

The Law Society *of British Columbia*



Annual Report



2001



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Richard C. Gibbs, QC
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Howard R. Berge, QC
Second Vice-President

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Marjorie Martin
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2001 Benchers



(Front row) William Everett, QC, First Vice-President Richard Gibbs, QC, President Richard Margetts, QC, Second Vice-President Howard Berge, QC, Jo Ann Carmichael, QC (Second row) Robert Gourlay, QC, Anna Fung, QC, Gerald Lecovin, QC, Jaynie Clark, Marjorie Martin, Anita Olsen, Emily Reid, QC (Third row) Executive Director James Matkin, QC, Patricia Schmit, QC, Russell Tretiak, QC, Gerald Kambeitz, QC, Peter Ramsay, QC (Fourth row) Ralston Alexander, QC, June Preston, Ronald Toews, QC, David Gibbons, QC, Robert McDiarmid, QC, Jane Shackell, QC (Back row) Ian Donaldson, QC, William Sullivan, QC, Terence La Liberté, QC, Peter Keighley, QC, Ross Tunnicliffe, Robert Diebolt, QC (Not pictured) Robert Crawford, QC, Ann Howard, Dr. Setty Pendakur

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President's report

by Richard S. Margetts, QC

This is my last opportunity to address you, in the tradition of Past Presidents, and to reflect on the year gone by.

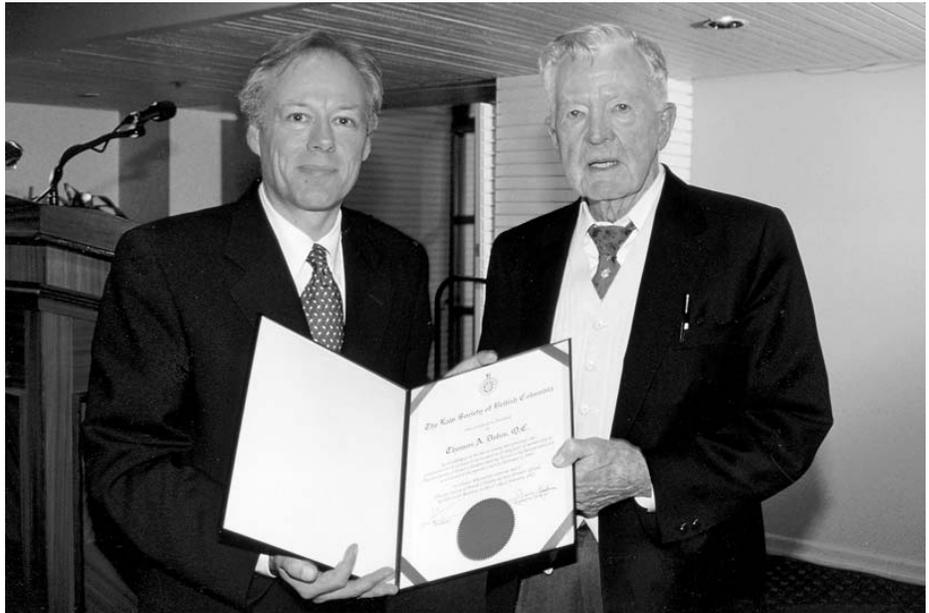
In the pages of this report you will read more about the work of the Benchers and of our committees, task forces, volunteers and staff in 2001. Over the past year I hope we have set a firm foundation for the consideration of long-term issues. For all those involved in the governance and regulation of our profession, both volunteers and staff, I wish to express appreciation, on my own behalf and on behalf of the profession as a whole.

At the beginning of my year as President, I said that lawyers were at the crossroads of change. I still firmly believe that, although nothing changes quite as dramatically as one might expect, of course. But the signs are there. The debate has heightened over paralegals, alternative dispute resolution and multidisciplinary practice — among a multiplicity of concerns.

For those who would take comfort in the Enron scandal as putting an end to multidisciplinary practice, I would say not to “let your guard down” in the eye of the storm. Enron illustrates why the legal profession should now assume a leadership role in setting the ethical standards that govern professional relationships and further should recapture ground previously lost to other professions in the marketplace.

If I have learned one thing from the big picture in the past year, it is the importance of our profession remaining relevant to the people we serve.

As lawyers, we have a difficult but important mandate, individually in the day-to-day work we do for clients and collectively in doing what is right for our system of justice. The year



President Richard Margetts, QC presents a certificate to Thomas A. Dohm, QC in recognition of his 60 years at the bar. Mr. Dohm's distinguished career includes service as a prosecutor for the City of Vancouver, a magistrate for the City of Vancouver and a Justice of the Supreme Court of British Columbia. He practises with Dohm, Jaffer & Jeraj in Vancouver.

2001 saw our profession stand united against intrusions by the state into solicitor/client privilege, take a national position on GATS and NAFTA negotiations, open the door to greater interprovincial lawyer mobility and demonstrate leadership on a variety of other national and provincial concerns. I can say with pride that lawyers in British Columbia are always at the forefront in raising and addressing each of these issues. The bar in this province is active, vocal and imaginative in doing business in a changing political economy. We must stay that way.

We are strategically placed to ensure the fundamental integrity of our legal system, and that role must not be compromised. That having been said, ours should be a profession that is open to exploring and pursuing reasonable change.

It has been my privilege over the past year to have travelled about the province, to have met and spoken with many of you. This has been an opportunity that I will long remember and cherish. There is absolutely no doubt that lawyers are among the most diligent, hard-working and caring people in our community.

Finally, I would be remiss if I did not take this opportunity to express gratitude for the time, effort and hard work of those members of our profession who have involved themselves in the affairs of the Law Society, whether by serving as Benchers, working in other volunteer capacities or by participating in meetings, events and consultations. While each of our individual efforts may seem small, the sum of the whole is so much greater than the parts. Like you, I take to heart we have each played some small part.

Year in review



The Day of Law videoconference — featuring professional development sessions on money laundering legislation, legal updates and new practice opportunities for lawyers as well as a quiz-show on claims, complaints, ethics and scruples — was held on September 21 in conjunction with the Law Society and CBA annual meetings. The event, sponsored by the Law Society, the CLE Society and the BC Branch of the CBA, drew together 350 lawyers at nine BC locations.

2001 Highlights

Law Society adopts strategic plan

In 2001 the Benchers adopted a three-year strategic plan to guide the priorities of the Law Society, with emphasis on two key goals — enhancing the “lawyer brand” in the public eye and expanding the opportunities available to lawyers.

The strategic plan reflects an appreciation within the legal profession that the consumers of legal services have changing needs. The future direction of the profession must take account of a more diverse and multicultural population, an aging population, more knowledgeable and sophisticated clients and people who may have different expectations of the profession.

The practice of law too is in the midst

of change. The strategic plan notes that practice is more highly competitive than ever, more technologically intensive, more varied in structure, less homogeneous, less collegial and in some respects less enjoyable, given the pace of practice, pressure to meet billing targets and time commitments inconsistent with lawyers’ own expectations.

The Law Society’s challenge is to ensure that the public continues to receive competent and ethical legal advice while enabling lawyers to innovate and adapt to the changing marketplace.

In the face of changing expectations, lawyers must be prepared to adapt their practices. The Law Society, in addition to preserving the core values of the profession, must address the need for change.

The Benchers have accordingly

A lawyer who has a criminal or discipline record, or has such proceedings pending, or who is subject to practice restrictions or conditions in any jurisdiction must apply for an inter-jurisdictional practice permit.

The move to liberalize lawyer mobility rules was spurred by a joint task force of the four law societies of Western Canada, which have now set the pace of progress for the rest of the country. The western protocol extends to any other province or territory with reciprocal provisions. As barriers to mobility fall, BC has helped with the development of a national database to assist law societies, when necessary, to identify visiting lawyers in their jurisdictions.

A Canadian lawyer belonging to a law society without reciprocal provisions may still visit any of the western provinces in accordance with the standards of the Interjurisdictional Practice Protocol of the Federation of Law Societies of Canada. In that case, the lawyer may act without a permit on 10 matters, for not more than 20 days in any 12-month period — known as the “10-20-12” rule. In the western provinces and in Ontario there is no requirement that the visiting lawyer must consult a local lawyer.

New conveyancing protocol to offer financial institutions

A Western Law Societies Conveyancing Protocol was another initiative adopted early in the year. BC lawyers who act in mortgage transactions can now advise an institutional lender client under the protocol that, when there are no known building location defects on a property, the lender client need not obtain an up-to-date building location survey as a condition of funding a mortgage loan.

If a lender relies on the lawyer’s opinion given under the protocol to fund a



Lawyers take the opportunity to catch up during a coffee break at the Vancouver site of the Day of Law videoconference, held at the stunning SFU Wosk Centre for Dialogue.

mortgage and suffers an actual loss as a result of an unknown building location defect that would have been disclosed by an up-to-date survey, the

Lawyers Insurance Fund will, on behalf of the lawyer, accept liability and, as appropriate, pay the cost of repair or any actual loss suffered. Provided a



Paralegals were under study in 2001. In Ontario, where independent paralegals may gain formal recognition, critical questions arise over how they should be regulated, and by whom. In B.C., the Law Society favours paralegals working under lawyer supervision but is exploring opportunities to expand their role, possibly under a certification program.

lawyer has complied with the protocol, a paid claim will not trigger any deductible or surcharge for the lawyer, and the lawyer remains eligible for a part-time practice discount.

The protocol was designed to enhance mortgage transactions and the working relationship between lawyers and lending institutions.

Benchers say no to multidisciplinary practice

Multidisciplinary practice between lawyers and non-lawyers has been under study by a special Law Society task force for several years, and the Benchers in 2000 initially approved multidisciplinary practices (MDPs) in principle as a new practice opportunity for BC lawyers — provided the core values of the profession could be maintained.

Opening the door to MDPs would

mean relaxing restrictions, in particular the rule against splitting fees with non-lawyers. The intent was to allow lawyers more scope in structuring their practices and to facilitate one-stop shopping for clients.

As they studied proposed rules in 2001, however, many Benchers lacked comfort that the core values of the profession could be adequately safeguarded — in particular, confidentiality and privilege, the avoidance of conflicts and the professional independence of lawyers. Moreover, some Benchers flagged that there was a lack of demand within the profession for such a regulatory scheme and that the cost of any proposed scheme would have to be examined carefully. Accordingly, when put to a vote at the Benchers table in December, the rules did not gain the necessary two-thirds majority support, putting the issue to rest for the present.

Expanding paralegal practice

During the year, the Benchers took a fresh look at expanding the role of legal assistants in BC and options for their certification. A Paralegals Task Force undertook this review, which was prompted by the resurgence of independent paralegals, particularly in Ontario. In that province, independent paralegals may gain formal recognition, bringing to the forefront of debate some critical questions about how they should be regulated, and by whom.

While BC does not currently face the same pressures as in Ontario to institutionalize independent paralegals, there is an opportunity to enhance the value of paralegal practice generally in BC without placing the public at risk.

The Benchers have therefore encouraged the Task Force to explore several options to promote the cost-efficiencies of legal assistants — of which there are between 1,500 and 2,000 in BC — while preserving the protections that law firm supervision already offers consumers. The Task Force has looked both at simply expanding legal assistant functions or doing so under a certification program, with the regulation of legal assistants either directly by the Law Society or indirectly, through regulation of their supervising lawyers.

