



NOVA SCOTIA
BARRISTERS' SOCIETY

ANNUAL REPORT 2005

NOVA SCOTIA BARRISTERS' SOCIETY
NOVA SCOTIA BARRISTERS' LIABILITY CLAIMS FUND

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PRESIDENT'S ANNUAL REPORT

It was a great privilege to serve as your president this last year. Like many before me, the year just seemed to start and it is over already. I did think this would be a year of consolidation. We had hoped to pass the *Legal Profession Act*, but there was no assurance that this would come before the Legislature. Indeed some of the previous years' agendas had been somewhat ambitious and I had hoped for a year of quiet and consolidation. That was not to be!

The challenges for Bar Council, and for lawyers in Nova Scotia in the past year, have been many and varied. The basis of much of the work we have undertaken is contained in our Annual Plan, agreed upon at last year's annual meeting, but there were also a number of unforeseen challenges, including a substantial defalcation. However few and far between, an event like this reminds us why the work we do to govern the profession in the public interest, and to provide education, support, and member services is so important.

Having said that, we also addressed many other issues on your behalf. Here's a brief overview of what we hoped to accomplish and where we find ourselves at the end of this term.

A NEW PROGRAM TO DELIVER ASSISTANCE AND ADVICE TO MEMBERS

This year, working with committee members from the Lawyers' Assistance Program, the Practice Assistance Committee, the Ethics and Professional Responsibility Committee and staff from the (newly named) Lawyers' Insurance Association of Nova Scotia (LIANS), we developed a project plan for a Risk and Practice Management Program. By providing members with a resource that will offer confidential assistance in all aspects of practice management, we are being proactive in addressing and managing the risks that face members in practice, and the Society as a whole.

Another change that will come about this summer is moving the Lawyers' Assistance Program (LAP) from the Society to LIANS. While the LAP has always been a completely confidential program, there was concern that some members may have been reluctant to make contact because of concerns that the LAP existed side-by-side with other departments in the Society. The LAP will continue to be managed as it has in the past, but by plac-

ing both the LAP and the members' assistance program within LIANS, we hope that members will be more likely to seek assistance for any difficulties – either personal or practice-related – at an early stage. We anticipate that the new position for a staff member to administer and deliver the Risk and Practice Management Program will be filled by September, and the program will be underway by the end of the year.

ENHANCED ARTICLING AND ADMISSIONS PROCESS

There will be some challenges for firms and principals as they get used to the new way of doing things, but the changes address the shortcomings in the old program that we heard about when we surveyed those who had gone through in the last five years. New forms are on the website, and they reflect the emphasis on an education plan, rather than the old checklist. There will also be a name change with an attendant change in focus, as the Qualifications/Bar Admissions Committee becomes the Credentials Committee.

EQUITY ISSUES: PARENTAL LEAVE PROGRAM

With women going to law school and joining the profession in greater numbers, many of them are also finding that they are unable to continue to balance family and practice obligations. This past year, in the light of the Quebec Bar's initiative in this area, and our own concerns following our recent survey of the membership, Executive directed the Equity Officer and the Gender Equality Committee to research this issue, and to see if we could develop a program for Nova Scotia lawyers. The Equity Officer and the GEC put in an enormous amount of work developing and modifying a pilot program, and then travelling around the province to present and discuss the program with members. The proposed program generated vigorous debate. The discussion managed to highlight the problems inherent in private practice for those who want work/family balance, and to raise all sorts of issues about how and why we should address them, as employers, colleagues and as a Society. We have no solution as yet, but we are committed to continuing the discussion and finding ways to address the problem.

And of course, there were many other issues that involved the Society and our members this year. Real property continues to be high on the list of lawyers' concerns again, but in the last year, hundreds more lawyers have taken the education program and as more and more properties are migrated into the new system, we are gaining experience and a level of familiarity with the new process.

Because of a substantial defalcation involving one of our members, we have engaged in a discussion about our Reimbursement Fund, and our mandate to protect the public. Council debated this matter over two meetings.

One of the concerns that was repeated by many was that we are not able to limit or predict the criminal behaviour of a member or members, and there is a limit to what members can do to mitigate the damages. This is why, when the Reimbursement Fund was created, the caps and annual limits were put in place. However it was decided by Council that in the Pillay case, all approved claims should be paid.

There were many happy events that I was able to attend and represent our Society. The Society was pleased to be involved in the celebrations marking the 250th anniversary of the Supreme Court of Nova Scotia, and to attend a gala event to congratulate Chief Justice Glube on her retirement. We celebrated Dal Legal Aid Services 35th anniversary with a special issue of the magazine all about access to justice, we developed a pilot project for youth, the Uncommon Law event; and along with many of our members, we supported the Legal Information Society Annual Law Lunch.

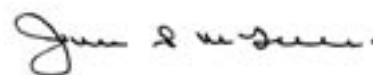
And lastly, the new *Legal Profession Act*. The work on this has spanned several presidents' terms, and I'm pleased to be here to see the legislation passed. Many staff, lawyers, and members of Council are to be thanked for their work on the Act and the changes to the regulations. The new Act clarifies our mandate to govern the profession in the public interest, and it creates new standards for many areas of law. All this leads to many changes to our Regulations, and changes in the way some things will be done. The *Legal Profession Act* and the new Regulations are available on the NSBS website.

I invite you to read the June issue of the Society Record for more information about how these changes will af-

fect the profession and the way we practise. If you have any questions about these changes, please contact the Society.

As I have said before, it was a great privilege serving as your president this year. I do want to thank all of you for your support, emails, telephone calls and encouragement. The support from Council, the Executive and the professional staff was outstanding.

With our new president, Ronald J. MacDonald, Q.C., we are in a good position to continue with the work of the Society.



John McFarlane, Q.C.

ADMINISTRATION OF JUSTICE COMMITTEE

As indicated in the 2003-2004 Annual Report, the Administration of Justice Committee (AOJ) is the committee through which the Society relates formally with both the judiciary and the Department of Justice. Through subcommittees, liaison is made with each of the courts, and through *ad hoc* subcommittees or task forces, the AOJ deals with specific issues of interest to the membership.

The Annual Plan of Bar Council for 2003-2004 called for a review of "the structure and mandate of the Administration of Justice Committee and subcommittees together with other liaison functions to determine if the most effective means are being used for liaison with the courts and other justice partners."

Accordingly, the structure of the AOJ changed in 2004. The size of its membership was reduced to include the chairs of AOJ's subcommittees and officials from the Department of Justice in an effort to bring forward more significant and meaningful issues and concerns which should be addressed by the committee. It is expected that this new structure will continue to develop and evolve to become much more effective and efficient. Indeed, work has been undertaken to establish a system to better track and manage issues, and the action taken on those issues as a means of addressing the need to better inform the AOJ members of the ongoing work of the committee. Further, it is anticipated that in the fall of 2005, the members of the AOJ will meet to discuss a method or process to identify specific issues of interest to the membership.

The AOJ is examining a number of issues which could impact the effectiveness and efficiency of the administration of justice in the province, including the following:

- Unbundling of Legal Services relating to Family Law;
- Unbundling of Legal Services relating to Criminal Law;
- Family Law — Mediation Program;
- Teleconferencing — Video Conferencing;
- Provincial Court Rules;
- Municipal Prosecution Disclosure Issues;
- French Language Issues;
- Courthouse Security Issues, and
- Digital Recording.

UNBUNDLING OF LEGAL SERVICES RELATING TO FAMILY LAW

The committee discussed this topic and it was noted that the issue in family law revolves around the expansion of the Family Division province-wide. The federal government may be introducing legislation which would result in the Family Division expansion in April 2006. This issue may be worthy of discussion in the future.

FAMILY LAW — MEDIATION PROGRAM

The AOJ is considering what, if any, role it can play in this area.

UNBUNDLING OF LEGAL SERVICES RELATING TO CRIMINAL LAW

The unbundling of legal services relating to criminal law is an ongoing project. The *ad hoc* committee mandated to examine this issue is expected to meet with the AOJ committee in the fall of 2005.

The committee was provided with Professor Don Clairmont's report. We agreed to invite Professor Clairmont and representatives of Nova Scotia Legal Aid to a meeting with the committee to discuss how Duty Counsel is being administered and how the Bar can be better informed about this program.

TELECONFERENCING — VIDEO CONFERENCING

There is a pilot being developed for the Justice of the Peace Centre. Court services will be supporting this project. It was agreed that the AOJ committee would be an appropriate liaison or vehicle through which issues regarding video conferencing can be discussed.

It was agreed that the first place the committee will be involved is with the Justice of the Peace Project and that we will coordinate with the two lawyer members of the committee.

For the pilot project, a separate phone line will be installed that will allow for communications between the JP Centre and police who have individuals in custody. The system will allow for interactive communication between the JP and the person in custody.

There was a wide range of discussion about whether this might be an issue the committee will look at more carefully. Because both teleconference and video conferencing are relevant to all Courts, and to a variety of proceedings, it was felt that this might be an appropriate project to undertake. Frank Hoskins and Darrel Pink will discuss with Ms. Chris Mosher of the Department of Justice.

PROVINCIAL COURT LIAISON SUBCOMMITTEE

The Provincial Court Liaison Subcommittee raised two issues for the Administration of Justice Committee to consider. The first related to the use of adult diversion in domestic violence cases. The second related to provincial court rules.

The committee had a lengthy discussion about whether adult diversion is appropriate in domestic violence cases. As in the profession, there is no consensus in the committee about what the appropriate role for adult diversion would be in this area. It was noted that the policy regarding domestic violence was articulated following the report of Dean Dawn Russell, Q.C. In order to allow for a more fulsome discussion, it was agreed that the committee would review Dean Russell's recommendations and discuss the matter at a future meeting.

Frank Hoskins and Stan MacDonald reported on the progress being made with respect to the *ad hoc* committee created to review the Provincial Court Rules. The mandate of this *ad hoc* committee is to review the rules for the purpose of recommending suggestions for revision.

MUNICIPAL PROSECUTION DISCLOSURE ISSUES

It was noted that municipal prosecutors across the province are not subject to any universal policy regarding disclosure. This is in contrast to that of provincial and federal crowns. This led to a discussion about the role of the Society and the committee. It was agreed that there should be a dialogue with Service Nova Scotia & Municipal Relations, the provincial government department responsible for this area.

FRENCH LANGUAGE ISSUES

Annette Boucher reported on work that is being done in the Department of Justice to address a number of issues.

The community wants to be able to communicate with the justice system in person, in writing, and electronically in French, and be able to access French trials. This does not mean that these trials would be available in all parts of the province at all times, but rather they could be available in appropriate circumstances. A plan is being developed following which a request for federal funding to assist in implementation will be forthcoming. Overall it is the desire of the Department of Justice Group to be proactive in this area.

COURTHOUSE SECURITY ISSUES

There was a discussion about Courthouse Security and it was felt that the Society should be involved with these discussions to ensure that the perspective of the Society is brought to bear on any deliberations.

DIGITAL RECORDING

Alan Brown and Kevin Winch were present for this discussion. Mr Brown indicated that Nova Technology has been awarded the contract to implement digital recording technology. The new court facility in Port Hawkesbury will be the first site and the department is awaiting installation of the equipment there. Following that, Judicial Assistants and other users will be trained and then installation will occur at the Law Courts in Halifax. Some renovations to courtrooms are required before installation can occur, but this work has started.

Mr. Brown explained the technology and how it will work. He noted that evidence will be available to be copied but the business rules that will govern the project have not yet been developed. Who has access to the system security will be a key factor. It is hoped that Port Hawkesbury will be installed by the end of May, with the Law Courts in Halifax having installation completed by the end of the summer. Following that other courts in Metro will have work done.

The committee then had a lengthy discussion about what might be leveraged from this new capacity. It was agreed that a further and more detailed discussion with Chris Mosher and Judith McPhee of the Department of Justice is required.

The AOJ committee will continue to examine the above noted issues as well as others in the future.

CONCLUSION

As Chair, I would like to acknowledge and thank the members of the committee for their work over the past year. In particular, on behalf of the Committee, I extend thanks to Darrel Pink and Kristene Handley, and the staff of the Bar Society for their excellent support and services provided to the committee during the year.

COMMITTEE MEMBERS

Frank P. Hoskins, Chair (4)
 Annette Boucher (3)
 Robert D. Chipman (1)
 Lynn M. Connors (1)
 Donna Foulkes (3)
 Gavin Giles (3)
 Deborah E. Gillis, QC (1)
 Stanley W. MacDonald (4)
 Christine A. Mosher (3)
 W. Augustus (Gus) Richardson (1)
 Michael J. Wood, QC (3)
 STAFF: Darrel I. Pink

AOJ: COURT OF APPEAL LIAISON SUBCOMMITTEE

The Court of Appeal Liaison Subcommittee met twice this year and provided a useful mechanism for exchanges of ideas between the Bench and Bar.

Topics discussed at the committee meetings included court security, certification of court reporters, and representation of a party by an agent. The committee suggested that the NSBS lunch seminars involving appellate practice be repeated and this was done with a good response from the Bar.

Members of the Bar on the committee provided input with respect to revisions to the conditions of recognizance used when appellants are released on bail pending appeal. In addition, they provided comments with respect to potential amendments to a number of sections of Civil Procedure Rule 62.

I would like to thank all members of the committee for their time and input on the various matters which were considered this year.

COMMITTEE MEMBERS

Michael J. Wood, QC, Chair (6)
 Annette Boucher (3)
 Donna Foulkes (6)
 Dana W. Giovannetti, QC (6)
 T. Gerard Lukeman (7)
 John C. MacPherson, QC (CBA)
 Nancy I. Murray, QC (3)
 STAFF: Darrel I. Pink

AOJ: PROVINCIAL COURT LIAISON SUBCOMMITTEE

We are a subcommittee of the Administration of Justice Committee, and our task is to identify and deal with issues arising in the Provincial Court of Nova Scotia. Our members include members of the judiciary, crown attorneys and members of the defence Bar.

We met on September 10 and November 12, 2004, and January 14, March 4 and May 13, 2005. Issues discussed during the fiscal year included:

IMPROVED LIAISON WITH THE ADMINISTRATION OF JUSTICE COMMITTEE

In 2004, that committee reviewed its structure and mandate and now receives regular input from all of its subcommittees. Our subcommittee appointed Peter Mancini to be our representative to attend all of the Administration of Justice Committee meetings.

Frank Hoskins, chair of the committee, also attended our January 14, 2005 meeting and discussed issues of interest in the Provincial Court.

SECURITY IN THE PROVINCIAL COURT

Our Bar members raised the issue of security in the Provincial Courts in Halifax and Dartmouth. Reports indicated there is little or no screening of the general public at the entrance to the courtroom. Crown Attorneys have frequently been uncomfortable about specific individuals. The Sheriff's Offices have always been responsible when something is brought to their attention specifically, but the feeling is that the security generally is lax and there is legitimate reason for concern. This issue was referred to the Courthouse Standards Committee.

