



Agenda

Benchers

Date: Friday, May 6, 2016

Time: **7:30 am** Continental breakfast

8:30 am Call to order

Location: Room 204, 2nd 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.*

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
1	Magna Carta Essay Award	5	President		Presentation
<p>CONSENT AGENDA:</p> <p>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.</p>					
2	Consent Agenda <ul style="list-style-type: none"> • Minutes of April 8, 2016 meeting (regular session) • Minutes of April 8, 2016 meeting (<i>in camera</i> session) • External Appointments: Vancouver Airport Authority • Amendments to the Commentary to Code of Conduct Appendix A, Rule 1 	1	President	Tab 2.1 Tab 2.2 Tab 2.3 Tab 2.4	Approval Approval Approval Approval



Agenda

ITEM	TOPIC	TIME (min)	SPEAKER	MATERIALS	ACTION
GUEST PRESENTATIONS					
3	Overview of the Truth and Reconciliation Commission	30	Ardith Walkem		Presentation
EXECUTIVE REPORTS					
4	President's Report	10	President	Oral report (update on key issues)	Briefing
5	CEO's Report	10	CEO	Tab 5	Briefing
6	Briefing by the Law Society's Member of the Federation Council	5	Gavin Hume, QC	Tab 6	Briefing
DISCUSSION/DECISION					
7	Rule 5-24.1 (proposed) Record for Review of Hearing Decision	5	Herman Van Ommen, QC	Tab 7	Discussion/ Decision
REPORTS					
8	Core Values Presentation	10	Core Values Working Group		Briefing
9	Investment Review	20	Miriam Kresivo, QC	Tab 9	Briefing
10	Report on Outstanding Hearing & Review Decisions	5	Herman Van Ommen, QC	<i>(To be circulated at the meeting)</i>	Briefing
11	2015-2017 Strategic Plan Implementation Update	10	President		Briefing



Agenda

<i>IN CAMERA</i>					
12	<i>In camera</i>		President/CEO		
	<ul style="list-style-type: none"> • Bencher concerns • Other business 				



Minutes

Benchers

Date: Friday, April 08, 2016

Present: David Crossin, QC, President
Herman Van Ommen, QC, 1st Vice-President
Miriam Kresivo, QC, 2nd Vice-President
Satwinder Bains
Jeff Campbell, QC
Pinder Cheema, QC
Lynal Doerksen
Thomas Fellhauer
Craig Ferris, QC
Martin Finch, QC
Brook Greenberg
Lisa Hamilton
J.S. (Woody) Hayes, FCPA, FCA
Dean P.J. Lawton
Jamie Maclaren
Sharon Matthews, QC
Steven McKoen
Christopher McPherson
Nancy Merrill, QC
Maria Morellato, QC
Lee Ongman
Greg Petrisor
Claude Richmond
Phil Riddell
Elizabeth Rowbotham
Mark Rushton
Carolynn Ryan
Michelle Stanford
Sarah Westwood
Tony Wilson

Excused: Not Applicable

Staff Present: Tim McGee, QC
Deborah Armour
Taylore Ashlie
Renee Collins
Charlotte Ensminger
Su Forbes, QC
Andrea Hilland
Jeffrey Hoskins, QC
David Jordan
Michael Lucas
Jeanette McPhee
Lesley Small
Alan Treleaven
Adam Whitcombe
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Law Courts Center
	Mark Knauf-Nakamura	Director of Knowledge Management, Courthouse Libraries BC
	Anne Chopra	Equity Ombudsperson, Law Society of BC
	Carla Terzariol	Executive Director/CEO, Trial Lawyers Association of BC
	Ron Friesen	CEO, Continuing Legal Education Society of BC
	Richard Fyfe, QC	Deputy Attorney General of BC, Ministry of Justice, representing the Attorney General
	Yves Moisan	President, BC Paralegal Association
	Jennifer Muller	Access to Justice BC Executive and Leadership Group
	Wayne Robertson, QC	Executive Director, Law Foundation of BC
	Monique Steensma	CEO, Mediate BC
	Prof. Jeremy Webber	Dean of Law, University of Victoria

CONSENT AGENDA

1. Minutes

a. Minutes

The minutes of the meeting held on March 4, 2016 were approved as circulated.

The *in camera* minutes of the meeting held on March 4, 2016 were approved as circulated

b. Resolutions

The following resolutions were passed unanimously and by consent.

BE IT RESOLVED to amend the Law Society Rules by rescinding Rule 3-44 (1) and substituting the following:

- (1) On demand, a lawyer must pay in full to the Society any of the following amounts paid under the Society's insurance program on behalf of the lawyer:
 - (a) a deductible amount;
 - (b) any other amount that the lawyer is required to repay or reimburse the insurer under the policy of professional liability insurance.

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

1. By rescinding Rule 5-15 (3) and substituting the following:

- (3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

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

1. By rescinding Rule 2-96 (6) (a) and substituting the following:

- (a) adjourn the conference generally or to a specified date, time and place,

2. By rescinding Rule 2-98 (5) and substituting the following:

- (5) After a hearing has commenced, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

3. By rescinding Rule 5-25 (9) (a) and substituting the following:

- (a) adjourn the conference or the hearing of the review generally or to a specified date, time and place,

4. *By rescinding Rule 5-26 (5) and substituting the following:*

- (5) After a hearing has commenced, the chair of the review board may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.

EXECUTIVE REPORTS

2. President's Report

Mr. Crossin provided a brief report to Benchers on various Law Society matters. He noted that Mr. Hume's Federation Council report would be deferred to the May meeting, and recognized the attendance of Deputy Attorney General Richard Fyfe, QC as well as guest presenter Jennifer Muller. He also noted that item 1.4 from the Consent Agenda will be moved to the Discussion/decision section of the Agenda at the request of a Bencher.

He noted that the recent announcement of Mr. Justice Cromwell's retirement effective September 1, 2016, which prompts discussion of the Supreme Court of Canada judicial appointments process. Benchers have raised this issue with him and asked if the Rule of Law Committee might prepare for Bencher consideration in June a process consistent with transparency and integrity. If Benchers agree on the proposed process, Mr. Crossin suggested that the Law Society of BC could make submissions to the Minister in that regard.

He also noted his recent attendance at the New West Bar dinner, at which he spoke on the Law Society's work on the Truth and Reconciliation Commission (TRC) recommendations and its commitment to adequate legal aid funding. He described the members as engaged and interested in the work of the Law Society, and observed that our recent public demonstration of interest in such topics appears to have created a restored hope in members and the public. Other topics of discussion included the Justicia project and the importance of our continued efforts to combat gender bias and to retain women in our profession.

Mr. Crossin briefed the Benchers on his attendance, with Mr. McGee, the Ladder and senior staff, at the Federation Council Meeting in Banff, at which he reported to the other provincial law societies on our current issues of focus, Mr. Van Ommen reported on Law Firm Regulation, and Ms. Kresivo reported on our engagement on the TRC recommendations.

He and the Ladder attended the QC Ceremony at Government House; he acknowledged the recent Queen's Counsel designations awarded to Ms. Merrill and Mr. Campbell. While in Victoria, he also spoke to a criminal law class at UVIC.

In his report on the recent Executive Committee meeting, he noted that the Executive discussed having staff provide their presentation on Core Values to the Benchers. The Executive also discussed the upcoming expiration of Mr. Hume's final term as the Federation Council representative, triggering the nomination and appointment process for his replacement, as well as

the Steering Committee to assist the Law Society with the TRC recommendations. Members of that committee met with the Ladder, Maria Morellato, QC Tim McGee, QC and staff and engaged in a wide ranging discussion which will be detailed under the Strategic Plan Implementation agenda item.

3. CEO's Report

Mr. McGee provided highlights of his monthly written report to the Benchers.

He began by acknowledging the positive tone set by the Law Society's engagement on key issues such as legal aid, the TRC recommendations and law firm regulation, and thanked both Mr. Crossin and staff for their considerable efforts in this regard.

Operationally, he noted that a redesign of the Law Society website was in development, and encouraged Benchers to provide their valued input through an upcoming survey. On the building restoration, he confirmed that the bidding process for contractors was complete, and work could likely begin soon. The hope was to have the premises fully restored in time for the July Bencher meeting, but unfortunately it was not definitive. He also noted that, in the context of the restoration work, staff would seek direction on a minor renovation to the Hearing Room to provide a separate entrance for panel members.

Mr. McGee also briefed Benchers on the Skills Enrichment Program recently implemented for staff with the goal of increasing our technological skill set and improving the quality, accuracy and efficiency of staff work. He acknowledged those Benchers who have already expressed an interest in taking part, and extended the offer once more to the remainder.

He also briefed Benchers on the work being done by staff to assess the appropriate level of resourcing for external counsel work. Specifically, the project will try and determine the appropriate mix between outsourcing work and investing more heavily on internal resources.

Touching on the recent Federation meeting, Mr. McGee related that the important governance changes at the Federation level result from the strong message from law societies that the Federation is not a stand-alone regulator. It can, however, play a pivotal role regarding national standards. Two governance mechanisms designed to help facilitate that role are the enhanced President's Forum, whose function is to gauge how individual law societies' positions fit into national agendas, and the newly constituted CEO's Forum, which collects the insights of law society CEO's and for the first time allows them to speak with one voice.

Finally, Mr. McGee noted recent media stories suggesting that the London-based Freshfields may be opening a Vancouver office to "offshore" commoditized work using paralegals and lower cost associates. According to his inquiries, no decision has been made as of yet, but he would brief Benchers as information became available in the weeks to come.

4. Briefing by the Law Society’s Member of the Federation Council

Gavin Hume, QC’s regular briefing was deferred to the next meeting.

GUEST PRESENTATIONS

5. Unbundling of Legal Services: Presentation by Jennifer Muller

Mr. Crossin introduced Jennifer Muller, a member of the Access to Justice BC Executive Committee and former self-represented litigant, to speak on challenges facing self-represented litigants in our justice system, and the ways in which “unbundling” of legal services can provide some relief.

Ms. Muller related her personal story of retaining counsel to assist with her family litigation matter, but being unable to continue given the significant expense. With self-representation as her only option, she described a bewildering, demoralizing experience in which she lacked any useful knowledge of the system, its language or its protocols. Finding herself apologizing for missteps at every turn, she approached several lawyers, proposing to pay for their time and guidance on a limited basis, so that she could continue to represent herself, but with the advice of counsel periodically. Most rejected her proposals; one agreed, and was instrumental in assisting her with the preparation and conduct of her case which culminated in a 9 day trial.

Ms. Muller, who has a Master’s degree in Human Learning and Counselling Psychology, typifies the average self-represented litigant (SRL) who tends to be middle class and college educated. Statistics show that 57% of litigants in family cases are SRL’s. In some cities the figure is as high as 70%. According to Ms. Muller, most would prefer to have a lawyer, they simply cannot afford one for protracted periods of time. Ironically, most also earn too much to qualify for legal aid. And most are unaware it is possible to hire a lawyer on a limited basis, with what is known as a “limited scope retainer” or “unbundled legal services”.

Having navigated the system as an SRL, it is Ms. Muller’s observation that the public should be made more aware of the possibility of hiring a lawyer on a limited scope retainer; lawyers themselves should be made more aware of their ability to take on such work.

In answer to a question, Ms. Muller clarified that, being unfamiliar with the terms “unbundled legal services” or “limited scope retainer”, when she approached lawyers for help she proposed paying “on a task by task basis”. Most SRL’s she speaks with now are equally unaware of the terms, or of the service. She also describes an almost covertness amongst lawyers who are willing to provide such service. Most do not publicize it in any way.

Ms. Muller also recognized the prevailing perception of SRL's as unpleasant, uncooperative or adversarial. While acknowledging there will always be some who are disgruntled, the National Self-represented Litigants Project Report by Dr. Julie McFarlane found that 90% would have chosen to be represented by a lawyer.

Mr. Crossin noted that this issue should form part of the discussion of the Access to Justice Committee; Mr. Van Ommen, chair of that committee, confirmed "unbundling" had been a topic of conversation at the last meeting and would welcome the input. At the least, the committee agree the terminology is difficult, and does not best describe the service offered.

It was noted by a Bencher and by staff that since the 2008 Report of the Unbundling of Legal Services Task Force, the Law Society has permitted the "unbundling" of legal services, but few lawyers seem to be taking advantage of the ability. Staff will be reviewing the creation of templates and business models to provide to lawyers to promote this type of practice; it was also suggested a "roster" of lawyers providing this service be made available to the public.

Mr. Crossin thanked Ms. Muller for her inspiring presentation.

DISCUSSION/DECISION

6. 2016 First Quarter Financial Report

Ms. Kresivo, Chair of the Finance and Audit Committee, introduced this item and thanked staff, particularly Chief Financial Officer Jeanette McPhee, for their invaluable contributions. She confirmed that the Law Society is on track regarding revenue, and noted that, while it is still early in the year, there is no indication of any issues to date. Ms. McPhee then briefed Benchers on the details of the First Quarterly Financial Report, noting that the first three months saw a positive variance of \$300,000, but only because of timing; expectations of being on budget with regard to numbers of members and students remain, while TAF revenue is expected to be over budget as a result of the real estate market. The Lawyers Insurance Fund is operating on budget, but investment returns for January and February are negative, as is the benchmark; the market recovered slightly in March resulting in an overall position of negative 1%, similar to the benchmark.

On that note, Ms. Kresivo indicated that, while changes to the investment policies are brought to Benchers as needed, the investments themselves are not generally reported on to Benchers. To ensure Benchers have a fuller understanding of our investments, there will be a presentation to Benchers at the next meeting.

REPORTS

7. Lawyers Insurance Fund: Program Report for 2015

Su Forbes, QC, Director of the Lawyers Insurance Fund (LIF), made a presentation on LIF's performance in 2015 for Benchers (the Power Point for which is attached as Appendix A). For the benefit of new Benchers, she also provided a brief overview of the program and its operations, naming key staff and their positions.

She outlined the functions of claims counsel, detailing the differences between negligence claims under Part A and theft claims under B, and setting out their various duties which include investigating coverage, assessing liability and quantum, negotiating settlements and otherwise resolving claims through repair or defence. She noted that a defence counsel "InForum" is held each year which provides opportunity for our outside defence counsel to discuss ethical issues, best practices, and how best to serve insured lawyers.

Last year, the program handled about 300 insurance and coverage inquiries. This is a reduction from years past, largely due to the addition of the website page "My insurance policy: questions & answers" which provides information on what is, and especially what is not, covered under the policy. Members are appreciative of this resource, with the page receiving over 8000 hits last year. Program lawyers are also very actively involved in risk management, helping lawyers manage their practice to avoid claims.

Ms. Forbes noted that there almost 11,400 practicing lawyers in BC, 2800 of which are "in house" and therefore not insured by the program. Accordingly, 8600 lawyers in private practice are insured through LIF, with approximately 7400 full time and 1160 part time. The frequency of claims from 2011 to now has remained essentially unchanged, with a slight increase in 2015. Two thirds of the reports received are potential claims or incidents; lawyers by and large comply with their duty to self-report, which provides opportunities for early investigation and resolution, and "repair" of a problem before it becomes a claim.

Total payments on claims (indemnities and defence costs) are about \$12-15 million per year; defence costs are consistent, but indemnities (settlements) are variable year over year. Last year's relatively low total payments of \$9.5 million is likely due to timing of some settlements and trials, but they will continue to monitor monthly for indication of trend.

After last year's report, the question of how age relates to claims was asked. Upon review of eleven years of data, the most claims appeared in the 40-54 age group, with relatively fewer claims in the 20-39, 55-64 and over 65 years age groups as compared with the number of lawyers in those age ranges. As claims relate to practice areas, civil litigation, real estate and commercial-other produced the most claims. Commercial leasing, securities and criminal

produced among the fewest. LIF generally closes as many files as it opens, and last year 75% closed without any payment. Between 15-20% of claims are successfully “repaired”.

As compared to programs across the country, we have the third largest program but the tenth largest fee.

Ms. Forbes also detailed Part B coverage for lawyer theft. LIF pioneered this coverage; Alberta has now followed suit. Since its inception, we have received claims regarding 81 lawyers, but only 18 have actually presented a risk to the program. A key goal of the trust protection regime was the more timely payment of claims. We are achieving this goal, with over one third of claims paid by 3 months, and 70% paid by 9 months.

Finally, service evaluation forms completed by claimants under Part B show that they are very happy with LIF's handling of their claims when asked to rate the service on timeliness, fairness, courtesy and satisfaction. Feedback from insured lawyers under Part A recognizes timely service and the insight, expertise, creativity, diplomacy and sensitivity of claims counsel.

In response to a question, Ms. Forbes confirmed LIF does not prorate premiums according to practice area, despite the differences in rates of claims, given that our fees are comparatively among the lowest in the country. When asked how it is we are able to keep fees so low, Ms. Forbes credited the skillful claims management group and leadership of the two managers, the high level of self-reporting amongst members, our efficient, streamlined program, and our investment performance.

Also, Ms. Forbes clarified that LIF provides a “declining limits” policy with defence costs within limits, as is typical in lawyers professionally liability programs throughout the world. Alternative policy models are challenging to underwrite and create much higher insurance levies. Moreover, many practices - for example, some administrative, criminal, family, and insurance defense firms - don't need greater coverage and if higher limits were provided at additional cost, lawyers who don't need additional coverage would be subsidizing those who do. She observed that additional layers of coverage are readily available on the commercial market and generally the firms that need them, buy them.

Report on Proposed Young Lawyers Initiative

Nancy Merrill, QC reported on the proposed development of a Young Lawyers initiative, with a view to providing a platform for collaborative input by that demographic on such issues as mentoring, student loan interest relief, Inns of the Court program, easier recording of CPD, quality of articles, and unpaid articles.

The next steps will involve a review by the Equity and Diversity Committee, to determine the potential viability of the initiative.

8. Report on Legal Aid Task Force

As Chair, Ms. Merrill also reported on the Legal Aid Task Force, whose mandate is to develop a principled vision for publicly funded legal aid, identify ways to fund legal aid plans, enhance Law Society leadership regarding legal aid and collaborate with other law societies. The Task Force has had three meetings thus far, and anticipates holding a full day retreat on April 23 to develop and refine the mandate and develop a conceptual framework.

9. 2015-2017 Strategic Plan Implementation Update

This report involved two aspects of the Strategic Plan: TRC's recommendations and the Law Firm Regulation Task Force.

Reporting on the TRC Steering Committee, Mr. Crossin confirmed that the Committee will be meeting to shape and discuss the Retreat agenda. He envisions hearing only from indigenous leaders on the Friday, and providing opportunity at the Bencher meeting the following day for discussion and consideration of next steps. He noted the delicate balance to be struck between the immediacy of the calls to action in the TRC report, and the advisability of ensuring consultation and understanding before action.

Maria Morellato, QC underscored the importance and value of the commitment that has been made by the members of the Steering Committee. Mr. Crossin thanked policy lawyer Andrea Hilland for her tireless contributions and for being a wonderful spokesperson for the Law Society.

Reporting on the Law Firm Regulation Task Force, Chair Herman Van Ommen, QC briefed the Benchers on the Task Force's consultations around the province, thanking those Benchers able to join the sessions in their districts. He also thanked Chief Legal Officer Deb Armour and Manager of Policy Michael Lucas for their assistance throughout. Using the information gathered at these sessions, the Task Force will refine its policy recommendations and work toward having a report to Benchers by early Fall.

Feedback included the common theme of resistance to increased regulation for sole practitioners and small firms, with the suggestion of mandatory education for firms of four or fewer instead. The areas of conflicts, accounting and marketing emerged as clear areas to be regulated at the firm level, given that these areas are largely managed at the firm level in any event.

Mr. Van Ommen noted that, nationally, virtually all law societies are looking at law firm regulation and are in various stages of consultation, moving separately but on similar paths. He

will be speaking at the Saskatchewan Annual General Meeting in June on the topic, and expects a clearer picture of law firm regulation across the country to emerge by the end of the year.

10. Report on the Outstanding Hearing & Review Decisions

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

Mr. Van Ommen also noted that he will be implementing an earlier reminder system, as we are not meeting the National Standards. Ms. Armour confirmed that at 55% we are in fact the lowest in the country; however, she did also note that we have experienced an inordinate number of reviews recently which may be contributing.

Mr. Van Ommen also noted that a committee has been struck to develop a code of conduct for all panel members which will include a section on the responsibilities of individual panel members in this regard.