Looking to new business opportunities

Should aspects of Law Society regulation change in order to open the door to practice or business opportunities for lawyers? This was a question posed by a new Business Opportunities Working Group looking at what unnecessary constraints lawyers might face in their delivery of legal services, in the management of their practices or in their pursuit of other endeavours.

In particular, the working group is concerned with whether there are restrictions in the *Legal Profession Act*, Law Society Rules or *Professional Conduct Handbook* that place the legal profession at a competitive disadvantage, such as by restricting lawyers from activities they might otherwise engage in, or by placing on them obligations that are too time-consuming or costly. In considering the Rules or *Handbook*, for example, do conflict rules now unnecessarily restrict lawyers from business opportunities? Would lawyers achieve greater cost-efficiencies if there were fewer restrictions on delegation to legal assistants? Do the trust accounting rules create difficulties for lawyers, such as by failing to provide for electronic fund transfers?

The working group began consultations with the profession on these issues in late 2001.

BC lawyers exempted from “suspicious transaction” reporting

While expanding practice opportunities remained a key theme in 2001, so too was defending the core professional values of solicitor-client privilege and confidentiality and the independence of the profession.

Without doubt, one of the greatest threats came from the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, which sought to impose unprecedented requirements on lawyers to record and report “suspicious” financial transactions of clients to a government agency, failing which lawyers faced serious penalties.

The Law Society alerted the profession to the legislation, and published a guide and manual to assist firms should they become subject to the requirements.

By November, however, the Law

Society and the Federation of Law Societies had also launched a constitutional challenge. It was argued that a lawyer’s disclosure of a client’s confidential financial information to the federal government would effectively prevent Canadians from obtaining confidential legal advice. That first step proved successful.

Calling the legislation “an unprecedented intrusion into the traditional solicitor-client relationship,” Madam Justice Allen of the BC Supreme Court on November 20 granted lawyers interlocutory relief from the requirement to comply with reporting requirements under the legislation.

The result of this decision was that, until further order of the court, BC lawyers are exempt from the obligation to report.

While the court’s decision in this matter was heralded in the profession and sparked similar applications and orders in other provinces, another danger loomed in 2001. Bill C-36, the *Anti-Terrorism Act*, effectively erects barriers to the right to counsel and imposes disclosure requirements on lawyers that endanger solicitor-client confidentiality through amendments to the *Criminal Code*. The *Anti-Terrorism Act* was under review by the Law Society in 2001.

Law office searches unconstitutional

The core values of the legal profession were upheld in another BC decision. On November 5, 2001 a majority of the BC Court of Appeal in *Festing v. Canada (Attorney General)* declared section 487 of the *Criminal Code* [police search and seizure under a warrant] unconstitutional to the extent that the section authorizes searches of law offices and seizure of documents. The Law Society was an intervenor in the case in support of protecting solicitor-client privilege.

With respect to section 488.1 of the *Code*, the Court of Appeal approved the reasons of Mr. Justice Romilly of the BC Supreme Court who had found that s. 488.1 inadequately protects solicitor-client privilege. If a lawyer for any reason fails to act in compliance with s. 488.1, privilege over any documents seized by the police is lost, or effectively waived. Moreover, privilege will have been waived, not by the client to whom the privilege rightly belongs, but by his or her lawyer.

The Court of Appeal has stayed its orders until the constitutionality of section 488.1 is decided in four other appeals now before the Supreme Court of Canada.

Pro Bono Forum 2001

Access to justice is a cornerstone of our society, and lawyers play a pivotal role in ensuring access, including for those people who cannot pay. *Pro Bono Forum 2001* was an expression of that commitment.

Co-sponsored by the Law Society and the CBA in October, the Forum drew together 150 community workers, judges, lawyers, students, Legal Services Society staff and others to discuss how *pro bono* legal services can be most effectively delivered in BC, as well as to learn about some of the leading *pro bono* programs from across North America. Speakers at the Forum included the Chief Justice of British Columbia, Lance Finch, Chief Justice of the BC Supreme Court, Donald Brenner, former BC Premier, Mike Harcourt, University of Toronto Law Dean, Ron Daniels, who in 1996 founded “Pro Bono Students Canada” and Esther Lardent, President of the Pro Bono Institute at Georgetown University Law Center in Washington, DC. The Law Foundation of BC provided financial support and the CLE Society of BC assisted with the event.

Year in review

New Benchers elected

New to the Benchers table in 2001 were **Ross D. Tunnicliffe** and **Robert Crawford, QC**. Mr. Crawford was then appointed to the Bench in September.

In November eight new Benchers were elected and 14 Benchers re-elected (four by acclamation) for the 2002-2003 term. Newly elected in Vancouver were: **John J.L. Hunter, QC**, **Margaret Ostrowski, QC**, **Gordon Turriff, James D. Vilvang, QC** and **David A. Zacks**. Re-elected in Vancouver were Benchers **Robert D. Diebolt, QC**, **Ian Donaldson, QC**, **Anna K. Fung, QC**, **David W. Gibbons, QC**, **Robert W. Gourlay, QC**, **William J. Sullivan, QC** and **Ross D. Tunnicliffe**.

In Victoria District, **Ralston S. Alexander, QC** was re-elected and **Anne Wallace** was elected a Bencher for the first time, replacing **Richard Margetts, QC** who completed his term as President and Bencher at year-end. **G. Glen Ridgway, QC** was elected as the Bencher for Nanaimo District, replacing D. Peter Ramsay, QC who did not stand for re-election.

In Westminster Benchers **Peter J. Keighley, QC** and **Russell S. Tretiak, QC** were re-elected and **Grant C. Taylor** was elected for the first time, replacing Robert Crawford, QC.

Re-elected by acclamation were Benchers **Gerald J. Kambeitz, QC** (Kootenay), **Patricia L. Schmit, QC** (Cariboo), **G. Ronald Toews, QC**, (Prince Rupert) and **Robert W. McDiarmid, QC** (Kamloops).

Lay Benchers

Lay Benchers are appointed by the provincial Cabinet and, like elected lawyer Benchers, are Law Society volunteers. They bring a public viewpoint to all work of the Society, whether in policy discussions before

committees and task forces or at the Benchers table, and carry a full workload that includes participation on hearing panels.

In 2001 the Society was served by Lay Benchers **Marjorie Martin**, **Ann Howard**, **Anita Olsen**, **Jaynie Clark**, **Dr. Setty Pendakur** and **Wendy John** (who resigned in the Spring and was replaced by **June Preston**).

During the year, Ms. Olsen chaired the Complainants' Review Committee and Lay Benchers participated on various committees (Executive, Credentials, Discipline, Equity and Diversity, Ethics and Practice Standards) and on the Paralegals and *Pro Bono* Initiative Task Forces.

Profile of the profession

Of the 344 people called to the BC bar in 2001, most were new law school

graduates — 211 (61%) were graduates from BC law schools, 88 (26%) were from other Canadian law schools and 16 (5%) were from foreign law schools. There were also 29 lawyers from other Canadian jurisdictions who transferred to BC (8% of all calls); this is a dramatic drop, less than half the number of lawyers who transferred in 2000: see *Lawyers called to the BC bar (1999-2001)*.

With fewer students from other provinces called in BC and a drop in lawyers transferring, the profession grew less than 1% between 2000 and 2001. As can be seen from the table *Law Society members*, there were 8,939 practising lawyers at year-end, 1,171 non-practising members and 194 retired members. Of lawyers with practising status in BC during the year, two-thirds were in private practice.

Lawyers called to the BC bar (1999 – 2001)

	1999	2000	2001
Called to the BC bar			
Recent graduates of BC law schools	220	198	211
Recent graduates of other Canadian law schools	98	101	88
Graduates of foreign law schools	15	18	16
Lawyers transferring from other jurisdictions	<u>60</u>	<u>67</u>	<u>29</u>
Total	<u>393</u>	<u>384</u>	<u>344</u>
Reinstatements	40	41	30

Law Society members (as at December 31, 2001)

Practising members	8,939	(86.7%)
Non-practising members	1,171	(11.4%)
Retired members	<u>194</u>	(1.9%)
Total	<u>10,304</u>	

Women made up just over 31% of the profession.

Looking at geographic distribution, 55.1% of lawyers are located in Vancouver district, 12.6% in Westminster, 9.5% in Victoria district, 3.8% in Nanaimo district, 3.5% in Okanagan, 2.2% in Kamloops district, 2.1% in Cariboo, 1.2% in Kootenay and just under 1% in Prince Rupert district. Another 9% reside out of province, many of whom maintain non-practising membership in BC.

The leading areas of practice, according to time spent by lawyers, are civil litigation (motor vehicle and other), corporate-commercial, family law, real estate and administrative law: see *2001 areas of practice*.

Credentials

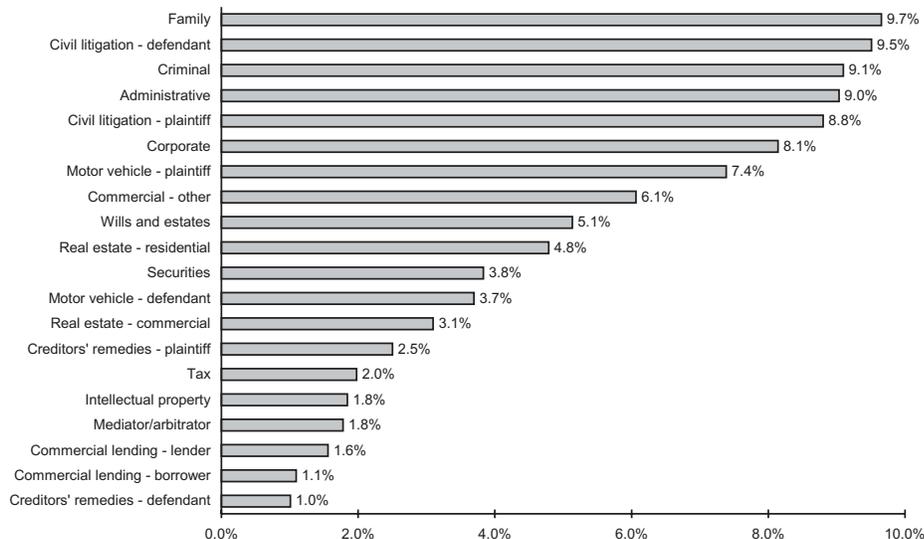
A key responsibility for the Law Society is to oversee the enrolment, education and call to the bar of articulated students, the transfer of lawyers from other provinces and the reinstatement of former lawyers. This work is carried out by the Credentials Committee, in 2001 chaired by Richard Gibbs, QC, and by staff.

When the character or fitness of applicants for admission, re-admission or transfer needs to be addressed, the Committee considers these applications directly or orders a formal credentials hearing. The Committee is also responsible for reviewing applications relating to a student's failed standing in the Professional Legal Training Course (PLTC) and for considering any matters arising from the articling system.

For the admission program, 2001 was a year of significant policy advances.