ADULT DIVERSION PROGRAM FOR SOME DOMESTIC ASSAULT CASES

Committee members noted that a zero tolerance policy with respect to the Adult Diversion Program for some domestic assault cases is not always effective. Our rep-

resentative on the committee was directed to bring this to the committee's attention.

CHANGES TO PRELIMINARY INQUIRIES

Effective June 1, 2004, new provisions with respect to preliminary inquiries came into effect. Amendments to the *Criminal Code* included the elimination of automatic preliminary inquiries, the ability to tender written statements rather than *viva voce* evidence and pre-trial hearings to narrow issues. Input was gathered from subcommittee members as to how the changes have been implemented and received by counsel and the courts. We resolved to monitor how the new system is working.

SEX OFFENDER INFORMATION REGISTRATION ACT

At our March 2005 meeting, C. Lloyd Tancock, Senior Crown Attorney, spoke regarding the new *Sex Offender Information Registration Act*. He sits on the Public Prosecution Service Implementation Committee for the Act. He provided some useful material, including a list of Nova Scotia Registration Centres, draft Orders and a summary of judicial interpretation of the new provisions.

I would like to acknowledge and thank all subcommittees for their work and interest over the past year. The members are diligent in providing input on the various issues that arise. It is useful to have other committee members working together to advance and address the various issues that arise in the Provincial Courts across Nova Scotia.

SUBCOMMITTEE MEMBERS

Robert D. Chipman, Chair (2)
Ann Marie MacInnes (2)
Douglas L. Lloy (2)
Ronald J. MacDonald, QC (2)
Daniel A. MacRury (2)
D. Peter Mancini (2)
Paula R. Taylor (2)
Peter Rosinski (2)
N. Kent Clarke (CBA)
Donald A. Urquhart (2)

AOJ: SUPREME COURT (FAMILY DIVISION) LIAISON SUBCOMMITTEE

This committee provides a forum for discussion and liaison between the Bench and Bar concerning the practice in the Supreme Court (Family Division) throughout the province. This committee formerly dealt with all Family Law matters, but now only deals with Supreme Court Family Division issues, as the Family Court has had its own liaison committee for the last two years.

Three meetings were held in Halifax, on September 27, 2004; December 9, 2004; and March 3, 2005. A further meeting is scheduled for June 2, 2005. The agenda for the above-noted meetings included discussions of the following topics:

- Adoption Review Process (Anna Paton and Susan Drysdale, Special Guests)
- Organizational Pretrials
- Settlement Conference procedures
- Courtroom Facilities
- Cost Awards
- Videoconferencing
- Unbundling of legal services
- Electronic Forms for the new Rule 70 Forms
- Chambers Motions / Scheduling
- Notices of Trial Practice Memoranda
- Secure Treatment Program, Truro
- Additional Resources for Counsel at the Devonshire Avenue location

SUBCOMMITTEE MEMBERS

Deborah E. Gillis, Q.C. (Chair)
 Christine A. Mosher
 Marian F.H. Tyson, Q.C.
 Judith A. McPhee
 Thilairani P. Pillay
 Theresa M. Forgeron
 Marian F. Mancini
 Julia E. Cornish
 G. Douglas Sealy
 The Honourable Associate Chief Justice Robert F. Ferguson (Halifax)
 The Honourable Justice Douglas C. Campbell (Halifax)
 The Honourable Justice Deborah M. Gass (Halifax)

The Honourable Justice Leslie J. Dellapinna (Halifax)
 The Honourable Judge David R. Hubley (Truro)
 The Honourable Justice Gregory M. Warner (Kentville; Justice Warner replaced the Honourable Justice Scanlan as an ongoing member of the committee in January 2005)
 The Honourable Justice Daryl W. Wilson (Sydney)

AOJ : SUPREME COURT LIAISON SUBCOMMITTEE - CRIMINAL

The Supreme Court Liaison Criminal Subcommittee is a forum to identify and resolve issues of mutual concern with regard to criminal practice in the Supreme Court.

We met on two occasions over the past year; November 3, 2004, and April 28, 2005. These meetings were well attended. The following agenda items were addressed at these meetings:

THE 250TH SUPREME COURT CELEBRATIONS

Chief Justice Kennedy expressed how well the 250th celebrations had gone and thanked the members of the Barristers' Society for their excellent participation in all the events.

RESOLUTION CONFERENCE PRACTICE MEMORANDUM

Associate Chief Justice MacDonald (as he then was) indicated that Practice Memorandum No. 22, as revised, was approved at the judges' meeting on October 29, 2004.

RETURN OF EXHIBITS

It was reported that exhibits are not being returned in a timely fashion after the expiry of appeal periods in criminal proceedings. A court order is required to return the exhibits and there are particular issues surrounding the handling of firearms, which must be carefully considered prior to the return of exhibits. From an administrative point of view, the large number of exhibits is problematic

as the exhibit vaults are becoming overcrowded. It was suggested that judges could assist by addressing the issue of “returning exhibits” at the pre-trial conference and indeed a section to this effect could be added to the pre-trial questionnaire. This would cause both counsel and the court to address the issue of exhibits and their release after the expiry of appeal periods following the completion of the trial. This would address the release of exhibits for future trials and would be a much more efficient way to deal with this issue.

With respect to the exhibits presently in the custody of the court, Frank Hoskins agreed to work with Annette Boucher to implement a system for the release of those exhibits over the next several months.

It was also suggested that it would be helpful to obtain information regarding the manner in which the Provincial Court releases exhibits after trial.

SWEARING / AFFIRMATION

This issue was raised at the meeting of the Civil Liaison Committee and the Chief Justice raised it once again at the fall meeting.

Members of the court raised the concern that witnesses at trial do not know that they are required to swear or affirm prior to presenting their evidence. It was also noted that when faced with the choice, witnesses are confused about whether they should swear or affirm on the basis that they do not appreciate the difference. It was felt that when counsel prepare their witnesses to give evidence in court, they should be informing them that they will be required to swear or affirm that the evidence they will give will be truthful and inform them of the mechanics of this function, i.e. who will administer the oath, etc. This was also identified as an education item and it was felt that perhaps when the pre-trial questionnaire is completed with the judge in both criminal and civil matters that this issue could be brought to the attention of counsel and that counsel would be asked to specifically raise this issue with their witnesses.

It was agreed that this issue should also be raised with the Provincial Court Liaison Subcommittee.

COURT SECURITY

At the April 28, 2005, meeting, Chief Justice Kennedy raised the issue of Court Security and it was discussed. The Chief Justice reported that a committee will examine the issue of Court Security in the near future.

Chief Justice Kennedy informed the members of the committee that airport-type scanners could be installed on an as-required basis at the Law Courts, and he wanted to solicit the reaction of members of the Barristers’ Society to this enhanced security measure. Concern was expressed about the costs to the Department of Justice to implement enhanced security measures. It was felt that the Family Division and the Provincial Court may be where efforts should be concentrated in this regard, but that it would likely be viewed by the Bar as overkill to install such scanners at The Law Courts.

Some committee members indicated that in Ontario courts there is a walk-through device for lawyers, and a second device for walk-through by the public. This results in people moving quickly, without delay, through the screening process.

FRENCH LANGUAGE ISSUES

Annette Boucher reported that she has been the contact person for the Department of Justice on these issues and she has been working with the Public Prosecution Service to assist in having training opportunities for the staff and prosecutors to access French language training to conduct French trials pursuant to section 530 of the *Criminal Code*. She is also working with the Department of Justice to establish a plan which will result in implementing enhanced French language capacity to respond to requests for French language criminal trials.

Frank Hoskins reported that he attended a Provincial Court Liaison Subcommittee meeting and raised the issue of French language trials (s. 530 of the *Criminal Code*) and the issue with respect to having counsel advise witnesses of their right to swear or affirm before testifying.

SUMMARY FOR THE TRIAL JUDGE IN JURY MATTERS

The practice of the Crown providing a "Summary for the Trial Judge in Jury matters" was briefly discussed. The Crown will continue to provide this document to both the Trial Judge and Defence Counsel.

CONCLUSION

As chair, I would like to acknowledge and thank the members of the committee for their work over the past year. In particular, on behalf of the committee, I extend thanks to Darrel Pink and Kristene Handley, and the staff of the Bar Society for their excellent support and services provided to the committee during the year.

SUBCOMMITTEE MEMBERS

Frank P. Hoskins, Chair (4)
 Joshua M. Arnold (6)
 Annette Boucher (4)
 Donna Foulkes (6)
 Martin E. Herschorn, QC (7)
 Diane L. McGrath (2)
 David M. Meadows (11)
 Joel E. Pink, QC (4)
 Cameron S. McKinnon (CBA)
 Walter I. (Terry) Yeadon (7)
 STAFF: Darrel I. Pink

ADMINISTRATION OF JUSTICE COMMITTEE - SUPREME COURT LIAISON SUBCOMMITTEE (CIVIL)

The last year was a very busy one for the Supreme Court Liaison Subcommittee (Civil). Earlier initiatives to revitalize the subcommittee with fresh input from members of both the Bench and Bar were met with great success. The subcommittee's discussions continue to be both lively and focussed on an important topics. The result is that the subcommittee has continued as an important forum for the exchange of information between the Members of the Society and Judiciary.

In its fall meeting, the subcommittee engaged in a lengthy discussion surrounding the appropriateness of the on-going practice of the renewal of Originating Notices *ex parte*. Some of the Society's members on the subcommittee expressed the concern that many Originating Notices were being renewed over lengthy periods without input from the named defendants, and in many cases, without indication from the named defendants that they were even aware that the Originating Notice had been issued. Chief Justice Kennedy and then Associate Chief Justice MacDonald explained that the Bench took very seriously the possibilities of prejudice to defendants as a result of continuously-renewed Originating Notices. The matter has been referred to the Rules Revision Project and new renewal rules now appear to be a distinct possibility.

The subcommittee's fall meeting continued with an important discussion on the dress and decorum of members appearing before the courts. In many instances, the Judges were of the view that members were not adhering to sensible standards of business attire. It was felt that education by the Society was key and that the Society should reprint, if it could, an excellent series of articles by then Society President, Robert S. Huestis, Q.C., which were published in *The Society Record* some 15 years ago.

In terms of court process, the Judges also raised an issue about the numbers of unsworn affidavits being filed by members in support of Chambers Applications. It was decided by the subcommittee that specific notice to the members of the requirement for sworn affidavits ought not be needed. Chief Justice Kennedy did note that Court Administration staff will in future be more careful in

accepting affidavits for filing and will be rejecting those which are not sworn.

The fall meeting ended with a discussion about the desirability for a uniform system of Chambers appearances by teleconference. It was decided that such a Chambers system could not be supported by technology currently available in all of the Province's Supreme Court Chambers but that advances and *ad hoc* teleconference Chambers would be attempted where time and resources permitted.

The Spring meeting was given over largely to issues of timing. Chief Justice Kennedy advised that many members were not filing pre-application of pretrial briefs as required by the Rules, or were filing them late. The result is the increasing possibility that late briefs will not be considered. The judiciary wished the members to be so informed.

The largest portion of the spring meeting involved a discussion surrounding the late (over six months) filings of reasons for decision by some members of the judiciary. Chief Justice Kennedy assured the members that the judiciary was very sensitive to the need to file reasons for decision with the six months of the hearing(s) to which they applied and that protocols have been established and continue to be refined to ensure that all members of the judiciary meet this expectation.

In the course of the year, then Associate Chief Justice MacDonald departed from his membership on the subcommittee upon his appointment as Chief Justice of Nova Scotia. Associate Chief Justice MacDonald had been a dedicated and important voice on the subcommittee for some years and will be missed.

The subcommittee is looking forward to the continuation of its valuable work in the fall of 2005. It will at the time welcome the newly-appointed Associate Chief Justice Deborah K. Smith.

SUBCOMMITTEE MEMBERS

Gavin Giles, Q.C., Chair (3)
Annette Boucher (3)
Peter D. Darling ((6)
Michael E. Dunphy, QC (4)
Donna Foulkes (6)
Edward A. Gores (2)
Catherine J. Lunn (2)
Christopher C. Robinson, QC (CBA)
Nancy G. Rubin (3)
Jonathan D.N. Tarlton (2)
STAFF: Darrel I. Pink

CONTINUING PROFESSIONAL DEVELOPMENT ADVISORY COMMITTEE

The Continuing Professional Development Advisory Committee is composed of a very broad cross-section of representatives, personally and professionally concerned with CLE for lawyers. They include representatives (lawyers and learning professionals) from the private bar, corporate counsel, government lawyers, large law firms, the CBA, Dalhousie Law School, NS Liability Claims Fund, etc., together with our own staff.

As its name clearly implies, it is “advisory” and to that end it is used as a key resource for ideas and review of CLE activities.

The committee reviews the conferences, seminars and workshops of the Society that were held or are planned, including the nature of the offerings, the attendance, locations, etc. Planning and execution is a staff function and they have produced numerous exciting offerings, however, resources will continue to be a challenge. There is a need to offer world class education yet remain mindful of the realities of delivering CLE, which include fiscal responsibility.

Most recently Council approved the formation of a new committee to look at mandatory CLE. Background material from other jurisdictions was reviewed and discussed by the committee.

Notwithstanding that lawyers have been learning for a long time, there is still much to be learned about the modern day operations of CLE. Future activities will likely include selection criteria for education programs, continuous feedback on proposed educational offerings (topics, timing, locations and pricing) and related operational impacts.

It is a given that education of lawyers remains an important aspect. The Society will need to evolve with the needs of lawyers, partnering with other organizations and focusing the Society’s resources where it either has the greatest impact or in those areas where important requirements are not being fulfilled elsewhere.

COMMITTEE MEMBERS

Robert G.H. Patzelt, Chair (3)
Anna Maria Butler (3)
Keith R. Evans (3)
Marian Mancini-Fulmer (3)
Edward A. Gores (2)
James A. Gumpert, QC (2)
Michelle Higgins (2)
M. Joseph Rizzetto (3)
Deborah Rozee (3)
Gail Salisbury (3)
Keith Ward (3)

STAFF: Jacqueline Mullenger,
Lori Duggan

PROFESSIONAL RESPONSIBILITY

It has been a very challenging year in terms of the number and nature of complaints, defalcations and staff changes. However, the Professional Responsibility Department and committee volunteers continue to demonstrate excellence, leadership and vision with respect to public protection and membership service.

For the period of May 22, 2004 to May 3, 2005, a total of 266 complaints were received. This includes written complaints and complaints processed as telephone resolutions. This represents an increase of 84 complaints (31 percent) over total complaints of 182 received last year, and is slightly higher than the three-year average. Most of the increase represents complaints from financial institutions regarding late document filing and file closure by members.

There were a total of 14 complaints that had been opened in previous periods and were still open at May 3, 2005. The total number of open complaints for the period was 280. From May 22, 2004 to May 3, 2005, of this total, 246 complaints were closed, while 48 remained opened as of May 3, 2005.