11. Tab 1.4 of Consent Agenda - Record of Review On Hearing Decisions

Mr. Van Ommen framed the question at hand as, to what extent are we expecting the person seeking the review to bear cost of producing the record? Increasing numbers of requests for review are significantly taxing resources. What is being proposed is the model used by the Courts, in which the party seeking to review bears burden of preparing the record. A mechanism has been included to allow a member to ask to be relieved of cost due to hardship.

Discussion ensued, with some Benchers noting this presents an opportunity to review whether electronic records should be implemented, and others questioning the quality of the record produced if left to the party seeking review, noting that the Law Society may be in a better position to ensure a complete and appropriate record. Still others questioned whether requiring parties to prepare the record presents an access to justice issue, observing that the mechanism for seeking relief due to financial stress is overly formal and cumbersome.

Others spoke in favour of the underlying model, noting that as the number of reviews increases, our costs increase which ultimately is borne by our members. However, they also agreed that the proposal could benefit from further consideration to simplify the process for relief.

It was decided the matter will return to the Executive Committee for further consideration.

RTC
2016-04-08



*Lawyers
Insurance
Fund*

Lawyers Insurance Fund

2015 Year End Report



Program Report Roadmap

- Drivers: Who we are and what we do
- Places of Interest: Part A
- Wonders of the World: Part B
- Signposts: Who we serve and what they think

Who We Are



Su Forbes QC
Director of Insurance



Margrett George
Deputy Director of Insurance



Murray Patterson
Claims Manager



Megan
Swail



Kate
McLean



Leanne
Wood



Surindar
Nijjar



Marlon
Song



Coran Stephenson



Richard
Panton



Maryanne
Prohl



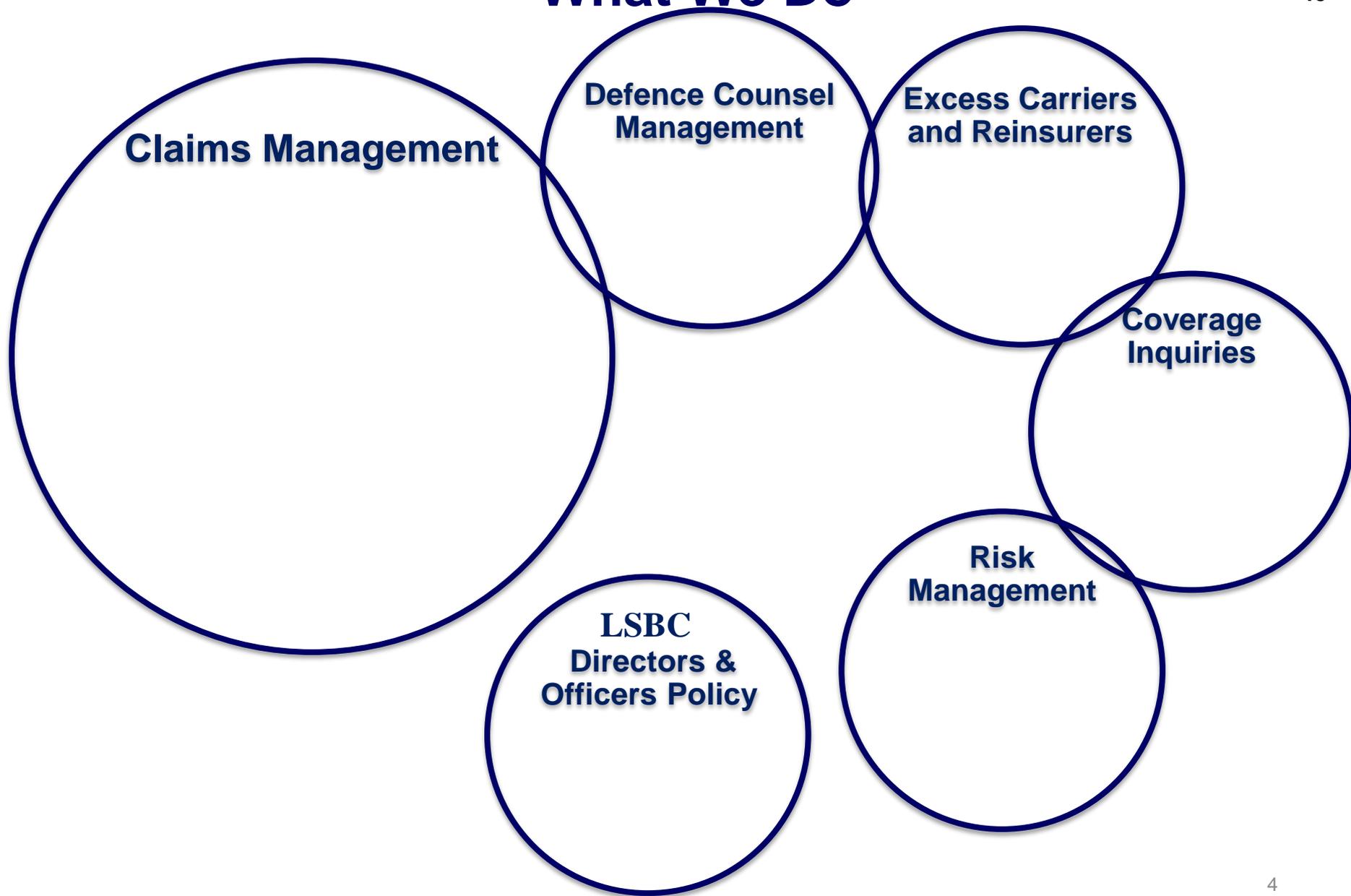
Lamour
Afonso



Greg
Sexton

Claims Counsel

What We Do

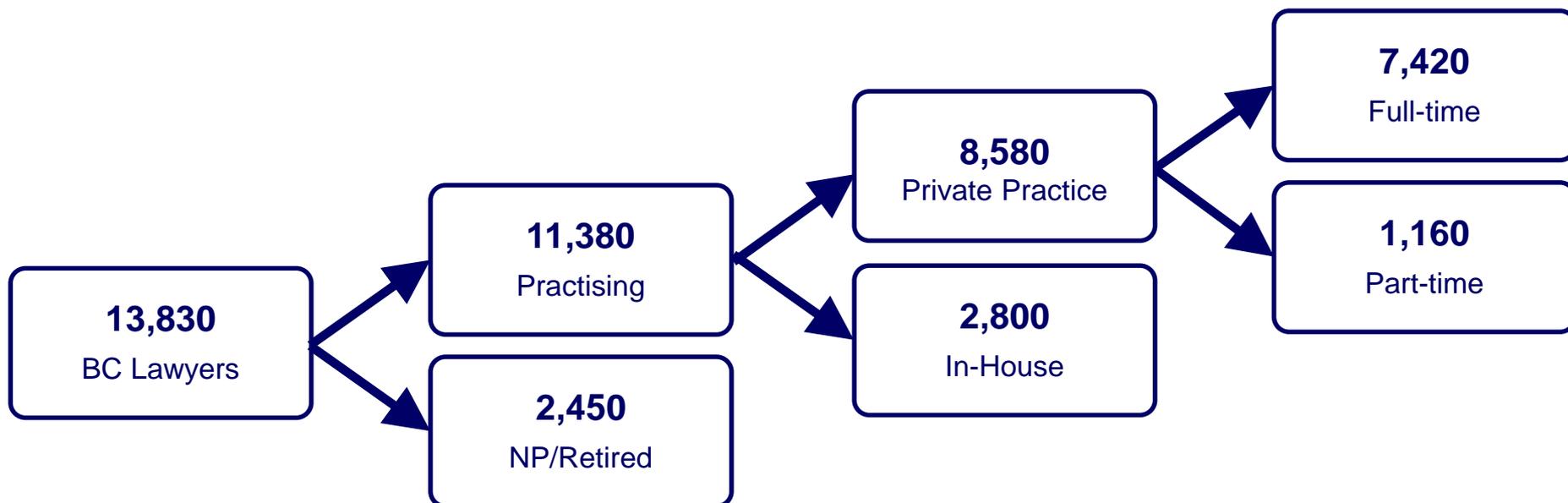




Program Report Roadmap

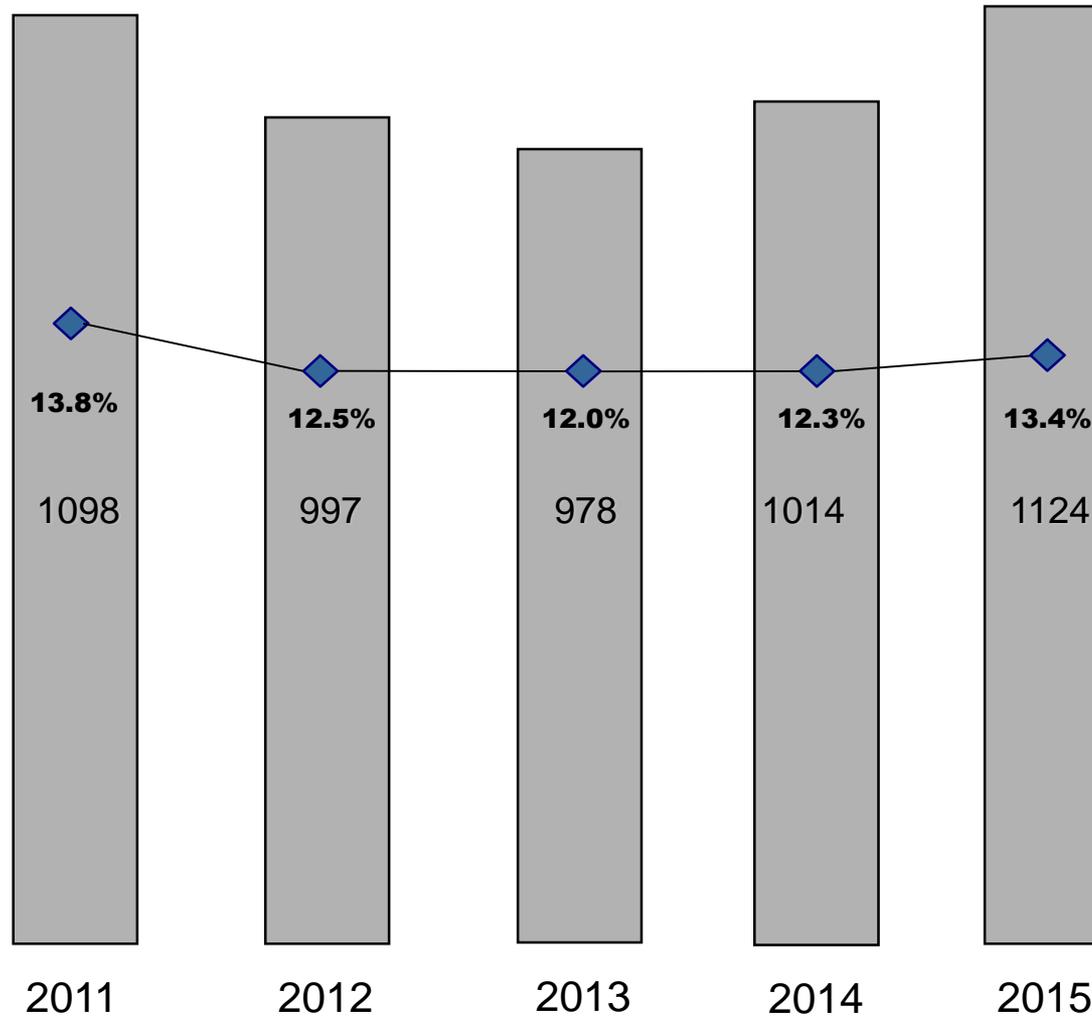
- Drivers: Who we are and what we do
- **Places of Interest: Part A**
- Wonders of the World: Part B
- Signposts: Who we serve and what they think