A special Admission Program Task Force of the Benchers, chaired by Richard Gibbs, QC, began work on options for admission reform and enhancement, including integration or harmonization of PLTC and articling.

2001 areas of practice



The Task Force set out options in an interim report that was presented to the Benchers in December and subsequently published for comment by the law schools, law students, principals and other interested lawyers.

Because the purpose of the admission program is to ensure that those called to the BC bar are competent and fit to begin the practice of law, the profession must be satisfied that newly called lawyers possess sufficient legal knowledge, lawyering and law practice skills, professional attitude and practical experience, as well as good character.

Articling has been identified as a weak link in the professional legal education process. Because articling functions in isolation, and the quality of experience varies greatly, for some students it is now less significant than PLTC as preparation for the competent practice of law.

In its review, the Task Force assessed a number of articling options, including a system in which principals and

students agree to a comprehensive, detailed educational contract, followed by mid-term and final progress reports. Options for PLTC reform include revising the curriculum to correspond to a new "competency profile," which has been developed in cooperation with the other western provinces and approved by the Benchers. The Task Force's final recommendations came before the Benchers for consideration and decision in June, 2002.

Another policy advance was reflected in the Benchers' adoption of rules to implement the new inter-jurisdictional practice protocol of the western law societies. This protocol creates the most liberal framework for temporary lawyer mobility in the country (see page 3 for details).

There were other rule changes passed during the year to allow the Executive Director to extend a leave of absence for an articulated student, subject to certain conditions, and also to grant temporary articles, not only to

Year in review



PLTC students hard at work. A special Admission Program Task Force of the Benchers, chaired by Richard Gibbs, QC, began work in 2001 on options for admission reform and enhancement, including integration or harmonization of PLTC and articling.

BC law school students, but also to students from any common law faculty of law in Canada.

Finally, there was clarification in the rules that the PLTC tutorial program, provided through a part-time academic support instructor, must give first priority to students of Aboriginal heritage and second priority to all other students. (*For more on initiatives to assist Aboriginal students, see Equity and Diversity on page 15.*)

Ethics

The Ethics Committee, chaired in 2001 by William Sullivan, QC, provides key support to the Benchers in their responsibility to set ethical standards for the profession. It does this in the following respects:

- identifying current professional responsibility issues;
- developing policy recommendations and possible changes to the

Professional Conduct Handbook;

- interpreting existing rules for individual lawyers; and
- publishing ethical opinions of interest to the profession as a whole.

The Benchers made several *Handbook* changes in 2001, based on policy work of the Committee and staff.

Following a change to Appendix 3 of the *Handbook* on real property transactions, there is now a broader range of residential mortgage transactions that fall within the scope of the “simple conveyance” and in which a lawyer may act for both the mortgagee and the mortgagor. Previous provisions were viewed as unnecessarily restrictive and did not reflect current mortgage options offered by institutional lenders.

A “simple conveyance” now includes a mortgage, not containing any commercial element, that is given by a mortgagor to an institutional lender

to be registered against the mortgagor’s residence. Examples of such a mortgage now include 1) a revolving mortgage that can be advanced and re-advanced, 2) a mortgage to be advanced in stages not dependent on the progress of construction and 3) a mortgage to secure a line of credit.

On another front, a change was made to the marketing rules. Chapter 14, Rule 10 of the *Handbook* now allows lawyers to list on letterhead or in any other marketing activity a broader range of their staff, provided it is clear those people cannot practise law. This gives firms greater flexibility in marketing, while ensuring the public is not misled as to who is a lawyer. The *Handbook* previously allowed lawyers to list on marketing materials only specified employees — retired and non-practising members, articulated students, legal assistants, registered patent agents and practitioners of foreign law — thereby excluding others, such as accountants, consultants, technology staff, marketing staff or business managers.

There was also a change to Chapter 6 of the *Handbook*, introducing limited situations in which a lawyer can act for one client against the interests of another client.

This change reflects the reality that some clients (typically large institutional clients) commonly permit lawyers who have acted for the institution on one matter to act against it on separate matters. This practice is customary for such institutional clients as ICBC and other large corporations, and also for the Crown and organizations such as the Law Society.

If a lawyer is to act against the interests of a current client, both clients must be informed of, and consent to, the representation, the matters must be substantially unrelated and the lawyer must not possess confidential information arising from

the representation of one client that might reasonably affect the other representation. In the case of those institutional clients that commonly allow such representation, consent may be inferred.

In addition to studying and proposing *Handbook* changes for Benchers' consideration, the Ethics Committee provides ethical guidance to the profession. In 2001 the security of electronic communications in the practice of law — which has driven several Law Society practice initiatives in recent years — came under consideration from an ethical standpoint.

The Committee published its opinion that, given the potential for ordinary e-mail to be altered after being sent, as well as the difficulty of proving that an e-mail message has been tampered with, it was unwise for lawyers to send by ordinary e-mail those communications that must be in writing or must be in writing and signed to be effective. Rather, the recommended approach was to send such communications in ordinary written form or by secured e-mail where the identity of the parties can be verified. This includes communications intended to fulfil a lawyer's obligations as set out in the *Professional Conduct Handbook*, such as written undertakings or client consents that must be in writing.

Much of the Committee's time during the year was spent giving advice to individual lawyers on request, some of which was published in the *Benchers' Bulletin* on an anonymous basis to benefit the entire profession. Questions ranged: *When is direct contact with an employee of an opposing party permitted or prohibited? How can a limited liability partnership from Ontario market itself in BC? Are there any special guidelines that apply to employees working at home, particularly with respect to confidentiality? Should employees be allowed to take files out of the office?* These and other published

opinions of the Committee are available to lawyers in the *Benchers' Bulletin* archives, available on the Law Society website.

Practice advice

The Law Society offers services and resources to assist lawyers to practise competently, ethically and in a way that is financial viable, and to assist them in preventing complaints and insurance claims.

There are many facets to this program, including advice on practice and professional conduct issues. The Practice Advisor, Practice Management Advisor and Ethics Staff Lawyer answer several thousand practice enquiries each year, with the more significant or common enquiries often leading to practice advice articles published in the *Benchers' Bulletin* and other publications.

There were new initiatives in 2001. The CD-Rom *Getting Started: opening your law office and trust accounting* was published in the Spring. This resource was designed to help BC lawyers just starting out in the profession or considering opening their own office.

The *Practice Checklists Manual* was, for the first time, published exclusively on the web. The electronic version allows lawyers to download only the checklists they need and to adapt these for use on their own files. Publishing the manual online met with full support from lawyers. Both in advance consultations and in feedback, lawyers told the Law Society they liked the economy and flexibility. They also took full advantage. By year-end there were over 10,000 downloads of individual checklists from the site.

By Fall the Law Society website featured a new practice section — offering downloadable precedents, articles and other practice resources — all of which are compiled under

the direction of the Practice Advisor and Practice Management Advisor. Manuals and guides to prepare the profession for the anticipated reporting requirements of proceeds of crime legislation were published to the profession in September through the work of the Practice Advisor — and almost 2,000 copies were downloaded from the site by year-end.

As part of its commitment to educational resources, the Society funds courthouse libraries throughout the province. Thanks to a 2001 Law Foundation grant, support has also been extended to CanLII, a website service offering free online access to statutes, regulations and case law from across Canada.

The CLE voucher program, offering each insured practising lawyer \$300 in CLE discount vouchers, was discontinued by year-end because CLE registration numbers had not reached the targeted levels.

Practice standards

In addition to programs that enhance overall competence in the profession, the practice problems of individual lawyers are addressed by a Practice Standards Committee, chaired by Robert McDiarmid, QC in 2001.

The Committee addresses competency issues in two ways:

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

When a lawyer is referred to the Practice Standards Committee — frequently as a result of complaints — the lawyer is often asked to participate in an initial practice review conducted by a volunteer practitioner and a Law Society staff lawyer. Through these reviews and

Year in review

recommendations, as well as follow-up measures in the program, the focus is on remediation. When necessary, the Committee may ask a lawyer to stop practising in certain areas or to practise only under the supervision of another lawyer.

Many lawyers approach the program positively and as a way to establish a more viable law practice. If the problems are severe or if the lawyer is unwilling to make necessary changes, however, a discipline referral is still possible. The Practice Standards Committee also plays an important role in overseeing remedial measures ordered by a discipline or credentials panel.

In 2001 the Committee took creative steps to encourage lawyers to move through the program — including supervision agreements, informal meetings with lawyers and seminars.

Late in the year the Practice Standards Committee asked the Benchers to consider a rule change to allow the Committee, in appropriate cases, to

provide the name of a lawyer, and other necessary information, to the Lawyers Assistance Program. The Committee viewed this referral option as offering more flexibility in the remedial process and protection for both the public and lawyers. While acknowledging the potential benefits of such referrals, a number of Benchers were concerned about the confidentiality of information before the Committee and declined to change the rules in this way.

Since 1994 the Practice Standards Committee has ordered and collected costs, which help fund the program. During 2001 the Committee published its policy on costs to help the profession understand its work and the financing of that work, based on the following principles:

- There is a positive duty on all lawyers to become and remain competent. This requires lawyers to be knowledgeable in substantive law, practice and procedures in the areas of law in which they

Personal assistance programs

To encourage lawyers to maintain wellness and competence, the Law Society funds two independent, confidential personal assistance programs: Interlock and the Lawyers Assistance Program (LAP).

Interlock offers professional counselling and referrals for lawyers and their families on a range of personal or work-related problems, including relationship difficulties and stress — all on a self-referral basis. Interlock has registered psychologists, social workers, clinical counsellors and addiction specialists available in many communities in BC. In 2001 Interlock provided services to 368 new clients (303 lawyers, 19 students and 46 family members).

The Lawyers Assistance Program relies on a network of “lawyers helping lawyers.” LAP takes self-referrals and may undertake interventions for substance abuse and other problems. The program helped 167 new people in 2001. With increases in the program budget, LAP programs also included the coordination of AA retreats and support groups, as well as lifestyle and career planning workshops.

2001 referrals to the Practice Standards Committee

New referrals	16
Results of referrals:	
Practice review ordered	11
Meeting with senior lawyer	4
Referred to Discipline Committee	1
Disposition of ongoing files:	
New restrictions obtained	7
Practice supervisions put in place	7
Referred to Discipline Committee	7
Matter completed to satisfaction of Practice Standards Committee (file closed)	38
Costs ordered	\$31,400

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

practise and to organize and maintain their practices to provide an effective and efficient quality of service to clients.

- A lawyer who allows his or her practice to fall below acceptable standards and who will directly benefit from the “investigation” and subsequent advice and remedial work should contribute to the costs of having his or her problems investigated and rectified under Rule 3-12(3).
- It is the goal of the Practice Standards Committee to assist lawyers to identify the sources of problems in their practices and to enable lawyers to implement changes swiftly, respond to remedial work promptly and pass through the program as quickly as possible.
- The Committee will order costs as an allocation of financial responsibility and not as a penalty.
- In ordinary circumstances, travel and accommodation expenses will not be assessed because to do so would be unfair to lawyers outside Vancouver.
- The Committee will aim for full recovery from the lawyer of the operating costs of investigations and remedial programs (less travel costs), while retaining the discretion to reduce the recovery that can be expected in certain circumstances, such as hardship.