INVESTIGATIVE SUBCOMMITTEE

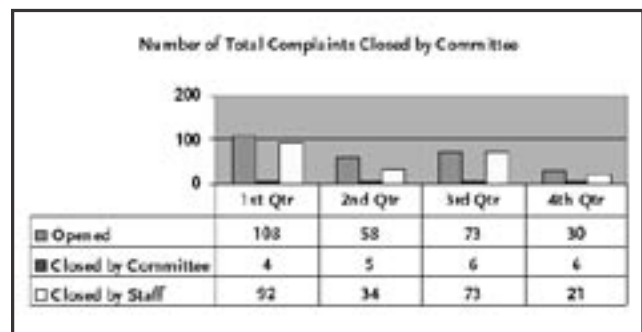
The Investigative Subcommittee was chaired by Ronald J. MacDonald, Q.C. The subcommittee held 10 regularly scheduled meetings. In addition, the subcommittee held six conference calls to address urgent matters and three section 32(2) hearings.

The year has offered great challenges: Firstly, there are a great number of complaints. Our staff are constantly challenged with the sheer volume of work. Secondly, the committee is starting to see a trend where lawyers are neglecting their practice leading to client complaints. This results in the committee becoming involved in practice investigations and spending significant amounts of time trying to resolve client dissatisfaction. Thirdly, it is abundantly clear that most of the major matters the committee deals with have as an underlying feature some form of emotional or addictive problem suffered by the lawyer complained of. These require the committee to be diligent in ensuring the cause of the complaint is appropriately dealt with, and highlights that an effective Member Assistance Program designed to deal with these

issues before they become problems is critical. We are fortunate that our extremely professional and hard working staff are well aware of all these issues, which dramatically improves the committee's ability to effectively deal with the complaints.

Of the total number of open complaints for the period, the Investigative Subcommittee issued the following dispositions:

DISPOSITIONS ISSUED BY THE INVESTIGATIVE SUBCOMMITTEE	
Dismissed	10
Referred to Formal Hearing	7
Caution	5
Letter of Advice (Staff)	2
Caution and Counsel	1
Withdrawn	1
TOTAL	26



Statistics shown in this chart represent a time period from May 22, 2004 to May 3, 2005, which have been divided into the following four quarters:

1st Quarter – May 22, 2004 to August 25, 2004

2nd Quarter – August 26, 2004 to November 25, 2004

3rd Quarter – November 26, 2004 to February 25, 2005

4th Quarter – February 26, 2005 to May 3, 2005.

While there has been an increase in the number of written complaints, 45 percent of these complaints have been resolved through mediation, and the majority being complaints from financial institutions respecting delay in filing closing documents.

SPOT AUDITS, RECEIVERS, PRACTICE INVESTIGATIONS, ETC.

INTERIM MEASURES ORDERED BY INVESTIGATIVE SUBCOMMITTEE	
Mentoring	2
Member interviewed by subcommittee	1
NSBS complaint laid against member	7
Referral to independent investigator	5
Practice Investigation under Reg. 43B(1)	7
Spot Audit	3
Appointment of Receiver under Reg. 34(1)	1
Appointment of Custodian under Reg. 35(1)	1
Authority to hire Private Investigator	3
Financial Monitoring Ordered	2
Assistance with Practice Closure	1
Section 32(2) Hearing – member suspended	2
Section 32(2) Hearing – reconvened, suspension lifted	1
Section 32(2) Hearing – suspension held in abeyance	3
Section 32(2) Hearing – request to review denied	1
Section 32(2) Hearing – Ordered but not yet held	1
LRA Targeted Audits – Practice Investigations	2
Referral of Issue to another Committee	3
TOTAL	

SECTION 32(2) HEARINGS

Where information before the subcommittee suggested that the public may be at risk, the subcommittee ordered a Section 32(2) hearing to determine whether suspension or practice restrictions may be in order. Four hearings were held which resulted in one suspension. Pursuant to Reg. 43A(11)(h), the subcommittee exercised the discretion to adjourn three s.32(2) hearings when the members undertook to abide by certain conditions, with the hearings to reconvene after periods of close monitoring.

One request was made by a suspended member for a change of status to permit his employment as a lawyer. This request was denied. This member reapplied later in

the year and the subcommittee allowed the hearing to be reconvened. As a result, the subcommittee accepted a proposal which would permit the member work under strict conditions.

SPOT AUDITS/APPOINTMENT OF CUSTODIAN/RECEIVER

Four spot audits were ordered. In the Pillay matter, a custodian and receiver was appointed pursuant to s. 35(1) and s. 34(1) respectively. As a result of one spot audit, a member was confirmed to be practicing while retired. With the assistance of the Society, this member obtained assistance in winding down his unauthorized practice, and closing off his trust account.

TRUST ACCOUNT MONITORING

Trust account monitoring of a member's practice can arise from a random audit or review of an annual Form 20 which reveals a basis for concern. Other triggers for trust account monitoring include the member reporting a judgment or bankruptcy to the Society. This is administrative monitoring. Where a member fails to report a judgment or bankruptcy, or where their conduct requires monitoring of their trust account activity, the Executive Director can authorize trust account monitoring. Three members were subject to disciplinary trust account monitoring in the last period and continued to be subject to monitoring throughout this reporting period. Two additional members are now required to submit trust reconciliations.

PRACTICE INVESTIGATIONS

Pursuant to Reg. 43B(1), seven practice investigations were ordered under Reg. 43B(1). Two of these had been ordered during the previous reporting period. All resulted in a period of monitoring and adherence to conditions by the members, and resulted in referrals to formal hearing.

INTER-COMMITTEE REFERRALS

Where matters of general importance have come to the attention to the committee, an issue has been referred. Direction from the Executive Committee was sought in relation to Chapter 12.9, which concerns fee splitting. The Trust Account Committee was asked for their

advice on a matter concerning providing cheques in escrow where there are insufficient funds, and a matter concerning prosecutorial discretion and disclosure for municipal counsel was referred to the Administration of Justice Committee. In addition, the Executive Committee was asked to consider referring a matter to the police. Requests of members to retire and resign while under disciplinary proceedings were considered by Bar Council with the subcommittee's recommendation that the offers be accepted in two matters.

ASSIGNING AN INDEPENDENT INVESTIGATOR

Occasionally, the subcommittee is called upon to order that a complaint be directed to an outside investigator. This occurs when the member complained of is either staff, a committee member, or where there is cause for the complainant to have a reasonable apprehension of bias. Five complaints were referred to an outside investigator. Four of these five complaints have been dismissed. The fifth complaint remains under investigation.

MEDIATION AND GUIDANCE

During the course of investigations, options for mentoring and guidance are presented to members. In two cases, the subcommittee provided mentoring and arranged for a member to meet with senior lawyers to discuss options. This approach is a more direct means to provide guidance. It is important to note that it is commonplace for Practice Investigators to provide members with a detailed list of recommendations upon the conclusion of a review of their practice.

STAFF DISPOSITIONS

On June 22, 2001, a revised Regulation 43A came into effect, giving the Executive Director, through the Professional Responsibility Department, the authority to dismiss or resolve complaints within the objects of the Professional Responsibility process:

43A(1) On receipt of a written complaint, the Executive Director shall

(a) dismiss the complaint, and notify the complainant

and the member of this disposition, if, in the opinion of the Executive Director,

(i) the subject matter of the complaint is outside the jurisdiction of the Society;

(ii) the complaint is frivolous, vexatious or constitutes an abuse of process as prescribed by Regulation 42(3);

(iii) the complaint does not allege facts which, if proven, would constitute professional misconduct, conduct unbecoming, or professional incompetence, or would merit counselling, a caution or both.

Of the total number of open complaints for the period, staff issued the following dispositions:

DISPOSITIONS ISSUED BY STAFF		
Dismissed		215
- No Jurisdiction: Fees	(4)	
- No Jurisdiction: Court/Civil	(18)	
- No Jurisdiction: Crown/ Failure to meet Chapter 17 Threshold	(1)	
- Facts if proven do not substantiate misconduct	(22)	
- Evidence does not support misconduct after 1 response	(26)	
- Evidence does not support misconduct after 2 or more responses	(9)	
Letter of Advice – after 1 member response		10
Letter of Advice – after 2 or more member responses		3
Discontinued		1
Resolved (telephone and written mediations)/Alternate Dispute Resolutions		121
TOTAL		215

Staff were able to resolve 45 percent of the written complaints received. This is the highest level to date for successful resolutions under the new complaints resolution system. Staff dismissed or issued Letters of Advice with respect to 36 percent of complaints. Therefore, staff re-

solved or dismissed 81 percent of all complaints received.

For complaints that were opened and closed during the period, the average time to process and close a file (staff dismissals of any kind) was 24 days, as compared to the average last year of 22 days. This is due in part to training of new staff.

NATURE OF ADVICE

For the period of May 22, 2004 to May 3, 2005, staff issued thirteen Letters of Advice to members which contained advice on issues such as rudeness, civility, duty to meet financial obligations, dealing with unrepresented parties, breach of confidentiality, keeping clients informed; effectively documenting advice to and communications with clients, replying promptly and clearly to any communications received, honesty and candour, and duties with regard to trust account regulations. Most Letters of Advice provided guidance with regard to duties of Quality of Service under Chapter Three of the *Legal Ethics Handbook*.

INTAKE PROCEDURES

The Professional Responsibility Department received 547 intake calls between May 22, 2004 and May 3, 2005. This is the first year we have been able to accurately track the number of calls within our database.

The average length of calls between January and May was 18.21 minutes. However, follow-up requires a good deal of our intake staff's time. Of the 547 calls received, 219 calls (40 percent) required two or more follow-up calls.

When complainants call with quality of service complaints, where appropriate, staff will discuss such self-help options as speaking to the member, or contacting the firm's Designated Member for the lawyer complained of pursuant to Regulation 43A(1). Where the complainant decides to attempt a resolution on their own, and does not call back, it is presumed that they have succeeded.

This year, staff contacted every firm with a Designated Member to verify the firm contact information remained current. An article was included in Inforum to invite the remaining firms to take advantage of this provision. A number of phone complaints were resolved within 24

hours. A number of mediations were conducted as a result of information received from a phone call. These mediations are now being assigned a complaint number being documented within the database. The average time to arrive at a resolution is two hours, with approximately five calls being necessary to arrive at a mutually satisfactory resolution. Of these attempted resolutions, only one has moved forward to a written complaint.

FINANCIAL INSTITUTIONS

An increasing number of complaints are being received from financial institutions. These are generally produced as form letters which are sent by fax to the member and copied to the Society. Over the past reporting period, 121 of these letters were received.

One series of complaint letters resulted in a complaint being laid against a member by the subcommittee.

When these types of complaints initially arrived in July 2004, staff responded by phoning the member and encouraging them to respond promptly. In many cases, the documents were 180 days overdue. While this approach was producing results, it was very time consuming. More recently, staff have used a form letter to ask the member to contact the Society. The member can either confirm that the documents have been sent to the financial institution, or dispute the validity of the request. With few exceptions, members have responded courteously and promptly to our requests. Representatives of the financial institutions have also responded positively and have been working cooperatively with staff and members to arrive at solutions.

REVIEW SUBCOMMITTEE

The role of the Review Subcommittee is to consider requests for review of staff dismissals, and either uphold the decision or return the file for further investigation. This represents an important part of the peer-review-based complaints resolution system.

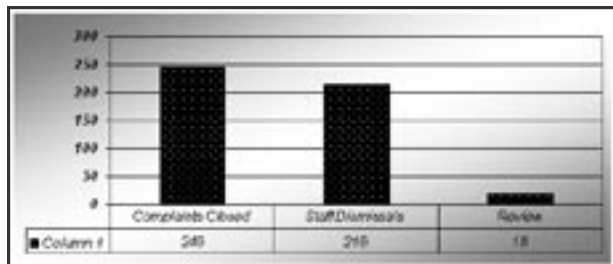
For the period of May 22, 2004 to May 21, 2005, the Review Subcommittee reviewed 18 complaint files pursuant to Regulation 43A(9). All staff dismissals were upheld. This number represents 9 percent of the 216 complaints dismissed by staff during this period. This compares to

12 percent during the same period last year. Requests for review remain low due to the dismissal letters prepared by staff setting out detailed reasons.

The Review Subcommittee was chaired by layperson Dr. Bernard Badley, with Frank Hoskins, William Meehan and Jean Dewolfe as members, and Chandrashakhar Gosine as an alternate member. The subcommittee meets on an *ad hoc* basis, and on average once per month.

The policies and procedures for the Review Subcommittee were revised and strengthened to clarify the procedures and timelines for the members to follow. Staff do not participate in any way, or attend meetings.

Dr. Bernard Badley wishes to thank the subcommittee members for their contributions and the Society's Investigative Staff for their efforts in conflict resolution and in the preparation of balanced reports.

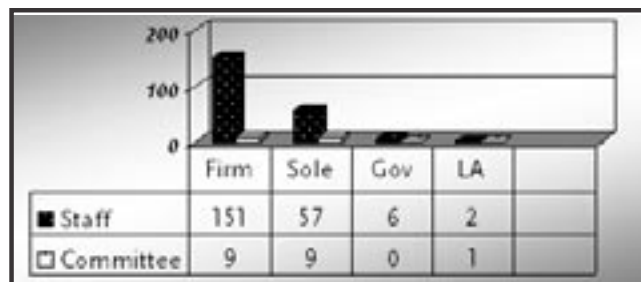


DEMOGRAPHIC ANALYSIS OF COMPLAINTS

There are currently 1650 practicing, insured lawyers in Nova Scotia:

- ▶ 1054 - Firms/Organizations
- ▶ 274 - Sole Practitioners
- ▶ 235 - Government
- ▶ 87 - Legal Aid

CROSS INDEX OF TYPES OF PRACTICE WITH NUMBER OF COMPLAINTS HANDLED BY STAFF		
Firm Lawyers	151	(14% of total)
Sole Practitioners	57	(20% of total)
Government	6	(2.5% of total)
Legal Aid	2	(2.2% of total)
TOTAL	216	



CROSS INDEX OF TYPES OF PRACTICE WITH NUMBER OF COMPLAINTS HANDLED BY INVESTIGATIVE SUBCOMMITTEE	
Sole Practitioners	9
Firm Lawyers	9
Government	0
Legal Aid	1
TOTAL	19

Our statistics for this year reveal that the serious matters reviewed by the Investigative Subcommittee were evenly distributed between sole practitioners and firm lawyers, however, this means sole practitioners continue to be the subject of investigations and sanctions in disproportionate numbers.

NUMBER OF LAWYERS THE SUBJECT OF COMPLAINTS CROSS-REFERENCED TO YEAR ADMITTED TO THE BAR	
1949-1969	9
1970-1975	44
1976-1980	57
1981-1985	43
1986-1990	34
1991-1995	39
1996-2000	13
2001	5
2002	3
TOTAL	247

*Please note that some lawyers had multiple complaints laid against them

FURTHER COMPARATIVE ANALYSIS OF COMPLAINTS

MOST COMMON TYPE OF ALLEGATIONS IN COMPLAINTS	
Delay/Inactivity/Poor Communication/Quality of Service	145
Conflict of Interest	12
Complaint against Opposing Counsel	12
Breach of Financial Conduct/Medical-Legal Dispute	10
Undertaking	7
Personal Misconduct	6
Fees	6
Trust Account Irregularity	5
Misleading	5
Lawyer's Attitude	4
Failure to Follow Instructions	4
Breach of Confidentiality	2

Client and file management problems remain the most significant area for complaints and client dissatisfaction, year after year, across the province.

