but instead move on to the next opportunity;⁷¹

Customer service-oriented – they genuinely like people and want to help;⁷²

Leaders – women in leadership positions report higher originations than those who are not leaders.⁷³

⁶⁷ *Supra* note 37.

⁶⁸ Ed Poll, “How Women Lawyers Can Make Rainmaking Work” American Bar Association Law Practice Magazine (August 2010).

⁶⁹ *Supra* note 28 at 10-5.

⁷⁰ *Ibid.* at 10-3.

⁷¹ *Supra* note 37.

⁷² Kathleen Brady, “Marketing and Client Development Activities” American Bar Association Law Practice Today (February 2009).

⁷³ *Supra* note 37.

Deciding when to ask for work

Successful rainmakers do not think of selling, or “pitching”, as an isolated event, but rather as the outcome of a multi-step process that involves building relationships and gaining knowledge to understand the prospect’s needs.

The best time to make a pitch is when the prospect has a problem or opportunity that you can help with.⁷⁴ It would not be unusual for months or years to pass before such a problem or opportunity arises.

In some practice areas you may be invited to respond to a Request for Proposal (RFP). If you are invited to respond to a RFP, you should always do so. Even if you don’t believe you are likely to be hired, submitting an RFP can be a way to get your foot in the door and could lead to more opportunities later on.⁷⁵ For those at large firms, be aware that most large firms have resources that can assist you in responding to RFPs and protocols regarding responses, so if you receive an invitation, involve the appropriate people in your firm.

Making the pitch

Asking for work is one of the hardest parts of most lawyers’ jobs. Everyone faces rejection from time to time, and some people take it personally. If this is a problem for you, practice separating yourself as a person from the services you offer. Just because someone does not choose you to provide legal services does not mean they do not think you are a good lawyer or like you as a person.⁷⁶ The more times you ask for work, the easier it becomes.

When the time comes to make a “sales pitch” prepare for it as thoroughly as if you were preparing a case on behalf of a client. There is no single way to ask for business. Some people are comfortable making a direct ask by saying, “I’d like to do your work.” Other people ask more indirectly. Observe how others do it and experiment with different techniques until you find a way that feels genuine for you.

Don’t be afraid to ask for work. And don’t be afraid to hear “no” – it’s not personal. Just move on to the next prospect. I literally incorporated some of my now significant clients so it has always been important to me to play the long game.

-Lori Mathison, Managing Partner - Vancouver, Dentons Canada LLP

⁷⁴ *Supra* note 4

⁷⁵ *Supra* note 28 at 6-7.

⁷⁶ *Supra* note 22 at 133.

Two pieces of advice I received that now seem obvious, but were not (to me at least). The first piece of advice was not to be shy about asking people for work – or at least telling them you would really like to get some work from potential clients. The second piece of advice was be persistent. Don't give up after the first or even after several rejections or 'non- responses' to your marketing efforts. Sometimes it takes years to convince a client to retain you.

-Nicole Byres, Q.C., Partner, Miller Thomson LLP

Tips for successful pitching

Figure out who makes the decisions regarding hiring outside counsel. This is the person that you should make your pitch to.

Ask questions to assess the prospect's needs with respect to the specific legal issue. Spend no more than 20 percent of the time talking and listen the rest of the time.⁷⁷ Ask the prospect about their goals, the challenges they face, and their expectations. Refer the article at Appendix 4, "20 Questions You Should Ask Current and Prospective Clients" for ideas for what to ask.⁷⁸

Describe the benefit that you can provide. Explain the features of the services that you or your firm can provide and how it addresses the prospect's identified needs.⁷⁹

Be enthusiastic. Show that you care about what the client is doing and express your desire to help.⁸⁰

Sell the whole firm. Even if a prospective client does not need your services at this time, he or she might need a different kind of legal assistance. Be prepared to refer them to other practice areas at your firm.

Preparing to ask for work

Where a prospect does not initially seem receptive to working with you, your work is not done yet. Ask open-ended questions to determine the underlying reason, and consider ways to address any concerns. This discussion is a valuable opportunity to understand the client's needs better.

Try to anticipate possible concerns, and consider how you might be able to address them. You may find it helpful to prepare your responses beforehand.⁸¹

⁷⁷ *Supra* note 28 at 4-7.

⁷⁸ William J Flannery Jr, "20 Questions You Should Ask Current and Prospective Clients" online: <<http://www.wjfinstitute.com/?t=18&dd=1319>>.

⁷⁹ *Supra* note 28 at 4-3.

⁸⁰ *Ibid.* at 7-5

⁸¹ *Ibid.* at 7-12.

Common objection - The prospect already has counsel

Possible response - Ask under what circumstances they would be open to working with other firms. Explore how you might be able to supplement that relationship.

Common objection - The prospect is not in a position to hire you.

Possible response - Ask who is responsible for making decisions regarding outside counsel.

Common objection - The prospect says you are too expensive.

Possible response - Ask if they would be open to hiring you if cost were not an issue. This will help you to determine whether the price is the real concern.

Common objection - The prospect wants a more diverse group.

Possible response - Ask questions to figure out what kind of diversity is important to the prospect and why. Consider your firm's strengths on this front. For those at large firms, be prepared with statistics and information about diversity initiatives at your firm.

Common objection - The prospect wants service in another language.

Possible response - Make yourself aware of the different language capabilities of your firm's lawyers and staff so you can tell the prospect which languages are spoken at your firm.

The most important thing to remember is that if the prospect ultimately decides not to hire you, stay in touch anyway.⁸² In a few months or years, they may have a new problem or opportunity that you could help with, or they may decide that they are not happy with their current representation and switch firms.

Suggested reading

Silvia L Coulter, *The Woman Lawyer's Rainmaking Game: How to Build a Successful Law Practice* (West Legalworks, 2007).

⁸² *Ibid.* at 8-4.

8. Maintaining Client Relationships

In most law firms, existing clients are by far the biggest source of new work. On average, 80% of new business comes from existing clients.⁸³ Therefore marketing to current and former clients should be a large part of any lawyer's business development strategy. Make sure you get to know your firm's existing clients, and that clients get to know you.

Don't take your clients for granted by assuming that they will continue to give you work just because they have in the past. Every time you do work for a client is an opportunity to build client loyalty by demonstrating the quality of your work and providing superior service.

Some strategies for building client loyalty

Distinguish yourself by providing excellent customer service. Each year BTI Consulting publishes a list of lawyers at firms around the world that have been identified by corporate counsel as "client service all-stars." The report includes the key attributes of client service leaders.⁸⁴

Express a genuine interest in your clients and their work. Try to put yourself in your clients' place and understand their perspective. Ask questions and listen to what they have to say.

Learn as much as you can about your clients' business. Most clients state that they want outside counsel to learn more about their work, and studies show that the most successful rainmakers are the ones who have a good understanding of their clients' business.⁸⁵

Know who your top clients are. Top clients are not only the ones who generate the most revenue for the firm, but also those who are the most loyal.

Keep in touch with your existing clients at least 4 times a year.⁸⁶ Visit them at their office, or take them out for lunch. Give them tickets to events. Send them your firm's newsletter and send holiday cards.

Don't be afraid to make friends with your clients. Some male lawyers might bond with their clients over sports or drinks. This may work for you too, but be aware that there are other ways to connect. Consider things you might have in common with your client on a personal level and consider opportunities to connect around those. Alternatively, simply take a genuine interest in your client beyond their role as such.

⁸³ *Supra* note 22 at 18.

⁸⁴ Report for 2015 available online: <<http://www.bticlientserviceallstars.com/>>; see also Coulterat 11-5.

⁸⁵ *Supra* note 37.

⁸⁶ *Supra* note 28 at 8-2.

Be approachable. You want your clients to feel free to ask you “dumb” questions. This will build your rapport and may even lead to opportunities for work. For example, if you advise on the early structuring of a deal (even if informally) you are the logical lawyer to involve if the deal moves forward.

Ask clients how you can serve them better. Take their feedback seriously.

I try to do the very best job I can and to let clients know that I truly care about them and their issues. The vast majority of new business comes from existing relationships.

-Anne M. Stewart, Q.C., Partner, Blake, Cassels & Graydon LLP

Consider how to keep your current clients happy; find specific opportunities to offer your time and talent to develop goodwill among your client base. [Also make sure to] find the time to call your clients; stay in touch, no matter how busy you may be . . . Communicate with your clients, let them know what you are doing; they like to hear about your successes . . . Don't forget the personal touch.

-Maria Morellato, Q.C., Partner, Mandell Pinder LLP

The most important business development activity is to do good work and provide excellent service to your clients. There is no better referral source than a satisfied client singing your praises to family, friends and colleagues. In addition, it's important to build a network of referral sources. Depending on your practice area this may be other lawyers, accountants, bank managers, investment advisors etc. Provide responsive, competent and cost effective service to their client referrals to you, and also make sure you “touch” them regularly, whether it's a coffee catch up, a newsletter, an invitation to a function or a presentation.

-Nicole Garton, Lawyer and Mediator, Heritage Law



Career Advancement into Partnership

Associate Guide

November 2015

Contents

- INTRODUCTION 6
 - Who is this guide for? 6
 - So you want to be a partner—why? 6
 - Outline of this Guide..... 7
- CHALLENGES 7
 - Introduction..... 7
 - Gender Biases 7
 - Lack of Role Models and Champions..... 9
 - Lack of Opportunities 10
- PRELIMINARY STEPS – KNOW YOUR FIRM 10
 - Introduction..... 10
 - Do You Know Your Firm’s Written—and Unwritten—Partnership Criteria? 11
 - Checklist for Partnership Admission Policy and Practices 11
- PERSONAL AUDIT 12
 - What is a Personal Audit?..... 12
 - Checklist for Personal Audit..... 13
- PRACTICE AUDIT..... 15
 - What is a Practice Audit?..... 15
 - Checklist for Practice Audit..... 16
- PERFORMANCE REVIEWS 17
 - Introduction..... 17
 - What is a Performance Review? 17
 - How to Benefit from Performance Reviews 18
 - Specific Questions to Ask in a Performance Review..... 19
 - What do you do if Your Firm Does Not Hold Formal Performance Reviews? 20
 - Negative Performance Reviews 20
 - Women’s Perspective: What are the Challenges and Opportunities in Performance Reviews?..... 21
 - Conclusion 22
- BECOMING AN ACTIVE MANAGER OF YOUR CAREER..... 22
 - Introduction..... 22
 - The Need for a Career Plan..... 22
 - Using Your Personal and Practice Audits..... 23

Developing and Setting Goals.....	23
Building a Sustainable Practice.....	25
Delegation and Leadership.....	25
Understanding the Importance of Clients	26
Building Your Client Base.....	26
Building Your Brand.....	29
Selling your Services	31
Checklist for Building a Career Plan	32
USING YOUR MENTOR OR SPONSOR RELATIONSHIP EFFECTIVELY	33
Introduction.....	33
What is a Mentor?.....	33
What is a Sponsor ?.....	34
Why Should I Have a Mentor and a Sponsor?	34
Finding a Mentor.....	35
Finding a Sponsor	35
Your Role as Mentee/Protégé	36
Women’s Perspective: Challenges and opportunities in finding mentors and sponsors	36
CONCLUSION.....	37
APPENDIX 1 - INDIVIDUAL LAWYER CAREER PLAN.....	38
APPENDIX 2 – CHECKLISTS.....	43

Executive Summary

Who is this guide for?

This guide is for women associates who want to be a partner. While men associates may find the information valuable, it was written particularly as a useful resource for senior women associates looking forward and planning for their future careers. A guide for law firms is available online:

http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Justicia/Law_firm_guide_2012.pdf.

Challenges

The research shows that women lawyers face three main challenges: gender bias, lack of role models and champions, and exclusion from informal male networks.

Preliminary steps – know your firm

The first step to charting your road to partnership is to gather as much information as possible about your firm. While firms may appear similar on their surfaces, each firm has its own unique idiosyncrasies and peculiarities. These can include anything from the criteria used to make assessments about potential partners, to features of the partnership policy, written or unwritten, that are unique to the firm and may have an impact on your progress toward partnership.

Personal Audit

You must assess whether you have the drive to succeed in becoming a partner. Carrying out such an assessment, or personal audit, can help you identify areas of needed improvement which may be holding you back from advancing to partnership. The Personal Audit is divided into the following sections: Satisfaction with Work; Work/Life Effectiveness; and Mentors, Sponsors and Champions.

Practice Audit

In order to make smart and strategic decisions as you progress towards partnership, you need to understand your current practice and the type of practice that will help you advance. A practice audit will help you assess the practice you have against the practice you need.

The Practice Audit checklist is divided into the following sections: Hours and Clients; Time and Financial Management of your Practice; Internal Networking; Branding; and Business Development.

Performance Reviews

You should take advantage of performance reviews to identify areas of improvement that will assist your progress to partnership and to understand where you stand with respect to advancement to partnership.

Becoming an active manager of your own career

Being effective at actively managing your career requires understanding and engaging in all the components that are necessary to advance to partnership. It means creating a plan or roadmap to chart a career trajectory, understanding what is required to build a sustainable practice, determining the best ways to build your brand as a future partner and knowing how to develop your practice through business development and networking. A career plan will enable you to take charge of your career, become your own advocate and locate and access scarce personal and firm resources. It will assist you in focusing on achieving your goal of becoming a partner.

Using your mentor or sponsor relationship effectively

Having a mentor to provide advice and coaching and to champion you is very important in your progress to partnership. Your mentor can assist you in understanding the firm and in preparing your personal and practice audits. A mentor can also provide support during and after your performance review. The mentor can talk to you about your career plan and how to develop and manage your client base.

There is a strong and well established link between mentoring relationships and career success. Lawyers consistently identify a strong mentoring relationship as extremely advantageous, if not key, to developing a successful practice and achieving partnership. It is important to understand and educate yourself about the particular mentoring program that your firm offers. In circumstances where there is no official mentoring program at your firm, or where an existing mentoring relationship is not providing all of the anticipated benefits, you should make efforts to identify a suitable lawyer who may be prepared to act as your mentor, either formally or informally.

When thinking about mentors, it is important as well to consider sponsors. While some mentors may also be sponsors, not all sponsors are mentors. While mentors provide support for you, a sponsor becomes your champion and helps you advance.

Introduction

Who is this guide for?

For women associates who want to be partner. While men associates may find the information valuable, it was written particularly as a useful resource for senior women associates looking forward and planning for their future careers. The Law Society's Justicia Project has compiled a series of strategies to assist you in advancing your career towards partnership. We have consulted the literature, drawn upon research, spoken to career coaches in the field of law and used our own experience to craft what we hope will be a useful and practical guide.

Law firms see a business case for retaining and advancing women. They recognize that firms that advance strong women into partnership are capitalizing on a significant intellectual resource and that a more diverse set of partners will provide more creative solutions to problems. Clients are asking for more diverse teams to service their work and are looking to see if their law firms are incorporating programs to focus on the advancement of women.

Even though firms see the business case, there are still many factors that impact on the advancement of women. However, the time is ripe for you to take a mindful and focused approach to the advancement of your career. You are not entirely on your own. We are working with law firm managing partners to identify ways we can collectively support women's careers and create work environments that are hospitable for women at every level.

So you want to be a partner—why?

You are part of the wave of extremely talented women who make up at least 50% of law schools and entry level associate positions. Many of you have graduated near or at the top of your law school class. "Canadian and US statistics indicate a range in the proportion of women partners from fewer than 16% of equity partners to about 20% of partners in large and medium size firms."¹ Law firms are turning more of their attention to this issue and are seeking to improve the retention and advancement of their women lawyers.

So why strive for this goal? Being a partner in a law firm brings many rewards. It means that you possess not only a valuable skill set, but a demonstrated ability to help clients resolve their complex legal issues and the ability to sustain a client base. It will bring personal satisfaction. It will allow you to do more complex work resulting in greater intellectual satisfaction. As an owner of the law firm, you will participate in business decisions that affect your law firm and its direction. You will have opportunities to leave your mark in shaping your firm in a way that will last. You will be a teacher and mentor to others coming up in your firm or in the profession. You will have more control over the direction and focus of your practice. You will have an opportunity to focus more on business development and to enhance your firm's reputation. You will likely receive substantial financial remuneration as well as tax incentives and benefits.

¹ The Law Society of BC, *The Business Case for Retaining and Advancing Women Lawyers in Private Practice* (Vancouver: The Law Society of BC, July, 2009).

I love the diverse nature of my client base and practice, the unpredictability of it all, and the unanticipated challenges that each day brings. I also enjoy working with a group of exceptional professionals (and individuals), who provide an invaluable sounding board and support network. I felt the same both as an associate, and as a partner. The one added advantage of being a partner is having slightly more control over both my own destiny, and the future of the firm.

- Trisha Robertson, Partner, Blakes

This guide in no way suggests that partnership should be your goal. Partnership is only one route toward a successful and rewarding practice, and is not necessarily the right choice for everyone. If you are not sure whether partnership is the right choice for you, ask what it entails at your firm.

Outline of this Guide

This guide will be a helpful tool in achieving your goal of becoming a partner. This guide is divided as follows:

- Challenges
- Preliminary steps – know your firm
- Personal audit
- Practice audit
- Performance reviews
- Becoming an active manager of your career
- Using your mentor or sponsor relationship effectively
- Conclusion

Challenges

Introduction

The complexities of the path to partnership require a multi-faceted, yet holistic approach that addresses every aspect of your career. This includes being cognizant of potential forces that may create challenges to your professional aspirations. While discussing these challenges in detail is beyond the purview of this guide, more information is available on these topics. We have highlighted here three main challenges for women – gender bias, lack of role models and champions and lack of opportunity.

Gender Biases

All individuals, men and women, have and are susceptible to making gender-based assumptions. In part because firms have an over-representation of men lawyers in senior positions who may be affected by these biases, gender-based assumptions or gender biases should always be a relevant consideration for a woman associate. Gender biases may affect the way women are perceived and judged with respect to their leadership qualities and their ability to take on challenging assignments. It should be noted that it is not only men lawyers who hold these biases; women lawyers may also make gender-based assumptions.

*Simply said, awareness begets identification. Only when gender biases are identified can they be readily addressed and prudently overcome.*²

Gender bias may create challenges for women in law firms that may be very difficult to detect and combat. Nonetheless, an appreciation and understanding of gender bias will be helpful as you chart your career path. We hope that this guide will provide some practical strategies for overcoming these challenges. Some well-recognized patterns of gender bias that have been identified in the literature are summarized below.

Prove it Again

Research suggests that men lawyers may get an automatic vote of confidence from their peers, while women lawyers must constantly prove they can lead. Leadership skills are often associated with stereotypically masculine traits and behaviours (e.g. “taking charge” skills such as influencing superiors and problem solving), and as a result, others immediately assume that men lawyers have the potential to lead and/or generate business, while women lawyers must prove their abilities over and over again.³

Experts state that generally women’s mistakes are remembered; men’s are soon forgotten. Women’s successes are chalked up to luck; men’s are attributed to skill. Objective rules are applied rigorously to women, but may be used far more leniently with men. As a result, women may feel they must “try twice as hard to get half as far.” In some cases, that may mean women only get half as far.⁴

Where this unconscious “prove it again” gender bias arises, women in law firms may feel the need to spend additional time and energy proving that they are worthy of partnership or leadership positions. They may ultimately end up working harder than their male counterparts to prove the same level of competence and achieve the same objectives.⁵

Double Bind

Many women lawyers have been confronted with the feeling of being trapped in a double bind, resulting in a nagging sense that they are required to be both supportive and nurturing *and* decisive if they are to be taken seriously as women and as leaders.⁶

The research tells us that gender bias results from an assumption that masculine characteristics (“taking charge”) and feminine characteristics (“taking care”) are mutually exclusive. These perceptions can be particularly challenging in law firms where “taking-charge” skills and other stereotypically masculine behaviours, such as assertiveness and competition, are often seen as prerequisites for partnership or top-level management positions. A woman lawyer who exhibits “taking care” skills may need to overcome

² For more information on gender biases and how they affect women see Joan C. Williams, “Why Women’s Leadership Initiatives Fail,” *Forbes* (16 December 2010) [Women’s Leadership Initiatives]; and Lauren Stiller Rikleen, *Ending the Gauntlet: Removing Barriers to Women’s Success in Law* (New York: Thomson/Legalworks, 2006) at Chapter 12 [*Ending the Gauntlet*].

³ *The Double-Bind Dilemma for Women in Leadership: Damned if You Do, Doomed if You Don’t* (Toronto: Catalyst Canada, 2007) at 6 [Double-Bind Dilemma]. See also *Women’s Initiatives*, *supra* note 7 at 2.

⁴ *Women’s Initiatives*, *supra* note 7 at 16. See also: Business Case for Retaining and Advancing Women in the Workplace *supra* note 2 at page 16.

⁵ Double-Bind Dilemma, *supra* note 9 at 18.

⁶ *Ibid* at 6.

gender assumptions to establish that she also has the “taking charge” skills necessary to move into the partnership. If she does not, she may be perceived as not ready for partnership. Yet a woman lawyer who openly exhibits taking charge traits may be seen as “overly aggressive,” because of unconscious social expectations about women generally. Women lawyers sometimes consequently feel that they are “damned if they do and damned if they don’t.”

In a recent Harvard Business Review article, author Erin Reid notes that women and men tend to cope with competing demands in starkly different ways. While women tend to openly discuss their family responsibilities and seek formal accommodations to meet these commitments, men often found “unobtrusive, under-the-radar” ways to create more flexible and predictable work schedules. As a result, they were able to avoid having their dedication and work ethic questioned and did not suffer any associated marginalization or penalization.⁷

The Maternal Wall

For some senior partners, a young associate’s transition to motherhood can trigger powerful negative assumptions about her competency and commitment to her law firm. Indeed, the research shows that the “maternal wall” is the strongest form of gender bias in the workplace.⁸ This bias can perpetuate and promote a variety of stereotypes:

- A lawyer who becomes a mother may be assumed to be less available to the firm.
- A lawyer who avails herself of the firm’s flexible work arrangements may be assumed to be less dedicated to the firm, or to her own advancement.
- A lawyer who becomes a mother may be excluded by others from certain high-profile work (i.e. trials, corporate transactions), often in a well-meaning attempt to assist her by reducing travel or workloads, but typically without clarifying what the young lawyer actually wants or needs, and thereby blocking her from work she may have chosen to do.
- A mother who takes a parental leave from her firm may be seen to be taking a “paid vacation.”