Professional conduct and discipline

The Law Society sets standards of professional responsibility for lawyers and enforces those standards through a complaints and discipline process. Complaints are most frequently made by clients, opposing parties or lawyers, but a complaint is defined in the Law Society Rules to include information from any source

Complaint files by type of conduct alleged

Type of file	1999	2000	2001	
Complaints:				
Abuse of process	66	38	30	(2.2%)
Advertising	16	28	6	(.5%)
Breach of Act or rules	17	31	52	(3.9%)
Breach of confidentiality	14	16	15	(1.1%)
Breach of undertaking	62	55	27	(2.0%)
Conduct unbecoming	–	22	14	(1.0%)
Conflict of interest	104	79	85	(6.3%)
Counselling/engaging in unlawful conduct	–	10	5	(.4%)
Court: missed limitation/disrespect	8	14	11	(.8%)
Criminal/quasi-criminal conduct	–	11	6	(.4%)
Delay/inactivity	67	67	50	(3.7%)
Discrimination	8	4	4	(.3%)
Dissatisfaction with legal service	365	226	228	(16.9%)
Error/negligence/incompetence	71	63	61	(4.5%)
Failure to communicate/respond	159	139	112	(8.3%)
Failure to follow/obtain client instructions	29	45	19	(1.4%)
Fees	78	69	60	(4.5%)
Miscellaneous/unclassifiable*	151	40	33	(2.5%)
Misleading/dishonest conduct	11	77	93	(6.9%)
Office management/employee supervision	13	5	14	(1.0%)
Opposing party: direct contact/dissatisfaction	6	116	162	(12.0%)
Personal problems affecting practice	4	3	4	(.3%)
Rudeness	53	30	36	(2.7%)
Sharp practice	68	42	42	(3.1%)
Threatening	37	29	24	(1.8%)
Trust defalcation	24	24	30	(2.2%)
Unpaid creditor/disbursement	84	81	58	(4.3%)
Withdrawal from case	–	13	17	(1.3%)
Withholding file/funds	<u>42</u>	<u>46</u>	<u>50</u>	(3.7%)
Total complaint files opened	1,557	1,423	1,348	
Public enquiry files opened**	<u>202</u>	<u>243</u>	<u>213</u>	
Total complaints and public enquiries	<u>1,759</u>	<u>1,666</u>	<u>1,561</u>	
Files closed	2,016	1,733	1,655	

* Several file categories were added in 2000, resulting in a drop in “miscellaneous” complaints.

** In addition to complaint files, the Law Society opens files for all written public enquiries about lawyer conduct (in which no particular lawyer is identified) or enquiries that do not relate to lawyer competency or conduct, but to some aspect of the legal system. The Professional Conduct Department staff also routinely offer information by telephone about lawyers in general, the Law Society and justice system, handling over 3,900 public calls in 2001.

Year in review

that suggests a disciplinary violation.

Staff lawyers and complaints officers in the Professional Conduct Department carry out the initial review and assessment. For the third year in a row, the number of complaints and enquiries declined. In 2001, there were 1,561 complaints and enquiries, down 6% from 2000.

The Department's goal is to complete and close a file within six months, although complex and serious matters can take longer to investigate and assess. By year-end, staff completed their review and assessment of 1,655 complaints and enquiries.

Of the complaints received in 2001, 47% were closed by staff as not revealing a conduct or competency concern or as unprovable or unfounded. Close to 22% fell outside the Law Society's jurisdiction.

In 2001 the Professional Conduct Department continued work on

alternative forms of complaint resolution. The intent was to improve efficiency, increase the satisfaction of lawyers and complainants and spend less investigative time on minor matters. This allows for greater focus on the most serious and complex complaints, including those involving the mishandling of trust funds.

In 2001 over 13% of complaints were resolved or reconciled, sometimes with the assistance of Law Society staff.

Telephone complaint resolution is an approach often favoured by complainants and is considered for such matters as unpaid debts, return of files, general dissatisfaction, simple delay and rudeness. Another option is to offer lawyers and clients a voluntary fee mediation program when fees are at issue.

In 2001 1.6% of complaints were referred to the Practice Standards Committee and 9% to the Discipline

Committee for further consideration. A referral to the Discipline Committee may result in further investigation, such as a trust audit, or in such disciplinary action as a letter to the lawyer from the Committee chair, a conduct review before a Bencher and another senior practitioner, or a citation for a formal hearing before a panel.

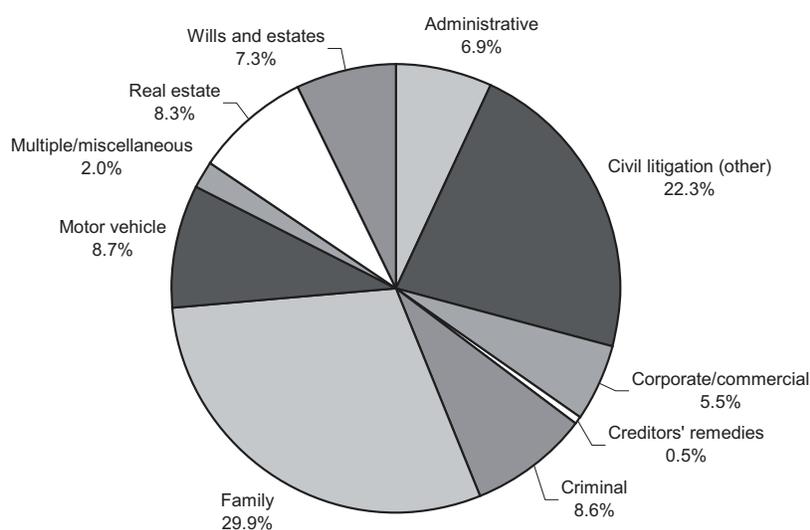
A complainant who is unhappy with a staff decision to take no further action on a complaint can, in some circumstances, request a review before the Complainants' Review Committee, which is chaired by a Lay Bencher. A review of procedural fairness by the office of the provincial Ombudsman is also an option.

The Law Society complaints process is confidential, and the Society reports out only to the complainant and lawyer. This ensures the integrity of an investigation, fairness to the lawyer's reputation and privacy of the complainant. If, however, a complaint is already known to the public, such as through media reports, the Society may comment publicly on the status of the complaint.

When there is enough evidence of misconduct to merit a formal discipline hearing, the hearing is open to the public, and both the circumstances of the misconduct and results of any discipline action are also public. The Law Society posts a list of upcoming hearings on its website and publishes discipline news releases and discipline summaries to the profession.

In 2001 the Law Society invited lawyers to volunteer for discipline defence work. The intent of this initiative was to help ensure the widest availability of counsel throughout BC who can offer representation at a hearing or conduct review, or provide

2001 complaint files by area of practice



continued on page 15

Disposition of complaints and public enquiries closed in 2001

	# of files	% of all files
Reconciled/resolved ¹	222	13.4%
Minor misconduct	62	3.7%
Minor error	59	3.6%
Referred to Discipline Committee	149	9.0%
Referred to Practice Standards Committee	26	1.6%
Misconduct not established after investigation ²	778	47.0%
Outside Law Society jurisdiction: complainant advised of possible civil remedies ³	<u>359</u>	21.7%
Total	<u>1,655</u>	

Note 1: Over 13% of all complaints were reconciled or resolved between the lawyer and client, sometimes with Law Society assistance such as through telephone complaint reconciliation. When there was minor misconduct or a minor error, this was often acknowledged by the lawyer and the acknowledgement conveyed to the client, without need for a discipline referral. 10.6% of complaints were sufficiently serious to warrant a referral to either the Discipline or Practice Standards Committee.

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

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

Actions taken by Discipline Committee

	1999	2000	2001
Citations	35	28	33
Admonishments from Discipline chair	38	26	17
Conduct reviews	73	70	42
Audits	<u>11</u>	<u>11</u>	<u>7</u>
Total	<u>157</u>	<u>135</u>	<u>99</u>

Note: For Practice Standards Committee statistics, see page 11.

Disposition of citations

	1999	2000	2001
Admissions of guilt (Rule 4-21)	9	1	6
Resignations	4	–	–
Disbarments	4	–	2
Suspensions	9	3	7
Fines	7	3	5
Reprimands	7	7	5
Citation rescissions by Discipline Committee*	12	11	8
Citation dismissals by hearing panels	<u>3</u>	<u>1</u>	<u>3</u>
Total citations completed	<u>55</u>	<u>26</u>	<u>36</u>

* May include matters referred for conduct review.

Disposition of 2001 reviews by Complainants' Review Committee

No further action	106
Complaint withdrawn	1
Referred to Practice Standards Committee	1
Referred to Discipline Committee	<u>4</u>
Total	<u>112</u>

Note: A complainant who is dissatisfied with the staff's disposition of a complaint may ask the Complainants' Review Committee, which is chaired by a Lay Benchler, to reconsider the disposition. The Committee could find no grounds for further action on 95% of 112 matters completed.

Year in review



advice to lawyers who are subject to a complaint. Under this program, the list of lawyers (and summaries of their practice experience) is given to any lawyer facing a citation, or otherwise, on request. The Society does not screen or recommend counsel on the list or become involved in any fee arrangements. In each case, it is entirely up to a lawyer who is consulted and the lawyer who seeks representation on whether they wish to form a lawyer-client relationship.

However, as the service is intended to help lawyers facing discipline proceedings who are sometimes experiencing financial difficulty, the Society has asked that lawyers joining the list indicate their willingness to act on a *pro bono* or reduced-fee basis.

Equity and diversity

Lawyers with Disabilities: Identifying Barriers to Equality was published to

the profession in early 2001. This report of the Disability Research Working Group, chaired by Halldor Bjarnason, brings to light discrimination, prejudice and access barriers encountered in the practice of law by lawyers with disabilities.

In focus group research, lawyers flagged discriminatory practices that have prevented the career advancement of lawyers with disabilities or resulted in overwork, burn-out and failure, both in private firms and government departments. The study also re-

vealed a tendency for lawyers to hide their disabilities since disclosure often leads to discrimination in employment. More than half of the research participants spoke of loss of employment, marginalization into solo practice or early retirement.

Presenting key findings to the Benchers at the end of 2000, Mr. Bjarnason pointed out that the study was unique and will be watched with interest by other Canadian law societies. The next phase of work begins in 2002 with a series of policy forums to address the institutional barriers identified in the first phase of study.

During the year, the Benchers also made a commitment to help BC Aboriginal law students and lawyers overcome barriers in legal education and the practice of law. Key components of this plan include:

- an admission outreach program (coordinated with the law schools and other bodies) to help members of the Aboriginal community and other historically disadvantaged groups to enter law school;

- assistance to Aboriginal students in finding the financial resources necessary to attend law school preparatory programs;
- a Law Society bursary to promote the expansion of Aboriginal material and course components in BC law schools;
- the incorporation of Aboriginal legal issues and anti-discrimination components into PLTC.

This plan caps off five years of study, extensive consultation, three reports and a series of recommendations by the Aboriginal Law Graduates Working Group, chaired by Prof. Gerry Ferguson. Certain other issues are coming under consideration in the context of admission reform.