NUMBER OF COMPLAINTS DISPOSED OF BY STAFF BY AREA OF LAW	
Real Estate	122
Family	39
Wills/Estates	15
Civil Litigation Personal Injury	10
Debtor/Creditor	7
Administrative/Human Rights/WCB/Labour	6
Criminal	5
Personal Injury	5
TOTAL	209

NUMBER OF COMPLAINTS DISPOSED OF BY COMMITTEE BY AREA OF LAW	
Real Estate	9
Family	3
Criminal	2
Civil Litigation	2
Debtor/Creditor	1
Mechanics Lien	1
Trust Account	1
TOTAL	19

ANALYSIS OF AREAS OF LAW IN RELATION TO MOST COMMON TYPES OF ALLEGATIONS		
Family	Delay	7
	Quality of Service	7
	Complaint against Opposing Counsel	7
	Conflict of Interest Misleading	4
	Unhappy with outcome	2
	Misleading	2
	Failure to Follow Instructions	2
	Lawyer's Attitude	2
	Undertaking	2
	Fees	2
	Personal Misconduct	1
	Breach of Confidentiality	1

Incompetence		1	
Inactivity		1	
Unauthorized Practice		1	
Improper Correspondence		1	
Withdrawal of Services		1	
Personal Injury	Delay	3	
	Poor Communications	2	
	Failure to file required documentation	1	
Real Estate	Delay	100	
	Standard/Quality of Service	8	
	Conflict of Interest	4	
	Undertaking	4	
	Financial Commitment	2	
	Misleading	2	
	Failure to Follow Instructions	2	
	Outside Interest	1	
	Unhappy with Outcome	1	
	Irresponsible Financial Conduct	1	
	Fees	1	
	Complaint against Opposing Counsel	1	
	Misc	1	
	Wills/ Estates	Delay	4
		Negligence	4
		Poor Communication	2
Fees		2	
Inactivity		1	
Quality of Service		1	
Conflict of Interest		1	
Misc		1	

HEARING SUBCOMMITTEE

The Hearing Subcommittee functions as a fully independent committee of the Society, and is chaired by John Merrick, Q.C.

During the year, the Hearing Subcommittee dealt with nine matters, three of which had been referred in the previous periods. Two of these went to formal hearing, and three resulted in settlement agreements. Charges have been served in four matters which are scheduled to be heard between May and September 2005. These figures are consistent with the previous two years.

The Nova Scotia Court of Appeal upheld two decisions made by the Nova Scotia Barristers' Society's Hearing Subcommittee on appeal from members.

Key areas precipitating referral to formal hearing included:

- **Conflict of Interest:** Acquiring gifts and property from clients without ILA. Breach of duty not to act for a client when the lawyer's interests were in conflict with those of the client.
- **Trust Accounts:** Failure to observe all relevant rules and regulations respecting the protection and safekeeping of clients' property, and the trust account regulations of the Society; using trust account for personal purposes; withdrawing funds from trust account without proper client authorization; misappropriation of trust funds.
- **Professional misconduct and conduct unbecoming:** Borrowing money from a client without ensuring the client was independently represented or had independent legal advice. Holding out to be entitled to practice law when not authorized to do so.
- **Integrity:** Failure to discharge with integrity every duty owed to the client, the profession and the general public; engaging in dishonourable or questionable conduct which reflects adversely on the lawyer, the integrity of the profession, the legal system and the administration of justice.
- **Failure to comply with Regulation 43B(2), Cooperation with Investigator, during the course of the Society's investigation of a complaint.**

The Hearing Subcommittee meets in full once a year in July for a full day of professional development.

There have been delays incurred in scheduling hearings because of a lack of sufficient members to serve on the hearing panels. It is anticipated that over the next few months additional members will be recruited to be part of the pool from which the panels are chosen.

Once again the Society owes its gratitude to the members who have so willingly and generously given of their time to participate in hearings.

THANK YOU

Special thanks to all committee members for considerable hours of volunteer time in file review and deliberation and exceptional work. Members spend at least two days a month preparing for and attending meetings. In a number of difficult cases, some members have spent many days interviewing witnesses and assessing documentary evidence. They deserve a lot of credit for their dedication and their commitment to the work of the committee.

INVESTIGATIVE SUBCOMMITTEE MEMBERS

Ronald J. MacDonald, Q.C., Chair
 Philip J. Star, Q.C., (Vice-Chair)
 Dr. Bernard W.D. Badley (Lay Member)
 Moka M. Case (Lay Member)
 Jean Marie Dewolfe
 Timothy G.J. Daley
 Chandrashakhar Gosine
 Frank Hoskins
 Raymond F. Larkin, Q.C.
 Lorne J. MacDowell, Q.C.
 E. Ann Marie MacInnes
 William F. Meehan
 Joel E. Pink, Q.C.
 Michael K. Power
 John Stringer, Q.C.
 Theodore K. Tax

REIMBURSEMENT COMMITTEE MEMBERS

Scott C. Norton, Q.C., Chair
 Roberta J. Clarke, Q.C.
 Douglas W. Lutz
 John P. Cochrane, Q.C.
 Jim Bickford (Lay Member)
 Senator Donald H. Oliver, Q.C.
 Robert G. H. Patzelt
 M. Joseph Rizzetto
 Jean Marie Whalen

REVIEW SUBCOMMITTEE MEMBERS

Dr. Bernard W.D. Badley, Chair (Lay Member)
 William F. Meehan
 Frank P. Hoskins
 Jean Marie Dewolfe (alternate)

HEARING SUBCOMMITTEE MEMBERS

John P. Merrick, Q.C., Chair
 Bruce T. MacIntosh, Q.C., Vice-Chair
 G. Wayne Beaton, Q.C., Vice-Chair
 Stuart Beaton (Lay Member)
 Thomas J. Burchell, Q.C.
 Thomas O. Boyne, Q.C.
 Patricia E. Caldwell, Q.C.
 Innis McLeod Christie, Q.C.
 George Diamond (Lay Member)
 Lawrence Evans, Q.C.
 Deborah E. Gillis, Q.C.
 Frank G. Gillis, Q.C.
 Marjorie A. Hickey, Q.C.
 Blanche Keats
 Beryl A. MacDonald, Q.C.
 David K. MacDonald
 Valerie A. Miller, Q.C.
 The late Delbert Muise (Lay Member)
 W. Mark Penfound, Q.C.
 Thilairani (Tilley) P. Pillay
 Gregory P. Rafuse, Q.C.
 Elizabeth Salton (Lay Member)
 Charles Schafer (Lay Member)
 Walter I. (Terry) Yeadon

EQUITY OFFICER PROGRAM

The Equity Officer's activities in this past year have included working with the Department of Justice in the area of employment equity, administering the Legal Legacies and Bridges Mentorship Program, informing the membership regarding the proposed parental leave proposal, outreach to the Black and Aboriginal communities, contact with various community organizations that assist those in the legal profession who are members of equity-seeking groups, and representing the Society on various committees. In addition, the Equity Officer Program continues to work as a resource for departments, committees and the membership of the Society on issues of equity and diversity.

EMPLOYMENT EQUITY

Since the Province of Nova Scotia adopted the Policy on Employment Equity for Crown Law Agents, the Society's Equity Officer has been working with the Department of Justice in the development and administration of Employment Equity Questionnaires to crown law agents and other law firms in Nova Scotia.

Building on the information provided in the 2001-2002 and 2002-2003, 2003-2004 Employment Equity Questionnaires; the 2004-2005 questionnaire was revised and sent out to all crown law agents. As well, Dalhousie University and the Bar Admission Course staff were asked to provide information. Continued monitoring of these figures will provide insight into the advancements being made by the legal profession in the area of employment equity. Because of competing priorities, including the work on the Parental Leave Proposal, the 2004-2005 Employment Equity questionnaires were completed and a report was provided to Justice Department in May 2005.

The Equity Officer Program has also answered questions from members of the bar about the policy and the compliance requirements for Crown Law Agents. Self-identification surveys were prepared and provided to law firms to use to gather information about the representation of designated groups in the workforce, and for applicants to summer student and articled clerk positions. Questions are also being fielded by law students about the questionnaire and the process of self-identification.

The Equity Officer and the Department of Justice have been in regular contact to discuss issues concerning the policy, the list of crown law agents and the final report.

The Society and the department are presently discussing how to use the information collected so far to ensure equity and diversity continue to be goals for the legal profession. The Equity Officer and the Director of the Indigenous Blacks and Mi'kmaq Program have met on several occasions to discuss what can be done to ensure that Indigenous Blacks and Mi'kmaq students are working in the areas they want to work.

MENTORSHIP PROGRAM

The Legal Legacies and Bridges Mentorship Program operated by the Society links Aboriginal and African-Canadian Dalhousie Law School students with members of the private bar. In 2004-2005, four students were mentored by senior members of the Bar.

ANNUAL GENERAL MEETING

In June, the Society facilitates the attendance of six members of equity-seeking groups (lawyers and law students) at the Annual General Meeting at the Keltic Lodge. These individuals would not have been able to attend without this assistance. This is an important opportunity for these lawyers and law students to network and socialize with members of the profession. At this year's meeting, six aboriginal and black lawyers and law students are guests of the Society.

SOCIETY RECORD

The Equity Officer Program worked closely with the Communications Officer to ensure that the Society Record and InForum reflect the diversity of the membership. As well, both these publications were used to communicate with the membership regarding issues of equity, diversity and civility.

BLACK LAW STUDENT ASSOCIATION OF CANADA

In the fall of 2004 the Conference of the Black Law Student Association was held in Halifax. The Equity Officer provided guidance to the planners of the conference regarding speakers and funding sources. The Society was also a major sponsor. The conference had originally been scheduled for February 2004, but was cancelled due to weather, and was rescheduled to fall 2004. The Equity Officer participated on a panel discussion regarding discrimination in the legal profession.

DALHOUSIE ABORIGINAL LAW STUDENT ASSOCIATION

The Dalhousie Aboriginal Law Student Association held a conference in February 2005. The conference included a student day where 40 Mi'kmaq students from Nova Scotia, New Brunswick and Quebec gathered to learn more about the legal profession. The Society helped sponsor the dinner for the students, which included several speakers, including Diane Rowe, member of the Race Relations Committee.

REACHABILITY

reachAbility is an organization committed to enhancing the quality of life of people with disabilities. This year the Society assisted reachAbility with two educational events: "Chronic Pain: What it is, Its Status at Law and What May Be Next," and "Honing Skills and Bridging Differences: Becoming an effective advocate on behalf of persons with mental disabilities." These educational events were specifically aimed at members of the legal profession regarding issues affecting people with disabilities.

INTERNAL COMMITTEES

The Race Relations Committee (RRC) has continued to develop several projects including finalizing the questionnaire for a survey of aboriginal, black and visible minority lawyers in Nova Scotia; an update of the *Article Interview Guide for Equity Employment*; and the development of a self-identification questionnaire for the general membership of the Society.

In addition, the RRC has sent out a letter to visible minority and Aboriginal members of the Society encouraging their participation in various Society committees and to run for Bar Council. While making those members aware of the opportunity to volunteer their services, we also invited them to let the committee know of any issues they feel we should be addressing.

The Gender Equality Committee (GEC) worked on several projects this year, including a pilot Mentoring Program for women lawyers, the parental leave program, and updating model policies. The committee's major project was the parental leave program. The GEC examined a program adopted by the Barreau du Quebec which provides a financial payment to self-employed members who are on parental, maternity or adoption leave.

EXTERNAL COMMITTEES

Indigenous Blacks and Mi'kmaq Program Advisory Council meets three times a year and advises the director on policies and procedures, recruitment, mentorship, academic support and placement, and funding initiatives. In January 2005, the program celebrated its 15th anniversary.

Nova Scotia Association of Women and the Law is now working on the 2005 Frances Fish Women Lawyers' Achievement Award Dinner, which will take place in October.

Partners Against Racism consists of representatives of various business, community and government organizations. The committee is responsible for organizing events commemorating International Human Rights Day on December 10, and the International Day for the Elimination of Racism on March 21. Involvement in the committee increases the Society's visibility in the media and the community on the issue of human rights and equality, and provides an opportunity to network with the Black and Mi'kmaq organizations.

The Sexual Orientation and Gender Identity Section, Nova Scotia Branch, Canadian Bar Association, provides a space for gay, lesbian, bisexual and transgendered lawyers to discuss issues of importance, and to educate the Nova Scotia legal profession on important legal developments in the area of sexual orientation and gender identity. The Society supports the work of SOGI, including the co-sponsoring the Annual Pride Reception in July 2004, and SOGI's Holiday Reception in December 2004.

The Equity Audit Template Advisory Committee includes representation from the Nova Scotia Barristers' Society. The Society will provide feedback on the project and help to set up consulting meetings in Nova Scotia.

Marie Paturel

GENDER EQUALITY COMMITTEE

The Gender Equality Committee is a standing committee which works with the Equity Officer to identify and provide recommendations to Bar Council with regard to issues of gender inequality and gender discrimination to improve the experience of women in the Nova Scotia legal profession.

In particular, the Equity Officer and the committee endeavour to:

1. Review, assess and propose to Bar Council methods of implementing, where feasible, the recommendations from the 1993 report "Gender Equality in the Legal Profession."
 2. Establish and maintain a mentoring program for the support of women in the legal profession in Nova Scotia.
 3. Develop policies for the promotion of gender equality in the legal profession in Nova Scotia for adoption by Bar Council.
 4. Facilitate the entry and retention of women in the Nova Scotia legal profession.
 5. Identify barriers to and facilitate the active involvement of women lawyers in the volunteer functions of the Society and on Bar Council and its committees.
 6. Develop and recommend to Bar Council programs and initiatives on gender equality for the Nova Scotia legal profession.
 7. Consult with women and other equity-seeking groups regarding gender equality issues.
 8. Raise, for Bar Council and members of the Society, awareness of the issues of gender inequality for women in the legal profession in Nova Scotia.
- A legal opinion was sought as to whether or not the proposal was within the mandate of the Society and whether or not it was in violation of human rights legislation and of the Charter;
 - The responses received to date were summarized and posted on the Society's website so the members of the Society could understand the development of the debate to that point;
 - A series of four consultation meetings were held across the province (one each in Sydney, Coldbrook, Halifax, and Truro), at which the Equity Officer and I made a presentation on the proposal and provided an opportunity for those in attendance to discuss the issues and to provide feedback on the program.
 - Feedback from the consultation meetings and subsequent responses received were summarized and posted for viewing and further discussion by members of the Society.
 - Summaries of the consultation meetings and all responses received were compiled in a written report to Bar Council for further discussion and vote.