Studies generally show that mothers are less likely to be promoted, and are held to higher performance and punctuality standards than women with identical qualifications who have no children.⁹

Lack of Role Models and Champions

Since there are fewer women at the partnership level than there are men, one of the biggest challenges for women working their way up is the lack of role models who look like them or who understand what they are experiencing or who can provide the necessary guidance on building their careers.¹⁰ By aspiring to become a partner, you are serving as a role model for junior women associates at your firm. Also, it is important to remember that many men partners are eager to see women associates advance into partnership.

⁷ Reid, E. (2015, April 28). Why Some Men Pretend to Work 80-Hour Weeks. Harvard Business Review. Retrieved from <https://hbr.org/2015/04/why-some-men-pretend-to-work-80-hour-weeks>.

⁸ See Gender Bias Learning Project, UC Hasting College of the Law online: http://www.genderbiasbingo.com/stereotype_maternalwall.html.

⁹ Women’s Initiatives, *supra* note 7 at 2.

¹⁰ *Ending the Gauntlet*, *supra* note 2, at Chapter 12.

Women need to learn marketing and networking skills early in their careers. Typically these skills are learned from more senior lawyers many of whom because of their gender tend to market and network with a classically masculine model. For them, mentoring less experienced men may come easily. They may not be as comfortable being role models and champions who actively support and take an interest in the broader professional and career development of less experienced women associates. As a result, women associates may not learn at all or as well to navigate the business world or understand law firm politics.

Lack of Opportunities

In a law firm where success is dependent on the ability to inherit and generate both work and clients and on building relationships inside and outside the firm, women associates may find that they face some challenges not shared by their men colleagues. Women lawyers often bump up against the invisible wall between women and men lawyers within a law firm. In the early years of practice, men associates may have more opportunities for informal contact with senior male partners and clients at social events. The predominance of male partners who control the majority of clients/flow of work, shapes the ability of other lawyers, in particular women, to have meaningful assignments, to participate in client development and to create networks. The lack of exposure to clients, lawyer credit manipulation and lack of succession planning combine to make women lawyers “perpetual juniors” with a handicap to advancement within a firm.¹¹ Nevertheless, you have the power to create your own opportunities by establishing and nurturing your own relationships and networks. Again, we hope this guide will offer some practical advice on how to do this.

Preliminary steps – know your firm

Introduction

The first step to charting your road to partnership is to gather as much information as possible about your firm. The importance of gathering information on how to succeed and advance cannot be overstated. While firms may appear similar on their surfaces, each firm has its own unique idiosyncrasies and peculiarities. These can include anything from the criteria used to make assessments about potential partners, to features of the partnership policy that are unique to the firm and may have an impact on your progress toward partnership. Some of these practices or rules are written and transparent; others are unwritten. In some instances, these rules are disseminated to associates, but in other cases, they are learned through experience or through a mentor or more senior colleague. Try to identify both formal and informal sources of information. You will need trustworthy allies, preferably at varying levels, who can keep you plugged in on firm strategy, initiatives and goals before they become formalized and as well give you insights on how you are perceived to be doing in your advancement towards partnership. It is pivotal to amass as much information about the prerequisites to partnership in your firm as possible in order to assist you in developing a comprehensive strategy to achieve your goals to become a partner.

¹¹ *Ending the Gauntlet, ibid.* at Chapters 3 and 5.

Do You Know Your Firm’s Written—and Unwritten—Partnership Criteria?

“Intense commitment and the delivery of exceptional work, — in short, technical performance — have become so routine that they no longer guarantee success.”¹²

You may think that if you develop your skills and reach your billable hours targets, the path to partnership is straight and clear. Many associates have learned this is not true. In reality, you will need to focus on other factors as well. Remember, ultimately partnership admission is a business decision and is focused on a candidate’s profile in the firm and the marketplace and the extent to which the candidate has established and built internal and external relationships and a sustainable practice.

The following checklist will be helpful to you as you gather relevant information about your firm.

Checklist for Partnership Admission Policy and Practices

- Identify and obtain copies of relevant policies (such as partnership admission policies) that outline criteria and process; billable hours targets policies and business origination credit policies.
- Identify unwritten policies and understand the core culture of your firm — talk to your mentors, pay attention to what behaviors receive praise, and seek guidance from someone who has recently been admitted to the partnership.
- Evaluate the criteria for partnership against your own skills and abilities. Understand what each criterion means within your firm and how “success” is measured. Most firms consider some or all of the following as relevant criteria:
 - a sustainable practice;
 - financial management skills;
 - commitment and dedication;
 - client management;
 - profile in the marketplace (via speaking, writing and committee work);
 - business development;
 - responsibility for or carriage of matters or clients;
 - non-billable activities;
 - leadership and delegation;
 - volunteer activities;
 - strong analytical skills, judgment and ethics; and
 - legal expertise.
- There may be a weighting of the criteria for admission to partnership. Gather as much information as possible about the weighting of criteria so that you understand the expectations of the firm. Identify characteristics of successful associates/partners practices that you can emulate. Be aware of the demographics of your practice group and whether there is space for you in the partnership.
- Be aware of the needs of the firm’s clients and how your expertise can contribute.

¹² Jennifer Overhaus, *Juggling the Big 3 for Lawyers* (London: ProvechZiel, 2009) at 6 [Juggling].

- If relevant, determine how maternity and parental leaves and flexible work arrangements may impact on your advancement toward partnership. The firm may have a strong commitment to work/life balance, but taking a maternity or parental leave may still impact your path to partnership. This is largely due to the fact that lawyers on extended leaves, men or women, are not actively developing their skills as lawyers, or their client contacts, and as a result may require a longer period of time to gain the appropriate competencies to be considered for partnership.
- Understand whether your firm has income partners and/or part-time partners and how those options are relevant to your progress. Identify the critical differences between equity, income and part-time partners in order to make informed choices about your options in your progress to partnership.
- Identify what kind of non-billable work is most valued in your firm.
- Understand the business development expectations for partnership candidates (e.g., When are you expected to begin bringing in some business and how much business are you expected to bring in? Does maintaining important existing client relationships count? If so, how?)
- Understand how performance evaluations are taken into account in the partnership admission process.
- Identify coaching, training and mentoring opportunities offered by the firm and the role that these may have on your progress to partnership.

The following two sections focus on how to conduct a Personal Audit and a Practice Audit. We recommend completion of both these audits as they are relevant to understanding your development toward partnership and will assist you in developing a career plan.

Personal Audit

What is a Personal Audit?

Do I have passion for what I am doing? Do I want to continue to do this work as a partner? How can I ensure that my personal goals can coexist with my career goals? Do I need to work on acquiring the skills to be a partner at my firm?

It is important to be introspective. If you really want to be a partner, determine how your personal and professional goals can coexist. Moreover, you should personally assess your strengths and weaknesses. Carrying out such an assessment, or personal audit, can help you identify areas to focus on as you advance to partner.

There are challenges that come with being a lawyer and a parent. Both men and women struggle with trying to manage a successful career and ‘be there’ for their children. I believe there has already been a significant shift in mentality in this regard and we are likely to see the results impact the workplace over the next decade. Ultimately work-life balance must be defined flexibly – and that is okay. Find what you love to do and do it. The rewards are immense. But there will always be sacrifices, and things will always be

crazy. At the end of the day, if you enjoy what you do, you simply become an excellent multitasker. And you will find that you love all of it.

-Trisha Robertson, Partner, Blakes

The Personal Audit is divided into the following sections:

- Satisfaction with Work
- Work/Life Effectiveness
- Mentors, Sponsors and Champions

Checklist for Personal Audit

Satisfaction with Work

When tracking your personal development towards partnership, you may wish to consider the following:

- Are you enjoying your practice area?
- Do you enjoy working with clients, taking responsibility for their legal problems and providing top-notch service to them?
- Do you enjoy business development and the process of finding new clients and generating new work?
- Do you like the firm where you are practising and the people you are practising with?
- What are your strengths? For example:
 - I am a strong team player.
 - I am ambitious.
 - I can build rapport with clients.
 - I am effective at providing client services.
 - I can lead a project.
 - I am a good team player.
 - I am detail oriented.
 - I like to market myself.
 - I am a good communicator.
 - I am a good writer.
 - I have strong time management skills.
 - I can multitask and work well under pressure.
 - I have a good sense of humour.
 - I work well to deadlines.
 - I am good at networking.
 - I am good at nurturing relationships.
 - I am good at problem-solving.

In addition to reviewing your own Personal Audit, you may wish to have an objective person (such as your mentor or practice group leader) review it as well to ensure that it also reflects how others perceive you.

If you rate yourself poorly on a number of these qualities, you may not be on track to meet the partnership criteria, written or unwritten, set out by your firm. What can you do? We have set out a number of suggestions to help you in the following pages.

Do not be discouraged if your personal audit shows some areas where your personal goals and career goals don't quite fit. This is normal. Only if there is a major disconnect between your personal goals and your existing career path is it time to redirect your career path. If that is the case, consider exploring internal ways to seek out a better fit or consider moving to a firm that will be a better fit.

Work/Life Effectiveness

- What are the billable and non-billable hour expectations of an associate and a partner in your firm?
- Are you able to meet these billable and non-billable hours expectations?
- If you find the hours challenging because of family obligations, do you have:
 - sufficient child care?
 - resources to assist in emergency situations, such as emergency child care?
 - resources to deal with contingencies, such as parents or children who are ill?
 - resources to assist you in household management and childcare tasks?
- If applicable to you, does your partner, spouse or significant other support your goal of being a partner?

*To become a partner I had, and used, the entire village and even the neighbouring village!
At critical times, my spouse stepped back to let me step forward, and that made all the difference.*

- Rita Andreone, Q.C., Partner, Lawson Lundell

If you are unable to meet the firm's hours expectations at this time because of family responsibilities, be proactive, take charge of your career path and consider asking for an alternate path to partnership. This could include a flexible work arrangement or an extended track to partnership. Don't wait to see what the firm does when your hours are low. Demonstrating a "take charge" attitude toward your own career path may be one way to show the firm you have what it takes to manage a practice and make it as a partner.

At the same time, appreciate the immense flexibility that technology provides. The ability to work remotely allows you to be fully responsive and still spend time with your kids and interact with your family in a meaningful way.

Technology has had a huge impact on the practice of law. It is certainly a double edged sword, but for me, I find that the benefits far outweigh increased client demands and expectations regarding availability and turn-around time. As a partner, I spend far less time drafting or turning documents. Most of my billable time is spent considering issues regarding transactions, discussing the same with clients, and overseeing the work done by associates. These are all things that (for the most part) do not require that I be tied to a desk. With today's technology, I have more freedom to enjoy time with my family while still feeling connected to my clients and being responsive to their needs. It may mean that you are reviewing documents on your iPhone while watching swimming lessons, or talking your client off a ledge while you watch your kids build sandcastles on the beach, but the point is you are there, with them, and when the crisis is over, you sit back down and dig a moat.

- Trisha Robertson, Partner, Blakes

Mentors, Sponsors and Champions (Also see Section “Using Your Mentor or Sponsor Relationship Effectively”)

- Are you satisfied with your “mentorship” relationships at the firm? Have you tried to seek out a mentor in a powerful position who will champion you?
- If you do not have an internal mentor or if that mentoring relationship is not successful, have you sought a mentor in the broader legal community through an external program?
- Do you have key work providers with whom you have a good relationship and who are providing you with appropriate work opportunities? Do you understand the work allocation process at your firm? Do you have a strategy to obtain the work opportunities that will assist in your advancement? If not, have you considered seeking assistance with this from your practice group leader or mentor?

Practice Audit

What is a Practice Audit?

In order to make smart and strategic decisions as you progress towards partnership, you need to understand your current practice and the type of practice that will help you advance. A practice audit will help you assess the practice you have against the practice you need.

This checklist is divided into the following sections:

- Hours and Clients
- Time and Financial Management of your Practice
- Internal Networking
- Branding
- Business Development

Checklist for Practice Audit

Hours and Clients

Annually, review your practice over the last year as follows:

- How many hours have you billed?
- How do your hours relate to firm billable hour targets?
- Which clients have you worked for and how many hours for each?
- Are your clients on the firm's list of major clients? If not, will this be a problem?
- Is your practice appropriately diversified or specialized for your year of call and in light of your overall career plan and future goals?
- How many hours of work do you get from more senior partners at the firm? Are they significant partners?
- How many hours do you generate yourself?
- How many files are you the billing lawyer on?
- How many hours of work did you delegate to more junior lawyers?
- How many significant matters were you the lead on?
- Are you the relationship lawyer for any clients? Have you attracted new matters or new clients yourself?
- Are you a member of any significant client teams?
- Are you a leader of any significant client teams?
- Are there matters that were generated as a direct result of your efforts with an existing client or clients that you brought to the firm? If so, how many hours did these matters account for?
- If you are moving towards specialization, will this specialization be sustainable and feasible as a partner? Will you be able to generate enough business in that area to keep yourself and others busy over the long-term?

Time and Financial Management of your Practice

- Do you capture your hours on a daily or weekly basis?
- If applicable, do you submit your hours on a timely basis?
- Do you bill promptly for files on which you are the billing lawyer?
- How much of your time was written off in the last year?
- How much of your time was premium billed? How long are your receivables outstanding?

If you don't know, how can you find out?

If you are struggling with time management, are you being efficient with the way you spend your time at work? If not, have you explored ways to increase your productivity? Have you asked for coaching in this area or arranged it on your own at your own expense?

As well, if applicable, have you discussed with your spouse, partner or significant other how you might more equitably share household and childcare responsibilities? Have you explored hiring resources that may help you at home?

Internal Networking

- List senior, influential work providers who have referred you work this past year.
- List how you have marketed yourself internally during the past year.
- List your sponsor or sponsors at the firm who can be an advocate for you and help you build your profile internally. If you do not have a sponsor, identify someone who you will ask to fulfil this role.
- List the role you play on any key firm committees.

Branding

List how you have increased your external reputation and profile in the past year by:

- writing and/or speaking on your areas of expertise;
- sitting on any corporate or not-for-profit boards;
- participating in any industry groups related to your practice; and
- participating in volunteer or social activities related to your practice or to potential client contacts.

Business Development

- Did you make a business development plan? Did you follow it?
- What are the expectations at your firm for associates and partners regarding business development? List the business development activities with clients that you carried out in the past year and rate their results, if any.
- List the external networking activities you engaged in over the past year with potential clients or contacts. Which were the most effective?
- List internal and external resources you have used to help you develop business.
- If your firm has business development resources that are specific to women, list those you have utilized.
- If your firm does not have business development resources that are specific to women, list any you initiated.
- Have you asked for coaching in the area of business development or have you arranged it on your own at your own expense?

Performance Reviews

Introduction

You should take advantage of performance reviews to identify areas of improvement that will assist your progress to partnership and to understand where you stand with respect to advancement to partnership.

What is a Performance Review?

A performance review in a law firm is a method by which the performance and career development of an associate is evaluated. Performance reviews can be written or verbal. Ideally, following an oral review, you should receive a written summary of the review as well as have a follow up discussion with a mentor

or person with whom you work. A performance review is a part of guiding and managing career development.

Generally, the aims of a performance review are to:

- provide feedback on performance (both positive and constructive);
- identify development needs;
- form a basis for decisions such as advancement, salary increases and performance bonuses;
- facilitate communication between the associate and firm management;
- assess career development/progress within the firm; and
- develop a plan or strategy as to how to progress towards your goals.

Thinking about performance reviews causes most associates some degree of anxiety. Apart from the fact that receiving constructive feedback is daunting to almost everyone, many associates do not know what to expect from their performance review because they have not received ongoing feedback on their work throughout the year. This may occur because supervising lawyers have failed to give it or because the associate has not asked for it at the conclusion of projects.

If you find yourself in this position—do not despair. There are steps you can take to become a more active participant in your performance review or to seek out a review if your firm does not schedule them.

How to Benefit from Performance Reviews

Performance reviews are an opportunity to have a two-way, thoughtful discussion about your development and progress towards partnership. Approach the feedback with an open mind and try to be as objective as possible. A good performance review will indicate areas in which you excel as well as those that need improvement. Do not underestimate the importance of seeking regular feedback from those you work with. A formal performance review usually comes only once a year but you can seek informal feedback after every assignment. The information you receive in this fashion will be current and timely and will allow you to make changes as you go and will avoid surprises at your formal review.

Remember that the way you respond to a performance review can influence how you are viewed. The following are some tips to maximize the benefits of performance reviews:

Get into the right mindset. Treat the review as an opportunity to learn. Your performance review is an opportunity to ensure that you fully understand your firm's view of your development and your development objectives.

Prepare. Regard a forthcoming review as an opportunity to step back and think about how you are developing as a lawyer. Ask yourself the following questions: Are you still enjoying your work? If not, why not? What work would you like more/less of? Are there partners you would like to work with? What accomplishments are you most proud of? Do you need any training? What work do you need to assist you in advancing into the partnership? If you enter your review meeting with an idea of what is going well and some suggestions for improvements, you and your firm will benefit. Also think about non-billable opportunities. Are there business development projects that you would like to pursue, committees you would like to join or continuing professional development (CPD) events or conferences you would like to attend? The review is an opportunity to raise all these issues with your reviewer.

If provided, read your review summary carefully. If you are given a written summary of your review, read it carefully after your review to ensure that all points (both positive and negative) have been included in the written summary. Ask for corrections if needed.

Focus on the big picture. Ask “What is the main message I should take from this review?” Ask questions about your progress toward partnership. Ask about your strengths as well as areas for development. During your review, try to establish specific short- and long-term goals to assist you in progressing to partnership. Also establish a plan for monitoring these so that you have a better opportunity for achieving them over the next review period.

Remember that everyone can improve. Try to accept constructive feedback that is offered. Being defensive may be judged poorly. Remember that you see things from a totally different point of view. If you are honest with yourself about the feedback, you may even accept that it is justified. Instead of demonstrating upset or anger, which is a natural human reaction, say that you will think about what has been said. We all make mistakes; the trick is to learn from them, and not make them again. If you really believe the feedback is unfair, do raise it, in a balanced fashion after you have had some time to reflect.

Ask for help. If there are areas where additional training or mentoring would assist you.

Make sure you understand, from your review, exactly where you stand with respect to partnership and what the firm can do to help you perform better, or more efficiently, or with greater consistency. You should both be working towards agreed, achievable goals that lead to partnership. If you are not satisfied that these things have been achieved, you should request a further discussion.

Specific Questions to Ask in a Performance Review

The following are examples of questions that you may wish to ask during your review:

- Am I on partnership track?
- How am I doing in relation to the firm’s partnership criteria? Which areas are viewed as my strengths? Which areas do I need to further develop?
- If the decision on partnership admission was being made today, would I make it? What criteria would I be perceived as missing?
- Am I making the progress toward partnership that is expected at this stage of my career and that is required?
- What are the one or two most important things I need to do to improve my chances of becoming a partner?
- Are there resources the firm would make available to assist me in meeting my goals that you as the reviewer would recommend?
- Who gave the feedback about me for this review? If partners with whom you did a great deal of work did not provide feedback for your review, you may wish to follow up with them.

What do you do if Your Firm Does Not Hold Formal Performance Reviews?

Performance reviews provide an opportunity for feedback that is integral to helping you develop as a lawyer and progress towards partnership. If your firm does not conduct formal reviews, take the initiative and ask the lawyers with whom you work for feedback on a regular basis. You could also ask to meet with a partner or mentor to discuss your progress. You do not need to call it a performance review. At the end of such a meeting you should try to summarize in writing what you were told so that you can keep a record of your informal review. You might then wish to sit down with your managing partner or practice group leader to review what you have been told so that you can ensure that it lines up with how the rest of the firm sees you.

Negative Performance Reviews

What can you do in the case of a negative assessment or performance review? It can and has happened to even the most hard-working and diligent lawyer. You need to calibrate what the overall “message” of the review is (purely developmental or “negative”). Criticism and critiques can be hard for anyone to take, especially in your job where you are constantly striving to do your best. Remember the following:

- If you are faced with criticism, do not be afraid to ask for examples and clarification if you are unclear on the critique or what the problem is. It is important to always remain calm and not become argumentative in this situation. If you feel the observations being shared are incorrect, use specific examples to state otherwise.
- Look at the review as a way to learn what specific aspects of development you have to work on to get to partnership. Assume there will be some negatives, but take this as constructive criticism that will help you take the next step in the job and reach your future goals. In most cases, your firm is only trying to help you achieve those goals and help you improve on the areas where you are weak.
- Ask for the input of the feedback provider and get advice on how to resolve any negatives discussed in your review. It might be beneficial to have a follow-up discussion after an agreed upon period to check in on the progress you are making.
- Clarify the message regarding partnership. If you have received a negative review, make sure you understand how this impacts on your progress to partnership. If there are things to work on, clarify how long the firm expects this to take and what help they will give you. If you are being advised that a form of income partnership is what is likely ahead for you, probe to find out what it would take to change this view of the firm so that you may still strive for equity partnership.

Women's Perspective: What are the Challenges and Opportunities in Performance Reviews?

Research has suggested that because of unconscious gender biases, women may need to work harder than men to demonstrate their skills and competencies and to ensure their potential is recognized.¹³ Here are some strategies to help you use the performance review process as an opportunity to do this:

- Ask those with whom you have worked to provide feedback not only on your level of performance but also on your ability and readiness to assume more responsibility and to move onto more complex tasks.
- Ask explicitly about the firm's partnership criteria and how your current skills and achievements measure up against the criteria. Use the performance review meeting as an opportunity to explore these issues in depth (see section entitled "Specific Questions to Ask in a Performance Review").
- Ask explicitly about the criteria where you still need to develop and discuss specific strategies for developing and improving with your mentor. You may wish to brainstorm as well with your practice group leader and other successful partners in your firm to further refine your development strategies.
- If you believe that you have been judged as lacking in certain stereotypical male attributes of leadership such as assertiveness, aggressiveness, being action-oriented, results focused and a good problem solver, speak to your mentors and others about how to clarify and demonstrate that you have indeed exhibited these qualities in your work to date and ask for their advice as to other things you could do to develop or further demonstrate these types of leadership qualities.
- If you perceive that men associates are being offered greater opportunities to advance more quickly than their women colleagues, speak to your mentor or supervising lawyer about whether there are reasons related to your performance that are preventing you from getting such opportunities. If not, look for "stretch" opportunities throughout the next year to increase your skills and experience. Do not hesitate to ask for such opportunities directly. Track your requests if you are not successful and raise the issue at your next review.
- Create a written Career Plan, whether or not your firm has a formal process for this, based on your performance review meeting and any follow up meetings you've had with your mentor, practice group leader and other partners. The Career Plan should reflect the skills and competencies you've attained based on your performance review, as well as your specific plans to develop or demonstrate the criteria that are currently viewed as missing. (For help on developing such a plan, see the next section of this Guide "Becoming an Active Manager of your Career.")