Both the Aboriginal and disability studies were shepherded by the Equity and Diversity Committee, chaired by Bencher Anna Fung, QC. The Committee is mandated to assist the Benchers on diversity issues, including multiculturalism, gender equality, disability and sexual orientation.

Over the past several years, the Committee has worked to ensure that equity principles have been reflected in the Benchers' governance policies. In late 2001 these principles were formally extended to Law Society regulation through an acknowledgement that a Bencher conducting a proceeding must take into account the principles of equity, diversity, accessibility and inclusiveness.

Unauthorized practice

Under the *Legal Profession Act*, the Law Society is responsible, not only for setting and upholding regulatory standards for lawyers, but for ensuring that unqualified people do not illegally offer legal services or misrepresent themselves as lawyers, which can put the public at risk.

The Society accordingly investigates

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

Through the work of the Unauthorized Practice Committee, chaired by Gerald Kambeitz, QC, the Law Society obtained 24 undertakings from non-lawyers to refrain from unauthorized practice in 2001, as well as two consent injunctions and one other injunction. The matters ranged from divorce and child support applications, to wills and estates work, to incorporations, to representation before the WCB and the Small Claims Court. Several of these matters involved former lawyers.

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

The final word on the status of lay immigration consultants came in 2001 with a decision from the Supreme Court of Canada. In October the Court held that the federal *Immigration Act* provisions allowing non-lawyer immigration consultants to appear before the Adjudication and Refugee Divisions of the Immigration and Refugee Board, and to provide related services for a fee, are paramount to the unauthorized practice provisions of the provincial *Legal Profession Act*: *The Law Society of British Columbia v. Mangat, Westcoast Immigration Consultants Ltd. and Jill Sparling* 2001 SCC 67.

In dismissing the Law Society's appeal of a judgment of the BC Court of

Appeal, the Supreme Court of Canada found that the *Immigration Act* grants certain rights to aliens in the immigration administrative process. These include the right to be represented in proceedings before the Adjudication and the Refugee Divisions of the Immigration and Refugee Board, by either barristers or solicitors or "other counsel" (which extends to non-lawyers) for a fee. The provisions further allow clients to obtain from those "counsel" documents for use in the proceedings and advice on matters relevant to their case prior to the proceedings.

The Court found a conflict between the federal *Immigration Act* and BC's *Legal Profession Act* since the *Immigration Act* authorizes non-lawyers to appear, whereas the *Legal Profession Act* prohibits them from doing so. The court found that dual compliance with both statutes was impossible without frustrating Parliament's purpose, and the *Immigration Act* provisions accordingly prevailed under the doctrine of federal paramountcy. Accordingly, the unauthorized practice provisions of the *Legal Profession Act* are constitutionally inoperative to non-lawyers acting within the scope provided by the *Immigration Act*. The Court noted, however, that other services related to immigration were not considered in this case.

The Law Society has urged the federal government to take steps to protect the public against the long-recognized risks of unregulated immigration consultants in wake of the decision.

The many policy issues relating to paralegal practice in BC, with a focus on a more effective use of supervised paralegals, have been taken up by a special task force: see page 5.

Lawyers Insurance Fund

To protect the public as consumers of legal services, the Law Society

requires that all lawyers in private practice have liability insurance for legal malpractice providing coverage of up to \$1 million per error and \$2 million annually.

In the Fall of 2001 the Benchers decided that the Lawyers Insurance Fund should offer a new category of coverage for law firms, for an additional fee and on an optional basis. This coverage protects innocent partners in law firms who may face claims that are otherwise uninsured because the business interests of another lawyer in the firm trigger the "business exclusion" clause in the mandatory liability insurance policy. (The business exclusion clause excludes from coverage a claim by, against, arising out of or in connection with any organization in which the lawyer, his or her family or law firm partners or associates had effective management or control or a greater than 10% ownership interest at the time of the error: see section 6.2 of the policy.)

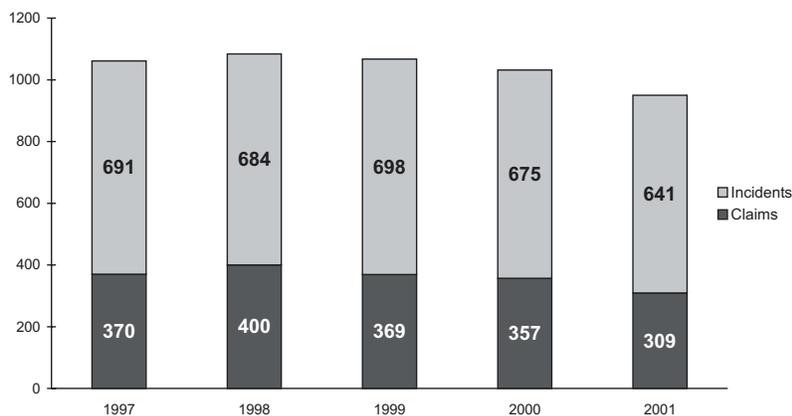
The new optional coverage offers greater protection to partners in firms that choose to purchase it, as well as to the public. The Benchers, however, decided against making the additional coverage mandatory, as it would be of no value to some lawyers, in particular sole practitioners, and would increase insurance fees for all lawyers in the program.

The Lawyers Insurance Fund finished 2001 in a sound financial position. For detailed financial information, see the financial statements on pages 27 to 29 and also "Finances" on page 18.

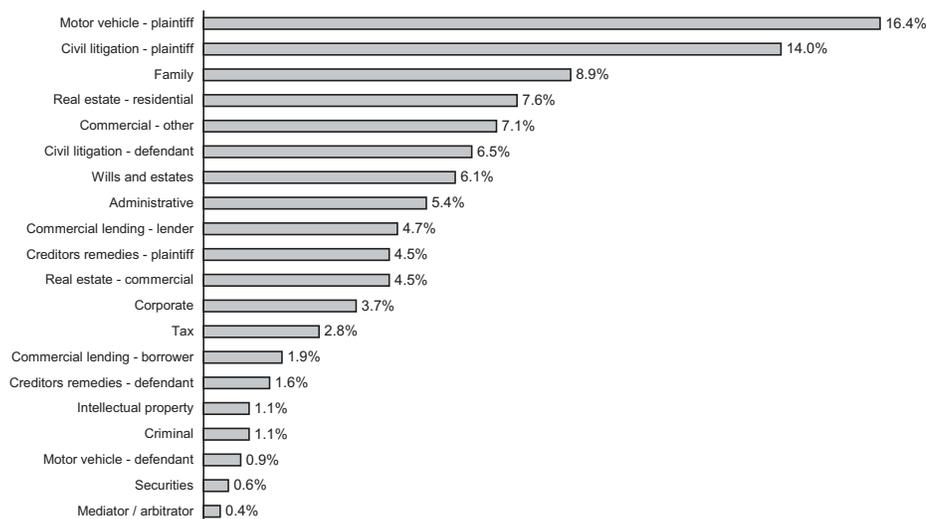
The stable loss experience and effective management of the insurance program has translated into favourable premiums for many years. The base premium in fact dropped in 2000 and has not since increased. As always, the continued success of the program remains contingent on a stable loss experience. No amount of

Year in review

Claim and incident reports 1997 – 2001



Insurance reports by area of law – 2001



effective management can alter the effect of an increasing number of claims or increased damage awards.

The percentage of insurance reports received from BC lawyers in 2001, broken down by area of practice, are set out in the chart *Insurance reports by area of law – 2001*. The full picture is, of course complex, especially when

reports are viewed alongside overall time spent by lawyers in each of these practice areas and alongside the dollar value of insurance claims actually paid or reserved in these areas. For example, all litigation (including motor vehicle) accounted for 33% of all BC lawyer practice in 2001. It gave rise to a proportionately higher

percentage of all claim reports (44%), but only 20% of dollars paid or reserved. By comparison, corporate-commercial practice, excluding tax and securities, accounted for 20% of BC lawyer practice. It generated 22% of all reports, but resulted in 40% of dollars paid and reserved.

What are the leading causes of loss to the program? Insufficient review by lawyers and poor client communications headed the list in 2001, long-standing risks against which lawyers must remain vigilant.

The number of lawyers reporting claims and incidents (which may or may not become actual claims) has remained very consistent over the last five years: see *Claim and incident reports 1997 – 2001*. BC lawyers understand their obligation to report potential claims early, and this has allowed for better management of the program. While many reports will not materialize into claims, early reporting can help ensure this. Notably in 2001, Lawyers Insurance Fund claims counsel were instrumental in successfully repairing problems in more than one in 10 reports made by lawyers.

Although it is never a happy experience for a lawyer to face a claim or potential claim, those who do so have expressed satisfaction with the insurance program. Hundreds of service evaluation surveys were returned by insured lawyers in 2001, and the results compiled. Over 90% of respondents gave high satisfaction ratings (4 or 5 on a scale of 5) on several aspects of the program: claims handling (92%), outcome of the matter (91%), work of Lawyers Insurance Fund claims counsel (96%) and work of defence counsel (97%).

The profession as a whole can have confidence in the integrity of the Lawyers Insurance Fund and in the Fund's sound financial position to compensate the public for lawyers'

errors and omissions and provide reasonable protection for lawyers from malpractice.

Special Compensation Fund

The Special Compensation Fund is a public protection fund, paid for entirely by BC lawyers, to compensate people for loss suffered through theft by a lawyer acting in that capacity. The Fund is one way lawyers demonstrate their collective commitment to the public and illustrates why, despite the deplorable actions of an occasional dishonest lawyer, members of the public can have confidence in the integrity of the profession as a whole.

Whenever there is evidence of misappropriation, the Law Society has important measures at its disposal. It can order a forensic audit and investigation of the law practice, order an interim suspension of the lawyer if the public is at risk, secure the law practice, alert clients and initiate disciplinary proceedings.

A review of claims paid by the Fund over the past five years shows that the payment history varies year to year, reflecting the unpredictable nature of misappropriation: see *Special Compensation Fund claims paid (1997 – 2001)*. For financial information, see financial statements on pages 25 to 26 and “Finances” below.

Although the number of paid claims and the number of lawyers causing those claims in 2001 was comparable to other years, the dollar amount of the claims paid was over \$1 million, much higher than in the previous four years combined. These payments resulted from misappropriations by former lawyers **Bruce Ross Pomeroy** of Victoria, **James Edwin Marks** of Nanaimo, **William John Graham** of Vernon and **Michael Patrick Custance** of Gibsons.

It is an unfortunate reality that the actions of a few dishonest lawyers

Special Compensation Fund claims paid (1997 – 2001)

Year	\$ Paid	No. of paid claims involved	No. of lawyers
1997	46,595	5	4
1998	45,879	5	4
1999	45,692	2	2
2000	363,022	10	5
2001	1,035,959	10	4

Over the past five years, the Special Compensation Fund paid out \$1,537,147 on 31 claims. These claims were caused by 15 lawyers — out of over 6,800 lawyers in private practice (the claims against several of these lawyers were paid out over the course of more than one year).

can hurt the reputation of many, underscoring the importance of the protection offered by the Fund.

The Fund is not available for claims of lawyer negligence or for fee disputes, and this fact is carefully explained to potential claimants.