BC Lawyers



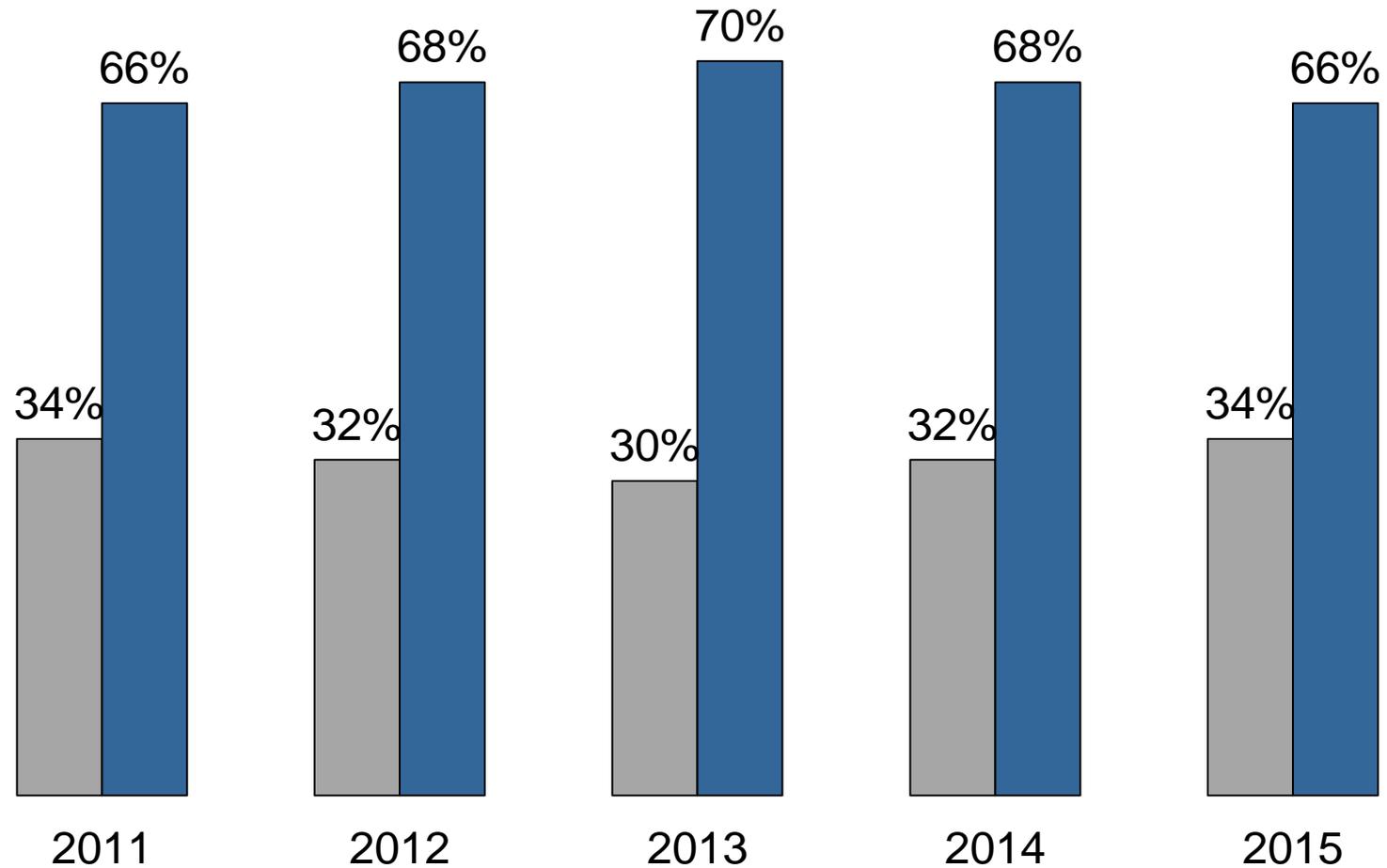
Number and Frequency of Reports

■ Number of Reports
◆ Frequency of Reports



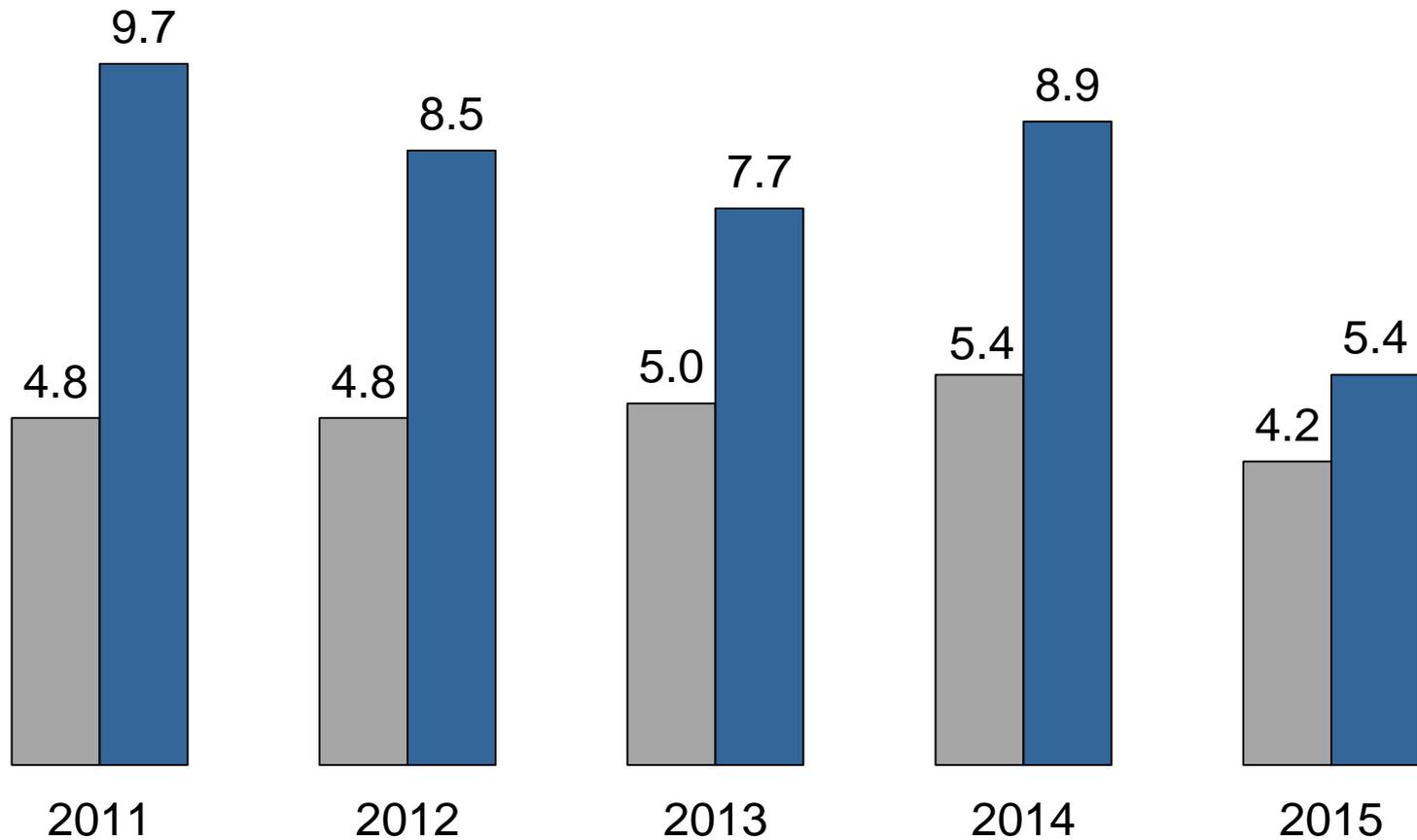
Claims and Incidents

■ Claims
■ Incidents

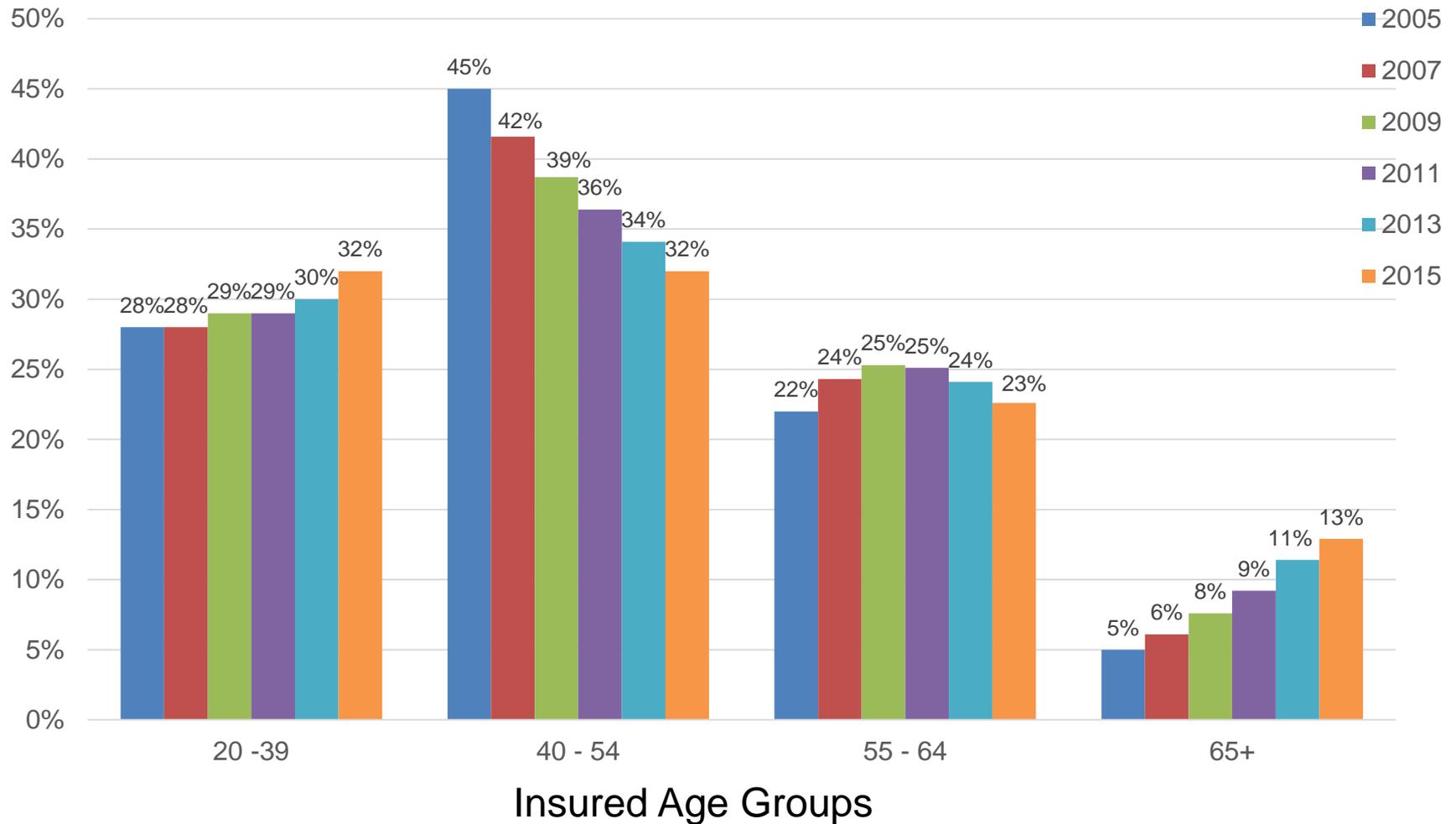


Expense
Indemnity

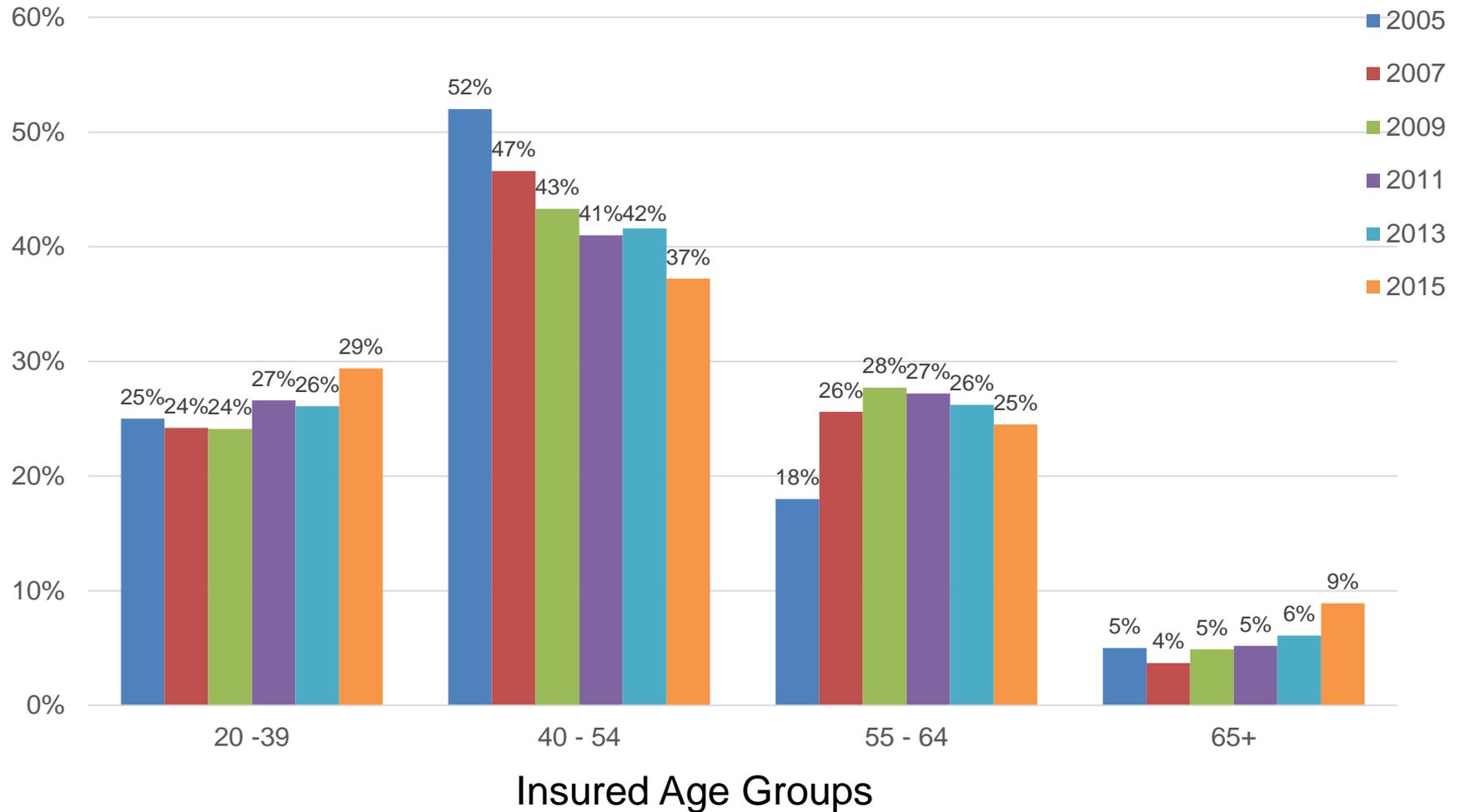
Claim Payments



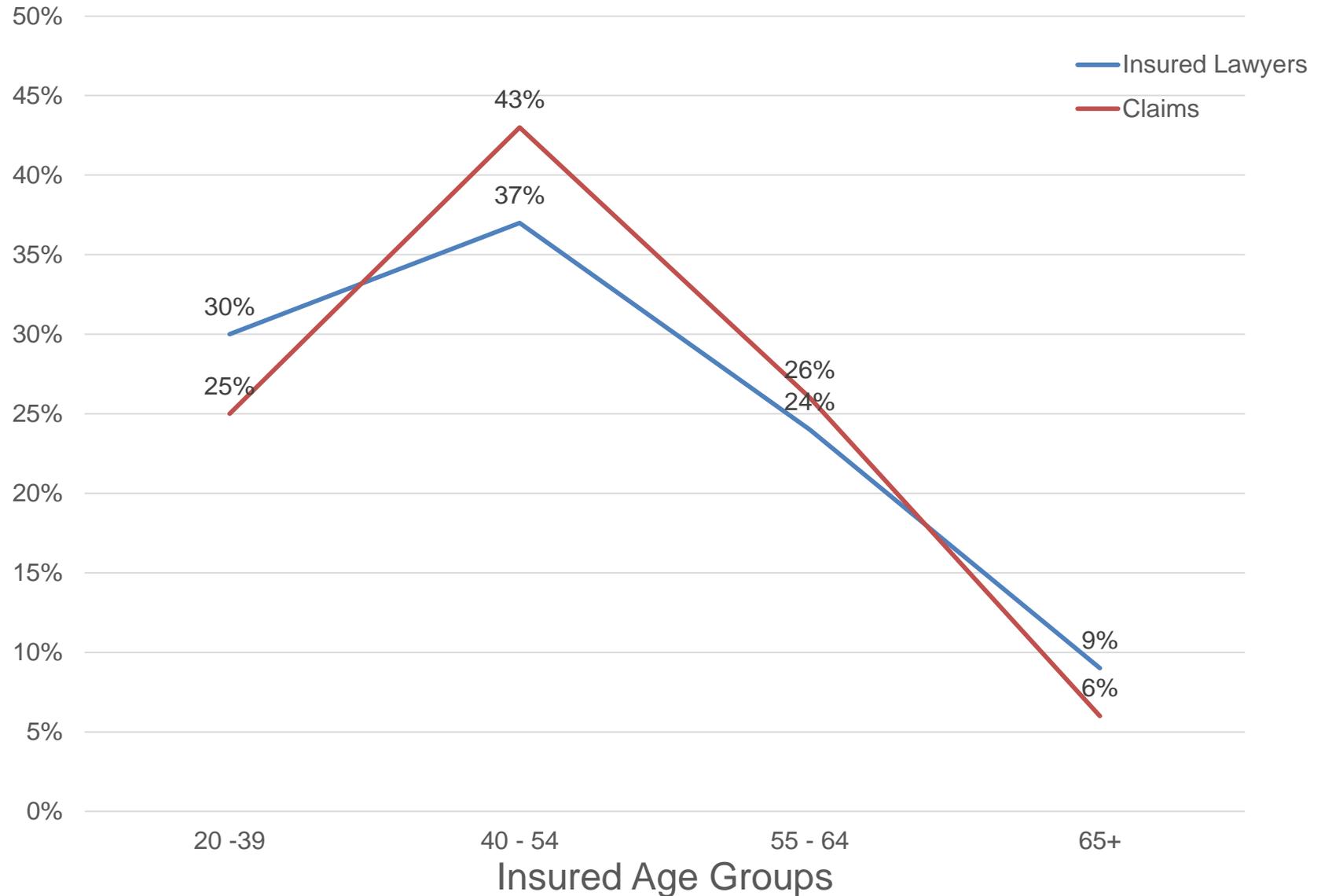
Insured Lawyers by Age Group



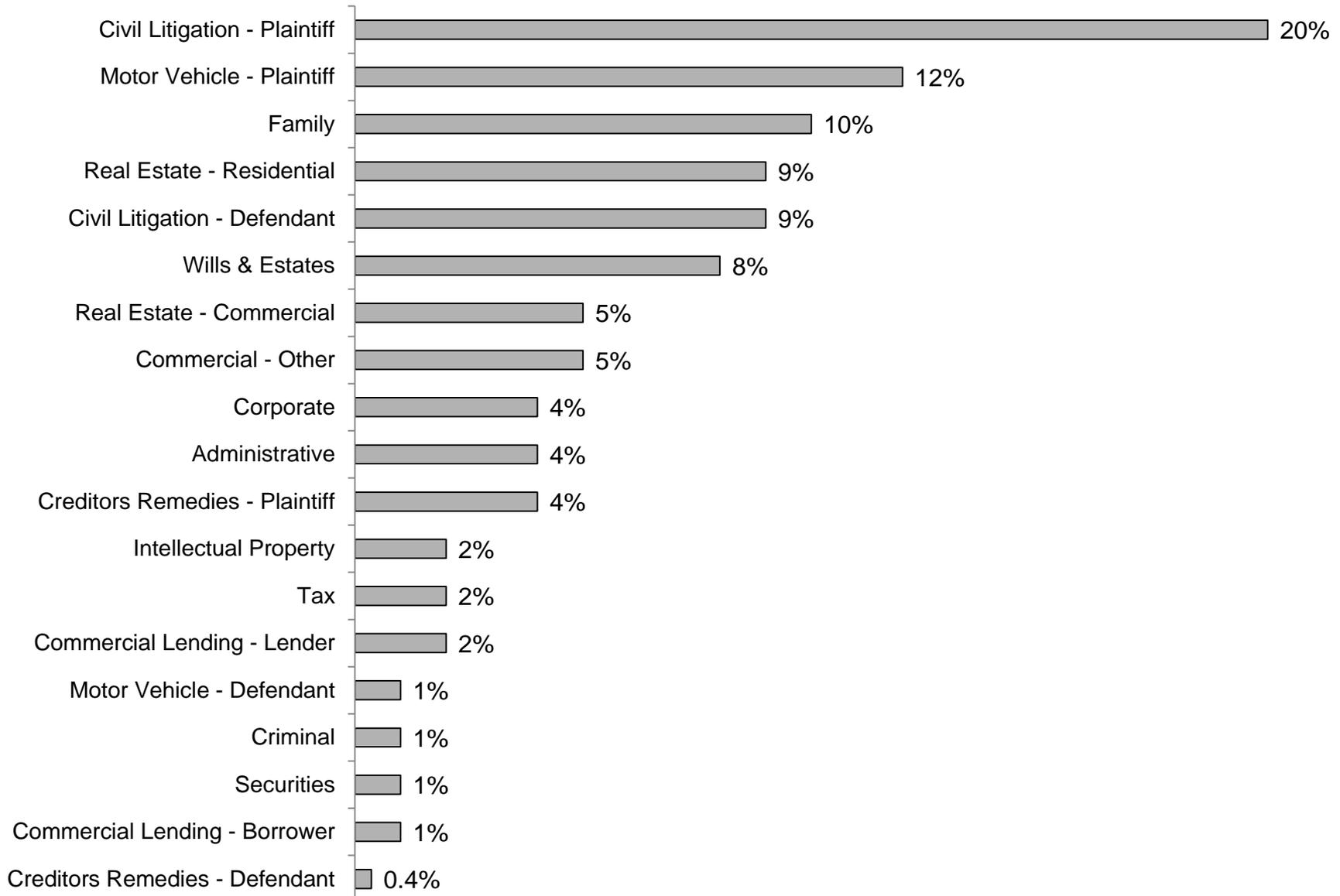
Claims Reported by Insured Age Group



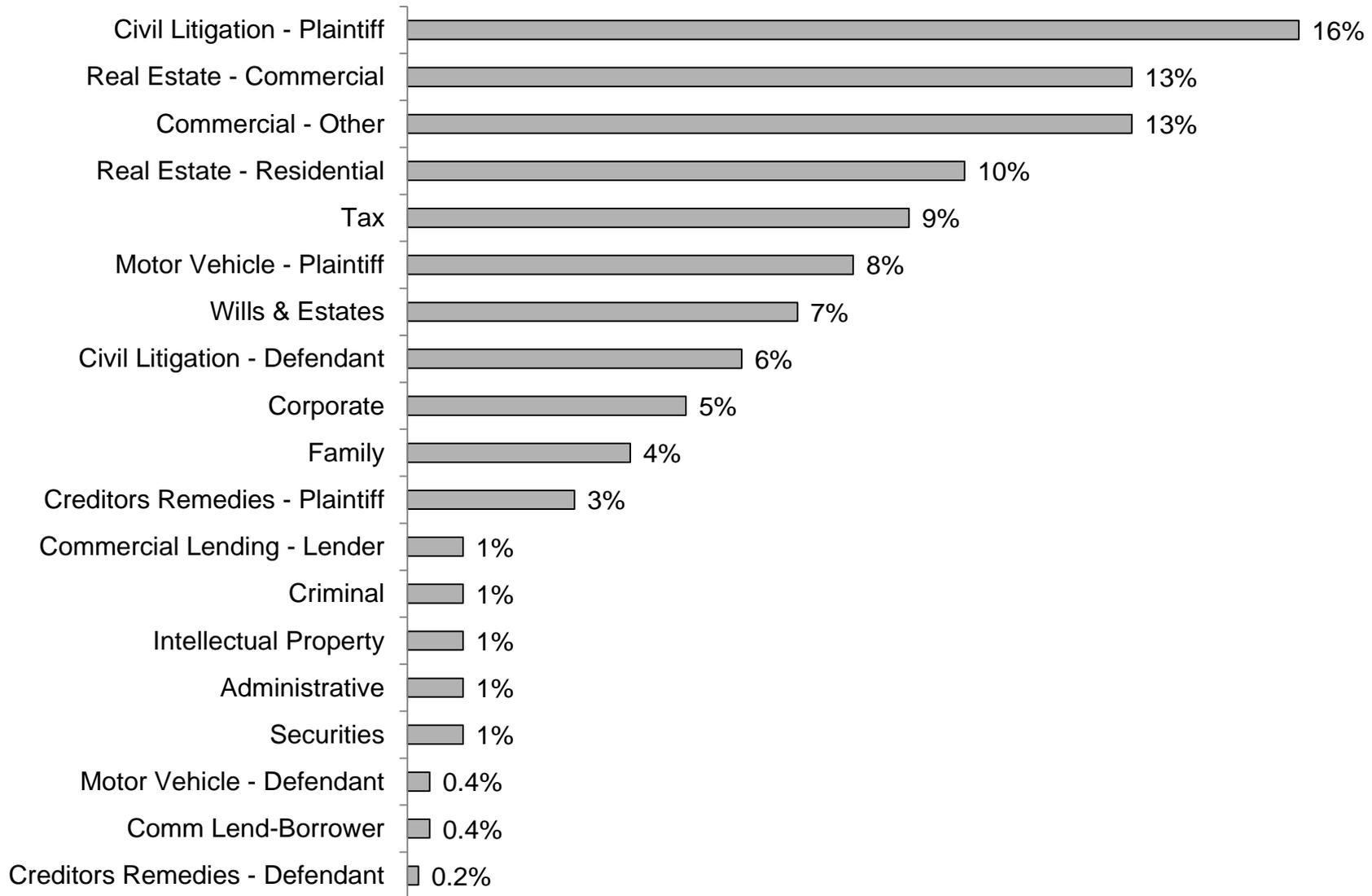
Lawyer Age Demographics: 10 year average