¹³ A study by Monica Biernat, M.J. Tocci and Joan C. Williams analyzes performance evaluations of male and female junior attorneys in a Wall Street law firm. The study found that the narrative comments in performance evaluations either favoured the women being rated, or treated them no less favourably than men. However, in the numerical ratings that mattered for promotions, men did better. See *The Language of Performance Evaluations: Gender-Based Shifts in Content and Consistency of Judgment*, Social Psychological and Personality Science, published online on July 18, 2011 at <http://spp.sagepub.com/content/early/2011/07/15/1948550611415693.full.pdf+html>.

Conclusion

Once you have identified the culture, rules and policies and expectations of the firm, conducted your personal and practice audits, and received a few performance reviews, you are ready to start planning how you will effectively manage your practice to get to the partnership level. The next section will assist you in planning your progress.

Becoming an active manager of your career

Introduction

Now that we have discussed various building blocks to help you understand the path to partnership and where your personal goals and practice profile fit, now is the time to put these elements together in a plan that will help you move forward.

This section of the guide discusses the following:

- The Need for a Career Plan
- Using your Personal and Practice Audits
- Developing and Setting Goals
- Building a Sustainable Practice
- Delegation
- Understanding the Importance of Clients
- Building your Client Base
- Building your Brand
- Selling your Services
- Checklist for Building a Career Plan

The Need for a Career Plan

Being effective at actively managing your career requires understanding and engaging in all the components that are necessary to advance to partnership. It means creating a plan or roadmap to chart a career trajectory, understanding what is required to build a sustainable practice, determining the best ways to build your brand as a future partner and knowing how to develop your practice through business development and networking. In short, being effective at actively managing your career requires a proactive and multi-faceted approach.

In the busy practice of law, it is very difficult to find the time to develop a career plan and even more difficult to implement the plan. But the rewards are significant. A lawyer without specific and identifiable goals may find that she lacks direction or focus in her practice. But a person who identifies and writes down goals is more likely to achieve them.¹⁴ A career plan will enable you to take charge of your career,

¹⁴ Sharon Meit Abraham, “Personal Strategic Planning: Gaining a Competitive Advantage Edge” (2007) 8 (1) Practice Innovations: Managing in a Changing Legal Environment 6 [Personal Planning].

become your own advocate and locate and access scarce personal and firm resources.¹⁵ It will assist you in focusing on achieving your goal of becoming a partner.

Your efforts to actively manage your career will have the best chance of success if you carry out personal and practice audits, set specific goals for the year, build specific actions into your regular “to do” list, and track your progress throughout the year. All of this should be incorporated in a Career Plan. Developing a Career Plan each year starting at an early stage in your career and consistently working towards your goals will make reaching the milestones necessary for partnership consideration less daunting.

We will be highlighting how to develop a Career Plan below.

Using Your Personal and Practice Audits

Developing a career plan first entails a self-assessment and an inventory of your strengths and weaknesses specifically in the context of the firm’s partnership criteria.¹⁶ As well, it entails making an analysis of your practice so that you can identify what changes if any you need to make in the coming year. You should refer to the personal and practice audits set out in this Guide - they are great tools to complete your career plan.

Be realistic and self-critical in your assessment of your strengths and weaknesses. Don't ignore the partnership criteria that you are missing, thinking that these criteria must not be important if you are currently busy and getting good feedback on your work. Many associates, men and women, find that their supervising lawyers emphasize the positives in their performance, measuring them favourably against the "associate performance yardstick". These well-intentioned supervising lawyers may not have focused on the associate's gaps, as measured against the "partnership admission yardstick", which may be some years away. However, it is important for you to uncover any gaps early so that you can proactively plan to address them effectively.

Developing and Setting Goals

One important component of the career plan is to develop goals.¹⁷ Your primary goal is to progress into partnership. You will also need to set secondary goals to help you achieve your primary goal. Engage in a brainstorming session and identify and write down all potential goals. Employ mentors to help you plan. Get thoughts and advice from others on what you are doing and what works and does not work for them. It is very important that the goals and your career plan be committed to writing.

Next, weigh your goals against your strengths, weaknesses and personal motivation (identified in the personal and practice audits) and the goals of your firm (identified in the firm’s partnership criteria). Goals that are not consistent with personal motivation may not be achievable. A career plan that requires

¹⁵ Marcia Pennington Shannon, “Managing: Helping Employees Create Career Development Plans” *Law Practice* (April 2004) [Managing]; Personal Planning, *ibid*.

¹⁶ Kathleen Bradley Chouai, “Career Planning for Lawyers - Why It Is Important What It Looks Like and Why Law Firms Should Invest In It” (2005) 90 (4) *Women Lawyers Journal* 18 [Career Planning];

¹⁷ Personal Planning, *supra* note 8.

you to engage in activities that are unfamiliar or uncomfortable will not be successful.¹⁸ Moreover, negative perception or performance results may result from goals that are not consistent with firm goals.¹⁹

Goals must be realistic and achievable: Effective goals are SMART: specific, measurable, attainable, realistic, and timely.²⁰

Identify short and long term goals: You may have multiple secondary goals, which should be identified as short term (0-1 years) and long term (2-5 years) and prioritized.²¹ Each goal should be further broken down to shorter time lines such as annual, 90, 60, 30 day or even weekly achievable targets.²²

Each goal should include the statement of the goal, the strategy and timing to achieve the goal and the benefit of achieving the goal.²³

Establish measurable goals: A measurable goal will require monitoring and evaluation of progress in comparison to the career plan. A goal must be sufficiently specific to be measurable. For example, a goal of increasing your billable hours is not specific and impossible to measure. A goal to increase your billable hours by a specific number is measurable. A goal of increasing your industry presence is not specific or measurable. A goal of taking on a specific number of speaking engagements or writing published articles in the particular industry is measurable.

Identify action steps: A strategy to achieving the goal includes developing a course of action and identifying obstacles. Once again, engage in a brainstorming session to identify all possible actions to achieve the goal.²⁴ Action steps should include answering the questions of who, what, where, when, why and how. The actions shall be specific and include targets, milestones and time lines. Specific due dates and milestones will increase the likelihood of achieving the goal.²⁵

Goals evolve and change: Be patient, stay with it, and keep revisiting your plan and what is working and what is not working. Goals will evolve and change as priorities change. Personal circumstances may change, such as health, family or a change in status from associate to partner. Firm priorities may change as practice areas expand or contract. A lawyer with a clear sense of self, strengths, weaknesses, values and interests are more adaptable to these changes.²⁶

¹⁸ Jan Norman, *What No One Ever Tells You About Marketing Your Own Business: Real-Life Marketing Advice from 101 Successful Entrepreneurs* (Warriewood: Dearborn Trade Publishing, 2005).

¹⁹ Talula Cartwright, *Setting Priorities - Personal Values Organizational Results* (Greensboro: Centre for Creative Leadership, 2007) [Setting Priorities].

²⁰ Personal Planning, *supra* note 8.

²¹ Managing, *supra* note 9.

²² Cordell M. Parvin, "How to Prepare a Business Plan That Will Make you More Successful" online: Cordell Parvin <<http://www.cordellparvin.com/index.html>>.

²³ Personal Planning, *supra* note 8.

²⁴ Cordell M. Parvin, "Planning for Success in 2010" online: Cordell Parvin <<http://www.cordellparvin.com/index.html>>.

²⁵ Managing, *supra* note 9.

²⁶ Career Planning, *supra* note 10.

Monitor and measure performance against the goals: Monitoring and measuring your performance against your goals will determine if and why goals are being met. A difference in the stated goals and those achieved through action may signal that your personal commitment and values differ from stated goals and values and necessitate re-evaluating the stated goals and plan of action.²⁷

Building a Sustainable Practice

The sooner an associate realizes it, the better: law is a business. When developing a career plan, focus on building a sustainable practice, which will include not only doing your work but also focusing on the business aspect of developing clients and bringing in work. The business component of a career plan helps to ensure that work will flow, not only now, but years from now. It is that flow of work that places you on the path to partnership.

If you focus only on doing your own billable work and neglect to build your business, you will not achieve your goal of becoming a partner. A practice that focuses on not only doing the work but bringing in more work and delegating some or all of it to others is a sustainable practice. It is important to remember that “doing your work” will include not only billable work but also making a level of contribution to the firm through non-billable work (such as mentoring, student recruitment, client development) that is consistent with the firm’s partnership track expectations.

Delegation and Leadership

As noted above, as a partnership candidate, you must ensure that you are meeting your firm’s billable and non-billable hour targets as well as delegating work to more junior colleagues. If you are not delegating at all or only delegating in a minor way, you will not be establishing a partner level practice. Being a smart, dedicated and hard-working associate who bills 2,000 hours a year can only guarantee personal success as an associate.²⁸

In your Practice Audit, you were asked to track how much work you had delegated to others in the past year. One of your secondary goals in your Career Plan should be to increase the amount of delegation you do over the current year and the next few years. Ensure that you are not holding onto work that is now too junior for you. Look for ways to include a more junior associate in each of your files. Track the kind of work you are delegating and the hours you have given to others. Assume leadership and strategic roles on files and with clients as you progress and don’t get lost in volume, detailed work. Use some of the time you have freed up for yourself to work on business development and developing your reputation as an expert.

I have observed that many women (lawyers and clients alike) assume a perennial 'junior' or 'second in command' role in the belief that it will be less stressful and more flexible than the 'lead' role. What often happens is that all the technical work, many of the toughest decisions and the responsibility for 'making it happen' fall to this role and there is little control over schedule or priorities. Moreover, full access to client relationships, strategic

²⁷ Setting Priorities, *supra* note 13.

²⁸ Susan Smith Blakely, *Best Friends at the Bar: What Women Need to Know about a Career in the Law* (New York: Aspen Publishers, 2009) at 145 [Best Friends].

board connections and high revenue (equity) positions are sacrificed. So, if you are already doing the heavy lifting, why not risk taking the lead role?

- Linda Parsons, Q.C., Executive Coach

Understanding the Importance of Clients

In order to succeed as a partner in a law firm, whether large or small, you must have clients provide you with a constant stream of work. When you first start out as a student or junior associate, your work may consist of helping partners or other lawyers in your firm with their client matters. Your colleagues are your “clients”. However, if over time you are to become a partner, you will need to go beyond the existing pool of client work in your firm, and grow your firm’s business by attracting new client work yourself or by maintaining existing clients.

Opportunity and career advancement are tied to the ‘value’ the lawyer brings to the firm and value to a law firm is all about ‘rainmaking’—developing new clients, driving business within existing clients, and becoming known in the business community.

Building Your Client Base

You need to concentrate on maintaining and expanding your client base. To do this you need to market yourself and your services to clients and prospects. To do this most effectively, you need to figure out who your ideal target market is, build your relationships and network with that market in an effort to expand the pool of clients and potential clients who will be sources of work for you as a partner.

This may be less of an issue today than previously, but take control over your own career advancement and don’t expect to inherit practices or clients in the same way some men might. That way, if you do, its gravy. Some people earn these benefits. Some, not so much. The world has changed and clients are less loyal themselves. It’s very competitive. Be an advocate for yourself and demand to be noticed and taken seriously. The wallflower never gets asked to dance. Sandberg’s advice isn’t new – she just branded it as “leaning in.”

- Rita Andreone, Q.C., ’89, Partner, Lawson Lundell

Here are some steps to consider:

- Develop a contact list of current and potential clients.
- Review and update your contact list on an annual basis.
- Identify the priority contacts that are most likely to be sources of work for you or your firm.
- Build relationships with your current and potential clients. Plan regular relationship-building activities, keeping in mind that simple activities, like sending holiday cards or newsletters, may be feasible for all clients, while more regular, time-intensive activities like lunches and dinners are most useful with your priority contacts. Keep your network vibrant and growing just by

staying in regular touch. Focus on activities that both you and your contacts will enjoy. Invest considerably more time on relationships that are most likely to matter.²⁹

- Expand your network and your contact list with the target audience most likely to buy your services, by participating in industry associations or networking events.
- Consider whether to pitch a client directly.
- Seek to get involved in your firm's responses to Requests for Proposals (RFPs).
- Consider how to differentiate yourself so that clients will select you.
- Look for client opportunities in different situations. Do not ignore the following situations as sources of potential clients—charity volunteerism, not for profit board positions, networking groups, religious organizations, art appreciation groups, book clubs, festival organizations, community groups, and your friends and family.
- Set aside time for business development activities. Plan time daily and weekly to work on business development activities. Successful partners say they devote three to 10 hours a week to business development – whether on lunches, making calls, preparing for presentations or pitches, attending networking events, or a myriad of other activities. Many say they do something every day, even if just to make a call to say “let's plan lunch”. Others choose a particular day each week to spend time on business development activities.
- Don't always ask for work. Ask your clients how you and your firm could be more helpful to them. Providing a seminar to your client's employees at no charge or inviting clients to continuing professional development events at your firm will build loyalty and may result in future work. Giving (for free) ideas, opportunities, connections, products and timely warnings to clients will always build business and loyalty.
- When you do ask for work, don't take a “no” to mean “never” but instead to mean “not now”.
- Plan what you will do and when: Set goals for business development. Set aside time for business development by blocking off time in your calendar. Stand by your commitments.
- Make your business development efforts known.
- Invite others to join you in business development activities when appropriate, showing you are a “team player”, thinking of the firm as a whole.
- List your board activities. Include updates in your annual review.
- Docket your time if your firm tracks non-billable hours.
- Keep a record of your efforts and their successes.
- Track what is working and what is not and adjust your plan accordingly.

²⁹ *Ibid.*

Check out your proposed activities with your Firm

Make sure that your proposed business development activities are in line with firm policies and goals for client activities. Let your managing partner or practice group leader know what you are planning to do and get their approval before you start.

Do not hesitate to use firm resources such as sports tickets or tickets to other cultural events for your own business development activities. Ask for other resources or financial support when needed.

Women's Perspective: What are the Challenges and Opportunities in Building a Client Base?

More clients are men. The majority of purchasers of legal services are men. This can be challenging for women, who may not come to the legal profession with the same “ready-made” networks as some of their male colleagues, and may find it harder to build relationships with the men in their networks. Here are some strategies to consider:

- You have more of a network of potential clients than you think. At the very least, you have law school and university colleagues who are now working in business or other law firms. Make sure to include relationship building with these contacts who are at your level of seniority. While they may not be currently in a position to provide you work, they certainly may become a future resource. As well, you have been exposed every day to clients, parties on the other side, and third parties like accountants and other experts since the day you started practising. Do not dismiss these contacts because you did not play hockey with them in grade school - concentrate on building a relationship with them now and staying in touch.
- Piggy back on the networks of the men in your network to reach out to potential clients. You have lots of men in your network, including mentors, peers and clients. Some of them will be happy to introduce you and help you build your contacts from among their contacts. A referral from an existing contact or client (a “champion”) is a very effective marketing tool. Figure out who these allies are and be proactive about asking them to help you. Be specific about what you need.
- Work hard at finding commonalities and areas of rapport with clients and contacts who are not the same gender or age as you. Everyone has to do this (even men). Learn about their business and read what they read and share insights about challenges your business is facing or that you have heard from other clients. Look for commonalities outside the business context. There are lots of topics like children, parents, hometowns, vacation destinations and news items that lead to conversations that can uncover commonalities. Be interested in your contacts, listen to them and you will discover things in common.
- Do not think that you have to do traditional business development activities such as playing golf or going to hockey games. Many clients, both men and women, enjoy events such as the theatre, concerts, the symphony, films, cooking, the spa, biking, running and other activities which may be more appealing to you and your clients. For women clients, you may want to create special event that appeal to women such as hosting a spa afternoon or a cooking class.
- Design business development activities and events so that there is no confusion as to intent. For example, ‘lunch’ sends a good message if you are in a situation where clarity is required.

Increasing numbers of clients, especially in-house counsel, are women. This is a huge opportunity for women. Tap into networks of women in-house counsel, and women's industry groups. Offer to work with your women clients jointly on women's initiatives. Invite your women clients into the firm to talk about what they are doing for women in their industry.

Relationship Building: Building a client base depends on the ability to build relationships meeting by meeting, case by case and year by year. Women have a demonstrated strength in building and nurturing relationships in their personal lives and can use this strength to their advantage in developing and nourishing client relationships.

Building Your Brand

Introduction

What is a brand? Lawyers with a strong "brand" are most effective in attracting work from clients. Your brand is what you are known for. If you are known for doing excellent legal work, being a consummate team player, and delivering excellent client service, you have covered the basics. However, there are many lawyers in every field and every firm who are known for these qualities. If clients are to choose you from amongst many competitors you need to have a more distinctive brand.

Building a distinctive brand: In order to build a distinctive brand, many lawyers work hard to develop a reputation for special expertise in a range of areas. In other words, you need to declare your major. Clients want experienced lawyers who have logged time in one area of law. Be the go-to associate for partners who are involved in your area of interest.

Questions to ask yourself. As you develop your own plan to build your brand, here are some questions to ask yourself:

- What special knowledge, expertise or skills do I have that I could market on a broader scale to clients? Consider specialized legal knowledge and experience, business and industry expertise, language skills, and other expertise that set you apart from competitors. "Clients like generalists but pay for specialists," so try to have both facets covered in your brand.
- What expertise or skills do I need to further develop to have a stronger brand? These might include substantive knowledge and expertise in a supplementary area that is in high demand by your target client base, or softer skills such as communication or presentation skills that would allow you to convey your expertise with more authority.
- What can I do to enhance my reputation in these areas?
 - *Website:* Make sure your website profile clearly articulates your special expertise and experience.
 - *Writing:* Consider writing a column in your area of expertise in a legal or trade publication; consider starting or contributing to a law related blog; establish newspaper and media contacts and indicate you will make yourself available for background off the record briefings as well as a contact for news; and finally don't ignore social media—use social media to your advantage (Twitter, LinkedIn, Facebook, etc.).

- *Speaking:* Consider where you wish to speak—research what opportunities are available. Speak in front of your colleagues at internal firm seminar as to increase your credibility. Consider professional development conferences and seminars and seek opportunities to speak on a panel. Offer to speak at one of your client’s internal seminars. Get yourself in front of large groups of clients or potential clients by pitching to speak at trade associations, legal seminar providers and other organizations.
- *Join professional groups and trade associations:* Joining organizations in your field of specialization will help you get in front of clients and potential clients as well as demonstrate your expertise.

Establish the Necessary Resources to Ensure Success

Get help if needed. Perhaps you need tips on speaking or presentation skills. You can also attend programs that address these issues. Ask if you need communications, presentations, image consulting (attire, body language, deportment) or an etiquette coach.

Women’s Perspective: What are the Challenges and Opportunities in Building a Brand?

Time. Time is a challenge for all lawyers, especially parents. One challenge frequently identified for women is that they spend more time on child care and household management per week than their men colleagues.³⁰ This translates into having less time to spend on marketing activities. Each family has to make decisions about the best way to share income-earning and child-care responsibilities in their own circumstances. If you want to become a partner, you will obviously have to devote the necessary time and effort to build your brand in order to succeed. Make thoughtful choices with your spouse about how you share family obligations, having regard to the time investment required for you (and your partner, spouse or significant other) to meet your career goals, and become a time management expert so that you can meet the family, client and career expectations you have set for yourself. Explore what resources are available to you to take household management tasks off your plate (e.g., cleaning services). Ensure you have enough resources to assist you. In addition, ask yourself what you are spending your time on at the office. Is it the highest and best use of your time? Could you delegate more effectively?

Credibility and Confidence. Research tells us that most people, men and women, make implicit assumptions that men associates have expertise, credibility and the trust of others. This is a form of gender bias. Women who are faced with these attitudes from others in the firm, need to focus on their own strengths in the areas of networking and relationship building. Women need to be especially attuned to substantive brand-building strategies that emphasize their credentials and lend weight to their expertise, such as speaking engagements and writing for publications. Women may also need to invest time in building their communication styles and presentation skills so as to demonstrate their confidence and their ability to convey authority and expertise.

³⁰ F. M. Kay, C. Masuch & P. Curry, *Turning Points and Transition: Women’s Careers in the Legal Profession. A Longitudinal Survey of Ontario Lawyers, 1990 – 2002* (Toronto: The Law Society of Upper Canada, 2004) at 56.

With respect to self-confidence – fake it till you make it. Everyone else is just as scared. When you make a mistake (and you will) own it, learn from it and move on. Do not operate as if perfection is the only option.

- Linda Parsons, Q.C., '80 Executive Coach

Selling your Services

Introduction

There are lots of good resources for lawyers on how to move new opportunities to new matters by mastering how to sell their services effectively. To succeed as a partner, you need to be able to sell your services and your firm's services to expand your firm's business. Selling may not come naturally to you, but it is a process that you can learn to do well, the same way you learned how to close a transaction or bring an action to trial.

Here are some things to keep in mind:

Listen. You won't learn what your clients really need unless you listen to them. Ask them open-ended questions— What are you working on now? What's keeping you up at night? How is x news event affecting your team? Be interested in them and let them do most of the talking. Listening fosters trust. If you are able to demonstrate that you are interested in understanding what the client really needs, they are more likely to believe that you will be able to provide it.³¹

Uncover Client Needs. As you listen, try to identify your client's needs for legal services that you or your firm could offer. The ability to analyze a client to achieve a precise understanding of their needs is of significant importance.³² Listen to what they explicitly say about their substantive legal needs, but also try to uncover the subtext – Do they need it done really quickly because they sat on it for too long? Are they inexperienced in the area and so need a 'name brand' to give them credibility? If you can identify their unspoken needs, you can tailor your own or your firm's pitch much more effectively.

Articulate How You Can Help. Spend thought and effort on articulating a persuasive statement or pitch as to how you can help. You are not selling soap; you are selling a complex blend of expertise and experience to someone who has a significant problem or project, so you need to be thoughtful, nuanced and articulate.

Advance the Process Step by Step. Learn the step-by-step process that takes you from your first contact to actually opening a new file with a client. We do not start on page one with an initial contact and then immediately skip to the end and get a referral for the legal work. Successful rainmakers know it is a longer process, where you plan the next step on the ladder and measure success in increments.

³¹ Jim Hasset, *Legal Business Development: A Step by Step Guide* (Boston: The Advertraining Group, 2006) at 52.

³² John Gelagin, "Good News, Lawyers Don't Need to Sell Used Cars to be Effective at Business Development" online: <<http://www.findlaw.com.au/articles/706/good-news-150-lawyers-don146t-need-to-sell-used-ca.aspx>>.