A claimant to the Fund may, at the discretion of the Special Compensation Fund Committee, be asked to obtain a civil judgment against a lawyer as a way of substantiating an allegation of theft. When disciplinary proceedings are underway against a lawyer and misappropriation is alleged, the Committee will generally await the outcome of those proceedings, but it retains a discretion to decide a claim in advance. In doing so, it follows certain early consideration guidelines and takes into account such factors as clear evidence of defalcation and hardship to the claimant.

The circumstances of those few lawyers who steal are complex and difficult. Prevention and detection, such as through trust assurance programs, remain important, as well as providing financial compensation.

Finances

BC lawyers pay the cost of Law Society operations through annual assessments and other fees.

The Society carries out its duties through three funds:

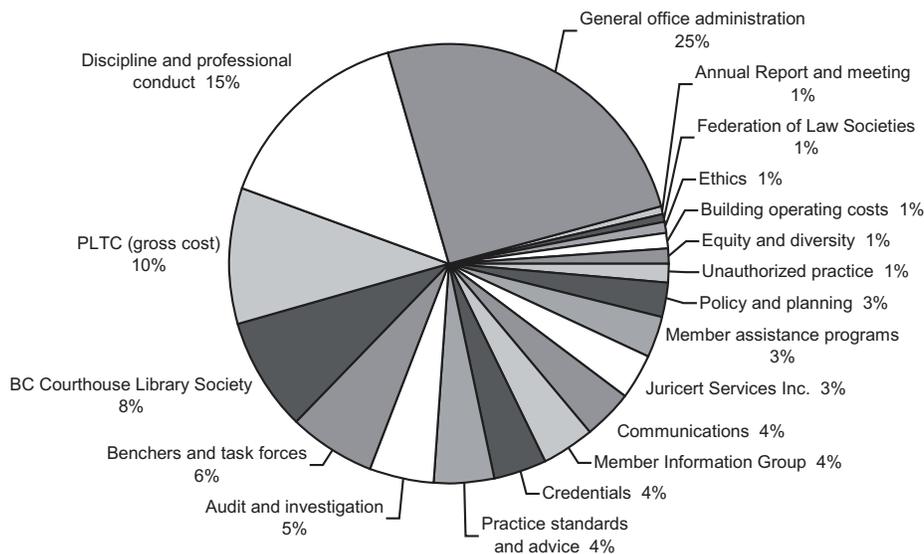
- General Fund — the primary source of funding for Society regulation, programs and services;
- Lawyers Insurance Fund — a fund to provide errors and omissions insurance coverage for lawyers for professional services;
- Special Compensation Fund — a fund to reimburse those who suffer a loss as a result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

The 2001 audited financial statements for these funds are set out on pages 20 to 29 of this report. These statements reflect the not-for-profit organization presentation and disclosure standards of the Canadian Institute of Chartered Accountants.

All funds are financed and accounted for separately. The Lawyers Insurance Fund and Special Compensation Fund each make a proportionate

Year in review

2001 General Fund expenditures



This chart shows gross program expenditures as a percentage of total 2001 General Fund expenditures, other than building operations, which are shown on a net basis.

contribution to the General Fund for Law Society facilities, administrative services and some defined program expenses. These expenses are incurred by the General Fund and recovered from the other two Funds.

The General Fund receives the majority of its revenue from the annual practice fee paid by practising lawyers. The pie chart *2001 General Fund expenditures* shows the gross program costs of the main programs as a percentage of the General Fund's total cost, including the related space and staffing costs.

The 2001 fee increase allowed the General Fund budget to be maintained, and a small surplus to be

realized, even in the face of some unexpected costs and increased program costs. The Law Society also received funding from the Law Foundation to support the creation of an online library resource through CanLII and a study on reform of the Society's admission program by the Admission Program Task Force.

The Law Society spent over \$300,000 in its challenge of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, with an additional amount set aside in 2002. The Law Society also continued its commitment to working with the Federation of Law Societies to improve lawyer mobility across Canada and with the three other western law societies on

such projects as mobility, the harmonization of trust rules, special compensation programs and admission programs. With changes in priorities dictating adjustments in allocation of resources, some program costs increased while others decreased.

Law Society building costs were \$252,000 lower than in 2000, due mainly to decreased internal financing costs. As noted in the financial statements, the General Fund pays the Lawyers Insurance Fund interest on the loan to finance the Law Society building purchase.

As a result of increased revenues and maintaining program expenses, there was a General Fund budget surplus of \$108,000, leaving the Fund with a reserve of just over \$650,000.

Despite increasing a commitment to current practice issues and fulfilling its primary regulatory responsibilities, the Law Society continued to charge a practice fee that compared favourably with other Canadian law societies.

The Special Compensation Fund reserve decreased by \$1,133,000 to \$7.2 million. Custodian expenses were the primary area in which costs were higher than expected. Claim costs were also up significantly in 2001, and there remained a significant claims inventory at year-end.

As of December 31, 2001, the Lawyers Insurance Fund had assets of over \$117.5 million and liabilities of \$104.7 million, leaving a fund reserve (unrestricted net assets) of \$12.8 million (up \$1.07 million from 2000). A reduction in this Fund's unrestricted net assets had been planned; however an actuarially determined reduction in the Fund's claim reserves resulted in the increase in the reserve.

All funds of the Society are financially sound. The Law Society expects continued stability in program operations, fees and assessments.

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

AUDITORS' REPORT

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

We have audited the statements of financial position of **The Law Society of British Columbia – General Fund, Special Compensation Fund and Lawyers Insurance Fund** as at December 31, 2001 and, for each of these Funds, the statements of revenue and expense, changes in net assets and cash flows for the year then ended. These financial statements are the responsibility of the Funds' management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

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

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Funds as at December 31, 2001 and the results of their operations and their cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

PricewaterhouseCoopers LLP

Vancouver, B.C.
March 28, 2002

Chartered Accountants

Consolidated Financial Statements

For the year ended December 31, 2001

CONSOLIDATED STATEMENT OF FINANCIAL POSITION as at December 31, 2001

CONSOLIDATED STATEMENT OF CHANGES IN NET ASSETS

	2001	2000			
	\$	\$	2001		2000
Assets					
Current assets					
Cash and cash equivalents	1,052,749	1,442,570			
Unclaimed trust funds	464,077	416,112			
Accounts receivable and prepaid expenses	453,508	327,425			
B.C. Courthouse Library Fund (note 2)	430,850	781,092			
Due from Lawyers Insurance Fund (note 6)	9,571,315	3,221,024			
Due from Special Compensation Fund (note 6)	<u>766,376</u>	<u>513,607</u>			
	12,738,875	6,701,830			
Property, plant and equipment					
Cambie Street property – net (note 3)	13,444,727	14,070,956			
Other – net (note 3)	<u>1,178,277</u>	<u>1,106,221</u>			
	<u>27,361,879</u>	<u>21,879,007</u>			
Liabilities					
Current liabilities					
Accounts payable and accrued liabilities	6,755,923	3,877,183			
Liability for unclaimed trust funds	472,382	416,112			
Current portion of building loan payable (note 5)	500,000	500,000			
Deferred revenue	8,849,210	5,644,125			
B.C. Courthouse Library Grant (note 2)	430,850	781,092			
Deposits	<u>96,754</u>	<u>12,500</u>			
	17,105,119	11,231,012			
Long-term debt					
Building loan payable (note 5)	<u>9,600,000</u>	<u>10,100,000</u>			
	<u>26,705,119</u>	<u>21,331,012</u>			
Net assets					
Invested in property, plant and equipment – net	4,523,003	4,577,177			
Unrestricted	<u>(3,866,243)</u>	<u>(4,029,182)</u>			
	<u>656,760</u>	<u>547,995</u>			
	<u>27,361,879</u>	<u>21,879,007</u>			

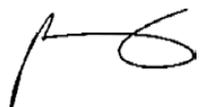
	2001	2000		
	\$	\$	Unrestricted	Total
			\$	\$
Invested in property, plant and equipment – net of associated debt	4,577,177	(4,029,182)	547,995	917,605
Net assets – beginning of year	4,577,177	(4,029,182)	547,995	917,605
Net excess (deficiency) of revenue over expense for the year	(998,894)	1,107,659	108,765	(369,610)
Repayment of associated debt	500,000	(500,000)	–	–
Purchase of property, plant and equipment	<u>444,720</u>	<u>(444,720)</u>	–	–
Net assets – end of year	<u>4,523,003</u>	<u>(3,866,243)</u>	<u>656,760</u>	<u>547,995</u>

Commitments (note 7)

Approved by



President



Chair of Audit Committee

Consolidated Financial Statements

For the year ended December 31, 2001

**CONSOLIDATED STATEMENT OF
REVENUE AND EXPENSE**

	2001 \$	2000 \$
Revenue		
Practice fees	9,281,315	8,206,454
Enrolment fees	800,875	746,670
Application fees	313,303	348,277
Fines and penalties	213,929	170,620
Interest and other income	<u>469,729</u>	<u>191,547</u>
	<u>11,079,151</u>	<u>9,663,568</u>
Expense		
Amortization of other capital assets	337,018	371,984
Annual report and meeting	83,444	48,150
Audit and investigation	685,235	545,254
Benchers and other committee meetings	899,043	668,397
British Columbia Courthouse Library Society	1,180,000	1,050,000
Communications and publications	528,729	520,002
Credentials	546,610	280,827
Discipline and complaints	2,141,660	2,315,871
Equity and diversity	176,667	154,394
Ethics	109,837	130,398
Federation of Law Societies' contribution	87,283	120,283
General office administration	2,637,653	2,432,117
Member information group	535,462	507,895
Membership assistance programs	438,596	303,213
Non-program legal	578,489	262,417
Policy and planning	339,621	338,096
Practice advice	441,041	436,458
Practice standards	179,191	218,425
Professional Legal Training Course	1,396,530	1,408,765
Unauthorized practice	<u>186,355</u>	<u>237,157</u>
	13,508,464	12,350,103
Costs recovered from Special Compensation and Lawyers Insurance Funds		
Co-sponsored program costs	(1,737,887)	(1,279,017)
Administrative	<u>(1,417,878)</u>	<u>(1,541,891)</u>
	<u>10,352,699</u>	<u>9,529,195</u>
Excess of revenue over expense before the following	726,452	134,373
Juricert	(470,816)	(105,222)
Cambie Street property operating costs – net (note 4)	<u>(146,871)</u>	<u>(398,761)</u>
Net excess (deficiency) of revenue over expense for the year	<u>108,765</u>	<u>(369,610)</u>

