An Ambitious Agenda for Change

President’s Report for September 27, 2013

When I discuss our Strategic Framework during my visits with lawyers around the province, I invariably hear that we have set out for ourselves “a very ambitious agenda.” That is true – there is a lot on our plate. We set ourselves on this path when we adopted our Strategic Framework. And we absolutely have the capacity, energy, plans and resources to achieve our goals. This meeting of Council will continue to move us along this agenda for change. And the agenda for our meeting itself is also ambitious.

Before we begin our work we will have the pleasure of officially unveiling the artwork created by students from JL Ilsley High School. “The River” is a beautiful piece that represents many of the values and aspirations of the NSBS and the communities that we serve. I encourage you to arrive in time for this presentation as we thank the students and have an opportunity to engage with them before our meeting. After the meeting is over, our Recognition Reception will honour Marjorie Hickey QC, Past President of the Society and recipient of the Distinguished Service Award.

There are two items to draw to your attention on the Consent Agenda. The purpose of the Consent Agenda is to allow approval of items that are non-controversial and do not need debate or explanation. By approving the Agenda, these items are also approved without further attention. If a member of Council disagrees with my decision to place something on the Consent Agenda, she or he need simply to so advise me at the beginning of the meeting and we can address it at that time. You will note that I have placed the Annual Activity Plan and Council Calendar on the Consent Agenda, with any changes noted in red font. I think these documents are helpful tracking and communication tools as we work through our ambitious plan, and I think we can refrain from walking through each item at every meeting as long as we are continuing to make progress. The second item of note is the results of the departing Council Member survey, which are provided for your information and which I have asked Governance and Nominating to incorporate in that committee’s work. Thank you to Annette Marshall for her efforts to prepare this report.

In pursuit of our goal to adopt a Risk Management Framework, we will hear a presentation from Rob Carruthers and Ana Bustos from Deloitte, LLP. I have worked with Rob in the past, and he is an expert in enterprise risk management. Rob and Ana are volunteering a bit of time and expertise to help us better understand our responsibility as governors of the NSBS, and to understand the journey of risk management. To get you started, these background materials contain four documents that provide high level background information. You will see the sample risk management report from the Law Society of British Columbia – this is the type of document that I envision we will have in place in the future, tailored to our specific needs. Rob and Ana will help us understand the practical steps we need to take and they have reminded me that risk management is a long term activity. So we will get started on that journey at this meeting.

In July, Council was asked for feedback about the draft Access to Justice (A2J) Work Plan and how we can bring focus to our A2J efforts. That feedback, as well as additional feedback from Executive Committee, has been incorporated in the new Work Plan that is contained in these background materials. I would like your engagement on this plan – A2J is an important Strategic Priority for the Society, and we need to get this plan right if we are going to demonstrate progress on this important item by the end of our
Council year. To be frank, I remain uncertain that the plan outlines a path that will allow us to objectively demonstrate the difference that we make in the area of A2J, but I am confident that by working together we can find that right path and communicate it to our partners.

A key component of our work at this meeting will be to consider the Committee Work Plans that have been prepared. Over the summer, I met with and sent a memo to Committee Chairs to outline Council’s expectations about the content of Committee Work Plans. I emphasized that we want these plans to be transparent about what the committees are doing and, just as importantly, the plans need to demonstrate how the Committee contributes to the success of achieving our ambitious Strategic Plan. Now it is up to Council to review these documents and provide feedback to the Committees to help them improve upon their work so far. Ideally, I would like to provide to each Committee Chair a list of your detailed feedback on the work plans, following this meeting. So please come to the meeting with specific suggestions and input.

We will receive a report from Glen Greencorn about the Annual Lawyer Report. This information will provide helpful context for our discussions in the coming months about Transforming Regulation. I encourage you to study Glen’s report, and we should keep it close when we hold our Transforming Regulation workshop in October. A draft agenda for that workshop will also be reviewed at this meeting. It is provided at this time to inform Council about how we are thinking about this strategic initiative. Staff will provide an update on the research, thinking and planning for this initiative and will benefit from your questions and suggestions about how to approach the workshop.