Invest Time and Don't be Discouraged by Failures. Understand that most approaches do not end in a referral of work. This is true even for the best rainmakers. Do not get discouraged. You need to make many unsuccessful approaches in order to have a successful one. Think of these unsuccessful attempts as part of the learning process. Each time you make a pitch, that experience makes the next pitch that much easier.

Women's Perspective: What are the Challenges and Opportunities in Selling Services?

Listening and meeting the needs of clients. Many women excel at listening, discerning and meeting the needs of others. You can use this to your great advantage in the business development area to uncover spoken and unspoken needs of your clients that others may miss, so that you can craft your message correspondingly better.

Communication Skills: Many women have superior communication skills in relationships. This will assist them in articulating how they can meet their client's needs in an effective way.

Bridging the credibility gap. Many women feel that they do well building relationships and uncovering needs in the sales process, but when it comes to actually 'closing the sale' they may suffer from the implicit assumptions discussed above; that is, that men have more credibility and authority. If you think this applies to you, plan for it. Think about what you need to do to give yourself the credibility boost that might not otherwise exist. Finding ways to emphasize your experience and recognized reputation or credentials, finding a mentor with the requisite authority to advocate for you, and upgrading your communication or presentation style to enhance your authority and credibility are just a few strategies to consider.

Checklist for Building a Career Plan

Introduction

It is now time to begin to draft your Career Plan for the next few years of your practice. Your goal is to become a partner and you have been introduced in this Guide to some of the many things you need to understand and to do so that you and your practice are ready for partnership consideration.

As noted above, setting measurable goals to help you move towards partnership will give you the best chance of success. A Career Plan helps you map out your own path to success. Every firm is different so in the checklist below, we have set out some suggested topics for you to cover in your Career Plan. You may wish to consult the sample career plan at Appendix 1 to assist you in putting your career plan on paper.

Checklist for Career Plan

The following is a checklist to assist you in developing your own Career Plan:

Consider your personal audit

- What personal characteristics do I have that need improvement to move towards partnership?
- Do I need additional resources at home to free up time for my practice?
- Should I consider a flexible work arrangement or extended track?

- Do I need to seek out a mentor or sponsor?
- What requests should I make of my mentor in the coming year?

Consider your practice audit

- Do I have enough billable hours? If not, what does my target need to be?
- Do I perform non-billable hours that are valued by the firm?
- Am I delegating enough hours?
- Do I need to improve the financial management of my practice?
- Is my practice focused in an area that will be sustainable for me and the firm in the coming years?

Consider client opportunities

- What existing clients can I work with to secure business for the future?
- What existing referral sources should I continue to nurture?
- What contacts do I have that are potential future referral sources and how can I grow those connections?
- Who are the peers, co-workers and those I know from my personal life that could provide some business for me?

Marketing yourself

This year I will do the following to market myself:

- writing and speaking
- specialist training
- joining organizations in my field of specialization.

Using Your Mentor or Sponsor Relationship Effectively

Introduction

Having a mentor to provide advice and coaching and a sponsor to champion you is very important in your progress to partnership. These important individuals can not only assist you in understanding the firm and in preparing your personal and practice audits but also provide support during and after your performance review and while you develop and manage your client base. This section talks about mentoring and sponsoring and what you can get out of such a relationship.

What is a Mentor?

A mentor is a trusted, experienced professional who provides advice, encouragement and coaching to a more junior colleague (the “mentee”). A mentor can be a source of valuable information and advice concerning the demands of the profession generally, and the particular expectations of the firm where the mentee works. A mentor will lead by example, demonstrating to the mentee what she should strive to achieve in order to attain success within the firm. A mentor will support and counsel the mentee to help to overcome potential roadblocks to success. A mentor will sometimes champion the mentee with clients and other partners in the firm, assist in opening doors to rewarding work assignments, and exercise organizational leverage to help the mentee advance professionally, ideally including entry to partnership.

Other times, a mentor will be an essential source of wisdom, guidance and support who can help get you through some of the more difficult and challenging periods.

What is a Sponsor?

While some mentors may also be sponsors, not all sponsors are mentors. While mentors provide support for you, a sponsor becomes your champion and helps you advance.

A sponsor is someone who is influential in your law firm or in business. Ideally, a sponsor has significant influence over the decisions made in your law firm, including decisions around admission to partnership. A sponsor opens doors, advocates, protects and promotes an individual in his/her career path. In doing so, a sponsor puts his or her prestige and power on the line to champion another.

Why Should I Have a Mentor and a Sponsor?

There is a strong and well established link between mentoring and sponsoring relationships and career success. Lawyers consistently identify strong mentoring and sponsoring relationships as extremely advantageous, if not key, to developing a successful practice and achieving partnership.

Among other advantages, mentors play a key role in helping less experienced lawyers to gain self-confidence, to develop a profile both within the firm and the profession generally, to understand and adapt to firm culture, and to develop valuable social and professional networking relationships. Sponsors are key to helping junior lawyers build their client base and raise their profile both within the firm and with current and potential clients.

A mentoring and sponsoring relationship can accelerate a junior lawyer's trajectory on the partnership curve and help to develop the skills needed to develop a satisfying and successful legal career.

In many law firms, there is a direct link between a good sponsoring relationship and the referral of challenging work from important clients. A good sponsor will provide opportunities to showcase the mentee's talent and ultimately open the door to key client contacts. It can be particularly helpful to have several mentors and sponsors at different stages of their careers and with different skills to provide you with the most help on the path to partnership.

Sponsorship is particularly key for women lawyers who wish to advance into partnership. As research from Catalyst indicates,³³ even though women start out behind and often remain behind men, even with mentoring, a sponsor can propel a protégé to the top of the list: "Done well, sponsorship can serve as a highly effective intervention to accelerate women's career velocity. Lack of sponsorship is one indicator of what's really been holding many women back—exclusion from organizations' most influential networks. Sponsorship can finesse access to these powerful networks, providing impressive benefits to leaders, high-performing employees and organizations themselves".

³³ Heather Foust-Cummings, Sarah Dinolfo, Jennifer Kohler, *Sponsoring Women to Success* (New York: Catalyst, 2011) at 2 [Sponsoring].

Finding a Mentor

Many firms have a formal new associate mentoring program in place with written guidelines, a program coordinator and procedures for matching mentors with first year associates. In other firms, partners have designated juniors who work exclusively for that partner, who then fulfills the role of a mentor and sometimes as sponsor. In some firm environments, mentoring is more informal. The designated mentor may be a senior associate who is more of a “buddy” or “pal”, responsible for checking in occasionally to see how the mentee is getting along. In some firms and for sole practitioners, a formal or informal mentoring program may be entirely absent.

At the outset, it is important to understand and educate yourself about the particular mentoring program that your firm offers. If there is a written policy or program, review it to ensure that you understand how the program operates, your obligations and those of your mentor or sponsor, and the role of the program coordinator. Consider asking some of the other associates about their experiences, their perceptions of its effectiveness, and for their insights about how to ensure that you get the maximum benefit from it.

Determine whether there is a procedure for dealing with mentoring relationships that do not work. Simply because a lawyer has been assigned by the firm as a mentor, this does not guarantee that the relationship will succeed. If the mentoring relationship is not a success, do not hesitate to ask for a different mentor.

Even where the firm has a formal mentoring program that matches associates with mentors, that does not exclude the possibility of developing other mentoring relationships. Indeed, it can be very advantageous to have the benefit of a number of different mentors from within the same firm. Sponsoring relationships in particular tend to arise informally, as a result of a more junior lawyer earning the respect of a more senior lawyer through impressive work. Most successful lawyers typically had the benefit of several different mentoring and sponsoring relationships, both formal and informal.

Finding a Sponsor

Given the nature of the sponsor/protégé relationship, finding a sponsor is not always an easy task. Generally, sponsors and protégés find each other through working together and developing a working relationship based on honesty, confidence, trust, communication and commitment.

In seeking a sponsor, look closely at those partners with whom you are working. See if any have the status and influence within the firm that will make them an effective sponsor for your advancement into partnership. Analyze what kind of working relationship you have with each and whether the relationship is marked by the qualities listed above. Tell him or her that you want to become a partner and ask for their help. Be willing to listen to advice that you are given and to seek out and act on opportunities provided. Ensure that when you do take up an opportunity, that your work is stellar. Above all remember, “While sponsorship can open doors for high performing individuals, simply providing someone with an opportunity does not guarantee success. It’s up to the person being sponsored to deliver, once given the opportunity.”³⁴

³⁴ Sponsoring, *ibid.* at 5.

Your Role as Mentee/Protégé

Once you have established a relationship with a mentor or sponsor, it is important to fulfil your end of the bargain. Try to follow the advice that you receive. Make the most of whatever opportunities are offered to you as a result of the relationship. For example, if your mentor or sponsor provides an opportunity to develop your skills and to meet individuals who would be helpful to your career development, such as meeting an important client, take the opportunity.

Observe how your mentor or sponsor deals with clients, colleagues at the firm and other counsel. Try to learn from their example.

Ask for regular feedback from your mentor or sponsor. Seek frank and constructive criticism.

Continue to assess your career plan to ensure that you are filling in the gaps in your experience that are necessary in order to succeed at the firm. If you are not making progress, consider whether you need to find an additional mentor with particular expertise in other areas to address those specific deficiencies. Also, do not be afraid to seek out opportunities for yourself.

It is also important to be forthcoming about your career plans. Tell your mentor or sponsor that you want to become a partner.

Women's Perspective: Challenges and opportunities in finding mentors and sponsors

Predominance of Men Partners: As we are all aware, it is still the case that most managing partners of law firms are men; most of the most senior partners are men; and most of the power figures in the partnership are men. The percentage of women partners in Canada and the US ranges from less than 16% to approximately 20% in large and medium size firms. Thus, it will be necessary for most women to have a man as a sponsor if they want to advance into partnership. Such a partner will have access to the opportunities and clients that matter most and also will have a voice when it comes to partnership admission. It may be more difficult for women associates to access such sponsors or to develop strong sponsor/protégé relationships with male sponsors. If you are lacking a strong male mentor or sponsor at your firm and if there is no formal mentoring program for senior women associates, speak up about it at your performance review, talk to your practice group head or your managing partner about whom you wish to be mentored by. Do not hesitate to approach a prospective mentor or sponsor directly – enlist help from more senior lawyers if necessary.

Seek out male mentors for whom you have done excellent work and work hard to build rapport and find commonalities outside the work context, as you would with clients. Ask for advice and be specific about your needs for help and support.

Male Partners have a different experience in law firms: While a senior male partner may make an excellent sponsor, he may not understand some of the issues you face as a woman in the firm as he has not experienced such things as gender bias, exclusion from informal networks, lack of role models, lack of leadership opportunities etc. For these issues, you should seek out a senior woman either at your firm or elsewhere to help you.

Women Partner Mentors can get overwhelmed with many mentees: You may be fortunate enough to have senior women partners in your firm who can act as sponsors or mentors to you. However, since many women associates prefer women mentors, such women often get overwhelmed at being asked to mentor numerous younger women and may not be able to deliver the time and attention needed. If this is the case at your firm, there are a few alternatives to consider. Some of these would include proposing the establishment of “mentoring circles” made up of groups of women who participate in group mentoring; approach lawyers in your firm closer to your year of call as “peer mentors” or consider seeking a woman outside the firm to assist you while asking for a male mentor at the firm.

If your firm does not have sufficient mentors or sponsors, consider utilizing outside consultants and coaches.

Conclusion

The path to partnership is complex and requires knowledge of your firm and yourself, planning, the support from members of the firm, and hard work and dedication. However, for those who wish to become partners, the work that is required to get there is worthwhile.

Women often comment about the challenges of progressing in their firms. Common challenges raised include the lack of transparency about processes and criteria used by the firm to assess an associate’s performance, not knowing what is expected of an associate and not having the business skills to build a sustainable practice. We hope that this Guide will provide a roadmap to assist you in navigating your firm’s expectations, assessing your personal and practice contributions to the firm, planning your path and ensuring that you have the resources to attain your goals. Always remember that the decision to become a partner is not only the firm’s decision. It is also your decision, and it should be informed.

In hindsight, I wouldn’t have worried as much (so much!) and I wouldn’t have been in such a hurry. I would have enjoyed life more, worked less. Partnership would still have come, in time.

- Rita Andreone, Q.C., Partner, Lawson Lundell

Appendix 1 - Individual lawyer career plan

Date:

Expertise

What are your areas of expertise?

Sources of work - Describe

Internal (e.g., lawyers, practice groups, cross-selling)

External (e.g., industry association, referral network, social network, volunteer activities)

Business Development Goals: Describe briefly three or four goals and objectives.

Analysis of goals (SMART: Specific, Measurable, Attainable, Realistic, Timely)

What are the most important goals (i.e., prioritize and identify as long- and short-term goals)?

What are the resources needed to achieve the goals (e.g., skills, technology, staff, CPD, financial, mentoring)?

How will the goals be achieved (e.g., CPD, speeches/presentations, conferences, articles/publishing, networking, firm committees)?

Docketing, Billings and Revenue

Total Hours

Chargeable: Annual _____ Daily: _____

Non-chargeable: Annual _____ Daily: _____

Projected Revenues: Annual _____

Business Development – Profile Building

Membership in professional/bar organizations (shall join or maintain).

Community, civic, political or charitable organizations (shall join or maintain), which have the potential of generating business or enhancing the firm’s image.

Social or recreational organization(s) (shall join or maintain) that have the potential of generating business or enhancing the firm’s image.

Trade and industry associations (shall join or maintain).

Speech or presentation to the following group(s) or teach a class in the following subject(s):

Write books or article(s) for publication.

Business Development – Relationship Building

Initiate social or business contact with existing or potential client(s) with whom I have not done so in the past three months

Existing or potential referral source(s) with whom I have not done so in the past three months.

During the next year, engage in existing client development activities:

Practice specific cross-selling, client roundtables, newsletter, legal cost analysis, managing client relationships

Prospect targeting, research and follow-up, legal audits, presentation teams

New client development, RFP's, presentations, etc.

Internal marketing activities (marketing training/mentoring, firm database, marketing committee, internal newsletter, etc.) during the next year.

Continuing Professional Development/Skill Improvement

Legal Education

Education required to increase expertise in current practice area(s), how it will benefit the firm, where the education is available and approximate cost.

Education required to increase expertise in practice area(s) where you wish to practice, how it will benefit the firm, where the education is available and approximate cost.

How can you assist in the education of others by in-house seminars or by a formal mentoring program to train other lawyers and paralegals, outline your proposal and how it would benefit the firm?

Industry/Business Education

Leadership, writing, speaking or management education

Practice group, committee, knowledge management, mentoring or other firm activities.

Describe education to improve your technological, writing, speaking, or management skills; how such knowledge would benefit yourself and the firm, where the education is available and approximate cost.

Pro Bono

Identify pro bono activities (volunteering, Board member, politics, college/university, pro bono legal services).

What is the benefit to you or the firm?

Appendix 2 – Checklists

Partnership Admission Policy and Practices

- Identify and obtain copies of relevant policies, such as partnership admission policies, that outline criteria and process; billable hours targets policies and business origination credit policies.
- Identify unwritten policies and understand the core culture of your firm – talk to your mentors, pay attention to what behaviors receive praise, and seek guidance from someone who has recently been admitted to the partnership.
- Evaluate the criteria for partnership against your own skills and abilities. Understand what each criterion means within your firm and how “success” is measured. Most firms consider some or all of the following as relevant criteria:
 - a sustainable practice;
 - financial management skills;
 - commitment and dedication;
 - client management;
 - profile in the marketplace (via speaking, writing and committee work);
 - business development;
 - responsibility for or carriage of matters or clients;
 - non-billable activities;
 - leadership and delegation;
 - volunteer activities;
 - strong analytical skills, judgment and ethics; and
 - legal expertise.
- There may be a weighting of the criteria for admission to partnership. Gather as much information as possible about the weighting of criteria so that you understand the expectations of the firm.
- Identify characteristics of successful associates/partners practices that you can emulate.
- Be aware of the demographics of your practice group and whether there is space for you in the partnership.
- Be aware of the needs of the firm’s clients and how your expertise can contribute.
- If relevant, determine how maternity and parental leaves and flexible work arrangements may impact on your advancement toward partnership. The firm may have a strong commitment to work/life balance, but taking a maternity or paternal leave may still impact your path to partnership. This is largely due to the fact that lawyers on extended leaves, men or women, are not actively developing their skills as lawyers, or their client contacts, and as a result may require a longer period of time to gain the appropriate competencies to be considered for partnership.
- Understand whether your firm has income partners and/or part-time partners and how those options are relevant to your progress. Identify the critical differences between equity, income and

part-time partners in order to make informed choices about your options in your progress to partnership.

- Identify what kind of non-billable work is most valued in your firm.
- Understand the business development expectations for partnership candidates (e.g., When are you expected to begin bringing in some business and how much business are you expected to bring in? Does maintaining important existing client relationships count? If so, how?).
- Understand how performance evaluations are taken into account in the partnership admission process.
- Identify coaching, training and mentoring opportunities offered by the firm and the role that these may have on your progress to partnership.

PERSONAL AUDIT

SATISFACTION WITH WORK

When tracking your personal development towards partnership, you may wish to consider the following:

- Are you enjoying your practice area?
- Do you enjoy working with clients, taking responsibility for their legal problems and providing top-notch service to them?
- Do you enjoy business development and the process of finding new clients and generating new work?
- Do you like the firm where you are practising and the people you are practising with?
- What are your strengths? For example:
 - I am a strong team player.
 - I am ambitious.
 - I can build rapport with clients.
 - I am effective at providing client services.
 - I can lead a project.
 - I am a good team player.
 - I am detail oriented.
 - I like to market myself.
 - I am a good communicator.
 - I am a good writer.
 - I have strong time management skills.
 - I can multitask and work well under pressure.
 - I have a good sense of humour.
 - I work well to deadlines.
 - I am good at networking.
 - I am good at nurturing relationships.
 - I am good at problem solving.

WORK/LIFE EFFECTIVENESS

- What are the billable and non-billable hour expectations of an associate and a partner in your firm?
- Are you able to meet these billable and non-billable hours expectations?
- If you find the hours challenging because of family obligations, do you have:
 - sufficient child care?
 - resources to assist in emergency situations, such as emergency child care?
 - resources to deal with contingencies, such as parents or children who are ill?
 - resources to assist you in household management and childcare tasks?
 - If applicable to you, does your partner, spouse or significant other support your goal of being a partner?

MENTORS, SPONSORS AND CHAMPIONS (SEE ALSO SECTION ON USING MENTOR OR SPONSOR RELATIONSHIPS EFFECTIVELY)

- Are you satisfied with your “mentorship” relationships at the firm? Have you tried to seek out a mentor in a powerful position who will champion you?
- If you do not have an internal mentor or if that mentoring relationship is not successful, have you sought a mentor in the broader legal community through an external program?
- Do you have key work providers with whom you have a good relationship and who are providing you with appropriate work opportunities? Do you understand the work allocation process at your firm? Do you have a strategy to obtain the work opportunities that will assist in your advancement? If not, have you considered seeking assistance with this from your practice group leader or mentor?

PRACTICE AUDIT

HOURS AND CLIENTS

Annually, review your practice over the last year as follows:

- How many hours have you billed?
- How do your hours relate to firm billable hour targets?
- Which clients have you worked for and how many hours for each?
- Are your clients on the firm’s list of major clients? If not, will this be a problem?
- Is your practice appropriately diversified or specialized for your year of call and in light of your overall career plan and future goals?
- How many hours of work do you get from more senior partners at the firm? Are they significant partners?
- How many hours do you generate yourself?
- How many files are you the billing lawyer on?
- How many hours of work did you delegate to more junior lawyers?
- How many significant matters were you the lead on?

- Are you the relationship lawyer for any clients? Have you attracted new matters or new clients yourself?
- Are you a member of any significant client teams?
- Are you a leader of any significant client teams?
- Are there matters that were generated as a direct result of your efforts with an existing client or clients that you brought to the firm? If so, how many hours did these matters account for?
- If you are moving towards specialization, will this specialization be sustainable and feasible as a partner? Will you be able to generate enough business in that area to keep yourself and others busy over the long-term?

TIME AND FINANCIAL MANAGEMENT OF YOUR PRACTICE

- Do you capture your hours on a daily or weekly basis?
- If applicable, do you submit your hours on a timely basis?
- Do you bill promptly for files on which you are the billing lawyer?
- How much of your time was written off in the last year?
- How much of your time was premium billed? How long are your receivables outstanding?

If you don't know, how can you find out?

INTERNAL NETWORKING

- List senior, influential work providers who have referred you work this past year.
- List how you have marketed yourself internally during the past year.
- List your sponsor or sponsors at the firm who can be an advocate for you and help you build your profile internally. If you do not have a sponsor, identify someone who you will ask to fulfil this role. List the role you play on any key firm committees.

BRANDING

- List how you have increased your external reputation and profile in the past year by:
- writing and/or speaking on your areas of expertise;
- sitting on any corporate or not-for-profit boards;
- participating in any industry groups related to your practice; and
- participating in volunteer or social activities related to your practice or to potential client contacts.

BUSINESS DEVELOPMENT

- Did you make a business development plan? Did you follow it?
- What are the expectations at your firm for associates and partners regarding business development? List the business development activities with clients that you carried out in the past year and rate their results, if any.
- List the external networking activities you engaged in over the past year with potential clients or contacts. Which were the most effective?
- List internal and external resources you have used to help you develop business.

- If your firm has business development resources that are specific to women, list those you have utilized.
- If your firm does not have business development resources that are specific to women, list any you initiated.
- Have you asked for coaching in the area of business development or have you arranged it on your own at your own expense?

Executive Summary of the Law Society of Upper Canada's Justicia Project Materials on Developing Women's Leadership in the Legal Profession

The Law Society of Upper Canada's Justicia Project has produced a thorough and excellent guide and resource for developing women's leadership in the legal profession¹. BC's Justicia Project endorses that guide and encourages law firms and lawyers to review and follow it. The following serves to introduce and summarize the Ontario guide and its conclusions, and adds the comments and insights of women leaders from BC.²

Why should you read this Guide?

Even if you think you have no interest in leadership, you should read this Guide. In a very real and pragmatic way, practicing law involves exercising leadership every day. The best practices in this Guide will be directly relevant to how you represent both your clients and yourself in the way you work.

“You're an advocate, so be an advocate for yourself. No one knows you and what you want, what you need and what you can bring to the table, like you.”

What is leadership?

There are many aspects to leadership. It is not just having a position or title – it is the ability to influence, inspire and motivate people so that all are working to the same goals.

“The job of a leader is to develop and empower those she is supposed to lead.”