**CONSOLIDATED STATEMENT OF
CASH FLOWS**

	2001 \$	2000 \$
Cash flows from operating activities		
Net excess (deficiency) of revenue over expense for the year	108,765	(369,610)
Items not affecting cash		
Amortization of Cambie Street building and tenant improvements	661,046	680,116
Amortization of other capital assets	<u>337,018</u>	<u>371,984</u>
	1,106,829	682,490
Decrease (increase) in current assets		
Unclaimed trust funds	(47,965)	303,103
Accounts receivable and prepaid expenses	(126,083)	(112,060)
B.C. Courthouse Library Fund	350,242	25,369
Due from Lawyers Insurance Fund	(6,349,462)	(3,221,024)
Due from Special Compensation Fund	(252,769)	(482,938)
Increase (decrease) in current liabilities		
Accounts payable and accrued liabilities	2,878,740	(961,099)
Liability for unclaimed trust funds	56,270	(303,103)
Deferred revenue	3,205,085	(1,017,545)
B.C. Courthouse Library Grant	(350,242)	(25,369)
Due to Lawyers Insurance Fund	–	(432,429)
Deposits	<u>84,254</u>	<u>1,000</u>
	554,899	(5,543,605)
Cash flows from financing activities		
Decrease in long-term debt – net	(500,000)	(500,000)
Cash flows from investing activities		
Property, plant and equipment additions – net	<u>(444,720)</u>	<u>(414,872)</u>
(Decrease) in cash and cash equivalents	(389,821)	(6,458,477)
Cash and cash equivalents – beginning of year	<u>1,442,570</u>	<u>7,901,047</u>
Cash and cash equivalents – end of year	<u>1,052,749</u>	<u>1,442,570</u>
Represented by		
Cash	1,052,749	708,107
Short-term investments	–	<u>734,463</u>
	<u>1,052,749</u>	<u>1,442,570</u>

The Law Society of British Columbia — GENERAL FUND
Consolidated Financial Statements

For the year ended December 31, 2001

**NOTES TO CONSOLIDATED
 FINANCIAL STATEMENTS**

1. Nature of operations and basis of presentation

Description of the Fund

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

The Society, as the initial shareholder, incorporated a company called Juricert Services Inc. (Juricert) in September 1999 for the purposes of establishing a process of electronic authentication of lawyers. Juricert commenced initial operations in 2000. As at December 31, 2001, the Society remained the sole shareholder of Juricert.

Basis of presentation

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

2. Significant accounting policies

Allocated administrative expenses

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

Allocated rental revenue

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

Amortization

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

Buildings	2-1/2% per annum
Computer hardware	20% per annum
Computer software	10% per annum
Furniture and fixtures	10% per annum
Leasehold improvements	10% per annum

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

During fiscal 2001, the estimated useful life for computer software was changed from 5 years to 10 years.

B.C. Courthouse Library Fund

The Society administers funds held on behalf of the B.C. Courthouse Library. Such funds are held in trust and the use of the funds is not recorded in the statement of revenue and expense of the Fund.

Cash and cash equivalents

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

Revenue recognition

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

All other revenues are recognized when receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

Unclaimed trust funds

The Fund recognizes a liability for unclaimed trust funds on the statement of financial position. If these funds are claimed, the owner of the trust fund balance is entitled to the principal balance plus interest at prime rate minus 2%. Due to the historically low collection rates on these balances, the Fund does not accrue for any interest owing on the trust fund amounts held and recognizes income earned from the unclaimed trust fund investments in the statement of revenue and expense. Unclaimed funds outstanding for more than five years are transferred to the Law Foundation.

Use of estimates

The preparation of financial statements in conformity with Canadian generally accepted accounting principles requires management to make estimates and assumptions which affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses for the period reported. Actual results could differ from those estimates.

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

Cambie Street property

	2001		2000	
	Cost	Accumulated amortization	Net	Net
	\$	\$	\$	\$
Land	4,189,450	–	4,189,450	4,189,450
Buildings	11,271,020	2,733,305	8,537,715	8,821,007
Leasehold improvements	3,097,615	2,512,037	585,578	893,693
Tenant improvements	962,828	830,844	131,984	166,806
	<u>19,520,913</u>	<u>6,076,186</u>	<u>13,444,727</u>	<u>14,070,956</u>

(continued on page 24)

The Law Society of British Columbia — GENERAL FUND
Financial Statements

For the year ended December 31, 2001

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

Other property, plant and equipment

	2001		2000	
	Accumulated		Net	Net
	Cost	amortization		
\$	\$	\$	\$	
Furniture and fixtures	1,586,958	1,203,898	383,060	459,533
Computer hardware	984,467	749,197	235,270	223,256
Computer software	1,191,768	631,822	559,946	423,431
Law libraries, at nominal value	<u>1</u>	<u>–</u>	<u>1</u>	<u>1</u>
	<u>3,763,194</u>	<u>2,584,917</u>	<u>1,178,277</u>	<u>1,106,221</u>

4. Cambie Street property operating costs – net

	2001	2000
	\$	\$
Rental revenue	431,926	418,667
Allocated rental revenue	<u>1,033,277</u>	<u>995,753</u>
	<u>1,465,203</u>	<u>1,414,420</u>
Expense		
Amortization	661,046	680,116
Insurance	28,254	29,354
Net loan interest	453,370	653,027
Property management salaries	146,158	142,610
Property taxes	261,238	267,331
Repairs and maintenance	232,300	218,796
Utilities	119,067	117,371
Recovery from tenants	<u>(289,359)</u>	<u>(295,424)</u>
	<u>1,612,074</u>	<u>1,813,181</u>
Net operating costs	<u>(146,871)</u>	<u>(398,761)</u>

5. Building loan payable

In 1992, the Benchers authorized the lending of monies from the Lawyers Insurance Fund to fund the capital development of the Society's buildings at 839 and 845 Cambie Street, Vancouver, B.C. The

loan has no fixed repayment terms and bears interest calculated monthly at a rate equal to the stated monthly yield to maturity earned on the Lawyers Insurance Fund bond investment portfolio. It is the intention of the Fund to repay a minimum of \$500,000 on the principal each year. During 2001, principal of \$500,000 (2000 – \$500,000) was repaid.

	2001	2000
Weighted average rate of interest	<u>5.00%</u>	<u>6.00%</u>

6. Interfund transactions

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

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

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

Interest paid to the Lawyers Insurance Fund totalled \$453,370 (2000 – \$653,027) after deduction of approximately \$77,584 (2000 – \$13,017) of interest revenue received from Fund cash balances held by the Lawyers Insurance Fund during the year.

Other interfund transactions are disclosed elsewhere in these financial statements.

7. Commitments

Juricert entered into an agreement with a systems developer that provides payment based on a percentage of gross revenues earned by Juricert. Cumulative payments totalling \$300,000 (minimum guaranteed payment) must be paid to the systems developer by January 2005. The Society has provided a guarantee to the systems developer to make up any shortfall in the minimum guaranteed payment.

Financial Statements

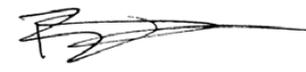
For the year ended December 31, 2001

STATEMENT OF FINANCIAL POSITION as at December 31, 2001

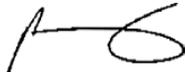
	2001 \$	2000 \$
Assets		
Current assets		
Cash and cash equivalents	940,534	611,005
Accrued interest receivable	<u>63,512</u>	<u>74,871</u>
	1,004,046	685,876
Investments (note 2)	<u>8,923,587</u>	<u>9,317,295</u>
	<u>9,927,633</u>	<u>10,003,171</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	10,000	144,874
Deferred revenue	1,947,000	1,007,600
Due to General Fund (note 3)	<u>766,376</u>	<u>513,607</u>
	2,723,376	1,666,081
Net assets		
Unrestricted net assets	<u>7,204,257</u>	<u>8,337,090</u>
	<u>9,927,633</u>	<u>10,003,171</u>

Claims (note 4)

Approved by



President



Chair of Audit Committee

* * *

STATEMENT OF CHANGES IN NET ASSETS

	2001 \$	2000 \$
Unrestricted net assets – beginning of year	8,337,090	8,892,588
Deficiency of revenue over expense for the year	<u>(1,132,833)</u>	<u>(555,498)</u>
Unrestricted net assets – end of year	<u>7,204,257</u>	<u>8,337,090</u>

* * *

STATEMENT OF REVENUE AND EXPENSE

	2001 \$	2000 \$
Revenue		
Annual assessments	1,797,200	1,325,157
Investment and interest income	<u>598,624</u>	<u>601,778</u>
	<u>2,395,824</u>	<u>1,926,935</u>

(continued above)

STATEMENT OF REVENUE AND EXPENSE (continued)

Expense		
Allocated office rent	38,340	18,132
Audit	7,809	9,996
Claims and costs	1,035,958	363,022
Contribution to costs of General Fund		
Administrative	518,661	467,305
Co-sponsored program costs	768,851	630,318
Counsel costs	76,289	38,511
Custodians' fees, net of recoveries	336,880	398,672
Insurance premium	146,522	149,565
Investment brokers' fee	16,027	15,770
Miscellaneous	74,354	65,957
Salaries, wages and benefits	341,634	214,317
Spot audits and related costs	<u>167,332</u>	<u>110,868</u>
	<u>3,528,657</u>	<u>2,482,433</u>
Deficiency of revenue over expense for the year	<u>(1,132,833)</u>	<u>(555,498)</u>

* * *

STATEMENT OF CASH FLOWS

	2001 \$	2000 \$
Cash flows from operating activities		
Deficiency of revenue over expense for the year	(1,132,833)	(555,498)
Item not affecting cash – amortization of premium on bonds	<u>55,215</u>	<u>62,108</u>
	(1,077,618)	(493,390)
Decrease in current assets		
Accrued interest receivable	11,359	18,664
Increase (decrease) in current liabilities		
Accounts payable and accrued liabilities	(134,874)	89,682
Deferred revenue	939,400	(18,250)
Due to General Fund	<u>252,769</u>	<u>482,939</u>
	(8,964)	79,645
Cash flows from investing activities		
Sale (purchase) of investments – net	<u>338,493</u>	<u>(189,889)</u>
Increase (decrease) in cash and cash equivalents	329,529	(110,244)
Cash and cash equivalents – beginning of year	<u>611,005</u>	<u>721,249</u>
Cash and cash equivalents – end of year	<u>940,534</u>	<u>611,005</u>

Represented by

Cash	940,534	11,005
Short-term investments	<u>–</u>	<u>600,000</u>
	<u>940,534</u>	<u>611,005</u>

NOTES TO FINANCIAL STATEMENTS

1. Significant accounting policies and description of the Fund

Description of the Fund

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

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

Allocated administrative expenses

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

Cash and cash equivalents

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

Investments

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

Revenue recognition

The Society follows the deferral method of accounting for annual assessments. Assessments are billed and received in advance on a calendar-year basis. Accordingly, assessments for the next fiscal year received prior to December 31 have been deferred for financial reporting purposes and will be recognized as revenue in the next calendar year.

All other revenues are recognized when receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

Use of estimates

The preparation of financial statements in conformity with

Canadian generally accepted accounting principles requires management to make estimates and assumptions which affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses for the period reported. Actual results could differ from those estimates.

2. Investments

	2001 \$	2000 \$
Investments – at amortized cost (market value: \$9,273,613; 2000 – \$9,577,481)	<u>8,923,587</u>	<u>9,317,295</u>

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

The effective yield to maturity on the total portfolio is 4.16% (2000 – 5.52%).