There are other matters that require our attention and your thoughtful contribution; the relevant information is contained in these background materials. The material for the in camera item will be available at the meeting. As I did during our first meeting in July, I urge members of Council to consider the nature of the public interest that is addressed or affected by the decisions we make and the discussions in which we engage at this Council meeting. We are demonstrating our values through transparent, respectful and thoughtful dialogue. You will make better decisions if you are able to describe for yourself the public interest objective on which you base your decision.

I hope that you continue to come to our meetings of Council with enthusiasm for the work ahead and a strong commitment to making a positive difference for the public and for lawyers. We have an ambitious agenda, and we have momentum.

I am looking forward to seeing everyone on September 27!

Rene

P.S. Please make sure you complete the 2-minute evaluation – I do use your input to make improvements in our governance processes and meetings.

**Key activities since July 19:**

August 9 – Executive committee meeting

August 27 – planning meeting with ED

August 27 – Interview with Donalee Moulton regarding Transforming Regulation
August 28 – Meet with Pictou County Bar re Strategic Framework

September 4 – meeting with Stewart McKelvey re Strategic Framework

September 6 – Interview with Hilary Beaumont regarding A2J strategic initiative

September 11 – meeting with Cox & Palmer re Strategic Framework

September 17 – Executive Committee meeting

September 18 – meeting with Deloitte re Enterprise Risk Management

September 19 – bring greetings on behalf of Council at the launch of the Internationally Trained Lawyer Observership Program
COUNCIL AGENDA
Nova Scotia Barristers’ Society

1. SETTING THE CONTEXT FOR THE MEETING – J. Rene Gallant

2. CONSENT AGENDA MATTERS
   - Minutes: July 19, 2013 p9
   - Council Member Exit survey and memo to Governance and Nominating Committee p13
   - Activity Plan 2013-2014 p17
   - 12-Month Council Calendar p25
   - Resignations: Ms. Robin Kimberly Aitken, Mr. William Glenn Hodge, Mr. Wayne Morris Kelsie

3. BUSINESS ARISING

4. PRESENTATION (Timed event – 2:00 pm)
   Enterprise Risk – The Role of Council in addressing Risk
   Guests: Rob Carruthers and Ana Bustos, Deloitte LLP

   Material: 20 Questions Directors of Not-For-Profit Organizations Should Ask About Risk
   A Framework for Board Oversight of Enterprise Risk (Introduction Only)
   Society of British Columbia Enterprise Risk Management Risk Schedule – Updated February 2013
   Risk Intelligent Governance - A practical guide for boards (Deloitte, LLP)

   Action: Council Education and Discussion
5. MATTERS FOR APPROVAL

(a) Matter: 2013-2016 Strategic Framework – Improving the Administration of Justice
Material: Access to Justice Work Plan
Action: Approve Plan
Page: 123

(b) Matter: Committee Work Plans
Material: Code of Professional Code of Conduct
- Complaints Review
- Complaints Investigation
- Credentials
- Family Court Liaison
- Finance
- Governance and Nominating
- Gender Equity
- Professional Responsibility Policies & Procedures
- Provincial and Family Court Liaison
- Professional Standards (Criminal)
- Professional Standards (Criminal) Terms of Reference
- Professional Standards (Family)
- Professional Standards (Law Office Management)
- Professional Standards (Real Estate)
- Racial Equity
- Supreme Court Liaison
- Supreme Court Liaison (Family)
Action: Approve Work Plans
D. Pink to explain roles and responsibilities of Executive Director Liaison Committees (Annual Activity Plan items 3.2.0 and 3.3.0)
Page: 125

(c) Matter: Application to resign — L.W Scaravelli QC
Material: Memo from V. Rees on behalf of the CIC
Action: Approve
Page: 194