Many positions within a law firm carry leadership responsibilities. Some of these have more influence, such as membership on a compensation committee, or being a practice group leader or managing partner. There are other positions within firms that involve less leadership responsibility but are still important, and may be stepping-stones to other more influential positions. Leadership can also come from within, such as being a good rainmaker, or having acknowledged expertise in an area. Likewise, having qualities that make a lawyer a good mentor, or being known as someone from whom one can obtain thoughtful advice, can result in someone becoming a leader. There are also leadership positions within the legal and broader communities such as volunteering with a CBA committee, teaching a CLE course, being a benchler, or sitting on the board of a community charity.

“There is no cookie-cutter way of maximizing your contributions to the business.”

¹ [http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Justicia/Leadership_Skills_2013\(1\).pdf](http://www.lsuc.on.ca/uploadedFiles/Equity_and_Diversity/Justicia/Leadership_Skills_2013(1).pdf)

² For the purpose of this summary only, we have taken excerpts from the responses provided by the women leaders whom we interviewed and made minor edits to them. Their full responses can be found in Appendix A – Leadership Questions and Answers.

What are the characteristics of successful leaders?

Successful leaders are good lawyers. They have excellent people skills, and are strategic, confident and resilient. But there is no one formula or combination of traits that will make a person a successful leader. Leaders are flexible and can adapt to different situations.

“Learning to lead is always a work in progress and a lifelong one.”

How do women and firms benefit from women leaders?

Women have unique leadership styles that are effective. Firms with women in leadership roles are more likely to do better financially.

“Diversity of thought, perspective, approach, and style are critical to organizational success.”

Women leaders are role models for others, particularly junior women lawyers. Women who see other women in leadership positions will know that this is possible for them and will be encouraged to aspire to such positions. Having women in leadership positions promotes a culture of equality between men and women and the sense that advancement is based on merit rather than gender.

Women make up more than 50% of graduating law school classes. Having women in visible leadership positions attracts the best graduates and ensures the largest pool of talented candidates. A greater pool of women leaders leads to greater opportunity for succession planning.

“Leadership positions give women the ability to help shape the organizations that in turn shape our society. It empowers the women in those positions, but it also inspires others.”

Women, along with all people from diverse cultures and backgrounds, bring different perspectives and values to leadership, allowing the diverse values of society and clients to be better represented and met. Many purchasers of legal services are now considering and even requiring diversity information when hiring counsel.

“We have a different and equally valuable perspective and set of experiences, without which we will never be able to create a profession where both men and women are able to thrive.”

Women leaders have the power and access to the resources that influence outcomes, in their own careers, in their firms and in the profession. They can influence policies to promote women and women’s perspectives on issues. They can rebut negative stereotyping of women. Leaders with greater control and choices have more fulfilling careers.

“Our contribution as women leaders offers something unique and new that needs to be heard; and our collective, caring voice carries a force that makes a difference in this world for the better.”

What are unique challenges for women in leadership?

There are comparatively few women in leadership positions and senior women in private practice. As a result, a small number of women are often asked to be on committees or be speakers. A larger pool of women leaders would lessen the burden and give others the opportunity to share their experiences, and be role models for other women.

Women continue to bear the majority of family responsibilities, and the demands of family and motherhood compete with the demands of a legal career.

Women continue to face unconscious and sometimes systemic bias in the workplace. For example, women who need time to care for family may be thought to be less committed to their careers, with the result that they are not given the same opportunities as their male colleagues. Further, many leadership qualities are often thought of as masculine traits. When women demonstrate the same qualities, they are sometimes criticized for them.

Some women may undervalue their abilities to be leaders. They may not consider their own potential unless they see other women in leadership positions or someone encourages them in that direction.

“Women are often socialized not to seek out leadership positions unless they believe that they are at least 99% qualified for the position.”

Women who are under pressure to contribute to firms by doing non-billable activities may not be as well-compensated as those who participate more in rainmaking and billings.

Women may feel that they are, and may be, appointed to committees or put in positions of leadership as the “token” women. This may cause women to decline positions if they feel they will be under increased scrutiny either as someone who lacks the credentials, or who will unfairly favour other women.

“If someone in the firm expresses confidence in your leadership skills – seize that. I still see a tendency to pull back, and women have to stop that self-regulation.”

Some law firms may not be accepting of diverse leadership styles, including the leadership styles of women, and may only accept leaders that confirm to a masculine model of leadership. Women may not be assigned mentors who have enough influence themselves to promote or sponsor the advancement of women.

What can be done?

1. Develop a sponsorship program. This is distinct from the formal and informal mentoring in which most firms engage. A sponsor actively supports and promotes another person. Assign a sponsor with influence to women who have the potential to be leaders.

“They provided me with opportunities that allowed me to progress and demonstrate my ability both to myself and others.”

2. Encourage junior lawyers to develop a leadership plan early in their careers to develop and demonstrate their leadership potential, and to seek out a sponsor.

“Define the future: Be proactive. At every level of the organization plan, act and behave so that you are defining the future as much as possible.”

“Get out there early! You don’t have to perfect every stage of your lawyering skills before you carve your own niche.”

3. Continue to develop leadership skills and experience in mid- and senior-level lawyers. Women lawyers should consider which committees, roles or additional training would allow them to continue to develop and demonstrate their skills and leadership style and advance their leadership opportunities.

“It’s important to invest in people and give them as much responsibility as they can reasonably handle.”

4. Ensure there are senior women in leadership positions to be role models for more junior lawyers, and value those positions both financially and culturally.

“My most important mentors included women leaders who inspired me, informed me, showed me a better way to get things done, listened to my woes and doubts, made me laugh, and kept me striving”.

5. Develop a culture that supports promoting women to leadership positions. Recognize and accept that leadership styles differ and a variety of leadership styles may be needed or effective in different situations. Make the selection of leaders as transparent as possible and ensure that the process for selecting candidates for leadership positions is fair and does not have any unconscious bias. Ensure that the selection pool is inclusive and reflects the diverse nature of society, the firm and its clients. Fairly value and compensate non-billable leadership work of women.

“I had partners who opened doors and sometimes pushed me when I was too comfortable.”

6. Develop a culture that supports women to take on leadership positions outside the firm, including within the profession and in other communities. Actively promote, support and nominate women for awards and positions in professional associations.
7. Read this and the Law Society of Upper Canada guide. Take steps, through a committee or a responsible person, to implement these goals. Set metrics and measure your success.

APPENDIX A: LEADERSHIP QUESTIONS AND ANSWERS

1. **How do you describe your leadership style and how did you develop it?**

“I definitely have a collaborative style of leadership. I’m told that I am good at ensuring that diverse ideas are heard while still ensuring that we reach a conclusion or achieve a good result.”

- Nicole Byres, Q.C., Miller Thomson LLP

“I believe my style has evolved to be analytical, inclusive and decisive.... A leader is needed to set the course and ensure everyone is headed in the same direction.... People love the discussion, but also like the energy of a resolution and the focus of a direction.”

- Anne Giardini, Q.C., Chancellor of SFU

“I believe that the job of a leader is to develop and empower those she is supposed to lead. She does so by being supportive, encouraging, collaborative and above all, fair minded.”

- Anna Fung, Q.C., Former President of the Law Society of British Columbia

“I’m inclusive, in large measure because the truly innovative ideas come from others. I’m also really task driven, finding joy in completion, so I spend a lot of time engaging others in strategic goals to ensure we all have actionable, next steps, all going in the same direction. But most importantly, there is this. It is really important for me to be the person who absorbs the stress of others, rather than creates further stress.”

- Lisa Vogt, Q.C., McCarthy Tetrault LLP

“It is a mixture of styles - both participatory and directive, and it developed over time. However, for me it starts with a clearly articulated vision and the development of roles within the group that play to people's strengths and interests and needs.”

- Carmen Theriault, Q.C., Bull, Housser & Tupper LLP

“I like to think that I lead by example, and frankly, I think I developed my ‘style’ out of some frustration with the pace of some things. If you want to get something done, as a busy person, so I try to lead by example and show what can be done.”

- Jan Lindsay, Q.C., Lindsay LLP, Former President of the Law Society of BC

“As a young lawyer, I learned the importance of being a professional first and a business person a close second. So to me, leadership of a group of high-achieving professionals means a very flat organizational structure and a team first environment. I am constantly saying “all of us are smarter than one of us.”

- Lori Mathison, Managing Partner, Dentons Canada, LLP

2. **Why is it important for women to seek leadership positions?**

“I see it as a responsibility to yourself, the profession and the broader community. Leadership builds confidence in your abilities, provides broadened engagement with others and is profile-building. Leadership in organizations outside of your practice can add a satisfying other dimension to your professional life. As a mother of two daughters, I wanted to be a positive role model.”

- Rita Andreone, Q.C., Lawson Lundell LLP, Law Society of BC Life Benchers

“Women bring different views to the table. Views that are critical to the success of a business. We’re going through a period of profound change in the delivery of legal services, and our clients have different expectations and value determinants: why wouldn’t you have a diverse leadership team to provide the input to adapting to, and succeeding, in that change. It’s kind of a no-brainer. It won’t happen by chance though. If someone in the firm expresses confidence in your leadership skills – seize that. I still see a tendency to pull back, and women have to stop that self-regulation.”

- Valerie Mann, Managing Partner, Lawson Lundell LLP

“Because we matter. Because our contribution as women leaders offers something unique and new that needs to be heard; and, because our collective, caring voice carries a force that makes a difference in this world for the better.”

- Maria Morellato, Q.C., Mandell Pinder LLP, Law Society of BC Benchers

“We are living in an increasingly diverse and demanding world. Diversity of thought, perspective, approach, and style are critical to organizational success these days. If a woman is energized by the prospect of leading then there is every opportunity these days for her to pursue that goal.”

- Sue Paish, Q.C., CEO of Lifelabs Inc.

“It is a way to effect social change, and not just in the context of gender equality. We need a diversity of views and styles at the table. Leadership positions give women the ability to help shape the organizations that in turn shape our society. It empowers the women in those positions, but it also inspires others.”

- Carmen Theriault, Q.C., Bull, Housser & Tupper LLP

“Women see the world differently than men do – and that is good and needs to be reflected in our leaders. We need both.”

- Anne Stewart, Q.C., Blake, Cassels & Graydon, LLP

3. **Did you have a sponsor? Or mentors? If so, how important were they in your career development?**

“I did have a sponsor, and it made all the difference in the world. I don’t know that I realized it at the time, but I was incredibly fortunate to work with a senior corporate partner at the firm from a very early stage in my career. Not only was I given the opportunity to cut my teeth on great work that was challenging, David encouraged me to stretch. He had the confidence in me to let me run with corporate transactions and I guess knew that I was the kind of person that would sweat something through to the right result. But what I suspect he also did, was speak up for me. His endorsement was not only incredibly humbling, but it was likely critical to my advancement.”

- Valerie Mann, Managing Partner, Lawson Lundell LLP

“My most important mentors were, first, my husband, who has good judgment and a skill set - accounting and finance - that I don’t have, and, second, women leaders ...who inspire me, inform me, show me a better way to get things done, listen to my woes and doubts, make me laugh, and keep me striving. I could not have achieved half of what I have done without them. It is a rare woman who makes it on her own.”

- Anne Giardini, Q.C., Chancellor of SFU

“Yes, I was very fortunate to have had several excellent male sponsors/mentors in the course of my career. They took the time to teach and encourage me to be the best lawyer that I was capable of being. They gave me opportunities to work on interesting and challenging files. They entrusted their clients to me. They sang my praises regularly. They taught me the need and importance of giving back to the community and contributing to the well-being of our society. They inspired me with their willingness to pass on their learnings to a generation of younger lawyers without self-interest or concern that they would be rendered redundant in the process.”

- Anna Fung, Q.C., ’86, Former President of BCLS

“I have had, and continue to have, many mentors, including family and colleagues, both young and old. Most would be surprised to know they were mentors. My career has been rich because of the experience and wisdom of others. Live like a sponge, and absorb the good. I also had partners who opened doors and sometimes pushed me when I was too comfortable; that’s what a sponsor does.”

- Lisa Vogt, Q.C., McCarthy Tetrault LLP

4. **Looking back, what advice would you give to your 30 year old self in regards to finding your voice as a leader?**

“Get out there early! Honestly, I felt like I had a lost decade where I could have made much more headway. You don’t have to perfect every stage of your lawyering skills before you carve your own niche.”

- Valerie Mann, Managing Partner, Lawson Lundell LLP

“Stop spending so much time second guessing myself or doubting my opinions, actions, decisions etc. I’m much more comfortable now with the notion that my decisions/actions etc. are probably correct, and sometimes brilliant and insightful. Also, I would like to tell my younger self that sometimes, doing an ‘okay’ job (rather than a ‘perfect’ job) is all that is needed.”

- Nicole Byres, Q.C., Miller Thomson LLP

“Step up more, challenge myself to do more and don’t be afraid of failing.”

- Jan Lindsay, Q.C., Lindsay LLP, Former President of the Law Society of BC

“Listen. Learn. Read. Fill out areas of weakness. Pay attention. Don’t be quelled or discouraged. Try your voice out, and measure its effectiveness. Ask for feedback. Strive not for humility but for confidence with lightness of self.”

- Anne Giardini, Q.C., Chancellor of SFU

“Be confident in your own ability. The ‘highs’ are likely not quite as high as you make them out to be and the lows are not as low as you think: the sky does not actually fall. ... Define your personal happiness and then pursue it.”

- Sue Paish, Q.C., CEO of Lifelabs Inc.

“You, and what you have to say, really matter. Take heart and speak up: what you offer is very worthy and will make a difference. Believe in yourself, but don’t forge ahead alone. Seek guidance and support from those you trust and admire; ask graciously for what you need. Dare to chart your course based on what you most value and aspire to. Then, find like-minded colleagues to travel with you. Along the way, support and care for each other, keep “paying it forward” and have fun!”

- Maria Morellato, Q.C., Mandell Pinder LLP, Law Society of BC Benchers

“Don’t wait to be asked to take on a role or to express your opinion. Your interest in contributing and your views will always be valued. At the same time, be strategic about how to deploy your most valuable resource – your time.”

- Lori Mathison, Managing Partner, Dentons Canada, LLP

“You’re an advocate, so be an advocate for yourself, because no one knows you and what you want, what you need and what you can bring to the table, like you. ... Fight back any self-doubt and stretch beyond your comfort zone.”

- Rita Andreone, Q.C., Lawson Lundell LLP, Law Society of BC Life Benchers

“First, the price of leadership is hard work, especially in the early years. Be prepared for that and remember that while having balance in your life is important, it doesn’t necessarily mean that you can have all of the things you want at the same time.

Second, weak leaders surround themselves with followers. Strong leaders surround themselves with those who have the potential to be even stronger leaders.

Third, don’t be afraid - to speak up, to shine, to accept credit for your achievements.”

- Carmen Theriault, Q.C., Bull, Housser & Tupper LLP

“Don’t be afraid to ask questions and offer suggestions – what is the worst that can happen? When I was a junior lawyer, I would often say: “this may be a dumb suggestion but have you thought about X or would Y work? The response was either: “yes we did” and they would then explain to me why X or Y didn’t work and I learned something. Or they said “oh, no we didn’t. Thanks for the idea”. In either case, I won – I either learned something or got recognition for a good idea – and the client knew I was thinking about the issue creatively and proactively.”

- Anne Stewart, Q.C., Blake, Cassels & Graydon, LLP

APPENDIX B: A SHORT LIST OF HIGHLY RECOMMENDED RESOURCES

Lean In – Women, Work and the Will to Lead, by Sheryl Sandberg

Women on Top – The Woman’s Guide to Leadership and Power in Law Firms, by Ida Abbott

Learning to Lead: What Really Works for Women in Law, by Gindi Vincent and Mary Cranston

“The Confidence Gap”, Katty Kay and Claire Shipman, The Atlantic, April 14, 2014

TedTalk - Sheryl Sandberg: The 3 Mistakes of Working Women

TedTalk - Amy Cuddy: Your body language shapes who you are/Power Poses

Memo

To: Benchers
From: Finance and Audit Committee
Date: January 6, 2016
Subject: Enterprise Risk Management Plan - 2015 Update

Attached is the 2015 update to the Law Society's Enterprise Risk Management (ERM) plan, which has been in place since 2011.

Background

The ERM plan is a governance tool to accomplish the following:

- Identify the enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate.
- Determine the relative priority of those risks based on the likelihood they would occur and the extent of the impact on the organization.
- Manage the risks through mitigation strategies that are either in place or in progress, which assist in retaining, reducing, avoiding or transferring the risks.

The initial ERM plan was prepared by management, reviewed by the Committee and presented at the December 2011 Benchers meeting. An update to the plan was reviewed by the Committee and presented at the March 2013 and January 2015 Benchers meetings.

2015 Update

In 2015, Management reviewed and updated the ERM plan, which was reviewed by the Finance and Audit Committee at their October 2015 meeting.

Attached is the 2015 ERM Executive Summary which highlights the top 10 strategic residual risks, along with the updated enterprise risk register, with changes from the last review highlighted in red.

Law Society of British Columbia
Enterprise Risk Management – Updated October 2015
Executive Summary

An enterprise risk is the threat that an event or action will adversely affect an organization's ability to achieve its strategic goals and mandate.

An Enterprise Risk Management Plan (ERM) is a governance tool which provides for the:

- Identification of enterprise risks that can have an impact on the achievement of the Law Society's strategic goals and mandate
- Determination of relative priority of these risks based on their potential to occur and the extent of the impact
- Management of the risks through mitigation strategies, retaining, reducing, avoiding or transferring the risks

To successfully manage these risks, a framework for risk identification, measurement and monitoring has been developed and is reported to the Finance and Audit Committee (and then to the Benchers) on an annual basis.

The process going forward will be:

- Leadership Council plays a central role, with the Chief Executive Officer being the main liaison per the Executive Limitations
- The ERM plan will be maintained through discussions by Leadership Council and related departments to refresh the Risk Schedule and related risk management efforts
- Should a risk change or a new risk occur, the escalation process will be to inform the appropriate Executive Team member, and/or the CEO, with a report out to the President (or Executive Committee) when required, subject to the Executive Limitations

The top ten strategic residual risks are noted below, with the full Risk Schedule attached as Appendix A.

Summary of Major Strategic Residual Risks (top 10 risks)		
Category	Risk	ET Lead
Regulatory	R6: Actual or alleged failure to fulfill the statutory duties under the <i>Legal Profession Act</i>	CEO
Regulatory	R5: Actual or alleged failure to appropriately sanction, or deal with a lawyer in a timely way	CLO
Staff and Work Environment	SW1: Loss of key personnel	CEO
Lawyers Insurance	LIF3: Significant theft under Part B of the LPL policy	Dir of Insurance
Financial	F2: Significant economic and/or financial market downturn	CFO
Operational	O1: Natural disaster	CEO
Operational	O3: Significant breach of confidential and/or FOIPPA information to members, employees and/or the public	Tribunal Counsel
Regulatory	R3: Conflict of interest event by Benchers or staff	CEO
Operational	O4: Unauthorized access to data and information	CIPO and CFO
Operational	O5: Loss of data and information	CIPO and CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

228

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
REGULATORY	R6: Actual or alleged failure to fulfill the statutory duties under the <i>Legal Profession Act</i>	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures • Reputational: diminished public confidence along with a loss of reputation with the membership • Financial: costs and damages - possible litigation 		<ul style="list-style-type: none"> • Bencher governance policies and training • Bencher Strategic Plan • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Crisis communication plan (note: applies to all risks) • Government relations • Hearing panel composition and training 				CEO
REGULATORY	R5: Actual or alleged failure to appropriately sanction, or deal with a lawyer in a timely way	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures • Reputational: diminished public confidence along with a loss of reputation with the membership • Financial: costs and damages -possible litigation 		<ul style="list-style-type: none"> • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Bencher governance policies and training • S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability) • D & O insurance policy underwritten by AIG • Government relations • Ability to seek review and/or appeal to the BC Court of Appeal • Enhanced role of Tribunal Counsel • Hearing panel composition and training • National Discipline standards 				CLO and Tribunal Counsel

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

229

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
STAFF AND WORKING ENVIRONMENT	SW1: Loss of key personnel	<ul style="list-style-type: none"> Operational: service disruption as well as loss of corporate knowledge 		<ul style="list-style-type: none"> Succession planning and cross training Compensation and benefit philosophy Professional, leadership and skills development program Review and renewal of management structure and working groups to provide leadership experience Employee Recognition Program (RREX) 			<ul style="list-style-type: none"> Knowledge Management Project 	CEO
LAWYERS INSURANCE FUND	LIF3: Significant theft under Part B of the LPL policy	<ul style="list-style-type: none"> Reputational: diminished public perception of the profession Financial: significant investigation expense and settlement payments 		<ul style="list-style-type: none"> Proactive claims and risk management practices Policy wording and limits Member Manual, including trust rules Trust assurance audit program Education and risk management advice to lawyers Effective regulatory response (eg: custodianships, suspensions) Appropriate reserve levels and Minimum Capital Test ratio Insurance policy for Part B underwritten by AIG 				Director of Lawyers Insurance Fund

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
FINANCIAL	F2: Significant economic and/or financial market downturn	<ul style="list-style-type: none"> Financial: investment devaluation as well as losses of market value in the building and member revenue, member economic impact 		<ul style="list-style-type: none"> Investment policies and procedures (SIIP) Quarterly reviews of investment performance and benchmarking Investment managers and pooled funds Annual operating and capital budgeting process Monthly and quarterly financial review process Real estate expert advice and monitoring Adequate reserve levels and Minimum Capital Test Updated Statement of Investment Policy, & Asset Mix Change (improve diversification through sale of building, move to real estate and mortgage funds) 				CFO
OPERATIONAL	O1: Natural disaster	<ul style="list-style-type: none"> Operational and financial: injury of staff and/or building damage Operational: service disruption Financial: unexpected costs 		<ul style="list-style-type: none"> Fire and earthquake safety plan and training Information technology backup plan Building due diligence review Insurance coverage Off-site storage Off-site server location Annual manager training to back up floor wardens (both operations and fire/earthquake) 				CEO
OPERATIONAL	O3: Significant breach of confidential and/or FOIPPA information to members,	<ul style="list-style-type: none"> Reputational: diminished public perception of independence and possible loss of reputation with membership 		<ul style="list-style-type: none"> Information technology security policy, process and procedures Member file and case file management procedures Building security system and procedures Information, privacy and security training of new staff Established Privacy Policies 			<ul style="list-style-type: none"> Review of LSIS access and audit trail Annual staff training Review of Benchers and committee 	Tribunal Counsel