MAJOR PROJECT 2004-2005: MATERNITY/ PARENTAL LEAVE PROPOSAL

Thanks to this project, 2004-2005 was an exciting time to be a member of the Gender Equality Committee. Having proposed last year that the Nova Scotia Barristers' Society implement a five-year pilot maternity leave program to be available to practicing insured self-employed women lawyers who otherwise would have no access to a parental/maternity/adoption financial benefit program, we followed through this year by posting our proposal on the Society's website and inviting the members of the Society to provide comments.

After initial responses, both for and against the proposal, the Gender Equality Committee sought and obtained direction from Bar Council. As a result, we were charged with putting in place a comprehensive process to allow members of the Society to consider the points raised by the respondents in order to foster a frank and open discussion with which to better inform Bar Council regarding the proposal. Specifically, the following steps were taken:

The legal opinion suggested that the proposal as put forward would not survive a Charter challenge. As a result, the proposal was amended to recommend establishing a parental leave program to provide a financial payment to eligible female members who bear children and a lesser financial payment to eligible members who become new parents, all in order to offset short-term business costs. (It would still be a five-year pilot project to be available to practicing insured self-employed lawyers with no access to other parental/maternity/adoption financial benefit programs.) Statistical information regarding the revised target group of the proposal was compiled and an updated actuarial report was obtained incorporating this new information for cost projection purposes. More responses were received, both for and against, including responses to responses, many very passionate. Early in December of 2004, our President, John S. McFar-

lane, Q.C., sent a letter to every practicing member of the Nova Scotia Barristers' Society, providing background on the issue, outlining the Resolution to be considered by Bar Council, providing a summary of each of the four consultation meetings, and inviting them to provide further input. Responses kept coming in right through to and including the day of the vote.

At the January 28, 2005, Bar Council meeting, a debate was held on the Resolution. Bar Council member Paul Miller spoke in support and Bar Council member Paul Drysdale spoke in opposition. All members of Bar Council in attendance spoke about their position, then a vote was taken. The proposal was defeated.

Having worked so long and so hard on a project which was not successful was naturally very disappointing for all of the committee members. Nonetheless, we are not defeated. We succeeded in raising an issue which is of importance to the profession and which is still underestimated in its significance. The discussions which took place involved members of the Society from every region of the province. As a result, all members of the profession now know that this is a problem and that a solution needs to be found. We will continue to pursue this issue in the future.

OTHER WORK OF THE COMMITTEE 2004-2005

For all that most of our energy was directed at the above proposal, we met monthly and did turn our minds to other projects. We continued to work on a Mentoring Program for Women Students/Lawyers and we look forward to carrying out a pilot project next year.

We also continued work on reviewing and updating the model policies of the committee for gender-inclusive language. In the coming year, we hope to develop a policy for the Nova Scotia Barristers' Society with regard to the use of gender-inclusive language.

This year, for the first time, members of our committee, together with the Race Relations Committee, participated in presentations to the Bar Admission Skills Course about the work being done by the committees, the experiences of the profession, and the work of the Equity Officer. We expect to continue such presentations in the future.

We have begun working with the Organizing Committee of the Nova Scotia Association of Women and the Law

in relation to the 2005 Frances Fish Women Lawyers' Achievement Awards Dinner, which is to be held on Tuesday October 18, 2005, Persons' Day. This will be the fifth time (the dinner is a bi-annual one) that we have worked with the association on this project.

CREDITS

This past year, my Co-Chair, Elaine Cumming, resigned in December, 2004; and in September of 2004, we were joined by our newest member, Catherine Meade. A huge thank you is extended to each member for the time and energy spent on the initiatives of the committee this year.

On behalf of all the members of the Gender Equality Committee, I extend appreciation to Gina Dwyer, our Administrative Support Person, for her interest, attention, and assistance throughout the year.

Last, but by no means least, on behalf of the Gender Equality Committee, I wish to applaud the support of the Society's Equity Officer, Marie Paturel, for her hours of dedicated work with the committee. This year, with the special demands of the Maternity/Parental Leave Proposal, she worked tirelessly with us in polishing the Power Point presentation, traveling to each of the consultation meetings, processing the comments made at the meetings, coordinating the posting of all information on the website, synthesizing reams of material, and making sure that everybody had a copy of every response that was received. Quite simply, the Gender Equality Committee could not have gotten through the demands of this year without her Herculean efforts.

COMMITTEE MEMBERS

Brenda K. Pate, Chair (3)
 Janice E. Beaton (7)
 Karen A. Fitzner (2)
 Paula Kinley Howatt (2)
 Lester Jesudason (2)
 Kevin A. MacDonald (2)
 Catherine Meade
 Denise C. Smith (2)
 STAFF: Marie Paturel

LIBRARY AND INFORMATION SERVICES

LIBRARY REVIEW

The Library Committee was tasked with undertaking a comprehensive review of the Society's Library Services, including county libraries, in light of other library services and resources available. This review, started in the previous fiscal year, continued into the 2004-2005 fiscal year.

In May 2004, a survey of the membership addressed not only questions about Library Services but also examined the legal research habits of lawyers in light of the significant changes in legal research.

The survey results concluded that there are differences in legal research practices and access to resources depending on a firm's size and location. Further, the use of online resources was obviously increasing, but Library Services was viewed as a valuable resource to members because of staff-assisted services, the print collection and online services. Support for a province-wide library system was evident in the survey results, yet approximately 40 percent of those who completed the survey indicated that they had not used the Halifax library in the six months leading up to the survey. As could be expected, lawyers in sole practice, smaller firms and recently admitted lawyers used Library Services more often. There was also a recognition of CanLII and strong support for it.

The Library Committee developed the core principles for Library Services, defined what basic services members should expect to receive, and discussed cooperation with other libraries. The basic services and key functions of Library Services were divided into three categories: collection, provision of service and value-added services. The value-added category is the largest, requires the most staff resources and includes, for example, the Nova Scotia Law News, online databases and management of Society information (Best Practices resource).

Cooperation with Dalhousie was examined, including amalgamation of the two facilities. A subcommittee was formed and a meeting was held with the Dean of the Law School and the Law School's librarian. Quickly, it became apparent to the committee that the diversity of users, the very different mandates, the varying collection policies, and staff complements, precluded any realistic discussion about a merger.

The committee agreed that the model that made sense, and which the survey results supported, would be one

that delivered as much information as possible directly to lawyers' computers. The delivery model supported by the committee calls for a library facility in Halifax with a good reference and text collection. Material will be provided to lawyers from this location in an efficient and timely manner. CanLII will deliver primary materials (case law and legislation) to lawyers' computers. County libraries will no longer receive funding from the Society, except for the Simon J. Khattar, Q.C. Library in Sydney and the Kings County Barristers' Library in Kentville, which will house part of the text collection. These will be referred to as remote collections. Commercial electronic services will be available only through staff.

These changes cannot happen immediately. It cannot be stressed enough that the success of CanLII is central to this proposal. This is a competency issue. Without adequate access to comprehensive case law, lawyers cannot be expected to be competent. Until CanLII is able to meet the mandate of delivering primary case materials directly to lawyers, the Society will continue to fund e-Carswell for use of lawyers across the province.

The committee's final report, presented to Bar Council on November 19, 2004, is available at www.nsbns.ca/Library/reportNov04.pdf

I cannot thank the committee enough for their considerable contributions in developing this new delivery model. Many hours of hard work and dedication went into this comprehensive evaluation of our library services and how they are delivered to the members.

BEST PRACTICES: RESOURCE

Library and Information Services worked with the Professional Responsibility department to create a Professional Responsibility research tool for members. This is still in progress and can be viewed via the "Best Practices" link on the NSBS website.

SECONDARY SOURCES DATABASE

All CLE, CPD, *Nova Scotia Law News* and *Society Record* articles are now available on the Society's website. Two databases were combined and materials from the Society Record and the Continuing Professional Development seminar materials were added. In addition, articles

written by members but not published in print will be included. This can be viewed via www.nsbs.ns.ca/library.html and choosing the secondary sources link.

NOVA SCOTIA LAW NEWS

In addition to digesting decisions, a new feature of providing case comments for the more interesting and noteworthy cases has been added. The case comments will appear in the *Nova Scotia Law News*.

CANLII RETROSPECTIVE CONVERSION

This project continues. Library staff have converted Appeal Court decisions back to 1992 and will hopefully be forwarding these to CanLII and loading them on the Society site with Law News digests by the end of the summer. The conversion of the Appeal decisions to 1990 will be completed first before moving on to complete the Supreme Court decisions for the same time period.

LAWYERS ASSISTANCE PROGRAM

This year the Lawyers Assistance Program was very busy with 77 new cases. The nature of the cases referred to counselling were stress, family problems, depression, and addictions.

LAP meets with the Bar Admission Course students and participates in the joint meeting of the chairs of various Society committees to share information about the work of the committees. When the Professional Responsibility Department conducts a Section 32(2) hearing, a member of the Lawyers Assistance Program Committee is waiting and available to meet with the member, if he or she so wishes. The committee member is not advised of the name of the member.

Last year an extensive peer volunteer training program was developed. Committee members received two days of intensive training. The training included preparing peer volunteers for the initial contact with someone who needs help; building trust and rapport; learning how to actively listen; understanding the role and responsibilities of a peer helper; and ensuring a better understanding of boundaries.

I would be remiss if I did not extend many thanks to the staff of our library. There have been many changes over the last 12 months, and there will be many more. The staff not only accept these changes, but have been actively involved in promoting them. We are fortunate to have staff who are continually prepared to consider new ideas and improvements to the service they offer.

COMMITTEE MEMBERS

Ronald J. MacDonald, QC, Chair (1)
 Del Atwood (2)
 Robert G.H. Patzelt (2)
 Frank E. DeMont (2)
 Paula Kinley Howatt (2)
 Jeffrey S. Moors (2)
 Donald C. Murray, QC (2)
 Jill Plummer (2)
 Barbara Campbell (Director of Library Services)
 Susan Jones
 Anne Watling

Members are being called upon more frequently to serve as peer volunteers, and this training process was very helpful. The 2005 Lawyers Assistance Program Award will be presented to Blanche Keats at the Admissions Dinner on June 9. Ms. Keats has been an active member of the Lawyers Assistance Program since its inception, and has volunteered countless hours to the program.

In the coming year, the Lawyers Assistance Program will be working with New Brunswick and Prince Edward Island to help them establish and develop their programs. We will continue to develop the peer volunteer aspect of our program and to provide outreach to members across the province.

COMMITTEE MEMBERS

Patrick I. Cassidy, QC, Chair (7)
 Sean Foreman (2)
 Everett Harris (2)
 STAFF: Lori Duggan

MULTI-DISCIPLINARY PARTNERSHIPS TASK FORCE

Although the publicity surrounding MDPs has waned in recent years, the Task Force continued to work on this topic because we continued to be of the view that there was a need and an opportunity to address this matter.

The Task Force agreed on several general principles and they are:

- 1) That MDPs be allowed, but only if the Society can protect the core values of the profession (e.g. privilege, confidentiality, eliminate conflict of interest, control clients' costs, etc.).
- 2) That lawyers should not be allowed to receive a finder's fee for referral of work to other professional or service providers.
- 3) The Task Force noted that many of the concerns surrounding MDPs are addressed in our Code of Conduct and in the LPA and with appropriate supporting regulations.

A report was developed by the Task Force and presented to the Executive and then later was received by Council. In brief, the Task Force recommended that the wording of the LPA as it relates to the "practice of law" supports the situation where lawyers and non-lawyers can together provide professional services to clients.

The Task Force recommended that if MDPs were to be sanctioned they should have their operations regulated by the Society to protect the core values of the profession.

Insurance was identified as the largest operational issue that needed to be addressed. There will be a challenge in harmonizing the various coverages.

Flexibility is necessary to be able to accommodate the myriad of legal and business structures of the MDP and its participants.

It was recommended by the Task Force that new draft regulations be completed and incorporated as part of the LPA process to allow for the existence and regulation of MDPs.

COMMITTEE MEMBERS

Robert G.H. Patzelt, Chair (3)
A. Mark David (2)
Jeffrey S. Moors (3)
M. Gerard Tompkins, QC (3)
STAFF: Darrel I. Pink

PROBATE COMMITTEE

The committee was constituted to review various matters from "*an Act respecting the Probate and Administration of the Estates of Deceased Persons*" (*the Probate Act*) S.N.S. 2002, Chapter 31. The committee initially met to discuss which issues should be addressed, and then circulated a letter to various interested members of the Nova Scotia Barristers' Society throughout the province who practice in the area of probate. As a result of the meetings of the committee and the responses from various solicitors, numerous concerns were identified and discussed. A copy of the draft report was sent to the Department of Justice, Courts Services Division, and staff in the department provided valuable input for the preparation of the report.

The final report should be completed within 60 days. The committee wishes to thank members of the Society who have taken the time to outline areas of concern, and

encourage them to continue writing to the committee should additional issues arise in relation to the *Probate Act* and regulations thereunder.

The committee also wishes to thank Darrel I. Pink for his counsel and assistance on committee matters, and Kristene Handley for her very capable administrative assistance.

COMMITTEE MEMBERS

Patrick A. Burke, Chair (3)
Roberta J. Clarke, QC (3)
W. Mark Penfound, QC (3)
M. Estelle Theriault, QC (3)
Shauna L. Wilson (3)
STAFF: Darrel I. Pink

PRACTICE ASSISTANCE COMMITTEE

The mandate of the Practice Assistance Committee is to deal with any and all operational issues that might arise in law practice. The primary workload of the committee is dealing with calls from lawyers on practice-related problems. The following is a sample of some of the issues the committee members dealt with over the past year:

- a number of questions or problems with respect to the transfer of files from one law firm to another;
- questions from lawyers wishing to re-enter private law practice from the public sector, and the reverse situation;
- issues as to ownership of file materials;
- issues concerning a situation where a prior lawyer on a file had submitted an excessive bill and was trying to hold up settlement of the matter and disbursement of funds to a client;
- questions on the technology available to copy closed-out files;
- the most efficient means of researching a particular legal topic;
- answers to legal issues;
- a number of questions on how to deal with a difficult judge and also difficult lawyers.

The committee continues to maintain its existing programs, such as the Mentorship Program and maintaining and interpreting the Practice Assistance Manual. One of the basic tenets of the committee is confidentiality. The committee is attempting to try to do a better job in conveying to members the fact that any communication they have with our committee or committee members is always held in the strictest of confidence.

Over the past year I think committee members have noticed that we are receiving fewer calls when compared to previous years. There are a number of possible explanations for this. However, the committee continues to view itself as a vital tool to the profession to use the experience and expertise of fellow members to solve operational dilemmas.

As mentioned in last year's report, the major outstanding issue for the committee is its future role in any modified practice assistance model at the Bar Society. We certainly believe that we should have a major role to play in any new model.