Frequency by Area of Practice

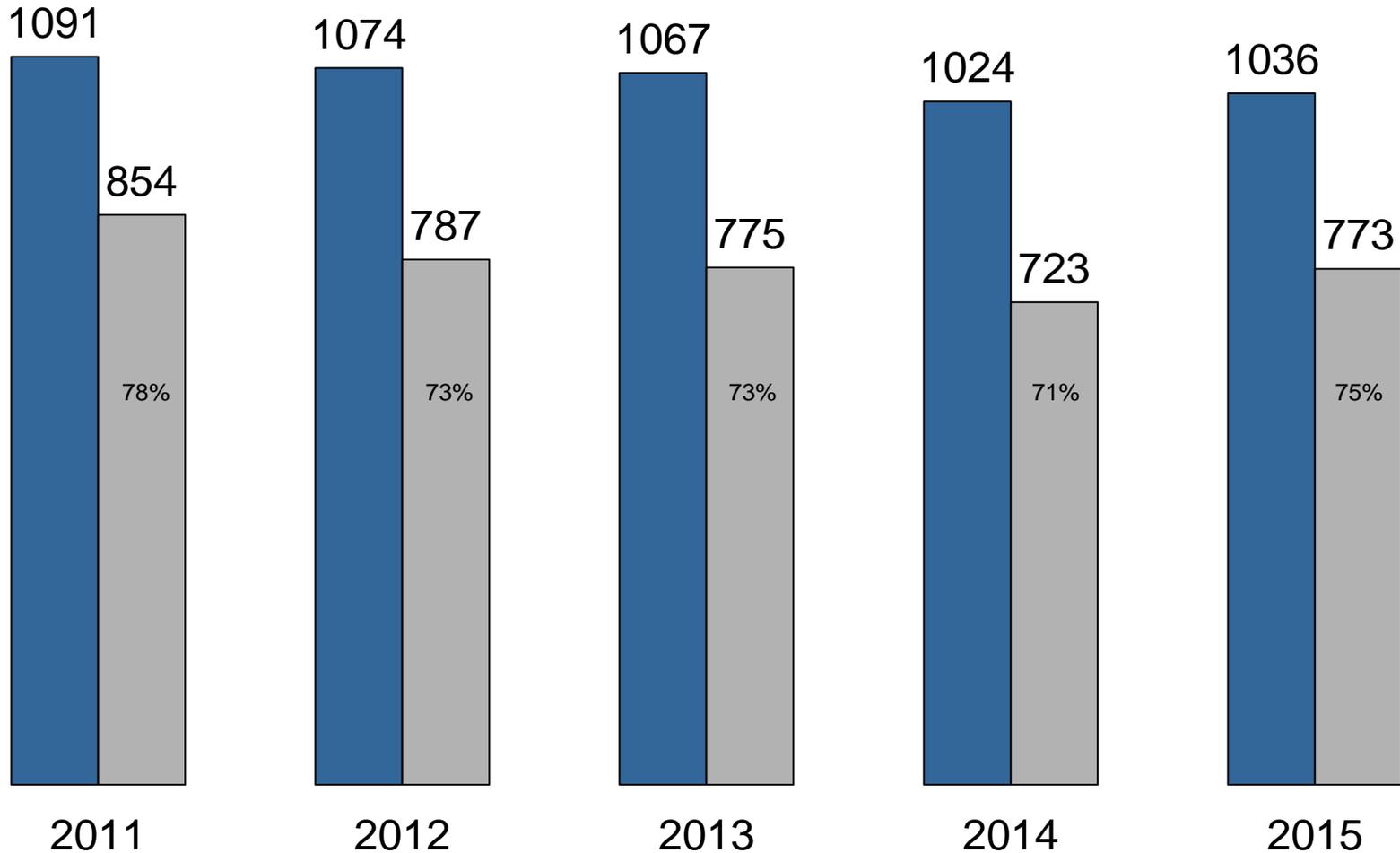


Severity by Area of Practice

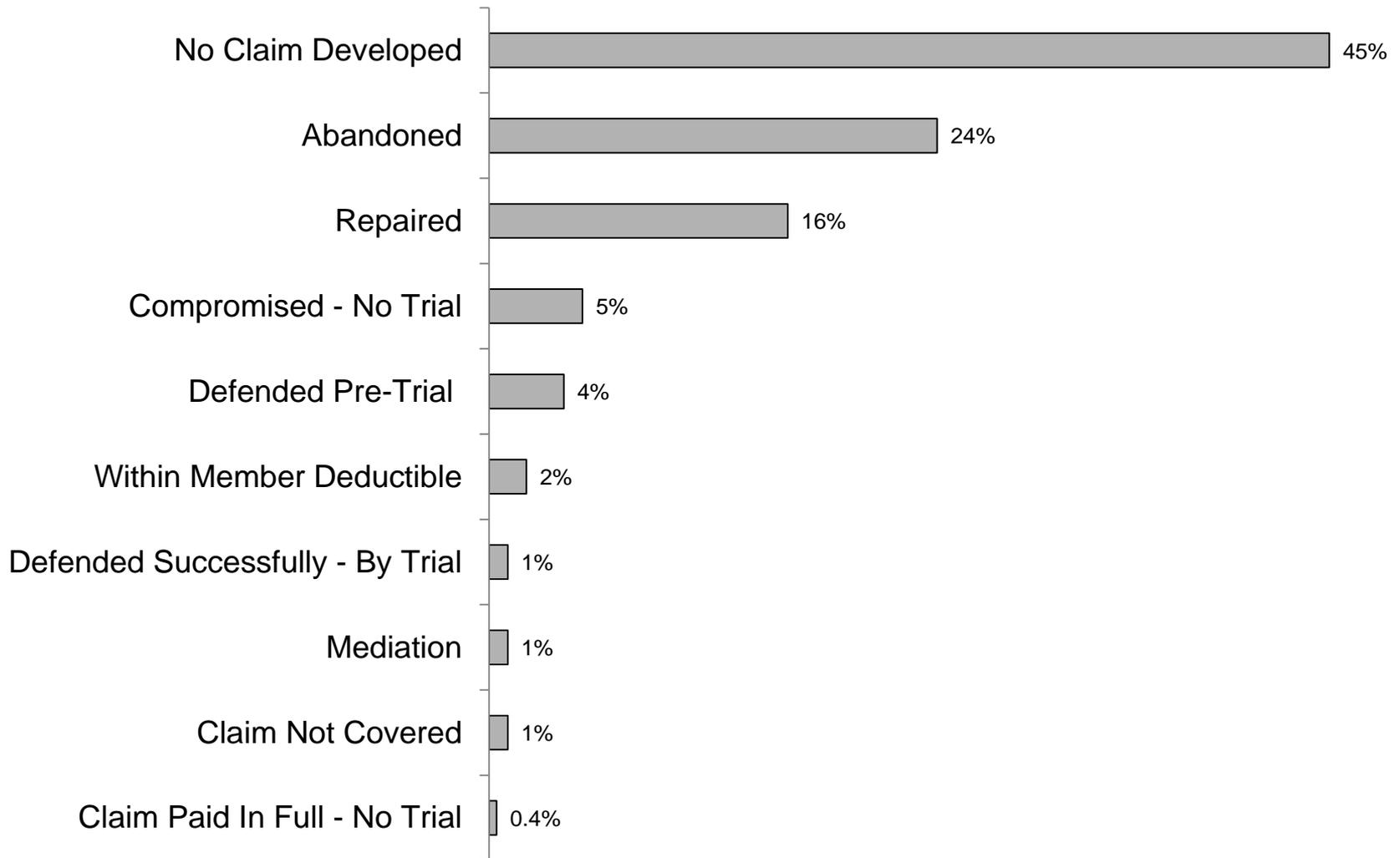


Closed Reports with No Payment

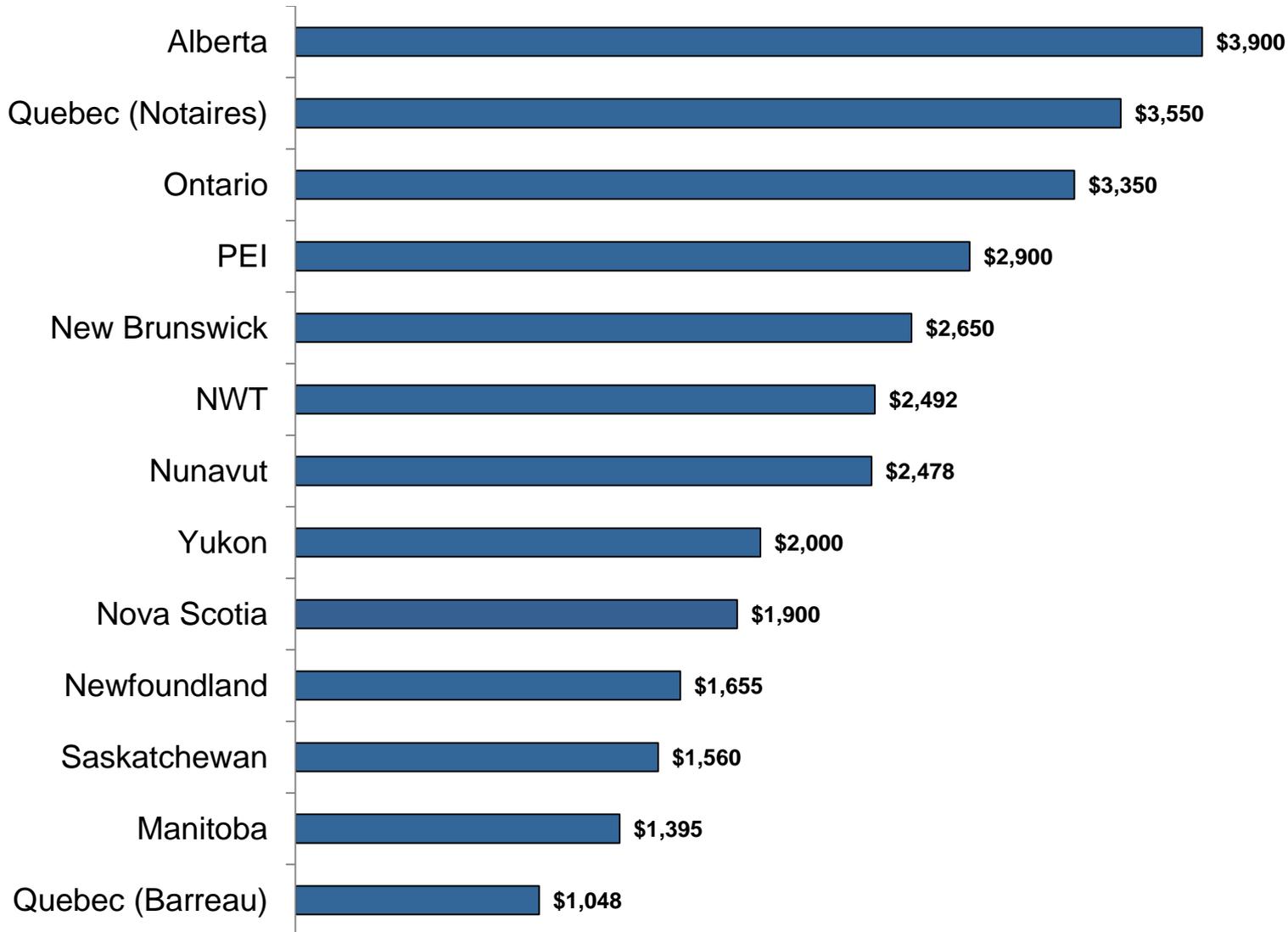
- Total Reports Closed
- Reports Closed with No Payment



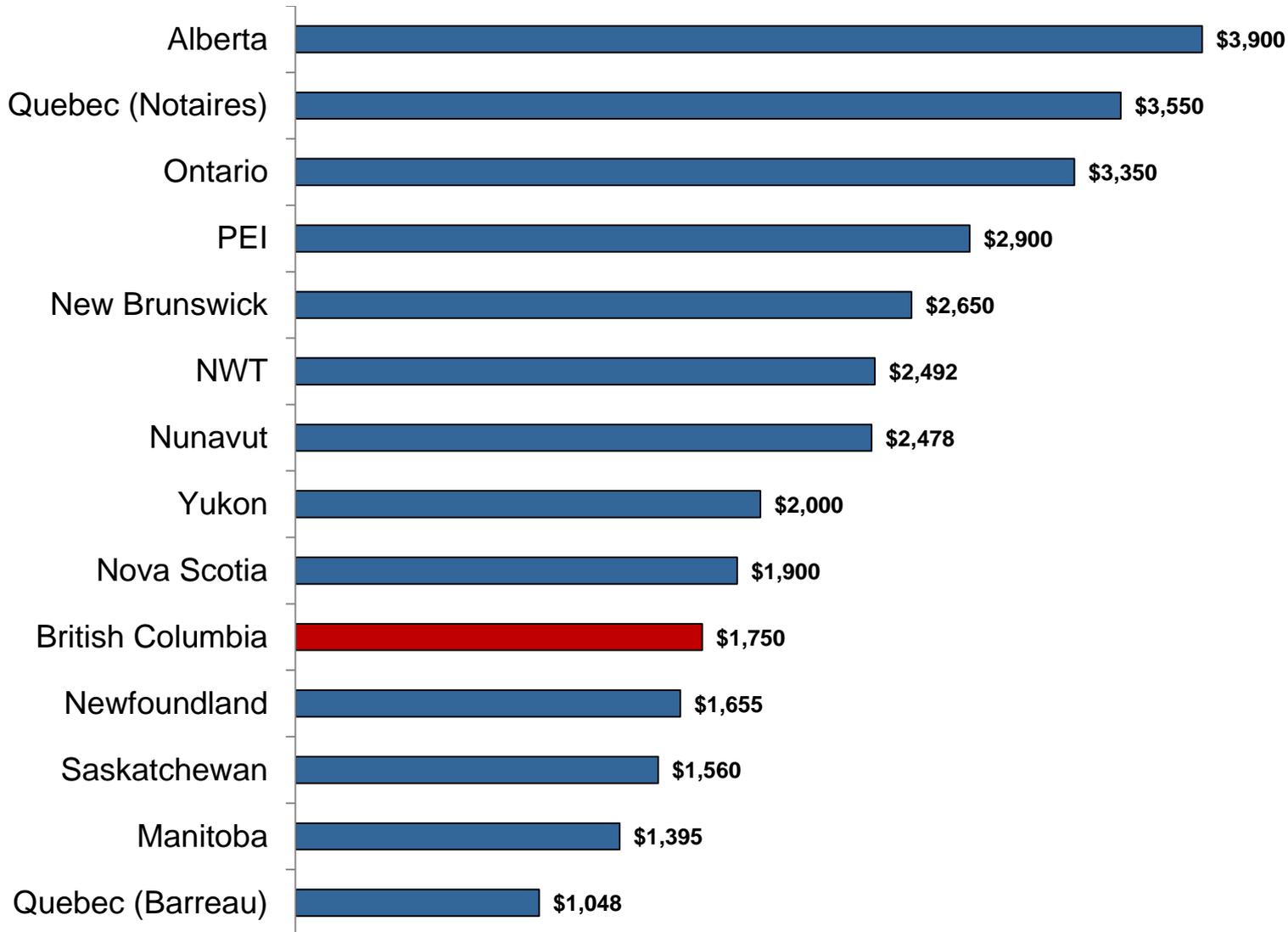
Results of Reports



Insurance Fee Comparison



Insurance Fee Comparison





Program Report Roadmap

- Drivers: Who we are and what we do
- Places of Interest: Part A
- **Wonders of the World: Part B**
- Signposts: Who we serve and what they think

LSBC launches novel 'trust protection' insurance scheme

By Gary
Victoria

In a world first, compulsory professional liability insurance for B.C. lawyers now includes "Part B" or "trust protection" coverage...

"In a world first, compulsory professional liability insurance for B.C. lawyers now includes "Part B" or "trust protection" coverage..."

"This approach for protecting the public from theft by lawyers," said Su Forbes, director of insurance for the Law Society of B.C. (LSBC).

"It's the first of its kind in the world," she told *The Lawyers Weekly*.

"With the addition of Part B coverage, the Law Society has consolidated the processes for responding to claims in which a member of the public suffers a loss when dealing with a lawyer.

"Whether the claim is for negligence [Part A] or theft, the policy responds and the Lawyers Insur-

Canadian law societies. Now, in B.C. at least, staff of the LSBC's Lawyers Insurance Fund "can process the claims as they do any other insurance claim," Forbes said.

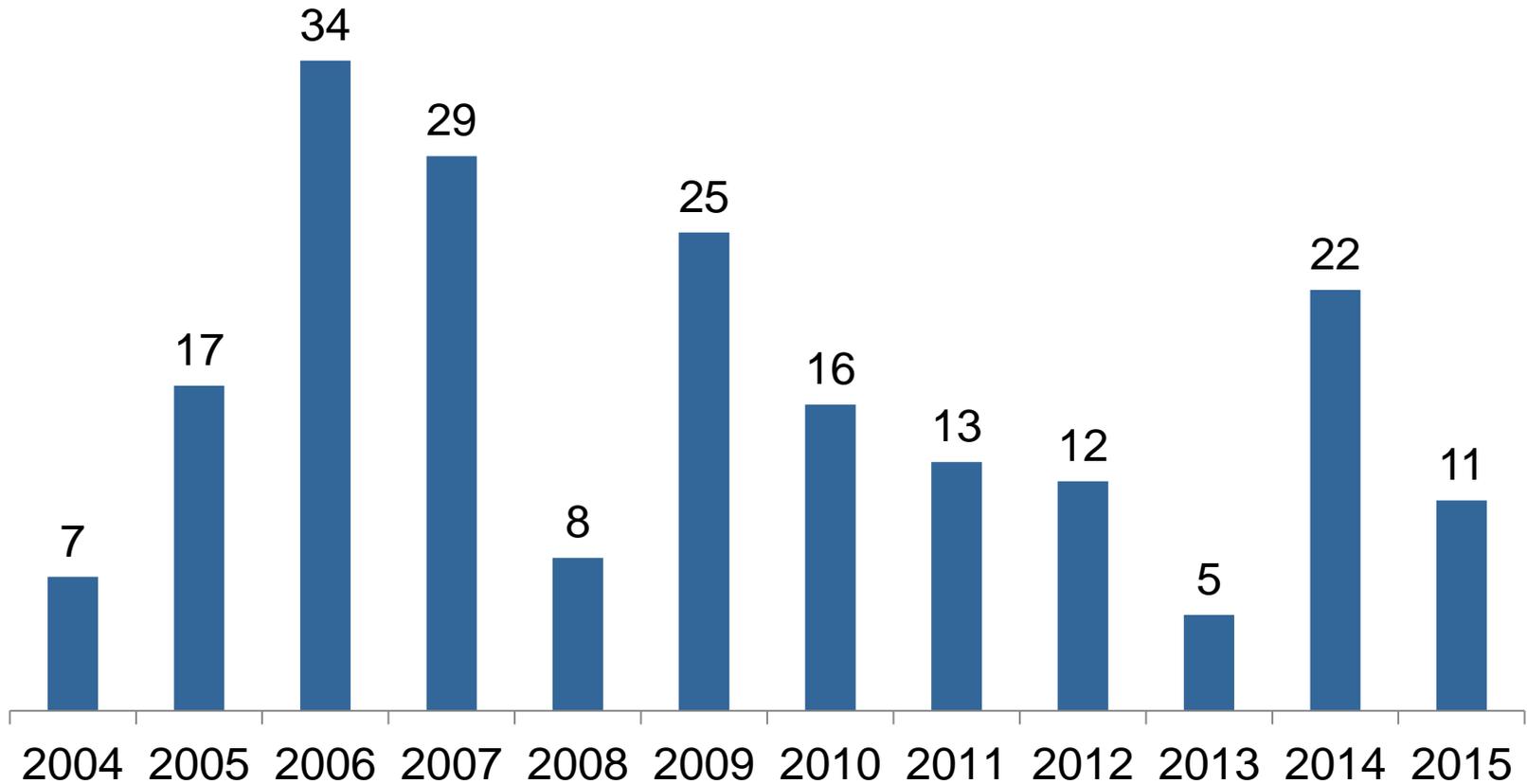
She added that the new program "also offers certainty to both clients and the profession." Under the previous system, all payments were subject to the discretion of a compensation fund

the client can take the matter to court. "The annual limit of \$17.5 million clarifies for the public the extent of the coverage available and will help ensure the stability and longevity of the program by limiting catastrophic losses," Forbes said. She added that the average payments made under the program were under \$1 million a year.