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

231

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
	employees and/or the public			<ul style="list-style-type: none"> Privacy awareness training for all staff completed May 2014 Majority of privacy report recommendations implemented Privacy impact assessments 			<ul style="list-style-type: none"> members procedures for Law Society documents IT Security Review Review of all department processes and policies regarding sensitive and confidential information 	
REGULATORY	R3: Conflict of interest event by Benchers or staff	<ul style="list-style-type: none"> Political: direct government intervention in the Law Society authority and structures Reputational: diminished public perception of independence along with a loss of reputation with the membership 		<ul style="list-style-type: none"> Bencher governance policies and training Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law including investigations conducted by independent, external counsel where appropriate Enhanced role of Tribunal Counsel Hearing panel composition and training 				CEO
OPERATIONAL	O4: Unauthorized access to data and information	<ul style="list-style-type: none"> Reputational: diminished public perception of independence and possible loss of reputation with membership 		<ul style="list-style-type: none"> Information technology security policy, process and procedures Records management policies Confidential shredding contract LEO document management security profiles Established New Privacy Policies 			<ul style="list-style-type: none"> Review of LSIS access and audit trail Annual staff training IT Security Review 	CIPO and CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> Privacy awareness training for all staff completed May 2014 Majority of privacy report recommendations implemented Privacy impact assessments 			<ul style="list-style-type: none"> Review of all department processes and policies regarding sensitive and confidential information Review of Benchers and committee members procedures for Law Society documents 	
OPERATIONAL	O5: Loss of data and information	<ul style="list-style-type: none"> Reputational: diminished public perception of independence and possible loss of reputation with membership Operational: service disruption Financial: unexpected costs 		<ul style="list-style-type: none"> Information technology backup plan Information technology security policy, process and procedures Records management policies and LEO Off-site Iron Mountain storage for closed files Insurance coverage Off-site storage Off-site server location 				CIPO and CFO
LAWYERS INSURANCE FUND	LIF8: Investment devaluation	<ul style="list-style-type: none"> Financial: insufficient reserves or surplus 		<ul style="list-style-type: none"> Investment policies and procedures (SIIP) Investment managers and pooled funds Quarterly reviews of investment performance Appropriate reserve levels and Minimum Capital Test ratio 				CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

233

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> Updated Statement of Investment Policy, & Asset Mix Change (improve diversification through sale of building, move to real estate and mortgage funds) 				
REGULATORY	R1: Adverse change in Provincial <i>Legal Profession Act</i> or government policy direction	<ul style="list-style-type: none"> Political: direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self-regulation Reputational: diminished public perception of independence 		<ul style="list-style-type: none"> Benchers Strategic Plan Meet KPMs and monitor Bellwether Continuous review of regulatory model Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law Benchers governance policies and training Media monitoring 2011 Regulatory review/plan in place Government relations National Discipline Standards <i>Legal Profession Act</i> Amendments – 2012 Governance Committee – 2013 Hearing panel composition and training 			<ul style="list-style-type: none"> Regulation and Insurance Working Group 	CEO
OPERATIONAL	O2: Failure (not due to natural disaster) in infrastructure and/or security of the building	<ul style="list-style-type: none"> Operational and financial: injury of staff and/or building damage Operational: service disruption Financial: unexpected costs 		<ul style="list-style-type: none"> Information technology backup plan External property management firm Building due-diligence review Capital plan Building maintenance plan Insurance coverage Off-site storage and servers 				CFO and CIO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

234

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
REGULATORY	R2: Loss of a lawsuit alleging a failure of the Law Society to follow due process	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self-regulation • Reputational: diminished public perception of independence along with a loss of reputation with the membership • Financial: lawsuit defence and settlement costs 		<ul style="list-style-type: none"> • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Bencher governance policies and training • Hearing panel composition and training • Enhanced role of the Tribunal Counsel • 2011 Regulatory review/plan in place • National Discipline Standards • S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability) • D & O insurance policy underwritten by AIG 				CLO
STAFF AND WORKING ENVIRONMENT	SW3: Labour action (strike)	<ul style="list-style-type: none"> • Operational: service disruption 		<ul style="list-style-type: none"> • PEA contract • Cross training • Compensation and benefit philosophy • Human resource and operational standards, policies and procedures • Reward and Recognition Program (RREX) 				CIPO and CFO
STAFF AND WORKING ENVIRONMENT	SW5: Loss of a lawsuit on human rights issues by staff	<ul style="list-style-type: none"> • Operational and reputational: diminished levels of staff performance • Financial: unexpected costs 		<ul style="list-style-type: none"> • Human resource and operational standards, policies and procedures • Annual performance management and coaching process • Leadership development training • Legal counsel and advice 				CFO
LAWYERS INSURANCE FUND	LIF1: Inadvertent loss of LIF	<ul style="list-style-type: none"> • Financial: requirement to restructure insurance program 		<ul style="list-style-type: none"> • Legal and tax advice of appropriate structure 				Director of Lawyers

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

235

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
	captive structure							Insurance Fund
STAFF AND WORKING ENVIRONMENT	SW2: Inability to recruit and/or retain skilled staff as an organization	<ul style="list-style-type: none"> Operational: service disruption as well as loss of corporate knowledge 		<ul style="list-style-type: none"> Compensation and benefits program Market benchmarking Human resource and operational standards, policies and procedures Succession planning and cross training Employee survey and action plans Annual performance management and coaching process Hiring practices and use of recruiting firms Professional, leadership and skills development program Staff working groups to enhance leadership skills Employee Enrichment Program Rewards and Recognition Program - RREX New Performance Management program – implemented in 2015 Values Working Group – Implemented in 2015 				CEO
FINANCIAL	F4: Unexpected escalation of operating costs	<ul style="list-style-type: none"> Financial: loss of revenue 		<ul style="list-style-type: none"> Executive limitations Schedule of Authorizations Annual operating and capital budgeting process Monthly and quarterly financial review process External property management firm expertise Building maintenance plan Building due-diligence review Capital plan 				CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

236

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
REGULATORY	R7: Loss of a lawsuit alleging wrongful deprivation of lawyers (prospective) membership (livelihood)	<ul style="list-style-type: none"> • Reputational: diminished public perception of independence along with a loss of reputation with the membership • Financial: costs and damages imposed through possible litigation 		<ul style="list-style-type: none"> • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Appropriate credentialing procedures, including investigations, assessment of applications and credentials hearings • Bencher governance policies and training • Hearing panel composition and training • S.86 <i>Legal Profession Act</i> (statutory protection against lawsuits and liability) • D & O insurance policy underwritten by AIG 			<ul style="list-style-type: none"> • Federation - National admission standards being developed 	CLO and the Director of Education and Practice
REGULATORY	R4: Failure of the Law Society to stay within jurisdiction and/or wrongful prosecution	<ul style="list-style-type: none"> • Political: direct government intervention in the Law Society authority and structures • Reputational: diminished public perception of independence along with a loss of reputation with the membership 		<ul style="list-style-type: none"> • Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law • Bencher governance policies and training • Hearing panel composition and training • Enhanced role of the Tribunal Counsel 				CLO and Tribunal Counsel
FINANCIAL	F3: Loss of tenants	<ul style="list-style-type: none"> • Financial: losses of market value in the building and lease revenue 		<ul style="list-style-type: none"> • Long-term leases, effect early renewals when appropriate • External property management firm expertise • Building maintenance plan • Building due-diligence reviews • Capital plan 				CFO

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

237

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
				<ul style="list-style-type: none"> Annual operating and capital budgets 				
FINANCIAL	F6: Lower member base	<ul style="list-style-type: none"> Financial: loss of revenue to the Law Society 		<ul style="list-style-type: none"> Benchers Strategic Plan Research into profession demographics 				CEO
STAFF AND WORKING ENVIRONMENT	SW4: Unhealthy or unsafe conditions	<ul style="list-style-type: none"> Operational and reputational: injury to staff and/or diminished levels of staff performance Operational: service disruption 		<ul style="list-style-type: none"> Human resource and operational standards, policies and procedures First Aid attendants Fire and earthquake safety plan and training Property management firm expertise and building maintenance plan Workers Compensation coverage Health and Safety Committee 				CFO
LAWYERS INSURANCE FUND	LIF7: Lawsuit for “bad faith” failure to settle / denial of coverage	<ul style="list-style-type: none"> Reputational: loss of reputation with the public or profession Financial: exposure to excess damage award 		<ul style="list-style-type: none"> Established and documented quality control (Claims Manual) Protocol to avoid “bad faith” losses Third Party Claims Audits S.86 <i>Legal Profession Act</i> (possible statutory protection against lawsuits and liability) E&O insurance policy underwritten by Markel Appropriate reserve levels and Minimum Capital Test ratio 				Director of Lawyers Insurance Fund

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

238

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
LAWYERS INSURANCE FUND	LIF5: Significant error in advice to insured or payment (non-payment) of individual claim	<ul style="list-style-type: none"> Financial: unnecessary payments 		<ul style="list-style-type: none"> Established and documented quality control (Claims Manual) Peer File Reviews E&O insurance policy underwritten by Markel 				Director of Lawyers Insurance Fund
FINANCIAL	F1: Misappropriation of Law Society financial assets	<ul style="list-style-type: none"> Reputational: loss of reputation with the membership Financial: loss of revenue, increased fees 		<ul style="list-style-type: none"> Internal controls Schedule of authorizations External audit Monthly and quarterly financial review process Crime insurance 				CFO
LAWYERS INSURANCE FUND	LIF6: Error in actuarial advice	<ul style="list-style-type: none"> Financial: insufficient reserves 		<ul style="list-style-type: none"> External actuarial advice and projections External auditor reviews of actuarial methodology and numbers Monitoring of LPL insurance trends and risks Appropriate reserve levels and Minimum Capital Test ratio 				Director of Lawyers Insurance Fund
LAWYERS INSURANCE FUND	LIF2: Loss of third-party lawsuit against captive, insurance operations or	<ul style="list-style-type: none"> Financial: exposure to compensatory damage award 		<ul style="list-style-type: none"> Established and documented quality control (Claims Manual) S.86 <i>Legal Profession Act</i> (possible statutory protection against lawsuits and liability) E & O insurance policy underwritten by Markel 				Director of Lawyers Insurance Fund

Law Society of British Columbia
Enterprise Risk Management
Risk Schedule by Risk Level – Updated October 2015
Appendix A

239

Risk Category	Risk Statement	Potential Consequences	Inherent Risk Level	Existing Strategies and Controls to Mitigate the Risk	Residual Risk Level 2014	Residual Risk Level 2015	Planned (In Progress) Strategies and Controls	ET Lead
	in-house counsel							
LAWYERS INSURANCE FUND	LIF4: Catastrophic losses under Part A of the LPL policy	<ul style="list-style-type: none"> Financial: significant investigation expense and settlement payments 		<ul style="list-style-type: none"> Policy wording on limits and “related errors” Proactive claims and risk management practices Monitoring of LPL insurance trends and risks Education and risk management advice to lawyers Appropriate reserve levels and Minimum Capital Test ratio Stop-loss reinsurance treaty underwritten by ENCON 				Director of Lawyers Insurance Fund
FINANCIAL	F5: Inaccurate or untimely financial reporting	<ul style="list-style-type: none"> Reputational: loss of reputation with the membership Financial: loss of revenue or increase in costs Operational: poor decision-making 		<ul style="list-style-type: none"> Internal controls Executive limitations Annual external audit Investment policies and procedures (SIIP) Quarterly reviews of investment performance and benchmarking Annual operating and capital budgets Monthly and quarterly financial review process 				CFO
REGULATORY	R8: Admission decisions are not reflective of the character, fitness, and competencies of a prospective lawyer	<ul style="list-style-type: none"> Political: possible loss of the right to self-regulation Reputational: diminished public perception of independence Financial: costs and damages imposed through possible litigation 		<ul style="list-style-type: none"> Law Society Admission Program Credentialing standards and procedures Hearing panel composition and training Enhanced role of Tribunal Counsel Legislative amendment to allow Law Society appeals of prior decisions 			<ul style="list-style-type: none"> Federation - National admission standards being developed 	Director of Education and Practice

Law Society of British Columbia
Enterprise Risk Management
Risk Assessment Tools

Likelihood (Rating)	Estimated Chance of a Single Occurrence Within Five Years
High (4)	80 - 100%
Medium-High (3)	60 – 80%
Medium (2)	40 – 60%
Low (1)	0 – 40%

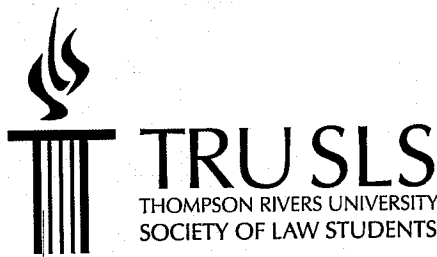
Consequences (Rating)	Financial Consequences	Operational Consequences	Reputational Consequences	Political Consequences
High (5)	A material loss of financial assets or cash: > \$750,000 in general, or 200% of gross case reserves/expected value for LIF claims, or >20% negative return for LIF investments	A substantial proportion of operations cannot be restored in a timely manner, essential services are unable to be delivered, and/or there is a significant loss of corporate knowledge that will result in the under-achievement of the Law Society's mandate	An irreparable loss of member and stakeholder trust in, or severe public criticism at a national and provincial level that brings disrepute to the reputation of, the Law Society	Change in the mandate and/or the imposition of a new governance as well as management structure for the Law Society is enacted by the government
Medium-High (4)	A substantial loss of financial assets or cash: \$500,000 - \$750,000 in general, 190% of gross case reserve expected value for LIF claims >15% negative return for LIF investments	Part of the operation cannot be restored in a timely manner, with some disruption to essential services, and/or a loss of corporate knowledge that can impact on the ability to render key decisions for the Law Society in the short to medium term	A substantial loss of member and stakeholder trust in, or sustained public criticism at a provincial level of, the Law Society which will be difficult to remedy over the short to medium term	The Law Society is susceptible to a potential change in government rules and legislation with implications for its authorities and/or an imposed change in the management structure

Law Society of British Columbia
Enterprise Risk Management
Risk Assessment Tools

<p>Medium (3)</p>	<p>A moderate loss of financial assets or cash: \$250,000 - \$500,000 in general 180% of gross case reserves/expected value for LIF claims 10% negative return for LIF investments</p>	<p>Some parts of the operation will be disrupted, but essential services can be maintained, and/or there is some loss of corporate knowledge that warrants management attention but the implications for which are limited to select projects or processes</p>	<p>Some loss of member and stakeholder trust in, and local public criticism over a short period of time of, the Law Society which warrants management attention</p>	<p>A change in Provincial direction affecting the operations of the Law Society is likely, but can be addressed within the current governance and management structure</p>
	<p>A manageable loss of financial assets or cash: \$100,000 - \$250,000 in general 170% of gross case reserves/expected value for LIF claims 5% negative return for LIF investments</p>	<p>Some inefficiency will exist, leading to increased cost and/or time in the provision of essential services, and/or a loss of corporate knowledge that may result in minor disruptions in specific projects or processes</p>	<p>A relatively minor setback in the building of member and stakeholder trust in, or "one off" unfavorable local public attention put toward, the Law Society</p>	<p>Minor, non-routine changes may occur in regulation of relevance, and the nature of guidance that is provided by the government, to the Law Society</p>
	<p>A relatively immaterial loss of financial assets or cash: < \$100,000 in general 160% of gross case reserves/expected value for LIF claims <5% negative return for LIF investments</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>	<p>No measurable consequence</p>

Law Society of British Columbia
Enterprise Risk Management
Risk Assessment Tools

		Consequences				
		Low	Low-Medium	Medium	Medium-High	High
Likelihood		1	2	3	4	5
High	4					
Medium-High	3					
Medium	2					
Low	1					



Thompson Rivers University: Society of Law Students
 Old Main Building, Suite 4659
 900 McGill Road
 Kamloops, BC V2C 0C8

December 3, 2015

Kenneth Walker, QC, President
 Law Society of British Columbia
 845 Cambie Street
 Vancouver, BC V6B 4Z9

Dear Mr. Walker:

RE: LSBC Participation in FLSC Proposed National Assessment Regime

We write to you collectively as the Society of Law Students at TRU (TRUSLS). It has recently come to our attention that the Federation of Law Societies (FLSC) has asked the Law Society of British Columbia (LSBC) to indicate whether or not they will be participating in the proposed national assessment regime. This proposal, if implemented, would have significant impacts on law students across Canada and their admission to the legal profession. As this will affect current students in the law program at TRU, we, as the TRUSLS, wish to declare that we are opposed to the LSBC participating in the FLSC national regime.

Our primary concerns are fourfold:

Firstly, we are concerned with the lack of student participation in the process of creating this proposal as well as discussing this proposal. As future lawyers will have to take and pass this test, current and prospective law students will be impacted most by this proposal – yet have not been consulted at any stage of the process. Further, the TRUSLS has found it challenging to find documentation on the FLSC proposal at all, let alone in regards to any student consultation, or student directed publications. Rather, all publications are aimed exclusively at the law societies of each province and territory. It has additionally, only just come to the attention of the BC Law School Deans. In summary, we find this lack of law student and faculty engagement concerning.

Secondly, the TRUSLS is concerned about the way the FLSC proposes to implement this exam. Their budget outlines that students will be bearing the majority of costs of the test. As the majority of law students will graduate school with a significant amount of debt, this is disheartening. Having to pay for this exam is merely another cost on top of already mounting costs. We are concerned that this cost could be problematic for students and will create yet another barrier to the individual to practice law in Canada.

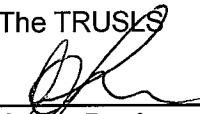
Thirdly, we have concerns about the purpose of this national exam as well as what it will accomplish. The TRUSLS is unconvinced that provincial bar exams and programs, such as the Professional Legal Training Course, will be cast aside once this national exam is established. If this were to occur, it would simply create another test without improving mobility or similar claims. This appears to be an answer begging for a

problem, rather than an effective solution to an existing problem. Without abolishing provincial bar exams with the implementation of this proposal, the benefits of increased mobility and nationalized standards are unlikely to be recognized.

Finally, the TRUSLS is concerned with the rushed manner in which this proposal has been put before the respective provincial and territorial law societies of Canada, and asked to commit or not. The recent nod from the LSBC to this issue and proposal to postpone a decision of commitment or not until January is a step in the right direction and we thank you for already delaying the decision.

Sincerely,

The TRUSLS


Corey Davison
President


James McLeod
Internal Vice-President


Kenneth McLeod
External Vice-President


Greg von Euw
Canadian Bar Association Liaison


Ryan Griffin
Treasurer



Kelly Melynk
Academic Director


Casey McQueen
Events Director


Tyler Martens
Sports and Clubs Director



Salona Nainaar
Health and Wellness Director


Melissa Boyles
Development Director



Tessa MacLeod
Outreach Director


Jackson Bullock
Alumni Director


Cedar Swartz-Fisher
1L Class Representative


Katy MacEwan
2L Class Representative


Sean Manery
3L Class Representative


Tracey Greer
Secretary



January 19, 2015

David Crossin, QC
 President, Law Society of British Columbia
 845 Cambie Street
 Vancouver, BC V6B 4Z9

Re: Federation of Law Societies of Canada's Proposed National Admissions Standards

Dear President Crossin,

I am writing in response to the National Admission Standards Project Assessment Proposal prepared by the Federation of Law Societies of Canada on behalf of students at the Peter A. Allard School of Law. On January 13, 2015, the Allard Law Students' Society held a consultation and referendum where 90% of our 68 attending students indicated that they did not support the Federation's Proposal. During this process, our student body raised a number of concerns regarding the Federation's current Proposal.

Detrimental to the Professional Legal Training Course: Students expressed a high regard for British Columbia's PLTC course and expressed concern that the Federation's Proposal may jeopardize the success of the current articling program. Students are concerned that the Federation's Proposal shifts legal training to an online format, which is considered to be a less pedagogically sound approach than in person delivery. Students expressed concern that the Federation's Proposal does not reflect strong competency with provincial law and will not thoroughly assess practical components of legal practice. When considering British Columbia's articling program overall, one student succinctly stated, "our provincial process is very good, more diverse, [and] practical".

Financial burden: Students concern that the Federation's Proposal, which imposes additional testing fees borne by students, will reduce the accessibility of the legal profession. Students see the current costs of entering the legal profession as already expensive. As one student expresses, the Federation's Proposal "would further insulate the profession from those with less financial resources". Some students see the increased financial burden as hindering their career choices with fewer students able to afford to work in social justice fields or provide pro bono services.

Little benefit to public interest: Students questioned the need for the Federation's Proposal. Without research indicating the Federation's concern for the public interest, students see the Federation's Proposal as an unnecessary burden offering, at best, only marginal benefit to the public.

The Allard Law Students' Society urges the Law Society of British Columbia to not support the Federation's Proposal at this time.

Sincerely,

Kristy J. Faris
 President, Allard Law Students' Society



ALLARD LAW
STUDENTS' SOCIETY

CC: Alan Treleaven
Renee Collins

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

MEMORANDUM

TO: National Requirement Review Committee

FROM: Frederica Wilson
Senior Director, Regulatory and Public Affairs

RE: Non-Discrimination Provisions – Issues for Consideration

DATE: November 10, 2015

Introduction

1. In Section B of the work plan developed earlier this year to address the question of whether to recommend the addition of a non-discrimination provision to the National Requirement (attached as Appendix “A”) the committee identified 12 issues for consideration, a number of which are interrelated. The issues include overarching questions such as whether the requirements for legal education and entry to the legal profession should include a non-discrimination provision and if so whether such a provision should be added to the National Requirement, as well as narrower legal and practical issues. The complete list is set out below.
 - a. Should the requirements for legal education and entry to the legal profession include a non-discrimination requirement?
 - b. What should be the goal of a non-discrimination requirement?
 - c. If the requirements for legal education and entry to the legal profession should include a non-discrimination provision should it be added to the National Requirement?
 - d. What is the regulatory purpose of the National Requirement? Would a non-discrimination provision be consistent with that purpose?
 - e. How would the addition of a non-discrimination provision fit with the overall approach to law program approval embodied in the National Requirement?
 - f. What implications might adding a non-discrimination provision to the National Requirement have for applicants to the National Committee on Accreditation? How might these be addressed?
 - g. What are the possible forms a non-discrimination provision might take? What might be the ramifications of the different possible approaches? What examples of non-

- discrimination provisions exist in the law school/bar admission context? What examples are there from other contexts?
- h. How should potentially conflicting rights and values be addressed?
 - i. Would the addition of a non-discrimination provision raise any jurisdictional or other legal issues?
 - j. What impact might the ongoing court proceedings in Nova Scotia, Ontario and British Columbia have on the work of the Committee?
 - k. In view of the mobility of the legal profession, is a consistent approach to non-discrimination required in all jurisdictions? What ramifications and jurisdictional issues might there be if law societies adopt different approaches?
 - l. What are the implications for law societies and for law schools in having a national requirement that regulates law school admissions policies?
2. To assist the committee members in their consideration of the overarching issues, this memo canvases many of the issues outlined in the work plan beginning with those related to the goal of the National Requirement and also including the possible forms of a non-discrimination provision and the impact on NCA candidates of the addition of a non-discrimination provision to the National Requirement. It also discusses the implications of the decisions of the Nova Scotia Supreme Court and the Ontario Divisional Court in the litigation with Trinity Western University ("TWU"). Additional guidance from the committee is needed before the broader legal issues touching on jurisdiction can be addressed.