(d) Matter: Terms of Reference – Special Advisor on Mental Health Awareness
Material: Terms of Reference Document
Action: Approve
Page: 200
6. MATTERS FOR DISCUSSION

(a) Matter: 2013 Annual Lawyer Report – G. Greencorn to present
Material: Memo from G. Greencorn with summary of ALRs
Action: Discussion
Page: 202

(b) Matter: 2013 Strategic Framework – Transforming Regulation Workshop
October 24, 2013
Material: Draft Agenda
Action: Discussion and direction
Page: 218

7. REPORTS

- President’s Page: 1
- Executive Director Page: 224
- Changes in Category Page: 232
- Financial Statements to July 31, 2013 Page: 234

8. MONITORING/LIAISON REPORTS

Professional Responsibility Quarterly Report (for information) p247

9. OTHER BUSINESS

10. IN CAMERA

Matter: Executive Director Performance Goals
Material: To be provided at meeting
Action: Reporting

11. COUNCIL MEETING EVALUATION

2 Minute Evaluation - Form provided — Complete and return to S. Shane (Handout)

12. FOR YOUR INFORMATION

CLIA update from LIANS Board, C. Canning p256

Documents posted at nsbs.org, communities, Council, 2013-09-27 Information
- Fair Access to Regulated Professions (FARPA) Review Officer Report
- FLSC e-briefing newsletter
13. FUTURE MEETING DATES

Meetings commence at 12h with lunch available at 1130

- Thursday, October 24, 2013 - Regulatory Reform Workshop (8:30 am start)
- Friday, November 22, 2013
- Friday, January 24, 2014
- Friday, February 28, 2014
- Friday, March 28, 2014
- Friday, April 25, 2014
- Friday, May 23, 2014
- Saturday, June 13, 2014 - Annual Meeting (Schulich School of Law)
President J. René Gallant spoke to Council about and provided a written report on “Governing in the Public Interest.” He also reported on his key activities since June 15, which included a meeting with China Legal Aid representatives, a meeting with the Nova Scotia Judiciary regarding the Barristers’ Library at the Law Courts, a dinner with Federation of Law Societies of Canada representatives during their Halifax visit, and a number of planning sessions.

1. **CONSENT AGENDA**
   - Minutes: June 15, 2013
   - Resignations: Christopher John Forbes, Gregory Allan Cann, James Gerald Elliott Ball, Kenneth Jenner Carlyle Armour, L. Edward Hicks, Michael Hicks, Stephen Michael Hellsten, Thomas Thompson, Carolyn Dawn Baglole, Cynthia Joy Matthews Hellsten, Elizabeth Lorna Soria, Shannon Webb, Susannah Margison
   - Regulation 10.3.6 – Requirements for all withdrawals - Memo G. Greencorn July 11, 2013
• Amendment to Regulation 2.9.1 to create the Law Office Management Standards Committee and to create the Criminal Law Standards Committee - Memo D. Pink July 11, 2013
• Renewal of a temporary practice permit fee (addition to Schedule A April 2013) - Memo G. Greencorn July 11, 2013
• Regulation 10.5.6 Application for Registration – Memo D. Pink July 10, 2013
• Professional Standards (Real Estate) Committee – Standard 3.18 Builders’ Liens – Memo M. M. McGrath July 11, 2013 and side-by-side Standards

UPON MOTION (Brothers/Nason) it was resolved to approve the consent agenda.

Motion carried.

2. GREETINGS
Council welcomed guests from the Federation of Law Societies of Canada - Gerald Tremblay QC, CM, OQ, President, and Jonathan Herman, CEO.

Mr. Tremblay detailed the work of the FLSC including reference to National Mobility, the Code of Professional Conduct, work with the National Committee on Access to Justice chaired by Justice Cromwell, and the potential law school at Trinity University.

Mr. Herman expressed deep appreciation for the confidence shown in FLSC by this Council and committed to continuing to be responsive to our needs going forward.

Question and answer followed.