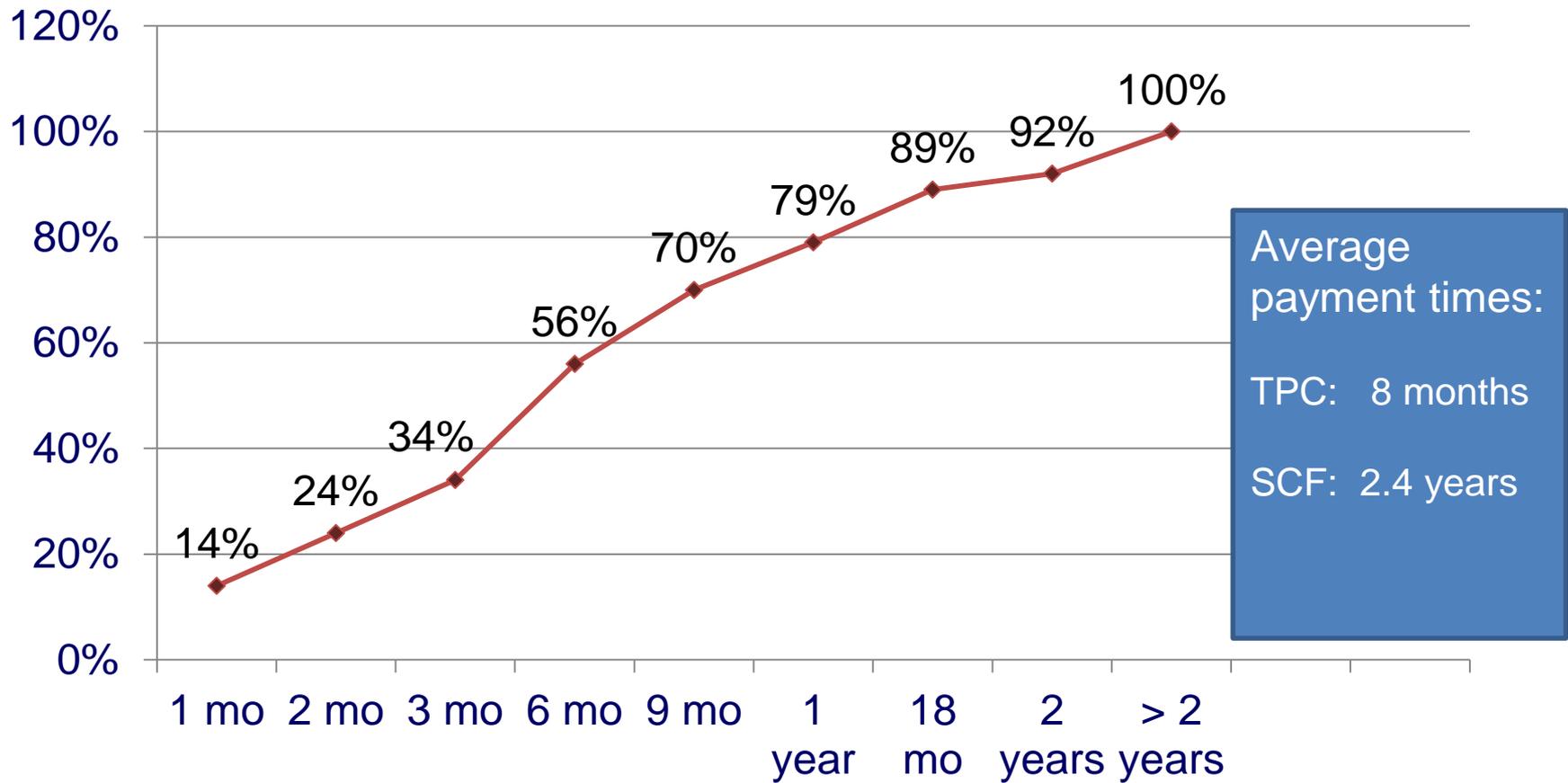
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Part B Claims: 2004 - 2015



Payment Time Lines

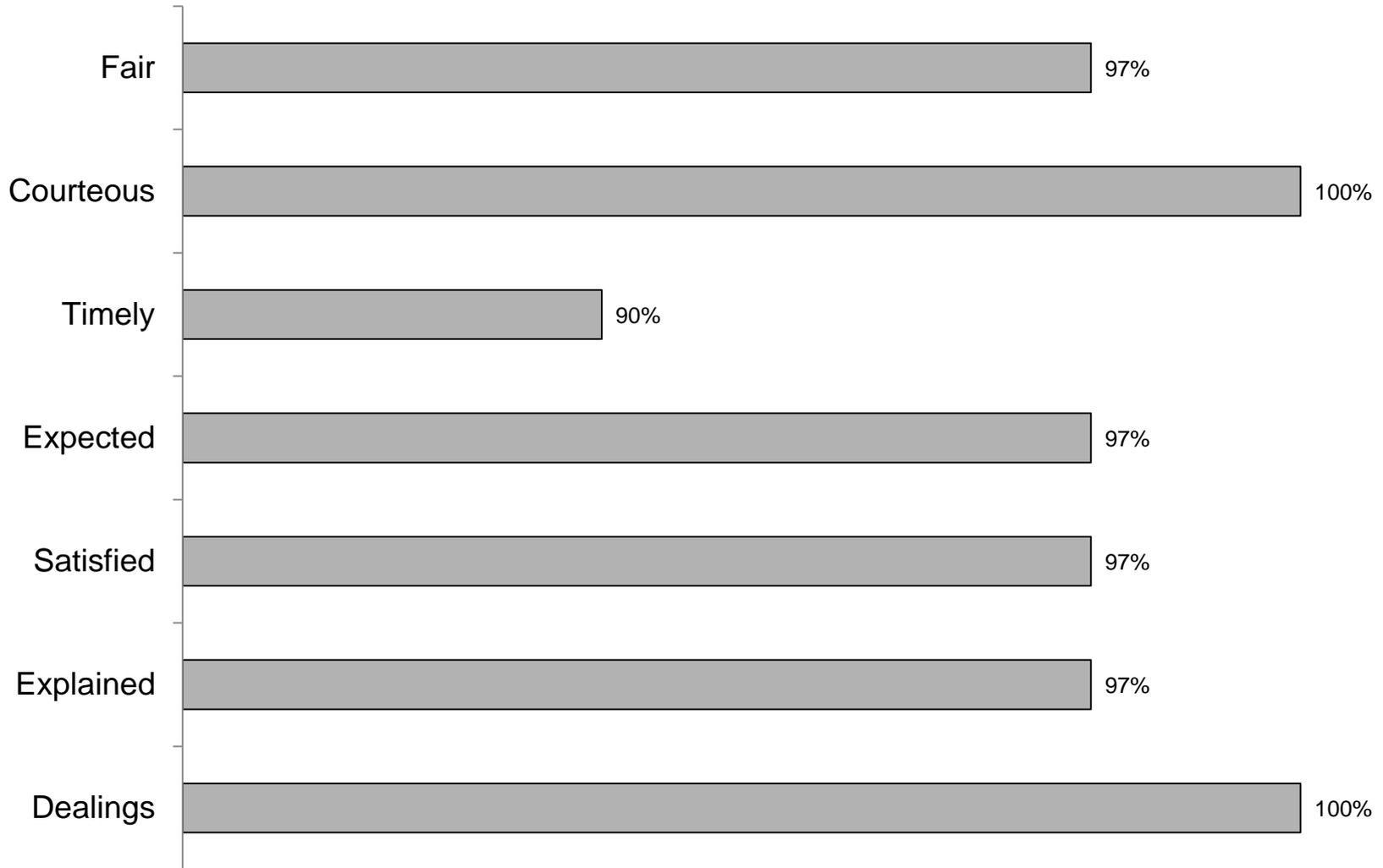




Program Report Roadmap

- Drivers: Who we are and what we do
- Places of Interest: Part A
- Wonders of the World: Part B
- **Signposts: Who we serve and what they think**

Service Evaluation Forms: Part B



Part B: Feedback from Claimants

“From the first call to the LSBC I felt like I was not being dismissed. I was then passed to claims counsel, who I feel and felt was a very professional and caring person, not only to me but to [the insured lawyer]. He made very clear his role and the role of his office so the time and effort came from his dedication to a positive profession. Thank you, thank you, thank you. I am so grateful for the work and caring of this man. The result was not what I expected – thank goodness for that. I expected either to be passed to a costly lawyer or nothing the Law Society could do about a lawyer who closed her practice and pulled her license before returning unused retainer fees for over 1.5 years.”

Service Evaluation Forms: Part A



Kudos – 191



Grumbles – 6

Part A: Feedback from Insureds

“I believe that this application should have been made by in-house counsel. This is presumably their area of expertise and what they get paid their salaries for. I should not have been in a position to have to pay outside counsel to have handled this for me. Claims counsel was very pleasant and professional and he is just an employee but overall, I feel that our insurance scheme failed me.”

Part A: Feedback from Insureds

“Very professional and thorough. Very fair process. No judgment. Can’t say enough really. LIF and claims counsel in particular are stars when it comes to proactive queries.”

Part A: Feedback from Insureds

“The speediness of response, the quick absorption of the facts and core issue, and practicality of response. I could not have asked for more or better assistance.”

Part A: Feedback from Insureds

“Whenever a lawyer is faced with a claim it triggers some measure of introspection and self-doubt which sometimes clouds a lawyer’s judgment about what happened, why it occurred, and most importantly, how to resolve it. Claims counsel was supportive, hard working and creative throughout the process, enlisting outside help as needed, and managed to get the PTT tax authority to reverse its position thereby eliminating the claim. I am truly respectful and appreciative of his talents and problem solving skills.”

Part A: Feedback from Insureds

“It is a terrible process to go through, making a mistake for a client that is actionable. Claims counsel provided excellent guidance and a clear understanding of the process and the need for same. LIF is in good hands, and thank you.”

Part A: Feedback from Insureds

“Claims counsel is the ideal person to support a distressed practitioner when a potential claim is made by a client. She is gracious, knowledgeable, encouraging and forthright. I really appreciated her style, approach and guidance.”

Part A: Feedback from Insureds

“Claims counsel handled the matter with outstanding professionalism. Beyond that, he showed compassion and sensitivity for my situation. He communicated well throughout the period, and I always felt well served by his advice and interest.”

Part A: Feedback from Insureds

“Claims counsel showed competence and professionalism throughout the process, asserting a strong position on my behalf while treating the lay claimant (not my client) with respect and courtesy. I felt that he made the effort to include me in his ‘strategy’ and welcomed my input. As soon as claims counsel took this on, I felt I was in good hands. Great job all around.”

Part A: Feedback from Insureds

“Claims counsel provided exceptional service, demonstrating knowledge, skill and experience which instilled confidence and was exceptionally good with “bedside manner” in terms of how she dealt with me.”

Part A: Feedback from Insureds

“The excellent legal analysis done by claims counsel and conveyed to the other side’s lawyer put a halt to the claim before it got going. I am most pleased with claims counsel’s effective presentation of my case.”

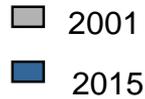
Part A: Feedback from Insureds

“I thought claims counsel was succinct and balanced in how she presented her views. I appreciated her candour.”

Part A: Feedback from Insureds

“Claims counsel was the calm in my storm. I am used to providing support, not needing it. It was immensely helpful to be able to run my thoughts by him and receive lucid, practical advice.”

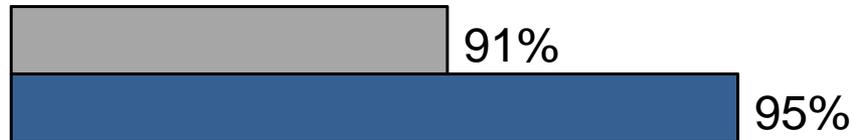
Lawyer Feedback



How satisfied were you on the handling of your claim?



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



How satisfied were you on the outcome of your claims?



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





*Lawyers
Insurance
Fund*

Thank you

REDACTED MATERIALS



Memo

To: The Benchers
From: The Ethics Committee
Date: April 12, 2016
Subject: **Code of Professional Conduct for British Columbia (“BC Code”) –
Revisions to Commentaries to Appendix A Rule 1 – following renumbering
of the Supreme Court Civil Rules**

Following the most recent renumbering of the rules in the Supreme Court Civil Rules, certain references made in the Commentaries to Appendix A Rule 1 of the BC Code are no longer accurate and require correction. The proposed corrections are clerical in nature, based on the numbering of the rules only, and do not involve any substantive changes to the meanings of the references from before the renumbering of the Supreme Court Civil Rules. The Ethics Committee recommends adoption of the following Resolution to correct the current inaccuracies resulting from the renumbering.

Attached hereto for information is a copy of the relevant provisions from the Supreme Court Civil Rules bearing the current numbering (**Attachment A**) and a copy of the relevant Commentaries to Appendix A Rule 1 of the BC Code showing the current inaccurate references (**Attachment B**).

Resolution: Be it resolved to amend the Commentaries to Appendix A, Rule 1 of the Code of Professional Conduct for British Columbia by:

1. Inserting “Rule 22-2(6)” in place of “Rule 51(5)” in Commentary [11];
2. Inserting “Rule 22-2(7)” in place of “Rule 51(6)” in Commentary [11];
3. Inserting “Rule 22-2(15)” in place of “Rule 51(12)” in Commentary [16]; and
4. Inserting “Rule 22-2(4)(b)(ii)” in place of “Rule 51(3)(b)(ii)” in Commentary [20],

as recommended by the Ethics Committee.

Court Rules Act
SUPREME COURT CIVIL RULES

[includes amendments up to B.C. Reg. 103/2015, July 1, 2015]

...

Rule 22-2 — Affidavits

...

Making affidavit

- (4) An affidavit is made when

...

- (b) the person swearing or affirming the affidavit
- (i) signs the affidavit, or
 - (ii) if the person swearing or affirming the affidavit is unable to sign the affidavit, places his or her mark on it, and

...

Statement if person swearing or affirming the affidavit unable to read

- (6) If it appears to the person before whom an affidavit is sworn or affirmed that the person swearing or affirming the affidavit is unable to read it, the person before whom it is sworn or affirmed must certify in the statement signed under subrule (5) that the affidavit was read in his or her presence to the person swearing or affirming the affidavit who seemed to understand it.

Interpretation to person swearing or affirming the affidavit who does not understand English

- (7) If it appears to the person before whom an affidavit is to be sworn or affirmed that the person swearing or affirming the affidavit does not understand the English language, the affidavit must be interpreted to the person swearing or affirming the affidavit by a competent interpreter who must certify on the

affidavit, by endorsement in Form 109, that he or she has interpreted the affidavit to the person swearing or affirming the affidavit.

...

Affidavit made before proceeding started

- (15) An affidavit may be used in a proceeding even though it was made before the proceeding was started.

Attachment B

Code of Professional Conduct for British Columbia

...

Appendix A – Affidavits, Solemn Declarations and Officer Certifications

Affidavits and solemn declarations

1. A lawyer must not swear an affidavit or take a solemn declaration unless the deponent:

- (a) is physically present before the lawyer,
- (b) acknowledges that he or she is the deponent,
- (c) understands or appears to understand the statement contained in the document,
- (d) in the case of an affidavit, swears, declares or affirms that the contents of the document are true,
- (e) in the case of a solemn declaration, orally states that the deponent makes the solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath, and
- (f) signs the document, or if permitted by statute, swears that the signature on the document is that of the deponent.

Commentary

...

Appearing to understand

...

[11] If it appears that a deponent is unable to read the document, the commissioner must certify in the jurat that the document was read in his or her presence and the commissioner was satisfied that the deponent understood it: B.C., *Rules of Court*, Rule 51(5). If it appears that the deponent does not understand English, the lawyer must arrange for a competent interpreter to interpret the document to the deponent and certify by endorsement in Form 60 that he or she has done so: *Rules of Court*, Rule 51(6).

...

Swear or affirm that the contents are true

...

[16] Generally, an affidavit is sworn and filed in a proceeding that is already commenced. An affidavit may also be sworn before the proceeding is commenced: *Rules of Court*, Rule 51(12). However, an affidavit may not be postdated: *Law Society of BC v. Foo*, [1997] LSDD No. 197.

...

Execution

[20] A deponent unable to sign an affidavit may place his or her mark on it: *Rules of Court*, Rule 51(3)(b)(ii). An affidavit by a person who could not make any mark at all was accepted by the court in *R. v. Holloway* (1901), 65 JP 712 (Magistrates Ct.).



CEO's Report to the Benchers

May 2016

Prepared for: Benchers

Prepared by: Timothy E. McGee

DM1120449

Operational Updates

Law Society 2015 Report on Performance

The Law Society's 2015 Report on Performance and 2015 Audited Financial Statements have now been posted and are available for public viewing. Links to the report have recently been sent to you by email.

I always encourage the Benchers to take a few moments to review the Report on Performance for a couple of reasons. First, it is a good high level summary of how we have performed against our regulatory mandate and it describes in one place the extensive and varied activities of our committees and task forces. I think you will also find the charts, graphs and other visuals quite interesting. Second, it is the primary point of reference for the public, government, academia and other organizations. It is a statement of who we are and what we do. I think it is important that as governors and officers of the Law Society we all are able to convey the results and information contained in the Report on Performance to colleagues in the profession and those with whom we interact for business and socially. I have often said that all staff and the Benchers are members of our Communications department and accordingly the annual Report on Performance should be required reading.

Building Repairs Update

The Law Society has hired Reotech Ltd. to repair the flood damaged areas of the office. Reotech has worked with the Law Society on a number of projects and they are very familiar with our offices and requirements. Our project will require materials such as carpet tiles and wall coverings to be shipped from manufacturers and we expect the project to take up to eight weeks to complete. On April 13, Reotech started their work and the damaged walls and ceilings on the 9th floor are now in the process of being repaired. On the 8th floor areas, the reception desk was moved for repairs and carpet from the flooded areas has been removed. As a priority, we will be returning Michelle Robertson to her office and David Crossin to his office on the 9th floor later this week.

Temporary walls and doors will be built on the 9th floor to contain the dust and debris and to allow staff and Benchers to safely access the area by Michelle Robertson's office, Room 909 and 910, and to contain the repair areas. There will also be some temporary walls constructed on the 8th floor too. The contractor is aware that staff and Benchers are using office areas and certain meeting rooms as active work spaces.

So, once again, thank you for your patience and understanding during this disruption. Our operations team is doing a fantastic job in managing this. We are planning to have the Bencher Room and all of the 9th floor back on line in time for the July Bencher meeting.

New Website Update

Our Communications and IS/IT staff are currently reviewing vendor proposals for the design and development of a new Law Society website. The vendor selection process will be completed over the next two to three weeks, and the development of the site will begin in May. We are planning to have the new website on line by the end of this year. Benchers will soon be receiving a brief online needs and preferences survey. Please take a few minutes to respond to the survey as your input and feedback will help us determine the final specifications for the design phase of the project.

Core Values Presentation

The agenda for this month's meeting includes a presentation by staff of the results of our cross departmental Core Values Working Group.

The topic of articulating core values in the workplace can often be elusive. On the one hand some would say core values are a "given" and that there is little to be gained by trying to develop a consensus around a common language to describe what should be known to all. On the other hand, our research has shown that many organizations, challenging this assumption, simply list every known "value" in the book and thereby achieve little in terms of identifying what is "core" or indeed meaningful to their staff. I was particularly impressed with how our staff embraced this project and I think you will find the process and the results of the working group both interesting and inspiring.

Access to Justice BC

As you know the Chief Justice of British Columbia, The Honourable Robert Bauman is chairing a group of leaders from all walks of the legal community in an effort to take concrete action on improving access to justice in the province. As the Chief Justice described in his address to the Benchers earlier this year, the time for reports has passed and the time for action by those who have authority has come. The group is now officially known as Access to Justice BC or A2JBC for short. Our President David Crossin is on the Steering Committee and the Chief Justice has recently requested that I serve A2JBC as a member of the Planning Committee. I have discussed this with the

Executive Committee and I have accepted the invitation. President Crossin and I will plan to brief the Access to Legal Services Advisory Committee and the Benchers more fully on the plans and initiatives for A2JBC in the near future.

Good Policy at Work – LSBC’s Transparency Advantage

As an organization we do not always reflect back on policy decisions that we have taken to evaluate and assess whether in hindsight and with the benefit of experience those decisions were well conceived and achieving the desired outcomes. However, I believe this should be a feature of the work of the Benchers at appropriate intervals. Perhaps a full review on a rolling basis every 2-3 years or targeted reviews annually or at some other interval.

With this in mind, I would invite you to read the attached “Final Report of the Disclosure and Privacy Task Force: Guidelines for the Future” dated November 27, 2006. This report delivered almost 10 years ago was ground breaking in many respects as regards the degree to which a law regulator would be transparent about all aspects of its public interest regulatory processes. While it may seem tame today given the widespread subsequent adoption of many of the recommendations by other law societies it was a bold and important public interest policy statement at the time, which is holding its own today.

I have also included the text of a speech I delivered shortly after the release of the Task Force report entitled “The Transparency Advantage – Disclosure and Privacy in Self-Regulating Professions” (note: the date on the speech should read 2007) . The audience were delegates to an Australian conference for lawyers and accountants held at Whistler. The various Australian organizations had heard about our work and the Benchers’ policy decisions and wanted to learn more.

I look forward to your ideas on reviewing and assessing other important policy initiatives we have adopted and how that might inform our decisions going forward.

Timothy E. McGee
Chief Executive Officer

The Law Society of British Columbia



Final Report of the Disclosure and Privacy Task Force: Guidelines for the Future

November 27, 2006

Purpose of Report:	Policy Discussion and Decision
Prepared by:	The Task Force on Disclosure and Privacy John Hunter, QC (Chair) June Preston (Lay Bencher) Maureen Baird (non-Bencher) Jean Whittow, QC (non-Bencher)

Final Report of the Disclosure and Privacy Task Force Guidelines for the Future

Purpose of this memo

The Disclosure and Privacy Task Force, established in July 2001, has (with one exception which is discussed below) now concluded its work. Over the past five years, the Task Force made 115 recommendations affecting 19 areas of Law Society operations and policy. This memo summarizes that work and provides guidelines for future analysis of disclosure and privacy issues.

Attached are a list of the Task Force's recommendations and the text of a speech about the work of the Disclosure and Privacy Task Force given by Tim McGee to the Australian Lawyers and Accountants Conference in January 2006.