Regulatory Purpose and Approach of the National Requirement

3. The National Requirement, approved by the law societies in 2010, was developed in response to a number of factors including increased mobility of lawyers, the adoption of fair access to regulated professions legislation in several jurisdictions, and the proposed establishment of the first new law school programs in Canada in more than 25 years.
4. With the adoption of the National Mobility Agreement in 2002 and the Territorial Mobility Agreement in 2006 lawyers in Canada acquired the right to transfer between jurisdictions with relative ease. Mobility ushered in a new era in which the regulatory scheme and processes of each jurisdiction now have the potential to affect other law societies. This change in regulatory landscape led law societies to consider for the first time the value of developing national standards on a number of issues.
5. Fair access to regulated professions legislation enacted in Ontario, Manitoba and Nova Scotia also changed the regulatory landscape, putting the law society licensing requirements, including those for internationally trained applicants, under greater scrutiny. While having a Canadian common law degree or its equivalent was a prerequisite for admission in all law societies in common law jurisdictions, there were no clearly articulated standards for what constituted a Canadian common law degree. The absence of such standards made it difficult for law societies to meet the requirement that they have fair, objective and transparent standards for licensing. The NCA, to which law societies in the

common law jurisdictions have delegated the task of assessing the credentials of internationally trained applicants, faced the same problem.

6. Expressions of interest by a number of universities in establishing law school programs added to the pressure to develop appropriate standards.
7. In response to these changes and pressures, the Federation established the Task Force on the Canadian Common Law Degree ("Task Force") with a mandate to review the academic requirements for bar admission programs and recommend changes as necessary. The final report of the Task Force was released in late 2009.
8. The regulatory intent of the National Requirement is captured in the following excerpt from the final report of the Task Force

The intent behind developing a requirement that applies equally to applicants educated in Canada and internationally is to ensure that all those seeking to enter bar admission programs in Canadian common law jurisdictions have demonstrated certain essential and predefined competencies in the academic portion of their legal education. (p 4, Final Report)

9. The National Requirement reflects the view of the Task Force that in determining whether an applicant should be eligible for admission the focus should be on outcomes, rather than prescriptive input requirements (see p.4, Final Report). It is for this reason that the National Requirement identifies knowledge and skills competencies rather than prescribing specific courses. The one exception to this approach is the requirement for a stand-alone course in legal ethics.
10. The National Requirement does include some requirements that must logically be considered "input" requirements. These include the requirement that the program be adequately resourced, the prerequisite of two years of postsecondary education, the requirement that the program for the study of law consist of three academic years or its equivalent in course credits, the requirement for primarily in-person instruction, and a number of other elements that address learning resources.
11. The reports of both the Task Force and the Common Law Degree Implementation Committee ("Implementation Committee") (established to consider how to implement the recommendations of the Task Force), speak directly to the rationale for including these provisions in the National Requirement. In its final report, the Task Force drew a link between learning resources and the ability of law schools to provide an effective legal education, concluding "that the law school [must] be adequately resourced to fulfill its educational mission." (p. 42, Final Report) In discussing the approach of the Task Force in these areas, the Implementation Committee made a similar statement, concluding, "[a]n environment that supports learning is critical to the development of meaningful legal education." (p. 26, Implementation Committee report)

12. The Task Force drew a similar conclusion in relation to the requirement that law programs comprise three years of full time study or the equivalent in course credits, stating,

A three year program or its equivalent in course credits will allow students to study the core foundational subjects of law and also be exposed to areas of study, including multidisciplinary fields that will enhance their perspective on the role of law and lawyers in Canadian society.

13. The Task Force also linked the in-person learning requirement to the acquisition of the specified competencies. As the Implementation Committee noted in its report (at page 22),

From the Task Force's perspective, the in-person learning requirement is directed at the skills and abilities that graduates who seek entry to a law society admission program should have. The practice of law is an interpersonal endeavour. Problems are solved through interactions with others: clients, lawyers, witnesses, office staff, judges, and others. Some of these interactions may be written, but many of them are oral, and involve understanding how to deal with a person face-to-face. In particular, lawyers typically discuss legal problems with other lawyers. They need to understand how to do that. Those interactions involve legal problem solving and oral persuasion. The law school experience – involving face-to-face interactions with instructors as well as students – models that experience.

14. These statements from the reports of the Task Force and the Implementation Committee would appear to support a conclusion that the provisions in the National Requirement related to learning resources, mode of instruction and prerequisites for entry to law school, while looking like “inputs” are in fact aimed at the acquisition of “outputs” - the required competencies.

15. The decision of the Federation Council to consider adding a non-discrimination provision to the National Requirement arose from consideration of the application by TWU for approval of its proposed law school program. Responding to submissions made by the Canadian Bar Association's Sexual Orientation and Gender Identity Conference and its Equality Committee, the Federation's Special Advisory Committee on Trinity Western University's Proposed School of Law (“Special Advisory Committee”) suggested that there would be merit in adopting a non-discrimination provision similar to those contained in the American Bar Association's (“ABA”) standards for approval of law schools and the bylaws of the Association of American Law Schools (“AALS”). ABA Standard 205 and AALS bylaw 6-3(a) both prohibit discrimination on enumerated grounds against applicants, students, faculty and staff.

16. While at least one legal academic suggested in regards to TWU that graduates of a law school with discriminatory admission and conduct policies would not possess the requisite understanding of their ethical obligations, most observers have not questioned whether a graduate of the proposed TWU law school would possess the competencies set out in the National Requirement. In its final report, the Special Advisory Committee specifically rejected this suggestion as unfounded and, while expressing some concerns about the proposed TWU program, the Approval Committee gave it preliminary approval, finding that if

implemented as proposed the program would meet the National Requirement. In deciding not to approve the TWU law school, the Nova Scotia Barristers' Society ("NSBS") specifically accepted the finding of the Approval Committee, emphasizing that its concerns are with what it considers to be the university's discriminatory policies not the competence of potential future graduates.

17. It is also clear that the decision of the Law Society of Upper Canada ("LSUC") refusing to accredit TWU's proposed law school was based on concerns about the discriminatory nature of the school's Community Covenant, not questions about the competence of graduates subject to the Community Covenant. In its decision upholding the LSUC decision, the Ontario Divisional Court rejected a suggestion that the law society should be concerned only with issues of competence holding that its statutory mandate gives it the authority to consider a wider range of issues in the public interest. In that case, the Court concluded that the law society was "entitled, in the exercise of its statutory authority, to refuse to accredit TWU's law school arising from the discriminatory nature of the Community Covenant."
18. As discussed below, a non-discrimination provision might take a number of forms. Regardless of the form, however, such provisions focus on equal treatment of students, not competence.

Discussion Questions

Would a non-discrimination provision be consistent with the regulatory purpose of the National Requirement?

Should a non-discrimination provision be added to the National Requirement even if it is not consistent with the regulatory goal of the National Requirement or its focus on competencies? If so, what would be the rationale for the addition?

If not, is there another way to address concerns about discrimination in law school programs and admissions practices, for example, through an aspirational statement?

Approaches to non-discrimination provisions

19. Non-discrimination provisions are common in educational and many business environments typically expressing a commitment to providing an environment that is free from discrimination and harassment and often tying the commitment to applicable human rights legislation. Those contained in the standards applied by bodies charged with accrediting professional schools, such as the Committee on Accreditation of Canadian Medical Schools ("CACMS") and the ABA are similar, generally prohibiting schools from discriminating against students on enumerated grounds.
20. The CACMS *Standards and Elements*, setting out the criteria for medical school approval, contains the following provision

3.4 Anti-Discrimination Policy

A medical school and its clinical affiliates do not discriminate on any grounds as specified by law including, but not limited to, age, creed, gender identity, national origin, race, sex, or sexual orientation. The medical school and its clinical affiliates foster an environment in which all individuals are treated with respect and take steps to prevent discrimination, including the provision of a safe mechanism for reporting incidents of known or apparent breaches, fair and timely investigation of allegations, and prompt resolution of documented incidents with a view to preventing their repetition.

21. ABA Standard 205, *Non-Discrimination and Equality of Opportunity*, prohibits law schools from precluding “admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability.” The standard also required law schools to “foster and maintain equality of opportunity for students, faculty, and staff, without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability.” The standard includes an exemption for religiously affiliated law school. Standard 205 (c) states

(c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (1) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (2) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but may not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age, or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.

22. Further guidance on the exemption is provided in the interpretation section of the Standard, paragraph 2 of which reads

So long as a school complies with Standard 205(c), the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs. For example, Standard 205(c) does not require a school to recognize or support organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school.

23. The AALS, a voluntary member-based organization of American law schools, requires members to adhere to a comprehensive list of requirements set out in the association’s bylaws. Section 6-3 of the AALS bylaws requires member schools to “provide equality of opportunity in legal education for all persons, including faculty and employees with respect to hiring, continuation, promotion and tenure, applicants for admission, enrolled students,

and graduates, without discrimination or segregation on the ground of race, color, religion, national origin, sex, age, disability, or sexual orientation.”

24. Further guidance on the application of the non-discrimination requirement to religiously affiliated schools is provided in AALS Executive Committee Regulations. Like to the interpretation provided by the ABA to its Standard 205, Regulation 6-3.1 permits religiously-affiliated schools to have admissions and employment policies based on their religious affiliation provided such policies do not directly discriminate on the basis of sexual orientation and are consistent with the association’s regulations on academic freedom. Notice of such policies must be provided in advance of a student, faculty or staff member becoming affiliated with the school.
25. In the course of the NRRC’s last meeting, members briefly discussed the possibility of taking an aspirational rather than a prescriptive approach to the issue of equality and non-discrimination. Whereas prescriptive approaches, such as those described above, typically prohibit particular behaviour or conduct, an aspirational approach might speak to expectations of non-discrimination and encourage the creation of an environment that is free of discrimination and harassment. A statement of principle that speaks to the commitment of an institution or organization to equality and non-discrimination is another example of an aspirational approach. The following statement from the Diversity and Equality Charter of the Law Council of Australia is one such example

The Australian legal profession is committed to promoting diversity, equality, respect and inclusion consistent with the principles of justice, integrity, equity and the pursuit of excellence upon which the profession is founded. We recognise that diversity benefits the legal profession and the community as a whole. Accordingly, the Australian legal profession and its members:

- treat all people with respect and dignity regardless of sex, sexuality, disability, age, race, ethnicity, religion, culture or other arbitrary feature
- create and foster equality through a supportive and understanding environment for all individuals to realise their maximum potential regardless of difference
- promote and support a strong and fair legal profession comprising, accommodating, encouraging and respecting a diverse range of individuals and views.

Discussion Questions

Would a prescriptive non-discrimination provision be consistent with the regulatory approach and goal of the National Requirement?

Would an aspirational approach?

If both would be consistent with the goals and overall approach of the National Requirement, is one approach preferable?

Implications of a non-discrimination provision for applicants to the National Committee on Accreditation

26. As noted above, the lack of clearly articulated standards for Canadian common law degrees had implications for the assessment of internationally trained applicants. The NCA is tasked with determining whether lawyers and students trained outside of Canada have credentials equivalent to those trained domestically. Without a clear standard it was difficult for the NCA to meet the expected standards of fairness and transparency. With the advent of fair access to regulated professions legislation the need to address this issue was critical. It is not surprising then that the final report of the Task Force included the following recommendation related to the NCA

The Task Force recommends that the National Committee on Accreditation (“NCA”) apply this national requirement in assessing the credentials of applicants educated outside Canada.

27. In the body of its report, the Task Force suggested the “national requirement will provide appropriate guidance and result in NCA applicants being assessed in a manner consistent with the requirements for graduates from Canadian law schools.” (p. 6 Final Report, emphasis added)

28. The NCA has changed its assessment policies to apply the National Requirement to its applicants. For the most part, this is a straightforward endeavour. The addition of a non-discrimination provision to the National Requirement could, however, have significant implications for NCA applicants, if intended to apply to them.

29. Given the nature of the NCA’s role – determining whether the credentials of internationally trained applicants are equivalent to applicants educated in Canada – there are inevitable differences in how the National Requirement is applied by the Approval Committee and the NCA. The assessment of internationally trained applicants remains an individual exercise, involving a review of transcripts and training to determine whether applicants have acquired the specified competencies.

30. NCA applicants come from a range of countries with a range of educational experiences. The assessment process assumes that the educational background of the applicants will differ, often significantly, from that of Canadian law school graduates. The assessment process does not impose a requirement that applicants demonstrate credentials identical to Canadian graduates, but rather that they demonstrate equivalent educational credentials. To comply with the National Requirement all NCA applicants are required to demonstrate competence in nine core subjects

Canadian Administrative Law
Canadian Constitutional Law
Canadian Criminal Law
Foundations of Canadian Law
Canadian Professional Responsibility

Contracts
Property
Torts
Business Organizations

31. Applicants from common law jurisdictions may demonstrate competence in all but the five specifically Canadian subjects through courses taken as part of their legal education, but will be required to either take courses at a Canadian law school or pass NCA exams in the five Canadian subjects. Those from non-common law jurisdictions will be required to return to law school.
32. Applicants must demonstrate the required language skills through evidence of completion of their legal education in either French or English or by attaining the requisite mark on a specified recognized English or French language test. The NCA is exploring the possibility of developing a legal research module to satisfy that element of the National Requirement. In lieu of assessing the learning resources of international law schools, the NCA recognizes only those law degrees from educational institutions “approved, recognized or otherwise accepted by the authority, or its delegate, responsible for the regulation of the legal profession in the Relevant Jurisdiction.” (See NCA Policies and Guidelines, 1.3.2.1) NCA policies also reflect the mode of study and pre-law education provisions of the National Requirement.
33. The NCA assessment policies provide applicants whose legal education and training does not include some of the competencies or otherwise comply with the National Requirement with means to address the deficiencies. The failure of an applicant’s educational institution to have respected a prohibition on discrimination is a deficiency of an entirely different nature. While some applicants come from jurisdictions in which law schools are subject to non-discrimination provisions, many others do not. Law schools accredited by the ABA, for example, are required to have non-discrimination policies, but law schools in other jurisdictions are not necessarily subject to such a requirement. Applied to NCA applicants a non-discrimination provision might bar otherwise qualified internationally trained students and lawyers from entering the Canadian legal profession or impose the onerous requirement to return to law school in Canada.

Discussion Questions

If a non-discrimination provision is added to the National Requirement, should it be applied to NCA applicants?

If yes, what means would be offered to NCA applicant’s whose legal education was obtained at an institution that does not comply with the provision to address the deficiency?

If no, are there other means to address the policy goals of a non-discrimination provision in relation to NCA applicants?

If there is no appropriate way to apply the requirement to NCA candidates, what are the implications for fairness to Canadian-trained candidates?

Court proceedings

34. The potential impact of ongoing court proceedings between TWU and the law societies in British Columbia, Nova Scotia and Ontario over the refusal of the regulators in those jurisdictions to approve TWU's proposed law school is another issue identified by the committee.
35. In January 2015, the Nova Scotia Supreme Court upheld TWU's application challenging the decision of the Nova Scotia Barristers' Society ("NSBS") to refuse to approve Trinity Western University's proposed law school program. The court found that the NSBS had exceeded its jurisdiction in passing a resolution and adopting a corresponding regulation refusing to approve the law school unless TWU either exempted law students from signing its Community Covenant or amended the covenant. In reaching this finding Justice Jamie S. Campbell held that the statutory jurisdiction of the NSBS to regulate the practice of law in Nova Scotia did not give it the authority to regulate the policies of a university or a law school.
36. In a decision released in July 2015, the Ontario Divisional Court reached a different conclusion, holding that it was within the jurisdiction the Law Society of Upper Canada ("LSUC") to refuse to approve TWU's law school on the grounds that its Community Covenant is discriminatory. In reaching this conclusion the Court distinguished between the intent of the LSUC resolution and that "of at least one other provincial legal governing body," finding that the LSUC was not attempting to regulate TWU's proposed law school. The Court held, "[t]he decision of the respondent did not purport to interfere with the right of TWU to create its law school in the fashion that it proposes, exercising its rights to freedom of religion."
37. TWU's case against the Law Society of British Columbia was heard in August of this year, but the BC Supreme Court has not yet released its decision.
38. Although the nature of the resolutions adopted by the NSBS and the LSUC were clearly relevant to the different decisions in the two jurisdictions, it should be noted that the courts also differed in their interpretation of the applicability of the Supreme Court of Canada's decision in *TWU University v. British Columbia College of Teachers*. While the Nova Scotia court found the decision to be binding authority that is directly on point, the Ontario court distinguished the decision on a number of grounds including the respective mandates of the law society and the British Columbia College of Teachers, the evidence of discrimination in each case, and the respective human rights statutes of Ontario and British Columbia.
39. The decisions of both the Nova Scotia and Ontario courts have been appealed. An appeal by NSBS to the Nova Scotia Court of Appeal will be heard in December 2015 and TWU has

been granted leave by the Ontario Court of Appeal to appeal the decision of the Ontario Divisional Court.

40. The differing decisions of the Nova Scotia and Ontario courts create some uncertainty about the jurisdiction of the law societies individually and collectively to impose a non-discrimination provision on law schools through the National Requirement or otherwise. The Nova Scotia Court was categorical in finding that the NSBS does not have the authority, holding at paragraph 174 of its decision,

The NSBS has no authority whatsoever to dictate directly what a university does or does not do. It could not pass a regulation requiring TWU to change its Community Covenant any more than it could pass a regulation purporting to dictate what professors should be granted tenure at the Schulich School of Law at Dalhousie University, what fees should be charged by the University of Toronto Law School, or the admissions policies of McGill. The legislation, quite sensibly, does not contain any mechanism for recognition or enforcement of NSBS regulations purporting to control how university law schools operate because it was never intended that they would be subject to its control. If it did, the operations of every law school in the country would be subject to the varying requirements of, potentially, 14 law societies. Each could require, for its purposes, that harassment policies reflect its protocols and the human rights legislation in its own jurisdiction, or require admission policies that prefer the equity-seeking group that each law society determines has been most historically disadvantaged.

41. The Ontario Divisional Court did not deal with the issue directly. Despite its broad interpretation of the law society's public interest mandate it is not clear whether it would have taken a different view of the jurisdictional issue than did the Nova Scotia court had the law society adopted a resolution similar to that adopted by the NSBS. The uncertainty created by the two decisions is likely to remain while the cases work their way through the appellate courts.

Discussion Questions

What are the implications of the jurisdictional uncertainty created by the Ontario and Nova Scotia decisions for adoption of a national non-discrimination standard?

Is there merit in deferring consideration of the addition of a non-discrimination provision to the National Requirement until the legal uncertainty has been resolved in the courts?

NON-DISCRIMINATION PROVISION

WORK PLAN

OVERVIEW

- A. MANDATE**
- B. ISSUES FOR CONSIDERATION**
- C. PROCESS**
 - a. Analysis of issues
 - b. Information gathering
 - c. Stakeholder Engagement
 - d. Consultation
 - e. Reporting mechanism
- D. TIME LINE**
- E. RESOURCE REQUIREMENTS**

A. MANDATE

1. The National Requirement Review Committee (the “Committee”) has been mandated to consider and make recommendations to Federation Council on whether to include a non-discrimination provision in the National Requirement and if so in what form. In fulfilling this mandate the Committee was directed to provide the Council of the Federation with a proposed strategy and work plan that includes:
 - a. a broad outline of the questions/issues it proposes to address and in what manner;
 - b. an estimate of the financial and other resources it requires to accomplish its work plan and mandate;
 - c. plans for ongoing engagement with key stakeholders, including representatives of Trinity Western University, the Canadian Bar Association, the Council of Canadian Law Deans, the legal academy, OUTlaws Canada;
 - d. a proposed consultation process, including,
 - i. whether it will prepare a consultation report to facilitate the process;
 - ii. whether the Committee will consult in person, by written submission or both;
 - iii. with whom it plans to consult how it will accomplish that goal given time and other constraints;
 - iv. a timeline for the consultation process; and
 - e. a proposed schedule of substantive interim progress reports to be provided to Council throughout 2015 leading up to the delivery of the Review Committee’s final report.

B. ISSUES FOR CONSIDERATION

2. The Committee has identified the following issues relevant to fulfilling its mandate:
 - a. Should the requirements for legal education and entry to the legal profession include a non-discrimination requirement?
 - b. What should be the goal of a non-discrimination requirement?
 - c. If the requirements for legal education and entry to the legal profession should include a non-discrimination provision should it be added to the National Requirement?
 - d. What is the regulatory purpose of the National Requirement? Would a non-discrimination provision be consistent with that purpose?
 - e. How would the addition of a non-discrimination provision fit with the overall approach to law program approval embodied in the National Requirement?
 - f. What implications might adding a non-discrimination provision to the National Requirement have for applicants to the National Committee on Accreditation? How might these be addressed?
 - g. What are the possible forms a non-discrimination provision might take? What might be the ramifications of the different possible approaches? What examples of non-discrimination provisions exist in the law school/bar admission context? What examples are there from other contexts?
 - h. How should potentially conflicting rights and values be addressed?
 - i. Would the addition of a non-discrimination provision raise any jurisdictional or other legal issues?
 - j. What impact might the ongoing court proceedings in Nova Scotia, Ontario and British Columbia have on the work of the Committee?
 - k. In view of the mobility of the legal profession, is a consistent approach to non-discrimination required in all jurisdictions? What ramifications and jurisdictional issues might there be if law societies adopt different approaches?
 - l. What are the implications for law societies and for law schools in having a national requirement that regulates law school admissions policies?
3. The Committee will also consider such additional issues as may arise during the course of its work.