COMMITTEE MEMBERS

Randall P.H. Balcome, Chair (6)
J. Brian Church, QC (7)
Carole Gartside (4)
Gavin Giles, QC (4)
Graydon D. Lally (13)
Sandra B. MacPherson Duncan, QC (9)
STAFF: Lori Duggan

PROFESSIONAL STANDARDS COMMITTEE - REAL ESTATE

Real Estate conveyancing continues to undergo significant change as lawyers' offices experience first-hand the changing real estate environment created by the new *Land Registration Act*. Last year Halifax joined the previous seven counties participating in the Land Registration system and mandatory education sessions have continued for all lawyers wishing to be authorized to work in the new system.

The committee's agenda in dealing with the Professional Standards was less onerous this year compared to other years. We reviewed some of the standards identified by lawyers as requiring clarification, including the Access Standard. The committee is currently drafting proposed new standards dealing with client identification to address some of the concerns raised by fraud issues, and undertakings, which continue to challenge property practitioners. Recommendations will be forthcoming to Council in the fall with regard to these changes.

The Standards Committee continues to welcome comments from the practicing bar to ensure that the Stan-

dards fit with the new regime presented by the *Land Registration Act*.

I extend a special thanks to the committee members who have exemplified year after year dedication to the work of this committee. Thanks to Christine Ward, our able scribe, and to Deborah Rozee, for her continued patience in furthering the work of the committee.

COMMITTEE MEMBERS

Catherine S. Walker, QC, Chair (10)
Richard W. Cregan, QC (8)
David F. Curtis, QC (10)
R. James (Jim) Filliter
Garth C. Gordon, QC (10)
James A. Gregg (4)
Erin O'Brien Edmonds (1)
Ivo R. Winter (2)
STAFF: Deborah Rozee

PROFESSIONAL STANDARDS (FAMILY LAW) COMMITTEE

Bar Council created the Professional Standards (Family Law) Committee as part of its Annual Plan in 2003. Professional Standards Committees have the mandate of developing guidelines and programs to assist the members of the Society, either collectively or individually, in maintaining and improving their competence. We are at the first stage of that mandate, defining the standards of professional conduct for family law practitioners. Following our work, it will be possible to develop programs to assist members in maintaining and improving their competence. Nova Scotia is the first Canadian jurisdiction to attempt to define professional standards in family law.

The committee is composed of Sally Faught, Ann Marie MacInnes, Valerie MacKenzie, David Mahoney and Linda Tippet-Leary. Ann Marie and David represent Bar Council on the committee. Janice Thomson acts as the committee's liaison with the Barristers' Society.

The committee has met seven times, with members participating by teleconference when unable to attend in person.

The committee has completed standards of practice with regard to disclosure, client screening, children, and dealing with parties and individuals who are not represented. Substantive practice checklists for interviewing clients, *Divorce Act* proceedings, and various forms of agreements were completed. Currently, the committee is developing the final standards on information gathering, trial preparation and trial.

Additionally, we have been asked to comment on various issues in family law practice by the Barristers' Society. During the upcoming year, the committee will develop standards relating to client relations, the lawyer's role; advising clients and obtaining instructions.

We estimate that our work will be complete by the end of 2005, when the draft standards will be made available to members and Bar Council for comment and consideration. This timing should mean the completed standards are available when the Family Division has expanded through Nova Scotia, which is presently anticipated to occur in 2006.

I am grateful to Sally, Ann Marie, Val, David and Linda for their tremendous interest in this project and the energy and expertise they bring to it. Every meeting is a learning experience and a reminder of the collegiality of the family law bar. I appreciate Janice Thomson's knowledge of the resources and research available at the Barristers' Society. Her work has saved us much effort. I thank my partners at Stewart McKelvey Stirling Scales for their support of my work as chair of this committee.

COMMITTEE MEMBERS

Elizabeth Jollimore, Chair (2)
 Sally B. Faught (2)
 E. Ann Marie MacInnes (2)
 Valerie A. MacKenzie (2)
 David J. Mahoney (2)
 Linda Tippett-Leary (2)
 STAFF: Darrel I. Pink

QUALIFICATIONS & BAR ADMISSION COURSE COMMITTEE

The Qualifications and Bar Admissions Course Committee (QBACC) is charged by Bar Council to establish standards for, and to administer, the articling process, the enrollment of articulated clerks and admission to the Bar, and to administer the regulations with respect to reinstatement and change of status of members of the Society.

Bar Council's 2004 - 2005 Annual Plan instructed QBACC to implement the new Articling and Admissions regime, which required a complete change to both the processes and the content of the articling and admission process. This has been an extremely busy and challenging year. The regulatory framework for the new regime has changed considerably. Starting June 1, 2005, all principals are required to complete an application to be approved as principals. Each principal or lawyer wishing to hire an articulated clerk must create an education plan which sets out the experience the clerks will gain during the articling term.

Each articulated clerk must have significant exposure to both a barristers' and solicitors' practice. Gone are the days when clerks must gain experience in 13 substantive areas of law. Instead, the firms must indicate what areas the students will be exposed to, but more importantly show how they will gain the requisite knowledge, skills and attributes. This has undoubtedly been a lot of work for firms, however our hope is that it will ensure a better experience for both articulated clerk and principal.

QBACC now has the responsibility of approving all education plans and principal applications as well as

articling plans for individual articulated clerks. In addition, the new regulations require the committee to review each application for admission when they are ready to be called. This ensures that the committee is aware of each candidate for admission and considers each application before that clerk is called to the bar.

As a result of the work of the committee and staff, the clerks who began articling June 1, 2005, are articling within a system that allows law firms to act as principals and focuses on the clerk acquiring the requisite knowledge, skills and attributes that will adequately equip them to begin the practice of law and to acquire habits of learning that will continue throughout their careers. QBACC also spent a tremendous amount of time reviewing and commenting on the draft regulations for the new *Legal Profession Act*.

In addition to eight regularly-scheduled meetings, QBACC also met an addition three times to consider applications being made under the new regime, and the subcommittee met numerous times to work on the new articling and admissions process. The committee also considered relevant aspects of the following topics:

- The work of the subcommittee on articling and the admission process;
- The new regulations under the *Legal Profession Act*;
- Bar Examination marking procedures;
- Part II of the Applicant's Questionnaire dealing with mental health issues; and
- The Skills Course

The committee (and staff, where appropriate) made the following rulings:

- Decisions relating to articling: 34 by committee, 14 by staff
- Change of status: 4 by committee, 62 by staff
- Canadian transfer (non-mobility provinces): 6 by committee, 4 by staff
- Canadian transfer (mobility provinces): 1 by committee, 19 by staff
- Temporary mobility: 8 by staff
- Occasional appearance: 3 by committee, 1 by staff
- Readmission after resignation: 1 by committee
- Academic call: 0
- Foreign transfer: 2 by committee
- 84 new lawyers admitted to practice

In addition to my thanks to all members for their efforts, I would especially like to thank the subcommittee members, Gordon Johnson, Q.C.; Cheryl Canning, and Kevin MacDonald for working tirelessly on the new articling and admission process. Thanks also to staff Darrel Pink, Jacqueline Mullenger and Karen Trites, who have contributed

significantly to the work of the committee over the year. Finally, I would like to acknowledge the contributions of those committee members who are retiring for their excellent service to the committee.

COMMITTEE MEMBERS

Richard S. Niedermayer, Chair (6)
Paula R. Taylor (1), Vice Chair
Jim Bickford (Lay Member)
Cheryl Canning (1)
Gregory Barro (3)
Paul Drysdale (2)
Diana E. Ginn (1)
Gordon C. Johnson, QC (18)
Paula Kinley Howatt (2)
David J. Mahoney (2)
Jeffery S. Moors (4)
Sheldon Nathanson (2)
M. Gerard Tompkins, QC (4)
Ivo Winter (2)
STAFF: Jacqueline Mullenger
Karen Trites

RACE RELATIONS COMMITTEE

The Race Relations Committee (RRC) welcomed several new members this year, including a new lay member from the Mi'kmaq community and the new director of the Indigenous Blacks and Mi'kmaq Programme at Dalhousie University. Meeting on a monthly basis, the RRC was able to complete several tasks and to finalize an ongoing project.

The RRC circulated a self-identification questionnaire in the February issue of the Society Record. One hundred and twenty responses were received in total. The purpose of the questionnaire was to provide an estimate of the number of Visible Minority and Aboriginal members of the Nova Scotia Barristers' Society (Society).

In May, the RRC finalized the format for a survey of recent members of the Society regarding their articling and employment experiences in Nova Scotia. The survey is expected to be circulated to members at the beginning of

the 2005-2006 committee year.

The RRC continued work on resource materials for law firms regarding equitable recruiting practices and interview guidelines. Completion of these materials is expected early in the 2005-2006 committee year.

In October, the Society sponsored the annual national conference of the Canadian Black Law Students Association which took place in Halifax. The RRC had encouraged the participation of the Society in this event in February of 2004 when it was originally scheduled, however, it was postponed due to weather.

Also at the encouragement of the RRC, the Society supported the Dalhousie Aboriginal Law Students Association conference and the 15th anniversary celebration for the Indigenous Blacks and Mi'kmaq Programme at Dalhousie.

The RRC expressed to Bar Council its support for the Parental Leave Program proposed by the Gender Equality Committee.

As in the past, the RRC wrote to Visible Minority and Aboriginal members of the Society to encourage participation in the Bar Council elections and the Society's committees. Several responses were received from interested members.

The RRC is very appreciative of the efforts of the committee members this past year and would like to extend a special thank you to Marie Paturel and Gina Dwyer for their continued assistance and support.

REAL ESTATE TASK FORCE

The Real Estate Task Force was a new committee created last year by the Society. The mandate of the committee was broadly stated. It included acting as a focal point for real estate issues affecting members to ensure that these issues were referred to the appropriate bodies for action, and developing an inventory of real estate practice issues and recommendations for the Society's involvement. It was an "overseeing" role.

The Task Force met only three times this year, but we were able to identify numerous issues, both provincial and national, with respect to real estate conveyancing practice and arising from the implementation of the *Land Registration Act*. They include general conveyancing issues of undertakings, fraud, and mortgage payouts; LRA practice issues such as the "green layer," and audit issues, search parameters, software recognition, and consistency among LRO staff. At a national level, issues include defalcation, identity fraud, and CMHC policy positions.

The issues identified are varied. A closer examination of how to best address and move the issues forward may be required. The role of this committee was one of identifying issues, but clearly action is required on a number of fronts as the pending year will see full implementation province-wide on the LRA, and the implementation of electronic

COMMITTEE MEMBERS

Deanna Frappier, Co-Chair (3)
 Michael J. Wood, QC, Co-Chair (2)
 Caron Ferguson (1)
 Janice Maloney (1)
 Ann Marie MacInnes
 Christopher Nicholson (2)
 Diane Rowe (2)
 Vanessa Tynes (2)
 Michelle Williams (1)
 Spencer Wilmot (1)
 STAFF: Marie Paturel

submission in addition to electronic registration.

I would like to thank the members of the committee for their commitment and interest shown to the real estate issues discussed, and hope that their participation in furthering these issues of paramount interest to the property bar will continue.

Thanks to Christine Ward, our able scribe, and to Deborah Rozee, for her enthusiasm and dedication to a quality product in this newly-created committee mandate.

COMMITTEE MEMBERS

Catherine S. Walker, QC, Chair
 Robert MacKeigan, QC
 George Lohnes, QC
 K.H. Anthony Robinson, QC
 Brenda Rice-Thomson
 James A. Gregg
 Ivo R. Winter
 STAFF: Deborah Rozee

REIMBURSEMENT FUND COMMITTEE

The Society's Reimbursement Fund was established in July, 1957, for the purpose of reimbursement, in whole or in part, of persons sustaining pecuniary loss by reason of the misappropriation or conversion of money or other property entrusted to or received in his or her professional capacity by any member of the Society practising in the province. Payments from the fund are made on an *ex gratia* basis. Claimants are required to satisfy various claims criteria set out in the *Nova Scotia Barristers and Solicitors Act* and Regulations. The Reimbursement Fund Committee has a mandate to investigate and make recommendations to Bar Council with respect to payment of claims.

The Society has enjoyed a very low claims experience for the past two years, and began this year with the intention of focussing attention on policy, procedure and development of new regulations. Unfortunately, the Society learned in January 2005 of the largest defalcation in the Society's history, and significant time and effort has been devoted in the past five months to processing the large claims arising from the former practice of Srinivasen P. Pillay.

The Pillay defalcation gave rise to a significant and important debate at Bar Council with respect to the current caps on the fund of \$300,000 per lawyer, and the lesser of \$750,000 or half the capital in the fund per annum. After considerable consultation with the membership and upon the recommendation of this committee, Council resolved on April 22, 2005, to raise the present caps on the Reimbursement Fund to enable the Society to respond in full to the meritorious claims in relation to Mr. Pillay. As recommended by the committee, Council also directed that every effort be made to seek recoveries against these losses, and to put in place as soon as possible appropriate means for containing future liability of members for payment of claims.

CLAIMS REVIEWED

Claims have arisen from the former practices of three lawyers during this period, two of whom (Bremner, Langille) were permitted to resign by way of Settlement Agreement in 2003-2004.

The committee recommended, and Council approved, payment of two claims in relation to Albert Bremner with respect to unearned retainers, in the amounts of \$1,200 and \$500. The committee reviewed one claim in relation to Kyle Langille, and as a result of the committee's review

of the evidence, it determined that the claim should be denied on the basis that there was no evidence that a solicitor-client relationship existed with respect to loans made between the client and Mr. Langille. The committee further determined that since Mr. Langille was still in the employ of his former law firm at the time the funds were provided to Mr. Langille, as a matter of policy, the claimant should pursue this matter with that firm.

With respect to the claims filed in relation to the former practice of Srinivasen Pillay, the committee had the benefit of a detailed audit report for purposes of identification of known and potential claims against the fund. The audit report identified known losses to clients of \$1,310,460.78, and potential additional losses of \$80,211.

To date, nine Pillay claims have been reviewed, recommended for payment and approved by Bar Council, totalling \$824,864.29. Given the extent of hardship caused to these clients by their significant losses, the committee and Bar Council took every step possible to expedite review, investigation and approval of these meritorious claims. Four new claims will be reviewed by the committee in June, and more are expected to be filed within the coming months.

Of the claims paid to date in respect of the Pillay defalcation, the sources of the funds in trust with Mr. Pillay were as follows: three involved losses arising from real estate transactions, totalling \$103,478.25; two related to real property transactions and subsequent investment of proceeds of sale, totalling \$442,081.04; one pertained to estates and trusts, totalling \$63,000; and one pertained to a corporate/commercial transaction, totalling \$215,305. The remaining claims filed and under investigation pertain to losses arising from estates and trusts, and real estate transactions.

POLICY AND PROCEDURE

During its deliberations with respect to claims, the committee has refined or clarified its policies with respect to payment of unearned fee/retainer claims; payment of non-pecuniary damages such as lost interest or legal fees in preparing the claim; access to claims precedents by claimants; and the application of the notice provisions set out in section 40(7) and (7A) of the Act.