3. Interfund balances

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

4. Special Compensation Fund claims

Pursuant to section 31(6) of the *Legal Profession Act*, the payment of Fund claims is at the discretion of the Special Compensation Fund Committee as delegated by the Benchers. No provision has been made in these financial statements for claims not resolved by the Benchers. As at December 31, 2001, 272 claims or potential claims (2000 – 119 claims) were known to the Benchers but not yet determined. These claims amounted to approximately \$15,338,585 (2000 – \$14,009,970). If all claims were approved for approximate payment, \$6,059,681 (2000 – \$3,619,455) would be payable by the Fund and \$9,278,904 (2000 – \$10,390,515) by the Fund's insurers. These amounts do not include an estimate for claims attributable to 2001 or prior years that have not as yet been filed.

Effective January 1, 1997, the Society implemented a policy regarding the recognition of valid claims such that where the amount claimed is greater than \$1,000,000, and there is no evidence presented to support a claim in that amount, the claim is shown at \$1,000,000. No such claims in excess of \$1,000,000 were filed in 2001 (2000 – nil).

The Society has renewed its indemnity bond for January 1, 2002 to January 1, 2003. The bond provides that total claims attributable to the period in excess of \$2,500,000 are 100% reimbursed by a commercial insurer up to a maximum of \$15,000,000 for claims against one lawyer and in total. An annual aggregate cap has been placed on claims paid by the Fund, set at the deductible plus the limit of the purchased insurance, including co-insurance amounts. For 2001, this cap is \$17,500,000 (2000 – \$17,500,000).

Consolidated Financial Statements

For the year ended December 31, 2001

CONSOLIDATED STATEMENT OF FINANCIAL POSITION as at December 31, 2001

	2001 \$	2000 \$ (Restated)
Assets		
Cash and cash equivalents	16,594,262	9,080,798
Accounts receivable	55,038	46,201
Accrued interest receivable	481,039	529,006
Income tax recoverable	22,700	14,433
Reinsurers' share of provision for claims	5,346,000	10,505,000
Due from members	1,899,444	2,362,201
General Fund building loan (note 4)	10,100,000	10,600,000
Investments (note 2)	<u>83,049,864</u>	<u>78,081,666</u>
	<u>117,548,347</u>	<u>111,219,305</u>

Liabilities

Accounts payable and accrued liabilities	727,141	519,518
Deferred revenue	4,416,370	3,137,600
Due to General Fund (note 6)	9,571,315	3,221,024
Provision for claims (note 5)	82,696,248	85,094,586
Provision for ULAE (note 5)	<u>7,325,000</u>	<u>7,508,000</u>
	104,736,074	99,480,728

Net assets

Unrestricted net assets	<u>12,812,273</u>	<u>11,738,577</u>
	<u>117,548,347</u>	<u>111,219,305</u>

Approved by



President



Chair of Audit Committee

CONSOLIDATED STATEMENT OF CHANGES IN NET ASSETS

	2001 \$	2000 \$ (Restated)
Unrestricted net assets – beginning of year		
As previously reported	11,738,577	30,117,322
Change in accounting for ULAE (note 1)	–	(6,700,000)
Excess (deficiency) of revenue over expense for the year	<u>1,073,696</u>	<u>(11,678,745)</u>
Unrestricted net assets – end of year	<u>12,812,273</u>	<u>11,738,577</u>

* * *

CONSOLIDATED STATEMENT OF REVENUE AND EXPENSE

	2001 \$	2000 \$ (Restated)
Revenue		
Annual assessments	9,253,981	9,061,102
Investment income (note 2)	5,623,492	5,445,266
Other income	<u>26,648</u>	<u>24,791</u>
	14,904,121	14,531,159
Insurance expense		
Actuary, consultant and investment broker fees	206,973	156,601
Allocated office rent	88,049	88,370
Audit	22,215	38,000
Contribution to costs of General Fund		
Administrative	902,585	1,077,906
Office	226,994	172,675
Premium taxes	9,119	9,123
Provision for settlement of claims	10,360,000	22,043,000
Provision for ULAE (note 5)	(183,000)	808,000
Salaries, wages and benefits	<u>1,245,154</u>	<u>1,165,824</u>
	12,878,089	25,559,499
Loss prevention expense		
Contribution to costs of General Fund		
Co-sponsored program costs	<u>969,036</u>	<u>648,699</u>
	13,847,125	26,208,198
Excess (deficiency) of revenue over expense before the following	1,056,996	(11,677,039)
Income tax (recoverable) payable	<u>(16,700)</u>	<u>1,706</u>
Excess (deficiency) of revenue over expense for the year	<u>1,073,696</u>	<u>(11,678,745)</u>

The Law Society of British Columbia — LAWYERS INSURANCE FUND
Consolidated Financial Statements

For the year ended December 31, 2001

**CONSOLIDATED STATEMENT
OF CASH FLOWS**

	2001 \$	2000 \$ (Restated)
Cash flows from operating activities		
Excess (deficiency) of revenue over expense for the year	1,073,696	(11,678,745)
Items not affecting cash		
Amortization of premium on bonds	720,375	733,097
Realized gain on disposal of investments	<u>(531,456)</u>	<u>(255,220)</u>
	1,262,615	(11,200,868)
Decrease (increase) in assets		
Accounts receivable	(8,837)	47,429
Accrued interest receivable	47,967	116,519
Reinsurers' share of provision for claims	5,159,000	3,312,739
Due from members	462,757	(373,584)
Due to/from General Fund	6,350,291	3,653,453
Income tax recoverable	(8,267)	(14,433)
Increase (decrease) in liabilities		
Accounts payable and accrued liabilities	207,623	(136,895)
Income taxes payable	-	(17,680)
Deferred revenue	1,278,771	(970,740)
Provision for claims	(2,398,338)	12,415,282
Provision for ULAE	<u>(183,000)</u>	<u>808,000</u>
	<u>12,170,582</u>	<u>7,639,222</u>
Cash flows from investing activities		
Purchase of investments, net	(5,157,118)	(5,129,797)
Decrease in General Fund building loan	<u>500,000</u>	<u>500,000</u>
	<u>(4,657,118)</u>	<u>(4,629,797)</u>
Increase in cash and cash equivalents	7,513,464	3,009,425
Cash and cash equivalents – beginning of year	<u>9,080,798</u>	<u>6,071,373</u>
Cash and cash equivalents – end of year	<u>16,594,262</u>	<u>9,080,798</u>
Represented by		
Cash	16,594,262	2,048,798
Short-term investments	<u>-</u>	<u>7,032,000</u>
	<u>16,594,262</u>	<u>9,080,798</u>

**NOTES TO CONSOLIDATED
FINANCIAL STATEMENTS**

1. Significant accounting policies and description of the Fund

Description of the Fund

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

Change in accounting policy for ULAE

The Society has changed its policy with respect to ULAE (note 5). These amounts, which were previously not recognized, are now recognized in these statements. The Society has restated prior year retained earnings to reflect the provision for these expenses.

Allocated administrative expenses

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

Basis of consolidation

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

Cash and cash equivalents

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

Investments

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

Reinsurance

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

Revenue recognition

The Society follows the deferral method of accounting for annual assessments. Assessments are billed and received in advance on a calendar-year basis. Accordingly, assessments for the next fiscal year received prior to December 31 have been deferred for financial reporting purposes and will be recognized as revenue in the next calendar year.

All other revenues are recognized when receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

Use of estimates

The preparation of financial statements in conformity with

Consolidated Financial Statements

For the year ended December 31, 2001

Canadian generally accepted accounting principles requires management to make estimates and assumptions which affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and revenues and expenses for the period reported. Actual results could differ from those estimates.

2. Investments

	2001	2000
	\$	\$
Investments, at book value (market value – \$85,330,225; 2000 – \$79,254,979)	<u>83,049,864</u>	<u>78,081,666</u>

Investments consist primarily of domestic government treasury bills, government bonds, high grade corporate bonds and pooled funds, generally having an average maturity of 9.76 years.

The effective yield to maturity on the total portfolio is 4.33% (2000 – 5.51%).

	2001	2000
	\$	\$
Investment income		
Cash and treasury bills	1,022,387	975,299
Bond interest	4,336,654	4,294,817
Amortization of premium on bonds	(720,375)	(733,097)
Net interfund loan interest (note 6)	453,370	653,027
Gain on sale of investments	<u>531,456</u>	<u>255,220</u>
Net investment income	<u>5,623,492</u>	<u>5,445,266</u>

3. Errors and omissions insurance claims

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

	2001	2000
	\$	\$
Deductible – member	5,000 or 10,000	5,000 or 10,000
Deductible – the Fund	<u>995,000 or 990,000</u>	<u>995,000 or 990,000</u>
Total coverage per occurrence	<u>1,000,000</u>	<u>1,000,000</u>
Annual aggregate per member	<u>2,000,000</u>	<u>2,000,000</u>

The amount of the member deductible is \$5,000 for each initial claim resulting in the payment of damages and \$10,000 for each additional claim within a three-year period resulting in the payment of damages.

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

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

4. General Fund building loan

In 1992, the Benchers authorized the lending of monies from the

Fund to fund the capital development of the Society's buildings at 839 and 845 Cambie Street, Vancouver, B.C. The loan has no fixed repayment terms and bears interest calculated monthly at a rate equal to the stated monthly yield to maturity earned on the Fund investment portfolio. It is the intention of the General Fund to repay a minimum of \$500,000 on the principal each year. During 2001, principal of \$500,000 (2000 – \$500,000) was repaid.

	2001	2000
Weighted average rate of return	<u>5.00%</u>	<u>6.00%</u>

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

The provision for claims is an actuarially determined estimate of the Fund's portion of settlement costs relating to claims incurred prior to the statement of financial position date. The provision is an estimate subject to variability, which arises because all events affecting the ultimate settlement of claims have not taken place and may not take place for some time. Variability can be caused by the receipt of additional information, changes in judicial interpretation, or significant changes in severity or frequency of claims from historical trends.

The provision for ULAE is an actuarially determined estimate of the Society's future costs relating to the administration of claims incurred up to the balance sheet date.

The provisions are based on the historical claims experience of the Fund and are reviewed annually by an independent actuary using updated information. All changes in provision estimates are expensed in the current period. Although the provisions are believed to be adequate, they are based on estimates, and the final actual loss values may vary significantly from those estimated.

6. Interfund transactions

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

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

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

Interest received by the Fund totalled \$453,370 (2000 – \$653,027) after deduction of approximately \$77,584 (2000 – \$13,017) of interest revenue paid to the General Fund on General Fund cash balances held by the Fund during the year.

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

7. Regulatory requirements

The Captive is licensed under the *Insurance (Captive Company) Act* of B.C. The regulations of this Act require the Captive to maintain certain minimum reserves. The Captive was in compliance with those regulations as at December 31, 2001.

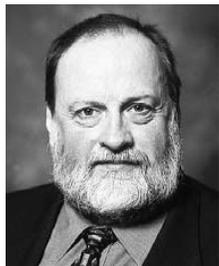
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Complainants' Review
Chair



R.C. Gibbs, QC
Credentials Chair



H.R. Berge, QC,
Discipline and Futures
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A.K. Fung, QC,
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Chair

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		Vancouver International Airport Authority	J. Thomas English, QC

¹ appointed jointly with the CBA, B.C. Branch

² appointed after consultation with the CBA, B.C. Branch

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Jean Whittow, QC
Deputy Executive Director

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