History of the Disclosure and Privacy Task Force

At one time the Law Society of BC, like most self-regulating professions, conducted most of its regulatory activities behind closed doors. Beginning in the 1970s, however, governments and the public began to take greater interest in the affairs of self-regulating professions and began demanding more transparency from these organizations.

As a result of these societal pressures, many changes occurred over the next two decades. For example, the Law Society opened its discipline hearings to the public in 1981 and its credentials hearings in 1999. The government also passed freedom of information legislation which requires the Law Society to protect personal privacy while at the same time giving the public access to a vast amount of previously confidential Law Society records. Another significant legislative change was the creation of the office of the Ombudsman with the authority to review Law Society's disciplinary procedures.

As these changes were forcing the once private world of the Law Society into the open, a new means of communicating with the public was growing and by the mid-1990s, the internet was, perhaps, our most important method of disseminating information.

Law Society rules, regulations and policies, however, did not keep pace with these changes and there were many anomalies. For example, the Law Society disclosed the dates of discipline hearings on its website but not the reason for the hearing. The public knew a lawyer was in trouble but didn't know how serious the charges were. Another anomaly involved Law Society Rules which said discipline hearings were open to the public and that summaries of disciplinary decisions must be distributed to the membership, but which were largely silent about distribution to the media or the public.

These anomalies, along with the growth in electronic communications and public demand for information, meant that the Law Society found itself regularly faced with questions of disclosure and privacy. There was, however, no centralized

Final Report of the Disclosure and Privacy Task Force: Guidelines for the Future

means of dealing with the questions and most issues were resolved on an ad hoc basis by the department in which the issues arose.

To deal with these problems, the Law Society, in January 2001, established a cross-departmental staff group to review current disclosure rules and policies and to make recommendations for necessary changes. As the staff group worked through various issues, it quickly became apparent that Benchers input was required. Consequently, the Benchers, in July 2001, created the Task Force on Disclosure and Privacy with a broad mandate to make recommendations for balancing the Law Society's obligation to be open and transparent against the requirements of the law, considerations of privacy and the efficacy of the Society's duties under the *Legal Profession Act*.

The Task Force and staff group include Benchers, Lay-Benchers, lawyers and staff members with expertise in public policy, communications, media relations, professional regulation and corporate governance.

Members of the Task Force have included: Peter Keighley, QC (Chair July 2001 to February 2004), John Hunter (Chair February 2004 to present), June Preston (Lay Bencher), Maureen Baird, Jean Whittow, QC (September 2003 to present)

Those who have served on the Law Society's Disclosure and Privacy Staff Team have included: Carmel Wiseman (Chair), Jean Whittow, QC, Jeff Hoskins, Jason Eamer-Goult, Denise Palmer, Brad Daisley, Brian McKinley, Cindy Picard, Todd Follett, Tim Holmes and Jessica Gossen.

The work of the Disclosure and Privacy Task Force

The Task Force identified the following areas for consideration:

- Discipline hearing process
- Complaints and investigations
- Complainants' Review Committee
- Discipline Committee
- Conduct reviews
- Reports to law enforcement agencies
- Credentials
- Practice Standards
- Restrictions and conditions
- S. 39 applications
- Practice histories
- Insurance (Part A)
- Insurance (Part B)
- Bencher records
- Mailing lists and email
- Unauthorized practice
- LLPs and law corporations
- Reports to LAP
- Policy development

Over the past five years, the Task Force has made 115 recommendations to the Benchers, almost all of which were approved. These recommendations have made fundamental changes to Law Society operations and have had an impact on other Canadian law societies and self-regulation professions. Some highlights of the task force's work are:

Discipline: The Task Force recommended and the Benchers have approved more than 30 changes to disclosure in the discipline process. Citations and

hearing reports are now posted on the Law Society's website. There are new policies governing the naming of witnesses and disclosure of personal information in citations and hearing reports. New rules were enacted regarding public access to exhibits in discipline hearings. There are also new rules prohibiting non-publication of decisions and governing applications for anonymous publication.

Governance: As a result of Task Force recommendations, staff have incorporated information about disclosure of personal, confidential and privileged information into the Benchers orientation program. The Benchers have also adopted guidelines for the disclosure of other documents in the Benchers' possession.

Complaints and investigations: The Benchers adopted changes to Law Society Rules authorizing staff to disclose more information about complaints and investigations. The Task Force noted that existing rules prohibited the Law Society from disclosing the outcome of an investigation if the Discipline Committee ordered a Conduct Review. This had caused problems for the Law Society in the past, particularly when the media know an investigation has been ordered into a lawyer's conduct.

Credentials: Following the Task Force's recommendations, the Benchers approved several changes to disclosure in the credentials process including pre-hearing conferences to review privacy, confidentiality and privilege issues; rules governing applications for anonymous publication; and rules governing posting of credentials decisions on the Law Society's website.

Practice Standards: The Task Force recommended and the Benchers have approved rules permitting the Law Society to disclose that a lawyer has been referred to the Practice Standards program when the complaint that resulted in the referral is already known to the public. Previous rules prohibited the Law Society from disclosing this information even when the complaint was known to the public through media reports.

Restrictions and conditions: On the Task Force's recommendations, the Benchers adopted guidelines for making public some restrictions and conditions. This had been a very difficult issue for the Law Society.

A complete summary of Task Force recommendations and Benchers' decisions is attached.

It should be noted that one issue which was referred to the Task Force by the Executive Committee has yet to be dealt with. This issue is presently the subject of a discipline hearing and should be left to be considered once the hearing is finished. Because it may take some time for the hearing to conclude, the Task Force felt it was best to report out at this stage. The Task Force can be reconvened after the hearing if the Executive Committee wish it to consider the remaining issue. The Executive Committee may also wish to refer the matter to the new Regulatory Policy Committee.

Principles for analysis of disclosure and privacy issues

The Task Force developed a principled approach for its analysis of disclosure and privacy issues. This approach should serve the Law Society well when analyzing similar issues in the future.

The starting point is first to consider applicable legislation including the *Legal Profession Act* and the *Freedom of Information and Protection of Privacy Act*. If this analysis does not determine the issue, the question then becomes one of policy analysis.

The starting point for the policy analysis is the principle that there is not necessarily a "right answer" to most disclosure problems. The Law Society's position could range from non-disclosure of any information unless required to do so by law to pro-active disclosure of all information unless prohibited from doing so by law. The real issue is where the Law Society should place itself on that continuum with respect to a particular class of information. No place is necessarily right — it is more a question of where the Benchers believe the Law Society should be.

To arrive at the right spot on the continuum, the Law Society must balance the fairness and integrity of its regulatory processes (including fairness to members) against the level of openness and transparency that is necessary to ensure public confidence in our regulatory system.

The Task Force has identified five factors that should be considered as part of this balancing process:

1. *Public interest:* The public, both in general and as consumers of legal services, increasingly want as much information as possible about lawyers they retain. The public expects full disclosure of information affecting a purchasing decision, whether that decision involves the purchase of a product or the hiring of a professional advisor. It should be assumed the public is interested in the Law Society's regulatory processes. In addition, we must ask how the public, in general, will perceive our disclosure policies. This perception will, in turn, inform the public's view of the legal profession's right to remain self-regulating.
2. *The profession's interest:* The legal profession, in general, has an interest in monitoring the Law Society's regulatory processes to ensure that we are governing the profession fairly and properly. The profession also has an interest in ensuring their legitimate privacy rights are respected.
3. *Law Society operations:* Changes to disclosure policies may impact Law Society operations. When discussing changes to disclosure policy, we must always consider whether the proposed changes will require changes to the Law Society's budget, operations or staffing requirements.
4. *The individual lawyer's interest:* Lawyers who are subject to the Law Society's regulatory processes may have an interest in the issue separate and apart from the collective interest of the profession.

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The Law Society of British Columbia

5. *Collateral interests*: It is also important to consider what effect disclosure of information will have on others. These people may include complainants or witnesses at hearings. They may also be completely passive participants, such as a client whose file is reviewed as part of an audit done in relation to a disciplinary matter.

One additional principle that must be weighed in the balance is that when the Law Society discloses any information, it loses absolute control of that information. Distribution of information to only one or two people may be so limited that for all practical purposes the information is not in the public domain. But the reality is that the Law Society no longer has complete control over that information and there is no way to stop the person who has received the information from distributing it further.

Conclusion

The Task Force believes that as a result of its work, there is a heightened awareness of disclosure and privacy issues and an ongoing expectation among the Benchers that new policies, programs or initiatives will take such issues into consideration and, when appropriate, include recommendations for dealing with them. As a result, the Task Force believes it is no longer necessary to have a specific task force assigned to deal with disclosure and privacy issues and that future disclosure issues should be dealt with in the normal course of Law Society operations. The Task Force, therefore, asks that it be dissolved subject to its being reconvened only for the purpose outlined above.

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The Law Society of British Columbia



Timothy McGee
Chief Executive Officer
The Law Society BC
Australian Accountants and Lawyers Conference
January 7 – 14, 2006
Blackcomb, BC

The Transparency Advantage — Disclosure and Privacy in Self-Regulating Professions

Introduction

I was recently looking into the history of the legal profession in British Columbia and discovered that the very first organized activity of the Bar in this province — back in 1863 — was to disbar someone.

His name was Felix O'Byrne and the lawyers in what was then the British Colony of Vancouver Island — all 10 of them — felt that Mr. O'Byrne — who had recently arrived from England — lacked the necessary qualifications to practise law even in a frontier trading post. It was also said that he cheated at cards.

When he died a few years later in the United States, a local newspaper said this: "Felix O'Byrne died at New York on March last. He left several Mrs. O'Byrnes to rejoice of his early departure and the end of his villainous career."

Topic

Today — more than 140 years later — the Law Society of BC is still doing much the same thing — acting in the public interest by setting standards for those who wish to practise law and disciplining those who run afoul of those standards.

What has changed over those 14 decades is the public scrutiny of how we carry out those activities.

Felix O'Byrne's disbarment — as best we can tell — was carried out behind closed doors, in private, hidden away from public view.

Today, this would be totally unacceptable. The politicians, the public, the media and, not least, the members of our profession, now demand that the Law Society's regulatory processes be open to public scrutiny, or, to use the current nomenclature, that they be transparent.

And it's not just law societies who have to be concerned about transparency. It's an issue that cuts across both international and professional boundaries. Transparency is as important to accountants as it is to lawyers and as important to Australians as it is to Canadians.

Transparency is — and this point is crucial — our key defence — and some might say our only defence — against those who attack the right of the professions to regulate themselves.

The Law Society of BC takes transparency very seriously and I want to spend the next few minutes talking to you about what I like to call our “transparency advantage.”

By “transparency advantage” I mean benefits that derive from the leadership position the Law Society of BC has taken to ensure its disclosure policies represent the best practices not just here at home in British Columbia and not just among the legal community, but a leadership position nationally among all self-regulating professions.

Our transparency advantage is the result of five years' work. Over the past five years, we have taken a systematic review of all aspects of the Law Society's operations to determine whether we are meeting the level of transparency and openness required of a self-regulation profession in the 21st century. And I should add — a self-regulating profession that wants to retain its self-regulating status into the next century as well.

The result has been a significant change in the way in which we conduct our business, the way in which the government, the media and the public view us and the way in which our members understand our role in regulating the profession.

Background information on transparency and self-regulating professions

Beginning with the disbarment of Felix O'Byrne, the Law Society of BC, like most self-regulating professions conducted its regulatory activities behind closed doors.

In the 1970s, however, governments, media, the public and members of the professions began to take a greater interest in the affairs of regulatory bodies and began demanding more transparency from these organizations.

As a result of these societal pressures, many changes occurred at the Law Society over the next two decades. For example, our disciplinary hearings were opened to the public in 1981 and our compensation fund hearings in 1993. Credentials hearings, however, remained closed until 1999.

At the same time as these changes were taking place, there were several legislative changes that had an impact on the Law Society as a professional regulator.

Lay Benchers became part of the society's governance. Our first Lay Benchers were an aggressive, blunt, no-nonsense journalist — the kind of person who called a spade an effing shovel. He was passionate in urging the Benchers to adopt a more proactive stance with the media.

The provincial government also passed freedom of information legislation that requires the Law Society to protect personal privacy while at the same time giving the public access to a vast amount of previously confidential information.

And the office of the Ombudsman was given authority to review certain Law Society procedures.

In addition, while these changes were forcing the once private world of the Law Society into the open, a new means of communicating with the public was growing and by the mid-1990s, the internet had become, perhaps, our most important method of disseminating information.

Law Society rules and policies did not, however, keep pace with these changes or with the new technology and in the mid-1990s we had not a transparency advantage, but many transparency anomalies.

Here are some examples of those anomalies:

- We disclosed, via our website, the dates of disciplinary hearings, but not the reason for the hearing. As a result, the public knew a lawyer was in trouble but didn't know how serious the charges were.
- Our rules prohibited us from commenting on disciplinary investigations even if the subject of the complaint was well-known to the public. Imagine what the public must have thought — imagine what our own members must have thought — when in response to a front page story about a lawyer who had committed some wrongful act, all the Law Society could say was “no comment.” We couldn't even disclose that we were investigating an obvious ethical violation.

As an aside, I note that some law societies in Canada are still prohibited from acknowledging an investigation even when it is public knowledge — a prohibition that causes them much embarrassment. I'll give you an example in a minute.

Disclosure and Privacy Task Force

It was anomalies such as these that led us, in 2001, to establish a cross-departmental task force to determine what information should be the subject of greater disclosure and how that information should be disclosed.

The task force includes Benchers, Lay-Benchers, lawyers and staff members with expertise in public policy, communications, media relations, professional regulation and corporate governance.

They were given a broad mandate to make recommendations for balancing the Law Society's obligation to be open and transparent against the requirements of the law, considerations of privacy and the efficacy of the Society's duties under the *Legal Profession Act*.

The approach they took was to find a balance between five competing interests:

- The public
- The profession as a whole
- The Law Society's operations

- Individual lawyers, and
- The interests of third parties.

Over the past five years, the task force has recommended, and the Benchers have approved, more than 80 changes to Law Society operations.

I'll give you just a few examples:

- On the discipline front, we now post the full text of all charges a lawyer faces in a discipline hearing. All decisions of discipline hearing panels are now posted on our website as well. This allows anyone who is interested in a hearing to know its subject matter, attend the hearing and to read the final results.
- We also have new rules giving the public access to exhibits tendered at a hearing; new policies governing disclosure of personal, confidential or privileged information; and new provisions prohibiting anonymous publication of discipline decisions except in extreme circumstances. These rules ensure we protect the privacy of complainants and that the names of lawyers subject to the discipline process are known to the public.
- New rules have broadened what we can say about on-going investigations and permit us to comment publicly on aspects of our discipline process that were previously confidential.
- Other changes involve complaints and investigations, conduct reviews, credentials and admissions, practice restrictions, compensation fund claims, employment histories, policy development and insurance claims.
- The task force even reviewed and made recommendations regarding disclosure of the law society's membership list to ensure the public can easily contact lawyers but also to prevent spammers from abusing email addresses.

The transparency advantage

The result of these and many other rule changes has been a significant increase in the amount of information we can disclose to the public and a significant increase in the transparency of our processes.

I'd like to give you a couple of anecdotes to demonstrate how this increased transparency has worked to our advantage.

First, I want to compare media coverage of serious wrongdoing by a lawyer here in BC where we are permitted to disclose information about complaints and in another Canadian jurisdiction where disclosure is prohibited. One case involves a lawyer facing sexual assault allegations and the other a lawyer charged with witness tampering. Both examples are from prominent newspapers.

- The first is from the "no-disclosure" jurisdiction (sexual assault allegations): "[A] spokeswoman for the Law Society ... would neither confirm nor deny if the society received a complaint against [the lawyer]. [She] said the law society is required to keep complaints confidential."

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Bear in mind that the same newspaper article states the alleged victim had filed a complaint with the Law Society.

- Now from BC (witness tampering): “A ... lawyer convicted ... of two counts of witness tampering has agreed not to practise law in BC for the foreseeable future.... [The lawyer] must have his conviction overturned or get permission from the BC Law Society before he can represent clients again.... [The Law Society] confirmed it was also investigating the prominent ... lawyer.... [The society is also appointing a custodian to look after [the lawyer’s] busy practice.... ‘This will ensure ... the public interest is protected,’ [the Law Society] said.”

Now I ask you — which of these two examples instils more confidence in the ability of the legal profession to regulate itself? The answer is obvious.

Here’s another anecdote. This one is about applications by persons wishing to become a lawyer. In the past, we were not allowed to disclose that a person had applied to become a member of the Law Society. As a result of recommendations by our Disclosure and Privacy Task Force, our rules now permit disclosure.

This new rule proved extremely useful recently when a very controversial politician and former lawyer applied to return to the practise of law. He had recently pleaded guilty to theft charges and had a previous conviction for criminal contempt of court. There was considerable public concern about his ability to practice law given his past. Thanks to our new rules we were able to tell the media — and you have to understand that this story drew front-page coverage across the country — that he had applied for readmission but that we would not be allowing him to return to practice without further consideration of his application. We told the public that a formal hearing had been ordered to determine whether he was of good character and fit to become a lawyer. Had we not been able to comment on this case, we would have been pilloried by the media.

Other self-regulating professions have yet to realize the benefits of transparency. Let me show you what I mean. Here are some headlines from local newspaper articles during the past year about self-regulating professions:

- More teachers’ hearings held in secret
- Education minister presses for release of disciplined teachers’ names
- Secrecy diminishes public trust in BC College of Teachers
- Transparency needed: education minister
- Minister vows to fix teacher disciplinary system
- CGA-BC hasn’t acted responsibly
- Whiff of scandal sends CGA boss to ground

These are not the sort of headlines you want to see when you are a member of a self-regulating profession.

The transparency advantage goes beyond public opinion and media comments, though. It also applies to our own internal operations. With detailed disclosure rules and policies, staff and Benchers know exactly what is available for members and the public and, in any

event, most publicly available information is now on our website further simplifying matters.

Conclusions and future trends

We've come along way since the days when ten lawyers met in a private office to disbar Felix O'Byrne.

Today, the Law Society of BC is demonstrating what I believe to be best practices in transparency. This approach, I believe, has served us well in our relations with government, the public, the media and our members. Transparency has allowed us to demonstrate publicly that we take self-regulation seriously.

And while we may now be at the forefront of transparency amongst self-regulating professions today, we can't simply stop there and hope for the best in the future.

I think we have to review on a regular basis the information we generate and ask ourselves whether it is in the public interest that it be disclosed. Or, more courageously perhaps, ask ourselves how we can possible justify not disclosing it.

For example, later this month at the Law Society of BC we will be making changes to our website to provide public disclosure of any restrictions on a lawyer's practice. These are restrictions imposed or agreed to as a result of disciplinary hearings or competency reviews. There aren't that many lawyers involved — 70 or 80 — but we believe it is in the public and the profession's interest to make this information available.

We may also consider disclosure of full discipline histories on the website. Discipline decisions are already public and available on the web so disclosing discipline histories may be the next step.

Another issue we are watching closely is disclosure to complainants in the discipline process. This is an issue that the provincial ombudsman has raised recently with all self-regulating professions. Our staff met with the ombudsman's staff last year and I'm happy to say they were quite satisfied with our work in this area.

We do, however, have to remain both vigilant and proactive if we want to maintain our transparency advantage.

Those are my comments. I would now like to hear what you have to say about your experiences with transparency, disclosure and privacy.

Thank you.



President's Report to the Law Societies April 2016

From: Jeff Hirsch, President
Federation of Law Societies of Canada

To: All Law Societies

Date: April 7, 2016

INTRODUCTION

1. The Federation of Law Societies of Canada is the place where representatives of Canada's provincial and territorial regulators of the legal profession gather, in the spirit of collaboration, to work in the best interests of the public on matters they have in common. The Federation belongs to you.

2. From March 9-11, 2016, law society leaders from across Canada, including Presidents, Vice Presidents, Council members and senior staff, gathered in Banff, Alberta to share ideas, work together and move forward on the Federation's national agenda at its spring business meetings. I expect that those in attendance will provide reports of those meetings to their own Benchers and council tables from their respective points of view. This is my report of the highlights of the Presidents' Forum and the Federation Council meeting.