Throughout the year, the committee assisted with the development of the new Legal Profession Act and Regu-

lations relating to client compensation. Significantly, the name of the fund will change on June 1, 2005 to the Lawyers Fund for Client Compensation. This name is more consistent with other jurisdictions and more clearly captures the purpose of the fund. In addition, the new Act and Regulations provide for a new *Land Registration Act* (LRA) Compensation Fund, for purposes of responding to claims arising from theft or fraud by members under the LRA system. Another change in the regulations has been to extend the time limit for filing claims from 12 to 24 months from the date when the claimant is deemed to have knowledge of the loss. Work continues to clearly define the types or heads of damages covered by the fund.

Victoria Rees, Director of Professional Responsibility, provides professional support to the committee, and maintains close ties with the American-based National Client Protection Organization, the International Bar Association's Client Protection Fund Committee, and is a member of the Federation of Law Society's National Compensation Fund Task Force. These are excellent resources for the committee in terms of difficult claims issues, networking, and best practices with respect to policy and procedures. The Federation Task Force has a mandate to consider means for levelling the playing field for claimants across the country and create greater consistency in compensation levels, within the parameters of the mobility agreement.

IN APPRECIATION

I have enjoyed my two years as Chair of the Reimbursement Fund Committee and am proud of the excellent work of the dedicated volunteers: Roberta Clarke, QC; Douglas Lutz; John Cochrane; Senator Donald Oliver, QC; Robert Patzelt; Joseph Rizzetto; Jean Whalen, and our new lay member Jim Bickford. I also wish to thank our previous lay member, Harry Inder, who devoted many hours to the committee's work until his retirement earlier this year. I also wish to extend our appreciation to Victoria Rees, and Heather Antonsen, Officer of Complaints and Investigations, for their dedication and hard work on behalf of the members of the Society.

COMMITTEE MEMBERS

Scott C. Norton, QC, Chair (2)
 Jim Bickford (Lay Member)
 Roberta J. Clarke, QC (2)
 John P. Cochrane, QC (9)
 Harry Inder (2)
 Douglas W. Lutz (3)
 Robert G.H. Patzelt (3)
 M. Joseph Rizzetto (4)
 Jean M. Whalen (1)
 STAFF: Victoria Rees
 Heather Antonsen

UNAUTHORIZED PRACTICES SUBCOMMITTEE

As chair of the Unauthorized Practices Subcommittee, I am pleased to report that we have had another uneventful year. There were no matters brought to the committee's attention, and hence, no meetings or action required.

COMMITTEE MEMBERS

Paul B. Miller, Chair (2)
 Jeffrey R. Hunt (7)
 Timothy Landry (7)
 Johanne Tournier (6)
 Ivo R. Winter (2)
 STAFF: Lori Duggan

SERVICE NOVA SCOTIA AND MUNICIPAL RELATIONS LIAISON COMMITTEE

The committee held four meetings in the months of November, 2004, and March, April and May, 2005. Two long-standing members of the committee, Nancy VanStone and our co-chair, Chris McCulloch, Q.C., resigned as they took up new responsibilities within the government: in Nancy's case, as Assistant Deputy Minister in the Department of Environment and Labour, and in Chris's case, as the Chief Electoral Officer for the province. Their leadership over the years has been very much appreciated by the committee and their ongoing contribution will be greatly missed.

The committee welcomed Gretchen Pohlkamp, Acting Executive Director of Registry and Information Management Services, and Kevin Malloy, Assistant Deputy Minister with Service Nova Scotia and Municipal Relations, as their replacements.

The committee's mandate was last reviewed and approved by Bar Council on March 22, 2001. The mandate includes the following:

There are three main tasks for the committee:

- To identify issues of mutual concern and interest;
- To recommend means for addressing these issues;
- To communicate the results of this process to the Department and to the Bar.

Some issues, which the committee may address, include:

1. Proposed changes in programs or services of the Department and technology used for these programs and services that will have a particular impact on the legal profession;
2. Facilities and technology available to the public and the legal profession for the electronic service delivery and accessing real and personal property information, business and personal information and other information maintained by the Department;
3. Standards for recording, filing, maintaining and accessing real and personal property information, business and personal information and other information maintained by the Department which will have a particular impact on the legal profession;
4. Legislation, regulations, policies and procedures affecting land information, real and personal property and other information maintained by the Department which will have a particular impact on the legal profession.

The makeup of this committee will consist of a small number (up to five) from the Society and from the Department.

Some issues may require special expertise, or a greater commitment of time or resources, such that subcommittees or working groups will be established or support will be seconded to the committee from time to time.

A summary of the committee's work for 2004-2005 is as follows:

At the November meeting, a presentation was made by Anne James and Kerry MacLean dealing with the Nova Scotia Business Registry, both in its present form and potential enhancements to be made to the registry in the future. Time was also set aside to discuss possible agenda topics for the upcoming year.

Our work was largely focused this past year on proposed amendments to the *Companies Act*. A draft discussion paper prepared by Robert G. Mackinaw, Q.C., was presented to the committee in March. A working group consisting of Fae Shaw, Maurice Chiasson, Kerry MacLean and Gwendolyn Fountain has continued with the project in the expectation that a broad-based consultation will take place in the late spring - early summer, in the expectation that amendments may make their way to the 2006 Spring Session of the Legislature.

The committee was joined at its April meeting by Mark Coffin, Registrar-General, and Sam Bennett. A presentation was made on E-Submission and E-Payments as further enhancements to Registry 2000 vision. A pilot implementation is scheduled for a small group of law firms in Halifax in the May 2005-September 2005 period, with a limited province-wide rollout tentatively planned for early 2006.

Robert Divet attended the May meeting to make a presentation on Public Key Infrastructure (PKI) issues as they affect government's increasing role in E-Business. The committee also considered the Government's Closure Policy as it affects offices under the jurisdictions of SNS & MR.

We thank those who have made presentations to the committee over the past year.

If the committee is to continue to serve a meaningful

role, it is important that members of the Bar, as well as Bar Council itself, be encouraged to refer issues to the committee within its mandate for consideration and investigation. The committee can serve a useful purpose in providing a sounding board for both the Bar and government as we carry out our respective roles in serving the public.

COMMITTEE MEMBERS

NSBS Appointments
 George R. Lohnes, QC, Co-Chair (7)
 Maurice P. Chiasson (3)
 Fae J. Shaw (3)
 W. Blair MacKinnon (2)
 Department Appointments
 Richard Schaffner
 Gretchen G. Pohlkamp
 STAFF: Darrel I. Pink

TRUST ACCOUNTS COMMITTEE

The committee held five regular meetings during the year and made four quorum rulings.

This year, as a result in changes within the Society, the monitoring of trust reconciliations and accounts, bankruptcies and judgments against members, and the internal audit program was undertaken by the Professional Responsibility Department.

During the year, 390 Form 20 filings were received and reviewed, with 238 or 61 percent being error-free. This represents an improvement over last year's filings. The most common exception reported was a violation of Regulation 47A(4)(b) – overdraft with respect to one client or account. Other common exceptions include violations of Regulation 47B(3) – failure to reconcile within 30 days and Regulation 47A(2) – failure to maintain the required books and records. As a result of a quorum ruling of the committee, one exemption from filing Form 20 was granted where the Society's auditors had already completed an intensive review of a firm's trust accounts.

This year there was one suspension for failure to file a Form 20.

One application for payment of undistributed trust funds was made to the Supreme Court. This involved files for four members and a total of \$7,291.00.

ANNUAL PLAN AND WORK OF THE COMMITTEE

The Society's Annual Plan assigned to the Trust Accounts Committee the matter of uniform trust regulations for Atlantic Canada (which continued from the previous work of the Committee); a program of mandatory trust account education for "new" trust accounts; and a new Form 20.

As a result, the committee set as its work plan the following tasks:

- creation of a mandatory trust account program, including revision of the Trust Accounts Manual, sample forms, and development (with the assistance of the Admissions & Professional Development Department) of the delivery and required testing
- creation of a reporting questionnaire to accompany monthly trust account reconciliations required for the first six months of operation of a new trust account, identifying compliance and potential risk
- introduction of new trust account regulations based on the uniform Atlantic Provinces Trust Account Rules
- creation of a new Form 20

During the year, the committee and a smaller working group of the members finalized the new Trust Accounts Manual, subject to the necessary changes resulting from the *Legal Profession Act* and regulations. With the valu-

able assistance of Jackie Mullenger, the committee is working on the education program, which should be in place when the relevant Regulations are in force.

Mr. Greencorn and Mr. Kolke have worked on the development of the questionnaire, which is expected to assist in addressing compliance issues and early detection of risk.

The Chair and Mr. Greencorn consulted with Jim Varro of the Law Society of Upper Canada regarding the Federation of Law Societies cash transaction rule. The committee recommended the adoption of the rule by our Society and it is now incorporated in the new Regulations under the *LPA*.

The uniform Atlantic Provinces Rules were incorporated into the new Regulations which were reviewed by the committee.

Much of the work of the committee revolved around the implementation of rules to allow the participation of a number of Halifax firms in an E-submission and E-payment pilot project of Service Nova Scotia and Municipal Relations pursuant to the *Land Registration Act*. As this would permit the province to withdraw funds from a member's trust account, after consultation with officials of the Law Society of Upper Canada regarding their Teranet service, appropriate regulations were developed by the committee and presented to Bar Council for approval. It is anticipated that the pilot project will eventually be extended to the entire province.

Through the year the committee also responded to inquiries from the Investigative Committee and from the Real Estate Task Force, and considered the matter of undertakings regarding releases of mortgage, and the implications of defalcations in British Columbia and Newfoundland.

The Chair participated in the Joint Chairs Meeting of the Society. This meeting provides a valuable opportunity to consider many interwoven issues of professional responsibility and member assistance.

ISSUES FOR THE NEW YEAR

The finalization and implementation of the mandatory trust account education program, and enhanced trust account monitoring and audit will be areas of major focus for the committee in the coming year.

In addition, as the *LPA* and regulations roll out, there will be an opportunity to ensure that members are aware of changes, and to consider the application of new provisions and whether any further changes will be required.

Sincere thanks to the members of the committee for their continued dedication and interest. Their perspectives are extremely important in the development of policies and regulations.

Special thanks go to Glen Greencorn of the Society's staff and to his assistant, Gina Dwyer, for their diligent support and assistance to the committee. Kelly Kolke, CA, of Grant Thornton, Society auditor continues to make a valuable contribution to the work of the committee.

COMMITTEE MEMBERS

Roberta J. Clarke, QC, Chair (4)
Robert W. Carmichael (1)
Paul Drysdale (2)
David J. Mahoney (2)
William F. Meehan (4)
Robert O'Brien (1)
Michael J. O'Hara (4)
STAFF: Glen Greencorn

FINANCE COMMITTEE

The Society ended fiscal 2005 with a surplus of \$234,612 in the unrestricted General Fund and a deficit of \$753,005 in the Restricted Reimbursement Fund, for a combined deficit of \$518,393.

Of the surplus in the General Fund, \$157,687 was the result of normal operations and \$76,925 was the result of Discipline repayments received during the year. Total revenue was \$74,533 less than budget, and total expenses were \$215,562 under budget for the year. The unrestricted reserves of the General Fund were \$1,093,058 at April 30, 2005.

REVENUE

Fees revenue for practising and non-practising members exceeded the budget by \$40,290. This was the result of more membership growth during the year than budgeted. Meetings and Events revenue was \$38,725 greater than budget, due to revenue received from the 250th Anniversary of the Supreme Court event, which was unbudgeted. This additional revenue was partially offset by the expenses for the event. Revenue for the Bar Admission Course was \$32,055 above the plan due to the capture and recording of some historical revenue in 2005. Revenue from Seminars and Conferences was \$43,595 below budget due to fewer than planned participants. LRA Revenue was \$141,186 below plan due to fewer participants in this educational program than planned. This shortfall in revenue is more than offset by a decrease in expenditure from budget by \$155,273. Over the course of this fiscal year, the LRA education program generated a net surplus of \$51,346 wiping out the deficit of \$13,319 incurred by this program in fiscal 2004.

EXPENDITURES

Expenditures for Admissions and Professional Development were below budget by \$149,569, largely due to the LRA program as noted above. Professional Responsibility expenses were \$95,700 higher than budget and \$53,424 higher than last year. This excess expenditure was the result of increased activity in the investigative and disciplinary activities of the Society. Meetings and Events expenses were \$21,948 higher than budget due to the 250th Anniversary of the Supreme Court event and the fact that there was no Testimonial Dinner in 2005. Library expenses were \$58,095 below budget in 2005. This favourable variance was due to a number of factors; most notably a \$42,739 variance in the Books and Bindings expense. Other favourable expense variances include \$24,905 in the LRA Audit program and \$33,200 in Contingency. During 2005, financial forecasts were prepared that projected an overall year-end result close to budget (break-even). While those forecasts included the Discipline repayments noted above and most of the additional Fees revenue, they

also projected much higher Professional Responsibility expenses than actually occurred. It is the practice of staff to budget conservatively and to forecast financial results based on the worst case scenario for known discipline activities. Financial forecasts prepared during the year also include an assumption that the Contingency expense will be consumed. In 2005 it was assumed that the full year budget for the LRA Audit would be consumed. This item was budgeted based on information provided by Service Nova Scotia and Municipal Relations and there was no way to verify its accuracy or appropriateness. Finally, the Library was forecast to come in on budget. Short staffing during the latter part of the year resulted in less time (and money) being spent on travel, and training. Additionally, the implementation of the Library Review approved by Council in November, led to a reduction in spending on books and bindings.

REIMBURSEMENT FUND

During 2005, the payment per member to the Reimbursement Fund remained fixed at \$1.00. Investment income earned by the Reimbursement Fund totaled \$82,302. Reimbursement Claims paid in 2005 totaled \$824,864 and other expenses (Investment Management Fees) were \$10,443. The total reserves of the Reimbursement Fund were \$1,329,822 at April 30, 2005. There are additional potential claims against the Reimbursement Fund of \$538,742.

BUDGET 2005-06

One of the significant responsibilities of the Finance Committee is the initial review of the Society's Operating and Capital budgets and the recommendation to Council of the practising fee levy for the upcoming year. For 2005-2006, the Finance Committee recommended to Council a Practising Membership Fee of \$2,140 – including a \$400 per member levy for the Reimbursement Fund.

The Finance Committee serves as the Society's Audit Committee. This year the Society's audit was conducted by the firm of Grant Thornton who provided an unqualified report on the Society's Financial Statements.