3. BUSINESS ARISING

4. MATTERS FOR APPROVAL

(a) Distinguished Service Award
On behalf of the Distinguished Service Award Committee, Ron Crighton QC, Chair, Addressed the nomination process including the criteria used in making a recommendation. The Committee requested approval from Council to present the Award to Marjorie Hickey QC at the Society’s Annual Recognition Reception September 27, 2013.

UPON MOTION (Mahody/Perry) it was resolved to award the Distinguished Service Award for 2013 to Marjorie Hickey QC.

Motion carried.

(b) 2013-2016 Strategic Framework – Transforming Regulation and Governance in the Public Interest

Council had a proposed work plan for advancing work in this area.

Rene Gallant advised of the interest in our leadership in this transformational change. Initially, this project will entail research, fact gathering, identification of issues, and generally scoping what is reasonable for us to undertake.

He plans to meet on this topic with managing partners of law firms and others. He requested Council members to discuss the strategic framework with their colleagues and to
utilize the key questions provided to start the conversations. Discussion ensued with the following comments noted:

- Observation was made that advocacy is related to the Framework;
- $50k to hire additional expertise is a valuable investment and we should share knowledge of the reserve fund with members;
- Work Plan and Framework are public documents;
- On the question of restrictions on organizations to contact it was agreed other professions worldwide would be appropriate, outside community leaders in business and regulation, to keep government informed of our early thinking so that they are aware of the type of considerations we are looking at, and key stakeholders;
- Victoria Rees is undertaking the initial research, fact finding, and development of a discussion paper for Council.
- Be aware there may be some people who are uncomfortable with these changes. It is too early to know how dramatic any changes will be but this will be for Council to determine;
- Who will deliver legal services, paralegals, etc. law firm ownership - these are areas that overlap;
- Access to justice - should it be foundational to all the work or should it be a separate heading.

Rene requested receipt of additional associated ideas to build into the Work Plan.

**UPON MOTION (Mahody/Perry)** it was resolved to approve the Work Plan as presented.

_Motion carried._

5. **MATTERS FOR DISCUSSION**

(a) **Access to Justice – Goals relating to Strategic Plan**

Council reviewed its access to justice goals relating to *enhancing access to legal services and the justice system for all Nova Scotians*.

(b) **Activity Plan 2013-2014**

Darrel Pink provided details for the Activity Plan review and discussion.

(c) **12-Month Calendar Review**

Rene Gallant pointed out the relationship between the Council Calendar activities and the Strategic Framework.

6. **REPORTS**

- President’s Report
- Executive Director – Darrel Pink provided updates, including details about year-end issues from 2012-2013, Annual Meeting, renovations at the Law Courts, regulatory reform research underway, access to justice initiatives, and other matters.
- Changes in Category

7. **MONITORING/LIAISON REPORTS**

None

8. **OTHER BUSINESS**

1 Strategic Framework 2013-2016
9. **IN CAMERA**
   Council met briefly *in camera* to discuss the Executive Director Evaluation.

10. **COUNCIL MEETING EVALUATION**
    2 Minute Evaluation - Form provided—Complete and return to S. Shane

11. **FOR YOUR INFORMATION**

12. **FUTURE MEETING DATES**
    Meetings commence at 12h with lunch available at 1130
    - Friday, September 27, 2013 – followed by Annual Recognition Reception
    - Thursday, October 24, 2013 - Regulatory Reform Workshop
    - Friday, November 22, 2014
    - Friday, January 24, 2014
    - Friday, February 28, 2014
    - Friday, March 28, 2014
    - Friday, April 25, 2014
    - Friday, May 23, 2014
    - Saturday, June 13, 2014 - *Annual Meeting (Schulich School of Law)*
MEMORANDUM

From: René Gallant
To: Tim Daley QC
      Chair, Governance and Nominating Committee
cc: Council
Date: September 18, 2013
Subject: Council Member Exit Survey

Annette Marshall undertook the 2013 exit survey for departing members of Council. A copy of her report is attached. I asked Annette to provide her report to the Executive Committee in first instance.