PRESIDENTS' FORUM

3. Over the years, a variety of approaches has been taken. In Banff, the morning of March 10th was set aside to afford law society Presidents and Vice Presidents opportunities to engage in dialogue amongst themselves. The agenda covered:

- (a) Law Society Priorities Roundtable;
- (b) Truth and Reconciliation Commission Calls to Action;
- (c) Update on Entity Regulation;
- (d) Strategic Planning – Lessons Learned;
- (e) Federation Governance Review; and
- (f) Federation Value Proposition.

4. **Law Society Priorities Roundtable.** Space does not permit a comprehensive list of the all of the priorities identified by the Presidents in this session; however, a variety of matters were identified as priorities for several law societies including entity and proactive regulation, the TRC Calls to Action, access to justice generally and in the north specifically, updating strategic plans and governance issues, as well as efforts to modernize and update applicable statutes governing the law societies. A number also identified their commitment to continued support for the Federation and its work.

5. **TRC Calls to Action.** The group spoke of the overwhelming importance of this issue and many indicated support for a national approach that should include at a minimum, an information-sharing role for the Federation. The point was made repeatedly of the importance of direct engagement and involvement of Indigenous peoples in every aspect of this work going forward.
6. **Update on Entity Regulation.** The group heard status reports on work being done in Nova Scotia, the Prairies, British Columbia and Ontario and learned from the Barreau du Québec that the Office des professions is now looking at multi-disciplinary practices. Nova Scotia is further along in its process, and is approaching the implementation phase for requiring law firms to establish an “ethical infrastructure” as part of their operations. The other jurisdictions are either studying or have initiated consultations on the subject of entity or law firm regulation.
7. **Strategic Planning – Lessons Learned.** Presidents were asked to share their experiences with their own strategic planning exercises with a view to assisting the Federation with its upcoming strategic planning process. Suggestions included using a carefully selected outside consultant or facilitator, sharing law society strategic plans in advance to assist with questions about alignment of priorities nationally and locally, and being careful not to set too many goals at once.
8. **Federation Governance Review.** The overwhelming sentiment expressed was that the time had come to complete the Federation’s governance review and return to focusing on its core activities. The group was confident that this objective was within reach.
9. **Federation Value Proposition.** The view was expressed that the Federation’s value could be enhanced with more and better information made available about the activities of all of its member law societies, as well as with respect to the emerging issues and trends in the legal profession. Concern was also expressed about the adequacy of Federation resources.

COUNCIL MEETING

10. The Federation Council is comprised of outstanding leaders of Canada’s legal profession thanks to the excellent choices made by the law societies that nominated them to serve. The Council usually meets four times each year. Here are the key issues that were discussed and the decisions that were made when we met in Banff.

Key Discussion and Decision Items

11. **Truth and Reconciliation Commission Calls to Action.** Council engaged in a wide-ranging discussion. Echoing the law society Presidents, Council agreed that responding to the TRC Calls to Action should be a strategic priority of the Federation. It resolved to respond to the Calls to Action in a way that engages representatives of Indigenous peoples. It also empowered the Federation Executive to establish a working group with a broad mandate to make recommendations to Council on an appropriate process for responding to the Calls to Action.
12. **Federation Governance and Strategic Planning.** After 18 months of consultation, drafting and debate, the Council adopted new Governance Policies that clarify the role of the Federation and how it makes decisions, spells out the duties and expectations for the various people involved in its oversight and operation, creates enhanced structures for ensuring input

from key individuals such as law society Presidents and CEOs, and otherwise improves the way the Federation does business in the interest of its members. This is a watershed moment in the ongoing evolution of the organization. It will now be critical to move on to strategic planning. Council agreed that the process will get underway promptly with a goal to have it completed by the end of the year.

13. In the context of the discussion about strategic planning, the Council heard a report from the CEOs' Forum that took place the day before. The CEOs' Forum, consisting of all of the law society CEOs, supplemented from time to time by other key senior staff, will play an important advisory role in the strategic planning process, in addition to that of the Presidents' Forum.

14. The CEOs will bring forward an environmental scan of the top drivers and issues they see as having an important influence on the future of legal regulation in Canada. Key themes that emerged from the CEOs Forum centred on the need for creating a compelling vision of the Federation as a body that facilitates national conversations about legal regulation. Specifically, CEOs gave the most weight to the need for conversations around how collaboration should occur while balancing national approaches with local autonomy, as well as how smaller jurisdictions should be supported. In that context, they discussed proactive and entity regulation and the importance of addressing questions about who is or should be regulated and how regulation should be delivered. An important theme emerged about the competence of and admission to the profession. The issue of access to justice and legal services also figured prominently. More work will be done to help inform the upcoming strategic planning process.

15. **Interim Finance and Audit Committee.** The establishment of a finance and audit committee for the Federation is one of the key outcomes arising from the governance review process. The Committee presented its report to Council with respect to the operating statement for the year in progress, a recommended Federation budget for 2016-2017, as well as the recommended law society fees for CanLII for 2016.

16. The Committee reported that the Federation's general operations, funded by law society levies, are expected to result in a small surplus of approximately \$14,000 by year end (June 30th). The National Committee on Accreditation operates on a cost recovery basis and is on track to break even.

17. The draft budget for 2016-2017 proposes a small decrease in the per FTE levy to \$28.12 from \$28.50. International travel costs are reduced, and it is proposed to eliminate one of the two conferences the Federation has traditionally held each year. The budget makes provision for increased costs arising from the implementation of the new governance policies such as those related to the Presidents' Forum, the CEOs' Forum and the Finance and Audit Committee. The costs related to the 2016 Strategic Plan are recommended to be drawn from reserves. The vote on the draft budget awaits full consideration by all law societies, expected this spring.

18. The Council heard a report from the President of CanLII, Xavier Beauchamp-Tremblay, indicating that CanLII was undergoing its own strategic planning exercise in 2016. On the recommendation of the Interim Finance and Audit Committee, the Council voted to approve CanLII's 2016 budget. The fees payable by the law societies will be set at \$39.24 per FTE for those outside the Province of Quebec. The Barreau du Québec will pay \$26.24 per FTE and the Chambre des notaires du Québec will pay \$16.77 per FTE. For the purpose of enhancing CanLII's relationship with the Federation, the Council appointed Richard Scott, Council member for the Law Society of New Brunswick, as its liaison to CanLII.

19. **Model Code of Professional Conduct Amendments.** In December 2015, the Federation circulated to the law societies an omnibus package of amendments to its Model Code. The proposed amendments included refinements to the rules on communicating with witnesses, the duty to report errors and omissions, and language respecting equity seeking groups. Council unanimously approved the amendments.

20. **National Committee on Accreditation Program Review.** The operations of the NCA were significantly overhauled in 2009; however, the underlying policy basis for how international legal qualifications are assessed for the purpose of admission to law society bar admission programs has not been reviewed since the late 1990's. Council agreed that a program review of the NCA should be undertaken and asked the Executive to bring forward at the next meeting in June recommendations for how such a review would be carried out.

21. **National Mobility Database.** Law society CEOs have indicated that there are inefficiencies and challenges with maintaining a current and accurate database that the law societies agreed should be established pursuant to the National Mobility Agreement. The Council identified this as an operational priority for the Federation CEO to manage with his law society CEO counterparts and their staff.

Status of Permanent Committees and National Initiatives

22. At each meeting of Council, the Committees that are responsible for the core work of the Federation provide written updates about their activities. I have attached the summary reports that were provided to Council. I wish to highlight certain ones here.

23. **Litigation Committee.** The Federation appeared before the Supreme Court of Canada on April 1, 2016 as an intervenor in *Information and Privacy Commissioner of Alberta v. University of Calgary* on the issue of solicitor-client privilege. We were represented by Mahmud Jamal and David Rankin of Oslers in this matter. Later this month, the Federation will seek leave to intervene in *Green v. Law Society of Manitoba*. The issue deals with the powers of a law society to administratively suspend its members for failure to comply with its rules. Our counsel will be Neil Finkelstein of McCarthy Tétrault.

24. **National Requirement Review Committee.** This Committee has recently met by phone to discuss input provided by the Canadian Common Law Program Approval Committee and will meet in person on May 2-3, 2016 to move forward with its work on whether to include a non-discrimination provision as part of the National Requirement.

25. **Public Affairs and Government Relations Committee.** This Committee was established last month and plans are underway for its first meeting. Priority areas for it to consider will be the federal government's extension of privilege to patent and trademark agents, as well as a review of issues relating to anti-money laundering rules and enforcement.

Member and Stakeholder Relations

26. I have made it a priority to reach out as often as I can to law society leaders across Canada and whenever possible, to make at least one in-person visit. I can think of no better way to understand our members' needs, hear your concerns and capture your feedback about the Federation and its work. Over the next few months I will have visited almost every law society in the country.

27. I have also made it a point to focus on reinforcing the already excellent stakeholder relationships that have been developed over the years. Members of the Executive and the senior staff meet and interact regularly with the leadership of the Canadian Bar Association. Earlier this week, our CEO, Jonathan Herman and I met with Minister of Justice and Attorney-General of Canada Jody Wilson-Raybould in order to brief her about the Federation and our issues of common concern. We meet again on May 2nd with Department of Justice and other government officials. I have also made plans to sit down with the Chief Justice of Canada in June to update her on our initiatives.

28. Next month I travel to Barcelona for the annual Bar Leaders' Conference of the International Bar Association where I will be participating on a panel dealing with the regulation of non-lawyer legal service providers.

CONCLUSION

29. I have not quite reached the halfway point of my term and continue to be energized by the Federation's future prospects and the extraordinary array of talent at its disposal. Law society leaders will meet again under the Federation banner when we gather for a strategic planning workshop later this year. We will also be together in St. Andrews by-the-Sea, New Brunswick in October for a conference on legal education, a fascinating topic that will appeal to legal regulators and the academy, providing excellent opportunities for dialogue and bridge-building.

30. It is an honour and privilege for me to be President of the Federation and to serve our members. Please reach out to me any time if you have any questions about the Federation or suggestions about how we can do our jobs better.



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FEDERATION COMMITTEE STATUS

Date	February 24, 2016
Committee name	National Committee on Accreditation
Background	The mandate and background information on the work of the Standing Committee are available on the Federation Intranet here .
Current status, activities and next steps	<ul style="list-style-type: none"> • The roles of the committee are to set NCA policy and consider appeals of assessments (three to date in 2015/2016). • In January 2015, the committee revised the NCA Assessment Policy, bringing it into compliance with the National Requirement. • The NCA has received 1,030 applications for assessment to date in 2015/2016. During the same period, 641 Certificates of Qualification have been issued. • In January 2016, 1,520 exams were written in 16 Canadian cities (includes Vancouver, Calgary, Edmonton, Regina, Winnipeg, & Toronto) and 7 sites abroad. • The NCA Chair is an observer and participant on the National Requirement Review Committee and will be providing input from the perspective of the NCA. While the NCA was planning to review its Canadian Civil Law Assessment Policy and to develop a module to evaluate Canadian Legal Research, these plans are on hold while the National Requirement Review Committee conducts its work. • At its March 2016 meeting, Council will be considering whether to carry out a program review of the NCA.

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FEDERATION COMMITTEE STATUS

Date	February 24, 2016
Committee name	Canadian Common Law Program Approval Committee
Background	The mandate and background information on the work of the Approval Committee are available on the Federation Intranet here .
Current status, activities and next steps	<p><u>Meetings:</u> The Approval Committee meets in person or by conference call three times a year to evaluate the law school reports and consider policy implementation.</p> <p><u>January Meeting:</u> The committee met in January 2016, in part to review the 2015 evaluation process and consider a submission from one law school. It also reviewed a summary of all comments, concerns and deficiencies issued in 2015 as part of the committee's focus on consistency. The committee had a productive meeting discussing various issues including the evaluation of learning resources, a key issue for the committee due to challenges in evaluating facilities, libraries, etc. without visits to the schools and given the variation in funding, size, and organization of Canadian law schools. The committee welcomed Federation President Jeff Hirsch and National Requirement Review Committee ("NRRC") Chair Tom Conway to the meeting and took advantage of their presence to have a fruitful discussion on various policy issues related to the Approval Committee and the NRRC.</p> <p><u>Law Schools:</u> There are currently 19 law schools with approved programs, and two (Lakehead University and Trinity Western University) with preliminary approval. There are 19 three-year JD programs, 53 joint programs, 9 dual programs, and 7 one-year civil law programs, for a total of 88. Lakehead's first class will be graduating in</p>

spring 2016 and the Approval Committee will be considering full approval of the program in late winter. It should be noted that the LSUC has decided to exempt Lakehead's graduates from articling given their unique program of supervised work terms. Several other universities are considering opening law schools including Simon Fraser University, Ryerson University and Memorial University of Newfoundland.

Ethics: All but two law programs now require all students to complete at least 36 hours of ethics instruction even though the current requirement is 24 hours. The Implementation Committee Report noted that 36 hours was the ultimate goal for ethics instruction, and this will become the official requirement in 2017-18.

Trends: The Approval Committee noted a number of trends in reviewing the evaluations. These include: budget pressures at some schools, including in some cases the budgets for libraries (both for acquisitions and staff); a continuing increase in enrollment in some schools, in some cases without formal announcements of increases (six schools have enrolment increases of 8-20%); ethics courses are in place and mandatory at all schools; there are several current decanal vacancies; and cooperation by all schools with the committee and Federation staff, including providing full and complete reports. Several of these issues may have a negative impact on the learning environment and therefore the Approval Committee is monitoring them. The committee is particularly concerned about the approximately six schools reporting budget cuts of up to 10%. As noted above, several schools have increased their student body which is likely in response to budget cuts. To assist the committee in monitoring these trends, members and staff are starting to track data and ratios. Particularly revealing in this exercise was the vast differences in certain areas such as library acquisition budgets, and the similarities in other areas such as the revenue/expenditure ratio.

Joint Programs: The application of the National Requirement to joint, dual and one-year programs for Canadian civil law graduates is deferred until 2017, however, feedback on all programs was provided to the law schools. All programs will be evaluated in 2016 with a goal of issuing approvals in the fall.

National Requirement Review Committee: The Approval Committee Chair is an ex officio member of the NRRC. At its January meeting, the Approval Committee

discussed the preliminary list of issues prepared by the NRRC as part of its work planning process. The list of issues, included in the work plan of the NRRC that was presented to Council last August, can be found [here](#). The committee is of the view that most of the issues are within its jurisdiction to address. The Approval Committee will be providing the NRRC with a detailed account of its views on the various issues. A summary of its discussion of a number of the issues is set out below for Council's information.

- **Legal and fiduciary concepts in commercial relationships:** Despite the best efforts of both the law faculties and the Approval Committee the requirement that students acquire competence in the “legal and fiduciary concepts in commercial relationships” has been difficult to apply. The committee noted that it is not clear that the requirement as stated is meaningful and is of the view that it should either be removed from the National Requirement or clarified.
- **Ethics requirement:** The Approval Committee is of the view that the requirement for a stand-alone ethics course should be maintained and noted that the proposal to move from a 24-credit hour requirement to a 36-credit hour requirement in 2017-18 reflects information from the law schools indicating that they will be able to comply.
- **Three-year law degree - presumptively 90 course credits:** The Approval Committee is of the view that the qualifier “presumptively” is unhelpful and contributes to a lack of clarity about how a three-year degree is defined. The Approval Committee would recommend deleting the qualifier.
- **In-person instruction:** While recognizing the value of in-person instruction the Approval Committee members consider that there may be room for permitting more use of digital instruction methods if they are interactive. The Approval Committee suggests that this issue be put on the list of emerging issues that NRRC will be preparing.
- **Learning resources:** the Approval Committee considers that there continues to be merit in

	<p>addressing learning resources in the National Requirement. The committee is beginning to develop benchmarks (“irreducible minima”) that will assist it in applying the requirement that law school programs be adequately resourced. Some of the issues that it has flagged for discussion with the NRRC are:</p> <ul style="list-style-type: none"> ○ the extent to which the National Requirement includes an expectation that all law programs will have some focus on research, ○ the minimum number of tenure/tenure-track faculty required, ○ the minimum library resources required including for acquisition budgets and staff, and ○ whether law societies should be asked to inform the Approval Committee of bar admissions exam pass rates by law school. <ul style="list-style-type: none"> ● Compliance: The Approval Committee considers that the existing categories for indicating potential or existing problems with a law school program (comment, concern, deficiency) are appropriate. Members of the committee discussed whether schools should be obligated to share information on concerns and deficiencies with their faculty, staff and students and concluded that there should be more discussion with the law school deans on the issue. The Approval Committee identified possible changes to the method of assessing compliance, which currently involves review of detailed annual reports, as an emerging issue. <p><u>Changes and challenges within Legal Education:</u> As part of its mandate “to participate in efforts and initiatives to enhance the institutional relationship between law societies and law schools at a national level” the Approval Committee is monitoring changes and challenges within legal education. The committee members see an important role for the Approval Committee in facilitating the flow of communication to and from the law societies and the academy on these issues, and in ensuring the issues are on the agendas of both the Federation and the law societies as required. Fulfilling this role may require specialized staff support</p>
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	<p>and would also benefit from a discussion about the best vehicle for the committee to bring forward the issues and then for the Federation and law societies address them.</p> <p><u>Federation Conference:</u> The Approval Committee supports and promotes the idea of a Federation conference in the fall that deals with legal education. The idea for a conference on legal education came in part from a discussion amongst the deans on the committee.</p> <p><u>Next Meeting:</u> The Approval Committee will meet next in June to evaluate the 2016 law school reports.</p>
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FEDERATION COMMITTEE STATUS

Date	Mar 8, 2016
Committee name	National Requirement Review Committee
Background	The mandate and background information on the work of the NRRC is available on the Federation intranet here .
Current status, activities and next steps	<ul style="list-style-type: none"> • Plans are underway to schedule two meetings of the committee this spring. The expectation is that the first will be a teleconference to consider input from the Canadian Common Law Program Approval Committee (the “Approval Committee”) on the list of issues relating to the initial review of the National Requirement. The second will be an in-person meeting to continue discussions on the possible addition to the National Requirement of a non-discrimination provision and to develop a plan for consultation on that issue. • It is evident that the committee has struggled in tackling the work plan developed last summer and presented to Council in the fall of 2015. This is in part due to resource challenges at the Federation that have now been addressed through the hiring of additional policy staff. It is also reflective of the committee’s challenging mandate. • The committee’s initial review of the National Requirement will be greatly assisted by the work done by the Approval Committee at a meeting in early January. With this input it is likely that the committee will be able to significantly narrow the list of issues it will need to consider. • Members of the Federation policy staff are preparing comprehensive materials to assist the committee in addressing the non-discrimination provision at the in-person meeting.

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FEDERATION COMMITTEE STATUS

Date	February 24, 2016
Committee name	National Admission Standards Project Steering Committee
Background	The mandate and background information on the work of the Steering Committee are available on the Federation Intranet here .
Current status, activities and next steps	<ul style="list-style-type: none"> • At its December, 2015 meeting, Federation Council held a preliminary discussion about issues raised by law societies in relation to the proposal for assessment of the competencies in the National Competency Profile. • Council members reported on the views within their law societies about the proposal and their readiness to move forward with next steps, as summarized in the Council meeting minutes. Not all law societies had considered the matter in depth, including the Law Society of Upper Canada. • Since the Council meeting, the Law Society of Upper Canada has said that it does not expect to provide feedback on the proposal before May or June, 2016. Feedback was originally requested from law societies by December, 2015 but that deadline has been extended to the spring/summer, 2016. • A meeting of the Steering Committee scheduled for January 20, 2016 was postponed due to the unavailability of several committee members. • Pending receipt of feedback from all law societies on the assessment proposal, the Steering Committee will discuss the National Good Character Standard and a process and timeline for review of the National Competency Profile.

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FEDERATION COMMITTEE STATUS

Date	February 24, 2016
Committee name	Standing Committee on National Discipline Standards
Background	The mandate and background information on the work of the Standing Committee are available on the Federation Intranet here .
Current status, activities and next steps	<ul style="list-style-type: none"> • The Standing Committee meets regularly by teleconference and periodically in person. The last teleconference meeting was held on February 9, 2016. • The Standing Committee is working on the following initiatives: a proposal for a voluntary peer review pilot project, a proposed new standard on early resolution of complaints, a proposal for a new standard for the ability to impose interim measures, a proposal for standards to measure quality of discipline work, and some resources for law societies implementing Standard 16 (information sharing). • The Adjudicator Training Working Group (ATWG) continues to work on the design of a national training curriculum for law society adjudicators. The ATWG meets next by teleconference on February 22, 2016. • At the February meeting of the Standing Committee several communication documents, including sample media messaging and FAQs for law societies, were finalized. These resources will be distributed to law societies soon, along with updated versions of the National Discipline Standards and the Implementation Guide. The revised Standards Guide is effective for 2016. • Law Societies have begun to submit their annual status reports on implementation of the standards. All reports are due by March 1, 2016. • An in-person meeting of the Standing Committee is being scheduled for April, 2016.