COMMITTEE MEMBERS

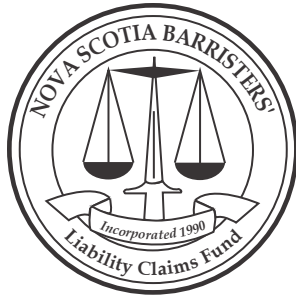
R. Daren Baxter, Chair (5)
 D. Bruce Clarke (1)
 Paul Drysdale (3)
 Lawrence J. Hayes, QC (3)
 Sean F. Layden (1)
 Brenda K. Pate (5)
 Philip J. Star, QC (1)
 M. Gerard Tompkins, QC (4)
 Catherine S. Walker, QC (1)
 STAFF: Glen Greencorn, CMA

OFFICERS AND MEMBERS OF COUNCIL - 2004-2005

This year's Bar Council met eight times. The following chart lists the officers and members for 2004-2005:

Officers	Attendance
John S. McFarlane, QC, President	7
First Vice-President, Ronald J. MacDonald, QC	7
Philip J. Star, QC, Second Vice-President	8
Gail Rudderham-Chermin, QC, Past President	6
John W. Alward, QC, Honorary President	6

Member	District/Capacity	Municipality	Attendance
Del Atwood (Resigned January 2005)	Central	New Glasgow	0
Dr Bernie W.D. Badley	Public Representative		4
Gregory Barro	Southwestern	Yarmouth	6
Clarence A. Beckett, QC	CBA Representative		8
Jim Bickford (Appointed January 2005)	Public Representative		3
Moka M. Case (Appointed in November 2004)	Public Representative		4
Robert D. Chipman	Southwestern	Bridgewater	7
Roberta J. Clarke, QC	Halifax	Halifax	8
Paul Drysdale	Central	Amherst	7
Edward A. Gores	Attorney General Rep.		8
Harry Inder (Resigned September 2004)	Public Representative		0
Paula Kinley Howatt	Southwestern	Kentville	6
E. Ann Marie MacInnes	Cape Breton	Sydney	7
Sandra MacPherson Duncan, QC	Chair, Liability Claims Fund		6
David J. Mahoney	Central	Truro	7
William F. Meehan	Central	Antigonish	6
Paul B. Miller	Halifax	Bedford/Sackville	6
Jeffrey S. Moors	Halifax	Dartmouth	7
Delbert Muise (Passed away January 2005)	Public Representative		1
Sheldon Nathanson	Cape Breton	Sydney	5
Scott C. Norton, QC	Halifax	Halifax	5
Robert G.H. Patzelt	Halifax	Halifax	7
Michael K. Power	Southwestern	Bridgewater	8
Mark Rieksts	Halifax	Dartmouth	7
M. Joseph Rizzetto	Cape Breton	Sydney	3
Dean Dawn A. Russell, QC	Dalhousie Law School		5
Paula R. Taylor	Halifax	Halifax	8
M. Gerard Tompkins, QC	Halifax	Halifax	8
Ivo R. Winter	Cape Breton	Arichat	6



NOVA SCOTIA BARRISTERS' LIABILITY CLAIMS FUND

The Nova Scotia Barristers' Liability Claims Fund is established and operated pursuant to the Legal Profession Act and Regulations, as part of the Nova Scotia Barristers' Society's public protection mandate.

The Fund conducts the mandatory professional liability insurance program for the benefit of the practicing insured members.

ANNUAL REPORT 2004



2004-2005 BOARD, COMMITTEES AND STAFF

BOARD OF DIRECTORS

Sandra MacPherson Duncan, Q.C. (Chair)

Daniel Campbell, Q.C.

Philip Star, Q.C.

W. Dale Dunlop

Robert G.H. Patzelt

Wendy Johnston, Q.C.

John Rafferty, Q.C.

Nancy I. Murray, Q.C.

John R. Cameron, Q.C.

Stephen D. Piggott

John W. Traves

Darrel I. Pink

COMMITTEES

Audit - John R. Cameron, Q.C. (Chair)

Investment - Sandra MacPherson, Q.C. (Chair)

Loss Prevention - W. Dale Dunlop (Chair)

Claims Review

STAFF

Deborah Rozee, Director

Christine Ward, Executive Assistant to the Director

Patricia Neild, Claims Examiner

Gerri O'Shea, Claims Examiner

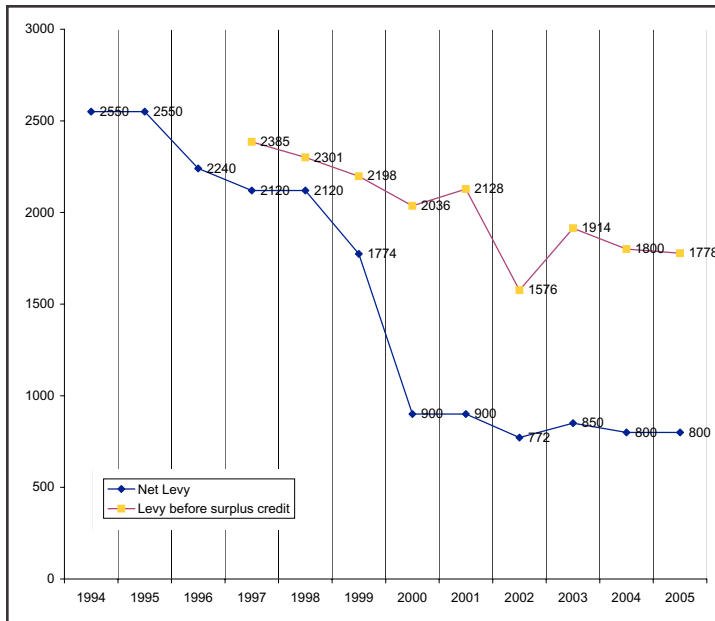
Robin Russell, Claims Officer

The Fund's website is found at www.nsblcf.ca

The 2004 CLIA Annual Report is available at www.clia.ca

THE NOVA SCOTIA BARRISTERS' LIABILITY CLAIMS FUND REPORT

I am pleased to report on behalf of the Board that the Nova Scotia Barristers' Liability Claims Fund has had another very strong year. The full practicing levy for private practitioners for the 2005-2006 year is \$800.00, for Nova Scotia Legal Aid staff lawyers, \$400.00, and for lawyers in the provincial government, \$350.00. There has been no change in the levy over last year.



Our claims experience with CLIA (which provides coverage of our liability claims in excess of \$300,000 up to a maximum of \$1,000,000 per occurrence) continues to be good. As a result, the CLIA premium portion of our insurance levy is the lowest among the participating provinces and territories.

The Fund is committed to managing your funds cautiously. We are very pleased with the financial health of the Fund and our consequent ability, through return of surplus, to stabilize rates for members during these difficult times for lawyers in this province. We can all do our part to keep increases in rates to a minimum, by practicing carefully with a view to loss prevention.

The Fund is very pleased to continue its activities for the benefit of members. A risk and practice management advisor will be joining the Fund in the coming year to work with members on a completely confidential basis in controlling or changing practices which give rise to claims or other difficulties for members. This is an exciting joint initiative with the Barristers' Society. Confidentiality for members seeking assistance will be assured to encourage members with problems to come forward.

To remind members, this is the second lowest assessment for members in the last decade, well off the high of \$2700.00 per member reached in the early 1990s. It is also one of the lowest insurance assessments in the country.

Our actuaries advise us that the true levy necessary to meet our expected liabilities in the coming year would be \$1778.00 per private practitioner, or about 2.2 times the levy being charged to private practitioners. We are able to subsidize this amount through the return of excess surplus held by the Fund to members. We do this in consultation with our actuaries. Since we are gradually depleting our surplus, we can expect the levy to increase over time. **Members should not expect the levy to remain at these low rates indefinitely.**

Our investment experience has been better than anticipated in the past year, which has contributed to the excess surplus available to be returned to members. As well, we continue to have a very favourable loss experience. We can all do our part to contribute to the situation by being careful and claims-wise in the way we practice.

I would like to thank all members of the Board for the commitment and dedication they continue to show to the Fund. I would also like to especially thank your Director, Deborah Rozee, and the dedicated staff, Patricia Neild, Gerri O'Shea, Robin Russell, and Christine Ward, who work so diligently to assist members. It is indeed a pleasure and an honour to be Chair of the Board of the Fund.

A summary of the past year's financial highlights, taken from the audited financial statements of the Fund, is shown on the opposite page.

Sandra MacPherson Duncan



SUMMARY OF FINANCIAL HIGHLIGHTS

NOTES TO THE SUMMARY OF FINANCIAL HIGHLIGHTS

The Fund's financial position has remained stable during 2004. As at December 31, 2004, there was an excess of revenue over expenditures of \$176,000. The excess of revenue over expenditure was the result of a return of subscribers' equity in CLIA of \$340,000. As shown on the summary, without the return of subscribers' equity by CLIA, there was a deficiency of revenue over expenditure of \$164,000. This deficiency was anticipated and is a planned distribution of surplus to insured members. It is part of the Board's strategic plan to stabilize the

insurance levy while maintaining adequate reserves to ensure long-term stability.

There was a decrease in net revenue of \$183,000 as a result of decreased levy revenue. Total claims and expenses increased by \$140,000 and administration increased by \$31,000.

At year-end, the reserve had increased by \$176,000 over the prior year.

NOVA SCOTIA BARRISTERS' LIABILITY CLAIMS FUND

Summary of Financial Highlights

From December 31, 2004 Audited Financial Highlights
(000's)

STATEMENT OF FINANCIAL POSITION AS AT DECEMBER 31, 2004

	December 31 2004	December 31 2003
Cash	\$ 3,057	\$ 3,953
Accounts receivable	273	76
Prepays	232	-
Investments	11,261	10,680
Fixed assets	29	17
	\$ 14,852	\$ 14,726
Accounts payable and deferred revenue	\$ 461	\$ 576
Provision for unpaid claims and expenses	5,073	5,008
Professional liability insurance reserve	9,318	9,142
	\$ 14,852	\$ 14,726

STATEMENT OF REVENUE, EXPENDITURE AND RESERVE PERIOD ENDED DECEMBER 31, 2004

	December 31 2004	December 31 2003
Revenue	\$ 2,009	\$ 2,254
Insurance premiums	449	511
Net revenue	1,560	1,743
Claims and expenses		
Payments	1,296	1,096
Stop loss group deductible limit reimbursements	(206)	87
	1,090	1,183
Increase (decrease) in provisions for unpaid claims and expenses	65	(168)
Total claims and expenses	1,155	1,015
Administration	569	538
(Deficiency) excess of revenue over expenditure before under-noted	(164)	190
Return of C.L.I.A. surplus subscriber's equity	340	1,068
Excess of revenue over expenditure	176	1,258
Reserve, beginning of year	9,142	7,884
Reserve, end of year	\$ 9,318	\$ 9,142

DIRECTOR'S REPORT

AS AT DECEMBER 31, 2004

During 2004, the foundation was put in place for several changes in the operations of the Fund which will become apparent to members over the upcoming year.

NAME CHANGE

One obvious change will be the name change from the Nova Scotia Barristers' Liability Claims Fund to the Lawyers' Insurance Association of Nova Scotia, or LIANS for short. This change will come into effect with proclamation of the new Legal Profession Act.

We have been working on the development of a new corporate logo. Over the upcoming months our communications, both print and electronic, will be distributed under our new name and visual identity.

NEW RISK & PRACTICE MANAGEMENT PROGRAM

We have hired a full-time risk and practice management advisor who will be joining the Fund later this fall. The RPM advisor will be responsible for the development and implementation of a comprehensive program of loss prevention and practice assistance resources for members. The development of the RPM program will allow the Fund to adopt a proactive approach to helping members deal with many of the challenges of practising in today's environment.

The RPM program will offer loss prevention on behalf of the Fund, and practice assistance initiatives on behalf of the Society. There is a strong correlation between the issues underlying claims and practice management problems. We anticipate the merging of these programs will offer efficiencies in program development and delivery, and will provide members with a central source of information and practice aids to deal with a wide range of risk and practice issues.

We are delighted that a long hiring process has resulted in the hiring of an individual who will bring many years of practical experience and a depth of knowledge to the position.

Although still located on the 11th floor of the Centennial Building, the Fund's offices have been renovated to provide for the additional staff space required to operate the RPM program.

LAWYERS' ASSISTANCE PROGRAM

Beginning with the 2005 - 2006 committee year, the Lawyers' Assistance Program will be brought in under the umbrella of Fund programs. The LAP program will continue to be run on a completely confidential basis and the Fund will not receive any information specific to members. LAP services will continue to be provided through an independent office and there will be no change in the current arrangements which ensure complete confidentiality for members utilizing the services provided by the LAP.

Administration of the LAP program through the Fund will permit the development of programs based on an understanding of the full range of practice issues facing members, regardless of the underlying problems. This should result in better program development and increased administrative efficiency.

CLAIMS ACTIVITY

On the claims side, no development is good news. Claims frequency remains relatively constant. There were 226 claim reports received during 2004; a decrease over the number of claims reported in 2003, but overall in line with recent claims history. The number of reported claims per insured member has also remained quite steady over the past ten years.

CLAIMS REPORTED PER 100 INSURED LAWYERS

94	95	96	97	98	99	00	01	02	03	04
28	23	23	18	18	15	16	14	19	16	14

There has been some increase in severity over recent years. However at this point it is not out of line with our longer term averages.

With respect to new developments, many jurisdictions are seeing an increase in the number of claims with unrepresented parties. While our numbers are too small to point to a meaningful increase, there is no doubt that claims

which go to litigation with unrepresented parties present a challenge to manage and are usually more expensive to resolve. The courts are also dealing with this issue and there is no easy solution.

We have been keeping a close eye on developments in the area of real property claims, and in particular, claims which would fall under the provisions of the Land Registration Act. To date there has been little change in the volume of real property claims. During 2004, 50 percent of all reported claims arose out of real property law and practice. So far in 2005 (May 31) 51 percent of all claims reported arise from real property. This is in keeping with the low end of the range of real property claims reported in prior years.

It is too early to draw any conclusions. We know that in New Brunswick the insurance program experienced a decrease

in the number of real property claims once the province converted to a land titles system. It will be a few more years before we will know whether we gain the same improvement in our claims experience.

Overwhelmingly, the claims that we do see result from inadequate office systems and procedures, mistakes relating to simple oversights, and poor communication of information between lawyers and between client and lawyer. Regardless of the area of law, claims are best avoided through a well-managed workload, and the office systems and trained staff adequate to support the work undertaken. With the new RPM program we will be able to offer members assistance in addressing these issues.

Deborah Rozee

CAUSES OF CLAIMS	1994-2004 (%)	2004 (%)
Poor Communication	34%	38%
Conflict two or more parties; unrep. party	2%	4%
Conflict personal/financial interest	1%	0%
Delegation	3%	5%
Delegation to outsider	2%	1%
Fraud by client/other party	1%	1%
Law fail to know/apply law; limitation or deadline	9%	14%
System/Procedure inadequate office systems; procrastination	2%	8%
System/Procedure failure to follow up	9%	4%
System/Procedure inadequate review/ prep	9%	14%
Other	28%	11%
TOTAL	100%	100%



Nova Scotia Barristers' Liability Claims Fund
ANNUAL REPORT 2004



NOVA SCOTIA
BARRISTERS' SOCIETY

ANNUAL REPORT 2005