C. PROCESS

a. Analysis of the Issues

4. The Committee will begin its work by considering the issues outlined above. The Committee will call on additional expertise should this prove necessary in the course of its work, but at this stage does not anticipate needing to do so. The Committee's work will be informed by the background material and supplemental briefing materials described below and also by engagement with key stakeholders.

b. Information Gathering

5. The Committee has before it the reports of the Task Force on the Canadian Common Law Degree, the Implementation Committee, and the Special Advisory Committee on Trinity Western University. To supplement this background information, staff members providing support to the Committee will conduct research and prepare briefing materials for the Committee exploring the issues outlined above. These materials will include research on existing and potential approaches to non-discrimination both in law school/bar admission programs and other contexts, potential jurisdictional and other legal issues, including existing law on reconciling conflicting rights, and potential implications for mobility of potentially differing approaches by individual law societies.

c. Stakeholder engagement

6. The Committee considers that engagement with key stakeholders is essential to the effectiveness of the Committee's work and must play a critical role. The Committee recognizes that engagement may take many forms including in-person or virtual meetings, and consultation on issues and draft materials. The Committee expects that initial engagement will inform a consultation paper it anticipates preparing in advance of broader consultations. To ensure effective and appropriate engagement, the Committee will
 - a. identify key stakeholders in addition to identified in the mandate of the Committee approved by the Federation Council;
 - b. identify the objectives of engagement with key stakeholders; and
 - c. consult with individual stakeholders to determine the most effective form of engagement, including the timing and means of engagement, and the persons who should be involved.

d. Consultation

7. The Committee considers that the primary goal of consultation with key stakeholders and others is to have an open and transparent discussion of the issues under consideration. Consultation will also educate stakeholders on the issues, including their complexity, and will provide an opportunity for the Committee members to explain and promote the advantages of a nationally consistent approach to these issues.
8. To facilitate this consultation, the Committee will,
 - a. identify stakeholders for broad consultation, which will include those stakeholders already identified in the mandate of the Committee approved by the Federation Council; and
 - b. draft a consultation paper to be provided to both key stakeholders and a broader audience. The Committee will draft the paper prior to developing any

recommendations. The consultation paper will discuss the issues under consideration, identify possible approaches to those issues, and pose questions designed to elicit the views of the stakeholders.

e. Reporting Mechanism

9. The Committee will provide interim reports to Council on a periodic basis and may also prepare interim public reports in the course of its work. Reports to Council will be provided no less frequently than every Council meeting.

D. TIME LINE

10. The need to follow an open, transparent process that includes significant engagement and consultation will have an impact on the timing of the Committee's work. In the circumstances, it is unlikely that the Committee will be able to deliver a final report and recommendations by the last quarter of 2015. The ongoing court proceedings between Trinity Western University and the law societies in Nova Scotia, Ontario and British Columbia, and the potential relevance of the findings in those cases to the work of the Committee may also affect timing. The Committee recognizes, however, the importance of moving its work forward as quickly as possible and to that end will,
 - a. meet as expeditiously as possible to begin consideration of the issues identified above and to develop a detailed plan for stakeholder engagement; and
 - b. following initial meetings to scope out the issues more fully, provide a more detailed time line for completing its work.

E. RESOURCES

11. The primary resource demand other than the costs associated with meetings, travel and accommodations for committee members will be the costs of broad consultation. The Committee will provide further information on the consultation costs once it has developed a detailed engagement and consultation plan.

Memo

To: The Benchers
From: Michael Lucas and Jackie Drozdowski
Date: January 20, 2016
Subject: Statutory Review of the *Freedom of Information and Protection of Privacy Act*

An all-party committee (“Special Committee”) of the Legislative Assembly is currently reviewing the provisions of the *Freedom of Information and Protection of Privacy Act* (the “Act”). The Special Committee will submit a report to the Legislative Assembly on the results of its review by May 27, 2016 and it has issued a call for submissions to provide an opportunity for public bodies, stakeholders and members of the public to participate in the review process. The deadline for submissions is January 29, 2016.

The Law Society participated in the three previous statutory reviews of the Act. The recommendations the Law Society made in 2010 have not been adopted and remain relevant. The submission has been revised to include the outcome of the Special Committee’s consideration of the Law Society’s recommendations found in its 2010 report, as well as a recent development in the courts regarding solicitor client privilege.

As the Law Society’s submission to the Special Committee simply repeats or discusses recommendations already approved by the Benchers, the Executive Committee has approved it for submission. A copy of the submission is attached for information.

In brief, the four recommendations to the Special Committee for 2016 are:

Recommendation 1

The Law Society recommends that section 14 be made mandatory except when the public body is the client and can choose to waive privilege or, if the client is a third party, the client agrees to waive privilege. This recommendation was, in fact, accepted by the Special committee in 2010.

Recommendation 2

We recommend that section 44(3) be amended to exclude from disclosure to the Commissioner all records that are subject to solicitor-client privilege. We recommend that where an issue arises

about the validity of a claim of privilege, a process be devised that would permit the Court to rule on the issue, on notice to all persons whose privilege may be affected by the order. This is in fact consistent with a recommendation made in 2010 by ICBC that was accepted by the Special Committee that s. 14 be amended to say that the privileged status of records requested under the Act be referred to the Supreme Court of British Columbia for a decision. However, as this very issue is currently before the Supreme Court of Canada, we note in our submission that it may be advisable to await the outcome of that appeal before acting on this recommendation.

Recommendation 3

We recommend that the definition of “law enforcement” in Schedule 1 be expanded to include:

- (d) proceedings or investigations authorized by an Act to be conducted by a professional governing body in furtherance of its duties and obligations in the public interest.

Alternatively, we recommend using more specific and restrictive language to define “law enforcement” as it applies to professional governing bodies.

Recommendation 4

We recommend that s. 75 and Regulation 155/2012 be amended or clarified, in light of the Commissioner’s Order F09-05 and particularly with respect to the cost of photocopying and ancillary services related to processing applications. We recommend that public bodies be permitted to charge for *all* services that are useful or reasonable in the processing of a request made under the Act by a commercial applicant.

Attachment

The Law Society *of British Columbia*



**Submission to
the Special Committee of the
Legislative Assembly of British Columbia
on the Review of the
*Freedom of Information and Protection of
Privacy Act***

January 20, 2016

The Law Society of British Columbia
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INTRODUCTION

The Law Society of British Columbia is the governing body of the legal profession in British Columbia. It was recognized and given statutory authority in legislation enacted in 1884. Today, the Law Society continues under the authority of the *Legal Profession Act*, which was enacted in 1998. The object and duty of the Law Society, as stated in s. 3 of the *Legal Profession Act*, is to uphold and protect the public interest in the administration of justice by, amongst other things, preserving and protecting the rights and freedoms of all persons.

The Law Society supports the principles of openness and accountability that the *Freedom of Information and Protection of Privacy Act* (the “*FOI Act*”) is intended to promote. However, there are some concerns in connection with how the public interest in the administration of justice is affected by the *FOI Act* as well as about its application to a professional governing body such as the Law Society that we wish the Special Committee of the Legislative Assembly to consider. We have focused our attention on four points that we consider to be particularly important. The four points are set out in some detail below; however, they are best understood in the context of the Law Society’s statutory mandate.

We start from the premise that both the *FOI Act* and the *Legal Profession Act* are intended to protect the public interest. The purposes of the *FOI Act* as set out in section 2(1) are to make public bodies more accountable to the public and to protect personal privacy by

- giving the public a right of access to records,
- giving individuals a right of access to, and a right to request correction of, personal information about themselves,
- specifying limited exceptions to the rights of access,

- preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
- providing for an independent review of decisions made under the Act.

The paramount duty of the Law Society under section 3 of the *Legal Profession Act* is to uphold and protect the public interest in the administration of justice by

- preserving and protecting the rights and freedoms of all persons,
- ensuring the independence, integrity and honour of its members, and
- establishing standards for the education, professional responsibility and competence of its members and applicants for membership.

In many respects the requirements of both Acts are congruent and the public is well served. However, in some respects the public interests served by the Acts are at crossed purposes. The Law Society's concerns arise from these points of tension. Dealing with information that is subject to solicitor-client privilege (a civil right of supreme importance in Canadian law) is one place where such tension can arise; investigating allegations of lawyer misconduct or incompetence is another.

Some of the recommendations submitted by the Law Society in these submissions mirror recommendations made in 2004 (see recommendations 1 and 3 below). The balance of the recommendations are made as the result further developments in the law that we

consider affect the premises underlying the statute and therefore need to be addressed in the legislation.

I. SOLICITOR-CLIENT PRIVILEGE

1. Legal Advice

Section 14 of the *FOI Act* provides:

Legal Advice

- 14** The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

In the *Lavallee* case (*Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R. v. Fink*, [2002] 3 S.C.R. 209, 2002 SCC 61) Madam Justice Arbour described solicitor-client privilege as a “*principle of fundamental justice and civil right of supreme importance in Canadian law*”. The paramount duty to protect the public interest in the administration of justice by preserving and protecting the rights and freedoms of all persons means the Law Society’s duty to protect the privilege of clients applies in all cases, not only in those where the Law Society is the custodian of the privilege as a result of its involvement with its members. The confidential relationship takes precedence over the rights of third parties to information, and only the client has the option of releasing privileged information arising from that relationship.

The Law Society’s concern with section 14 of the *FOI Act* is that, by giving the head of a public body the discretion to refuse to disclose information that is subject to solicitor client privilege, it appears by implication to give discretion to disclose privileged information. In the *Lavallee* case Madam Justice Arbour concluded “*solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does*

not involve a balancing of interests on a case-by-case basis.” In our view, there is no basis for a discretion to release privileged information. Disclosure must be refused.

We note that this recommendation was accepted by the Special Committee in 2010, but it has not been acted upon.

RECOMMENDATION #1

The Law Society recommends that section 14 be made mandatory except when the public body is the client and can choose to waive privilege or, if the client is a third party, the client agrees to waive privilege.

2. Production to the Commissioner of information subject to solicitor-client privilege

Sections 44(1) and 44(3) of the *FOI Act* require production of any record to the Commissioner during an investigation or an inquiry under the *FOI Act*, and permit the Commissioner to examine such records, despite any privilege of the law of evidence. Subsection 44(2.1) provides that disclosure of a privileged document to the Commissioner at the Commissioner’s request under subsection (1) does not affect the privilege. Although subsection 44(2.1) goes some way to limit the potential harm done by disclosure, in our respectful opinion, it does not go far enough.

The Law Society has a statutory obligation to investigate complaints made against lawyers, and in so doing may obtain privileged or confidential information of a lawyer’s client. The Law Society can also be a party to litigation itself and, like other entities from time to time is required to seek advice and instruct counsel in connection with matters affecting its legal rights and obligations.

In the *Cypress Bowl* case (*B.C. Minister of Environment, Lands & Parks v. B.C. Information & Privacy Commissioner*, (1995) 16 B.C.L.R. (3d 64)), Mr. Justice Thackray

confirmed that solicitor-client privilege is a principle that cannot be abridged by interpreting it narrowly, as the Commissioner had attempted to do by ordering the severance of certain documents related to giving legal advice. The Court held that s.4(2) of the *FOI Act* (the “severance” provision) does not modify the common law principle of solicitor-client privilege which is incorporated into the *FOI Act* by s.14. Mr. Justice Thackray went on to say that the Commissioner does not need to look at documents that are subject to solicitor-client privilege in order to determine if they should be disclosed:

“I have not seen Documents 254 and 311 and have no reason to do so. Neither, in my opinion, did the Commissioner. I am not suggesting that there are not cases wherein the Commissioner should not peruse the questioned documents. However, when a question of solicitor-client privilege is the issue that step should be taken only if necessary. It should never become routine.”

Since the *Cypress Bowl* case, the Supreme Court of Canada has had occasion to review in a significant manner, in a number of cases, the law concerning privilege, and has further and more firmly articulated the limits on disclosure of privileged documents. In the *Lavallee* case, the Supreme Court of Canada stated that solicitor-client privilege must remain as close to absolute as possible to retain its relevance, and that the Court must therefore adopt stringent norms to ensure its protection. In order to pass the scrutiny of the *Charter*, therefore, any statutory provision affecting the privilege must only do so as minimally as possible.

In *Lavallee*, the Court determined that the impugned statutory provision (s. 488.1 of the *Criminal Code*) more than minimally impaired solicitor-client privilege. Three problems identified in the *Lavallee* case included:

- the naming of clients
- the fact that notice may not be given to clients

- the possibility of access by the Attorney General to the information prior to the determination of privilege.

We are concerned that all three of those failings exist in s. 44(1) and (3) of the Act at present should the Commissioner compel a public body (such as the Law Society) to produce information or documents in its possession over which a claim of solicitor-client privilege of a lawyer's client may be made. Production of such information would, at the very least, name clients. There is no statutory provision for notifying the clients that their privileged information is being required to be produced. Should the privileged information disclosed amount to evidence of an offence, the Commissioner by virtue of s. 47(4) may disclose that information to the Attorney General. This provision constitutes a *substantial*, not a minimal impairment of privilege.

Moreover, the Supreme Court of Canada has made clear in *Canada (Privacy Commissioner) v. Blood Tribe Department of Health* [2008] 2 S.C.R. 574 that an adjudication of privilege by the Federal Privacy Commissioner (or presumably anyone delegated by the Commissioner to make the decision), who is an administrative investigator and not an adjudicator, would be an infringement of privilege. While there are some differences between the federal *Personal Information Protection and Electronic Documents Act* and the provincial Act that is the subject of these submissions, in our opinion the decision of the Supreme Court of Canada on this point is apposite. Consequently, the purpose for which s. 44(3) contemplates the production of documents over which a claim of privilege is made would itself be an infringement of the privilege and would apply equally whether the documents were third-party documents in the hands of the public body or of the public body itself.

The Supreme Court of Canada's decisions in *Goodis v. Ontario (Ministry of Correctional Services)* [2006] 2 S.C.R. 32 and in the *Lavallee* case state that any statutory provision permitting access to privileged documents must, in order to pass constitutional scrutiny, be "absolutely necessary" and "no more than minimally impair the privilege." In our submission, access to privileged documents by the Commissioner is not "absolutely

necessary” in these cases. Nor would such access no more than “minimally impair privilege”. If the Commissioner were, in error, to determine that the documents were not privileged, that privilege would be absolutely impaired as the documents would ultimately be disclosed to the party seeking them, and the privilege would be lost. This outcome is not “absolutely necessary”, as a process that allows the court to make a determination, in a manner that we have in the past suggested, is available. The Law Society therefore urges that a process be developed through which contested claims of privilege can be decided by the Courts, which is the ultimate and proper arbiter of privilege. This recommendation is consistent with a recommendation accepted by the Special Committee in 2010 that s. 14 of the Act be amended to say that the privileged status of records requested under the Act be referred to the Supreme Court of British Columbia for a decision.

Our recommendation is also consistent with the finding of the Alberta Court of Appeal in *University of Calgary v JR*, 2015 ABCA 118. In that case, the Court of Appeal determined that neither the Privacy Commissioner in Alberta nor her delegate has statutory authority to compel production of records over which a public body has asserted solicitor-client privilege. While that issue was raised in British Columbia in *School District No. 49 (Central Coast) v. British Columbia*, 2012 BCSC 427 the Supreme Court of British Columbia concluded that, given the particulars of the matter before it, it need not decide whether the *Freedom of Information and Protection of Privacy Act* gives the Commissioner the power to compel a public body to produce to the Commissioner documents which it refuses to produce because of a claim of solicitor-client privilege, although admittedly the Court seemed to prefer an interpretation of the legislation that would permit the Commissioner to access and review materials over which a claim of privilege is made.

The reasons for judgment in *University of Calgary* support the recommendation below. However, as the Supreme Court of Canada has granted leave to appeal that decision, we recognize that it may be advisable to await the outcome of that appeal before acting on our recommendation.

RECOMMENDATION #2

We recommend that section 44(3) be amended to exclude from disclosure to the Commissioner all records that are subject to solicitor-client privilege. We recommend that where an issue arises about the validity of a claim of privilege, a process be devised that would permit the Court to rule on the issue, on notice to all persons whose privilege may be affected by the order.

II. DISCLOSURE HARMFUL TO LAW ENFORCEMENT – Section 15(1) and Schedule 1: Definition of “law enforcement.”

Section 15(1)(a) of the *FOI Act* applies to Law Society investigations leading to disciplinary proceedings involving a penalty or sanction. The Information and Privacy Commissioner confirmed this in Order 163-1997. However, there are several other methods by which the Law Society protects the public that require investigations to which section 15(1)(a) might not apply.

Under Part 2 of the *Legal Profession Act*, the Benchers and the Credentials Committee are responsible for ensuring that no person becomes a lawyer in B.C. who is not of good character and repute or is otherwise unfit. It is common for an extensive Credentials investigation of an applicant to take place when there is a question of character or fitness. Preventing unfit persons from becoming lawyers is obviously a more effective way of protecting the public than attempting to discipline them for transgressions affecting members of the public after they become lawyers.

Credentials investigations should have the same protection as investigations related to disciplinary functions performed by the Law Society. In the course of Credentials investigations, the Law Society frequently receives confidential information, often from confidential sources. Section 15(1) might not apply to protect that confidential

information because the investigation does not or might not lead to the imposition of a penalty or sanction, and therefore, does not fall within the definition of “law enforcement” in Schedule 1 of the *FOI Act*.

Similarly, the Law Society maintains programs to determine competence of individual members and, when they are found wanting, to assist them to achieve a higher level of competence. Again, investigations leading to voluntary remediation are arguably not included in the definition of “law enforcement” because they do not or might not lead to the imposition of a penalty or sanction.

The Law Society is authorized by section 33 of the *Legal Profession Act* to conduct audits to ensure that lawyers are maintaining proper records and following the requirements of the Act and the Law Society Rules concerning accounting for money held in trust. Audits may be initiated on the basis of confidential information, and confidential information is very often obtained during the audit. The purpose of the audit is to enforce the law with respect to lawyers’ trust accounts, but it is not always clear that the audit could lead to the imposition of a penalty or sanction. We are concerned that other provisions of the *FOI Act* might not be able to prevent the disclosure of audit reports obtained through section 33 of the *Legal Profession Act* if they could be termed “routine inspections”.

Our third recommendation reflects our view that the ability of the Law Society to conduct investigations in order to fulfill its statutory obligations should be the same whether the issue is punishment and possible exclusion from practice of a current member, or preventing an applicant from becoming a member, or some other regulatory function.

RECOMMENDATION #3

We recommend that the definition of “law enforcement” in Schedule 1 be expanded to include:

- (d) proceedings or investigations authorized by an Act to be conducted by a professional governing body in furtherance of its duties and obligations in the public interest.

Alternatively, we recommend using more specific and restrictive language to define “law enforcement” as it applies to professional governing bodies:

- (d) proceedings or investigations conducted by a professional governing body in furtherance of its duties and obligations in the public interest, including but not limited to investigations or audits regarding
 - (i) the qualification, character and fitness of an individual to become a member of the professional governing body or to be enrolled as a student under the authority of the professional governing body,
 - (ii) the ability of a member of a professional governing body to practise and continue to practise a profession,
 - (iii) a complaint, allegation or other information concerning the conduct of a member or former member of a professional governing body or a student under the authority of the professional governing body, and

compliance with rules or regulations governing the profession.

III. FEES – SECTION 75 AND REGULATIONS

The cost burden that has to be assumed by public bodies, and including in particular professional governing bodies, in complying with the provisions of the *FOI Act* remains of concern to the Law Society. Professional governing bodies receive no public funds.

While the provincial government relies on a sizable tax base of over 3.7 million people, professional governing bodies are financed through assessments on relatively small groups of private individuals. Moreover, most of the applications under the *Act* made to governing bodies, such as the Law Society as an example, are made by persons who are not members of the governing body.

While it is, of course, appropriate for government to make the policy decision to provide certain services to members of the public at little or no cost and finance the cost of providing the services from general revenue, it is another thing to impose this requirement on relatively small organizations such as the professional governing bodies like the Law Society.

The *FOI Act* and the Regulations appear to contemplate that there are two types of persons who make applications under the *FOI Act*: individual applicants and commercial applicants. Policy considerations may militate in favour of ensuring that individuals who want to make applications are not precluded from doing so by reason of the risk of having to bear the costs of the public body in processing the request. Different policy considerations have been expressed, however, where the applicant is a commercial applicant. In such circumstances, where the application is made for information in connection with a business or venture for profit, the “actual cost” of the processing services is more justifiable, and this has been recognized in B.C. Reg. 155/2012.

In light of the Commissioner’s Order F09-05, however, the Law Society submits that some statutory clarification is warranted. In that order, fees for certain services that the Law Society undertook in the course of processing an application under the *Act* were disallowed, including

- the cost of making working copies;
- staff time spent making working copies;

- staff time spent severing records;
- staff time spent drafting lists of records.

In many, and perhaps even all, circumstances, these sorts of services are inherent in or ancillary to the nature of activities listed in s. 75(1) of the *FOI Act*. Disallowing a fee for these services means, by necessity, that the public body cannot recover the actual cost of processing a request under the *Act* because some necessary services are, by virtue of the Commissioner's decision, apparently excluded by the *FOI Act*. Applicants, particularly commercial applicants, therefore are *not* having to pay the reasonable cost of their requests, and the public body is having to subsidize the cost of the service. It is not that the Commissioner considers these sorts of services to be necessarily *unreasonable*, just that it is not a s. 75(1)(a) "service."

In the past, a practice appears to have developed whereby a charge of 25¢ per photocopy (the "maximum fee" for photocopying) has been applied by public bodies through which, we expect, public bodies have attempted to recoup some of the ancillary or "overhead" services that may not be specifically provided for in the legislation. The charge of 25¢ per photocopy is the general charge allowed for photocopying services by the courts on costs matters and is generally approved by Registrars in reviews of lawyers' accounts. In Order F09-05, the Commissioner permits only the "actual cost" of photocopying. If this is to be the case, then the Law Society submits that the ancillary costs must be recoverable at their actual cost. Otherwise, applicants, particularly commercial applicants, will receive a benefit at the cost of the public body. If the service is useful or reasonable in processing the application or is necessarily inherent in or ancillary to a service required to process a request, then the Law Society submits that it is reasonable to charge a commercial applicant the actual cost of that service. Statutory instruments should not place limits on the services that can be charged, at least to commercial applicants, provided they are reasonable services that aid in properly responding to the request.

RECOMMENDATION #4

We recommend that s. 75 and Regulation 155/2012 be amended or clarified, in light of the Commissioner's Order F09-05 and particularly with respect to the cost of photocopying and ancillary services related to processing applications. We recommend that public bodies be permitted to charge for *all* services that are useful or reasonable in the processing of a request made under the *FOI Act* by a commercial applicant.

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