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FEDERATION COMMITTEE STATUS

Date	February 24, 2016
Committee name	Standing Committee on the Model Code of Professional Conduct
Background	The mandate and background information on the work of the Standing Committee are available on the Federation Intranet here .
Current status, activities and next steps	<ul style="list-style-type: none"> • Since the last report to Council, the Standing Committee has met three times by teleconference to continue its work on post-judicial return to practice and fee sharing and referral fee rules and has also held a meeting with the law society liaison group. • At the upcoming meeting, Council will be considering a package of amendments to the Model Code that includes refinements to the rules on communicating with witnesses, the duty to report, errors and omissions, language respecting equity seeking groups, and the correction of some typographical errors. • The most recent consultation package on proposed amendments to the Model Code was released on January 30. • The package, which includes proposed amendments to the rules on competence, dishonesty/fraud, and incriminating physical evidence, and a new rule addressing responsibilities that arise when a lawyer leaves a law firm, was sent to law societies, the Canadian Bar Association, and the Department of Justice. It was also circulated to the legal ethics community through the listserv operated by the Canadian Association for Legal Ethics and was posted on the Federation's public website. • The consultation is open until June 30, 2016. • The Standing Committee has established a fixed schedule for consultations and amendment packages in response to requests from the law societies.

	<ul style="list-style-type: none">• Consultation packages will be released on January 30th of each year, with feedback due by June 30th.• The Standing Committee will review the feedback and finalize the proposed amendments by November 1st, with a view to circulating them to Council and the law societies by November 30 for a vote by Council at its spring Council meeting.
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Federation of Law Societies
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Fédération des ordres professionnels
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FEDERATION COMMITTEE STATUS

Date	February 24, 2016
Committee name	Standing Committee on Access to Legal Services
Background	The mandate and background information on the work of the Standing Committee are available on the Federation Intranet here .
Current status, activities and next steps	<ul style="list-style-type: none"> • The planned January meeting of the Standing Committee was cancelled due to a conflict with a meeting of the law society CEOs group. It is expected to be rescheduled for early in the spring. • The meeting will focus on the preparation of materials exploring possible access initiatives to feed into the larger Federation strategic planning work planned for 2016. • The Standing Committee chair and Federation President Jeff Hirsch continues to play an active role as the Federation's appointee to the National Action Committee on Access to Justice in Family and Civil Law Matters (the "NAC"). • The NAC will be meeting in Montreal in early March in conjunction with a meeting of representatives of provincial and territorial access committees. • Planning for the meetings is still underway, but it is expected that the NAC meeting will focus on the goals of the NAC 2.0 and the work to be done. • The second meeting will provide an opportunity for representatives of the provincial and territorial committees to share their greatest achievements and challenges and to discuss plans for ongoing information sharing as well as the possibility of holding an innovation roundtable.

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FEDERATION COMMITTEE STATUS

Date	February 24, 2016
Committee name	Litigation Committee
Background	The mandate and background information on the work of the Standing Committee are available on the Federation Intranet here .
Current status, activities and next steps	<ul style="list-style-type: none"> • Pursuant to a decision of Council made at its December 2015 meeting, the Federation sought and has been granted leave to intervene at the Supreme Court of Canada in the case of <i>Information and Privacy Commissioner of Alberta v. Board of Governors of the University of Calgary</i>. • The case raises important questions about the power of third parties to compel production of information protected by solicitor-client privilege. • The Law Society of Alberta had also been granted leave to intervene as have the Canadian Bar Association, the Advocates Society, the Criminal Lawyers Association, the British Columbia Freedom of Information and Privacy Association, the Information and Privacy Commissioners of Newfoundland and Labrador, British Columbia and Ontario have also been granted intervenor status. Each of these intervenors has the right to file a factum not exceeding 10 pages in length. • In addition the Information and Privacy Commissioner of Canada, the Privacy Commissioner of Canada, the Manitoba Ombudsman, the Information and Privacy Commissioners of the Northwest Territories, Nova Scotia, Nunavut, Saskatchewan, and Yukon and the Yukon Ombudsman have been granted status as a joint intervenor.

	<ul style="list-style-type: none">• The hearing is scheduled for April 1, 2016. The Federation is represented in this matter by Mahmoud Jamal of Osler, Hoskin & Harcourt LLP.• The Litigation Committee has also recommended seeking leave to intervene in <i>Sidney Green v. Law Society of Manitoba</i>, a case involving a challenge to the law society's authority to require members to undertake continuing professional development activities and to suspend members for administrative infractions without a hearing.• Preliminary discussions by Council revealed a possible overlap between issues arising in this case and litigation involving Trinity Western University and the law societies in Ontario, British Columbia and Nova Scotia.• Consideration of this possible intervention was deferred by Council to permit discussions between members of the Litigation Committee and representatives of the three law societies on the potential arguments that the Federation might put forward as an intervenor.• The appellant's factum is due by March 30, 2016.• Applications for leave to intervene must be filed within four weeks of the filing of the appellant's factum.• The hearing in this matter has been tentatively set for October 7, 2016.
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Memo

To: Benchers
From: Jeffrey G. Hoskins, QC
Date: April 22, 2016
Subject: **Responsibility for producing “the record” on reviews of hearing decisions – Proposed new Rule 5-24.1**

1. At the meeting in April, the Benchers considered amendments recommended by the Act and Rules Committee on the request of the Executive Committee to amend the rules on reviews of hearing panel decisions to make the party initiating the review responsible for producing the record on which the review is to taken.
2. Several Benchers expressed concerns about the provision that would have required a party applying for relief of the financial burden associated with producing the record to submit an affidavit continuing full disclosure of the party’s financial circumstances. I believe the concerns were related both to privacy issues and to access to justice issues.
3. The matter was referred back to the Executive Committee to further consider the recommended changes. The Executive Committee met April 21 and determined that the provision requiring the financial affidavit should be removed from the proposed changes.
4. The Committee also discussed a suggestion raised at the Benchers meeting that the record be produced and distributed electronically. That could potentially alleviate much of the budgetary and operational difficulty now encountered.
5. The Executive Committee was of the view that the electronic document suggestion should be pursued promptly, but that the proposed amendments, as changed, should proceed to the next Benchers meeting for adoption.
6. Accordingly, I attach my memorandum, which was before the Benchers at the April meeting, along with versions of the proposed amendments as they now appear and a suggested resolution for their adoption.

7. One version of the amendments shows the changes from the previous draft, which was before the Benchers at the meeting in April. The only change is the deletion of what was the proposed Rule 5-24.1(5) and consequential renumbering of other provisions and cross-references.

Attachments: March 28, 2016 memo
draft amendments
resolution

JGH



Memo

To: Benchers
From: Jeffrey G. Hoskins, QC for Act and Rules Committee
Date: March 28, 2016
Subject: **Responsibility for producing “the record” on reviews of hearing decisions – Proposed new Rule 5-24.1**

1. The Act and Rules Committee recommends the adoption of a new rule providing that the party initiating a review on the record of a hearing decision under section 47 of the *Legal Profession Act* should be responsible for producing and copying the record to be reviewed.
2. There has been a recent sharp increase in the number of reviews of hearing panel decisions. The Law Society Tribunal has historically accepted responsibility for producing and paying for the record on which the review is based. The recent increase in demand has put a strain on the Tribunal’s staff resources and budget. There is some concern that excessive delay caused by the added workload could become an issue in an application to quash a citation for unfairness.
3. In a memorandum addressed to the Executive Committee, I asked the Committee to consider whether a change in policy and/or rules should be adopted so that the party initiating a review is responsible for collecting and producing the materials that comprise the record and for making copies for the review board and other party. The Committee’s decision was to refer the question to the Act and Rules Committee to propose this rule amendment to implement that change.
4. The Benchers were not involved in the original decision, if there was a conscious decision, for Tribunal staff to produce the record. Making the applicant responsible for the record would not be inconsistent with any existing policy. It is arguably operational in nature. However, it does make a significant change from practice that will surely be noticed in some quarters.
5. The rules require that there be a record; they do not say who should produce it. If the Tribunal declines to produce it, the review cannot go ahead unless someone else does.

However, transparency is better served by amending the rule and issuing a notice of the change.

Background

6. The *Legal Profession Act* mandates a review by a review board of a decision of a hearing panel on either disciplinary or credentials matters:

Review on the record

- 47 (1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6) or (7), the applicant or respondent may apply in writing for a review on the record by a review board.
- (2) Within 30 days after the decision of a panel under section 22 (3), the credentials committee may refer the matter for a review on the record by a review board.
- (3) Within 30 days after the decision of a panel under section 38 (4), (5), (6) or (7), the discipline committee may refer the matter for a review on the record by a review board.
- (3.1) Within 30 days after an order for costs assessed under a rule made under section 27 (2) (e) or 46, an applicant, a respondent or a lawyer who is the subject of the order may apply in writing for a review on the record by a review board.
- (3.2) Within 30 days after an order for costs assessed by a panel under a rule made under section 46, the credentials or discipline committee may refer the matter for a review on the record by a review board.
- (4) If, in the opinion of a review board, there are special circumstances, the review board may hear evidence that is not part of the record.
- (5) After a hearing under this section, the review board may
- (a) confirm the decision of the panel, or
 - (b) substitute a decision the panel could have made under this Act.
- (6) The benchers may make rules providing for one or more of the following:
- (a) the appointment and composition of review boards;
 - (b) establishing procedures for an application for a review under this section;
 - (c) the practice and procedure for proceedings before review boards.
7. Part 5 of the Law Society Rules contains rules that give effect to this provision. Rule 5-19 provides that a review can be initiated by a party by means of a notice to the Executive Director and the other party.

8. Since section 47 mandates a review on the record, rather than an appeal or a trial de novo, Rules 5-22 and 5-23 establish the content of the record for credentials and discipline reviews, respectively:

Record of credentials hearing

- 5-22** (1) Unless counsel for the applicant and for the Society agree otherwise, the record for a review of a credentials decision consists of the following:
- (a) the application;
 - (b) a transcript of the proceedings before the panel;
 - (c) exhibits admitted in evidence by the panel;
 - (d) any written arguments or submissions received by the panel;
 - (e) the panel's written reasons for any decision;
 - (f) the notice of review.
- (2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

Record of discipline hearing

- 5-23** (1) Unless counsel for the respondent and for the Society agree otherwise, the record for a review of a discipline decision consists of the following:
- (a) the citation;
 - (b) a transcript of the proceedings before the panel;
 - (c) exhibits admitted in evidence by the panel;
 - (d) any written arguments or submissions received by the panel;
 - (e) the panel's written reasons for any decision;
 - (f) the notice of review.
- (2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

9. The rules are silent on who is responsible for producing, copying and distributing the record of the hearing. Since the number of reviews historically has been very low and a significant proportion of them have been initiated by the Law Society, the practice has been that the Law Society would produce the record regardless of who initiated the review. Since the Tribunal was in possession of most of the documents and had a relationship with the court reporters who produce the transcript, it was natural for the hearing administrator to be responsible for the record, and that is the practice that continues in effect.
10. Rule 5-24 also sets out the prescribed contents for the record for a review of a costs order made by the Practice Standards Committee. There is no transcript of proceedings, so the cost

of producing the record would not be so onerous. No one has ever applied for such a review. However, the same procedure for producing the record would apply.

Increased volume

11. The table below shows the number of review hearings over the past few years. From 2010 to 2015, the number represents the number of concluded review hearings in each year. For 2016, the numbers include reviews commenced to date, which are likely to be heard in 2016. That number, of course, will very likely increase before the end of the year. I have indicated in square brackets the number of reviews each year initiated by the appropriate Law Society committee.

YEAR	Discipline reviews [committee initiated]	Credentials reviews [committee initiated]	Total reviews
2010	3 [2]	0	3
2011	1 [1]	0	1
2012	1 [0]	2 [2]	3
2013	1 [1]	1 [0]	2
2014	3 [0]	1 [1]	4
2015	4 [2]	1 [1]	5
2016 [YTD]	11 [2]	1 [1]	12

12. As you can see, in recent years the number of reviews has been relatively small, with a significant proportion initiated by the Law Society, rather than the respondent or applicant. More recently, the number of reviews initiated by respondents has increased significantly. That may or may not be a trend that endures, but it does raise the question of who is responsible for the cost of the increase.

Cost

13. The increased number of reviews has created pressure on the Tribunals Costs budget, in particular on the cost of ordering transcripts, which are a required part of the record to be reviewed by the review board. The list below shows the amount spent each year for transcription services. This includes transcripts for all purposes of the Tribunal, but the main component, at least in 2014 and 2015, is for production of review records.

2012	\$7,154
2013	6,328
2014	16,530
2015	28,973

Court of Appeal

14. The BC Court of Appeal Rules require that the appellant prepare, file and serve copies of an Appeal Record in the prescribed form within 60 days of bringing an appeal. The proposed rule includes the same time limit, with a provision for the parties to agree to extend the time or for an application to be brought to the President for extension.
15. The Committee was concerned that financial considerations not prevent a person of limited financial resources from bringing an arguable review. The Court of Appeal Rules allow for an application to waive court fees that must be accompanied by an affidavit as to the financial circumstances of the applicant. The proposed rule includes a provision for an application to the President for full or partial relief from the cost of producing the record for review. It too requires that the application be supported by financial disclosure in the form of an affidavit with supporting documentation.

Amendments

16. I attach redlined and clean versions of the amendments to effect the proposed changes. They comprise a new rule on the preparation and delivery of the record and consequential changes to the rule on pre-review conferences.
17. The proposed rule requires the filing of eight copies of the record, one each for members of the review board and one for the Tribunal file. It also requires delivering a copy to the other party. The consequence of not providing the record as required has to be that the review cannot proceed and no hearing date can be set.
18. Some respondents and applicants who seek a review may have financial difficulty in producing nine or more copies of a record. As mentioned above, the proposed rule provides for an application for relief from some or all of the cost of production and delivery.
19. The process for making and deciding the applications is modelled on the provision for adjournment applications, and a number of others.
20. The provision in Rule 5-25 [*Pre-review conference*] authorizing the Benchler presiding at a pre-review conference to set a date for a hearing of the review, must be made subject to the provision that a date cannot be set until the record is produced and delivered.

21. Also in that rule, the chambers Bencher's general power to make orders is restated to encompass orders consistent with Part 5, and not just the pre-review conference rule. This allows an order under the proposed rule on producing the record.
22. Rule 5-15(3) [*Review by review board*] is amended to correct an error in the cross-reference. The reference should be the same as in subrule (1).
23. The Act and Rules Committee recommends the adoption of the attached suggested resolution.

JGH

LAW SOCIETY RULES 2015

PART 5 – HEARINGS AND APPEALS

Reviews and appeals

Review by review board

- 5-15** (1) In Rules 5-15 to 5-28, “**review**” means a review of a hearing panel decision by a review board under section 47 [*Review on the record*].
- (3) Delivery of documents to a respondent or applicant under Rules 5-14-~~15~~ to 5-26-~~28~~ may be effected by delivery to counsel representing the respondent or the applicant.

Preparation and delivery of record

- 5-24.1** (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver
- (a) 8 copies to the Executive Director, and
 - (b) 1 copy to the other party.
- (2) The time for producing the record may be extended by agreement of the parties.
- (3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).
- (4) By delivering to the Executive Director and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for
- (a) an extension of time to prepare and deliver the record, or
 - (b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.
- (5) The Executive Director must promptly notify the President of an application under subrule (4), and the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.
- (6) The President may
- (a) designate another Bencher to make a determination under subrule (5), or
 - (b) refer the application to a pre-review conference.
- (7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 [*Costs of hearings*].

LAW SOCIETY RULES 2015

Pre-review conference

- 5-25 (9) The Bencher presiding at a pre-review conference may
- (c) set a date for the review, subject to Rule 5-24.1 (3) [Preparation and delivery of record], and
 - (d) make any order or allow or dismiss any application consistent with this Rule part.

LAW SOCIETY RULES 2015

PART 5 – HEARINGS AND APPEALS

Reviews and appeals

Review by review board

- 5-15** (1) In Rules 5-15 to 5-28, “**review**” means a review of a hearing panel decision by a review board under section 47 [*Review on the record*].
- (3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

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- 5-24.1** (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver
- (a) 8 copies to the Executive Director, and
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- (3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).
- (4) By delivering to the Executive Director and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for
- (a) an extension of time to prepare and deliver the record, or
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- (5) The Executive Director must promptly notify the President of an application under subrule (4), and the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.
- (6) The President may
- (a) designate another Benchler to make a determination under subrule (5), or
 - (b) refer the application to a pre-review conference.
- (7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 [*Costs of hearings*].

LAW SOCIETY RULES 2015

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- 5-25** (9) The Bencher presiding at a pre-review conference may
- (c) set a date for the review, subject to Rule 5-24.1 (3) [*Preparation and delivery of record*], and
 - (d) make any order or allow or dismiss any application consistent with this part.

LAW SOCIETY RULES 2015

PART 5 – HEARINGS AND APPEALS

Reviews and appeals

Review by review board

- 5-15** (1) In Rules 5-15 to 5-28, “**review**” means a review of a hearing panel decision by a review board under section 47 [*Review on the record*].
- (3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

Preparation and delivery of record

- 5-24.1** (1) Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver
- (a) 8 copies to the Executive Director, and
 - (b) 1 copy to the other party.
- (2) The time for producing the record may be extended by agreement of the parties.
- (3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).
- (4) By delivering to the Executive Director and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for
- (a) an extension of time to prepare and deliver the record, or
 - (b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.
- ~~(5) An application under subrule (4) (b) must be accompanied by an affidavit attaching supporting materials fully disclosing all financial circumstances of the party making the application.~~
- ~~(6)~~ (5) The Executive Director must promptly notify the President of an application under subrule (4), and the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.
- ~~(7)~~ (6) The President may
- (a) designate another Bencher to make a determination under subrule ~~(6)~~ (5), or
 - (b) refer the application to a pre-review conference.
- ~~(8)~~ (7) A determination under subrule ~~(6)~~ (5) is without prejudice to an order of the review board under Rule 5-11 [*Costs of hearings*].

LAW SOCIETY RULES 2015

Pre-review conference

- 5-25** (9) The Bencher presiding at a pre-review conference may
- (c) set a date for the review, subject to Rule 5-24.1 (3) [*Preparation and delivery of record*], and
 - (d) make any order or allow or dismiss any application consistent with this part.

RECORD FOR REVIEW

SUGGESTED RESOLUTION:

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

1. By rescinding Rule 5-15 (3) and substituting the following:

- (3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

2. By adding the following Rule:

Preparation and delivery of record

- 5-24.1(1)** Within 60 days of delivering a notice of review, the party initiating the review must prepare the record for the review in accordance with the relevant rule and deliver
- (a) 8 copies to the Executive Director, and
 - (b) 1 copy to the other party.
- (2) The time for producing the record may be extended by agreement of the parties.
- (3) No date may be set for the hearing of a review unless the party initiating the review has delivered all copies of the record required under subrule (1).
- (4) By delivering to the Executive Director and to the other party written notice setting out the grounds for the application, the party initiating the review may apply for
- (a) an extension of time to prepare and deliver the record, or
 - (b) an order that the Society bear all or part of the cost of obtaining and copying all or part of the record.
- (5) The Executive Director must promptly notify the President of an application under subrule (4), and the President must decide whether to grant all or part of the relief sought, with or without conditions, and must notify the parties accordingly.
- (6) The President may
- (a) designate another Benchler to make a determination under subrule (5), or
 - (b) refer the application to a pre-review conference.
- (7) A determination under subrule (5) is without prejudice to an order of the review board under Rule 5-11 [*Costs of hearings*].

3. ***By rescinding Rule 5-25 (9) (b) and (c) and substituting the following:***
- (c) set a date for the review, subject to Rule 5-24.1 (3) [*Preparation and delivery of record*], and
 - (d) make any order or allow or dismiss any application consistent with this part.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

REDACTED MATERIALS

REDACTED MATERIALS