The report was reviewed by Executive Committee at its meeting on September 17, 2013.

Executive Committee will be providing the report to Council for information at the September 27 Council meeting, but it appears that the information generated by the exit surveys would be most helpful to your committee. I would like the Governance and Nominating Committee to consider the report in the context of the activities on your committee’s work plan for the year.

I am sure that Annette would be pleased to speak about her report at your request.

Thank you.

Attachment
NSBS EXIT QUESTIONNAIRE RESPONSES  (ALM August 2013)

Question 1. How long were you a member of council?
- 8 years – 5 years - 2 years

Question 2. What was the most fulfilling and least fulfilling aspects of your role in Council?

Most
- The committee word (i.e. CIC Credentials etc)
- Charting the direction of the Bar Society
- Formulating legislation
- Working with a good organization developing Strategic Direction
- Watching the professionalism of all members

Least
- Not sure
- When Council goes off topics not relevant to core business, simply wastes time e.g. St Thomas U discussion
- Determining how relevant the materials would be for the meeting. I spent a lot of time reading some material that was not that relevant to the discussion
- Ranking the detail required for the decision would be helpful.

Question 3. If you could modify the role of council member what would you have wanted to change?
- I can’t think of anything specific that I would want to modify in terms of the role of Council members
- I think that Council members should have to report back to members in some way. A blog of what’s happening or some meetings throughout the year of members with their reps would be helpful. This seems to be happening in rural areas but not in Halifax.
- No issue but we should be encouraged to relate to our local areas what is happening, be a sort of conduit of information both ways.

Question 4. Do you feel you received adequate orientation for your role?
- Orientation was good but the 2011 was excellent
- Yes, training was adequate
- No, only because I missed the first 3 months due to filling in for a retired member. I would like to have had a small briefing

Question 5. If you could give three pieces of advice to a new member of Council what would they be?
- Start reading your material as soon as it arrives and do a little bit each night. Write your comments down ahead of time. Enjoy your time on Council. It is very valuable.
• Make sure you read all your materials so you are prepared to discuss the topics on the agenda.
• Try different committees because you will find some more interesting than others.
• Don’t be afraid to give voice to any concerns you have at Council meetings
• Be prepared, read materials, ability to speak up
• Understand role, appreciate the big picture
• Understand the Public Interest.

Question 6. Would you recommend others to seek a role on Council?
• Yes, quality of people at NSBS, highest calibre
• Definitely
• Yes, provided the practitioner has the support of his/her firm and has sufficient experience in practice (perhaps 5 years)

Question 7. In your opinion, were council members focused on the business of the meetings?
• Most members were focused on the meeting
• Usually, however personal agendas often overtook business on the agenda
• Absolutely

Question 8. Were members’ behavior constructive to the meetings?
• There were a few members of Council who I thought err at times
• Counterproductive due to simply repeating points already made. Overall I believe all members were constructive
• Yes, everyone was very deferential to others, polite and professional
• Mostly, except for the sidebar conversations, some hog the speaking, like hearing the sound of their own voices. Marvel at their own wit.

Question 9. Do you think Council evaluation is worthwhile?
• Very much so, good feedback is very valuable
• Yes, Council evaluation is necessary especially if there are problems that people don’t otherwise feel comfortable bringing up
• Yes, a great idea to bring improvements

Question 10. Other comments/observations
• It was a pleasure to serve on Council. I learned a lot during my time on Council.
• I did not have much experience in the structure of an organization. I come from a practical and fast paced background where decisions need to be made and acted on.
• Would have liked to continue in some capacity on a committee. Surprised I wasn’t invited to. Would really like to serve on CIC.
INTRODUCTION
The Activity Plan for 2013-2014 outlines those activities that Council has mandated to address the initiatives approved by Council in furtherance of its approved Strategic Framework. Council will also monitor certain activities that are assigned to the Executive Director. Council Committees will carry on with their work in accordance with their Terms of Reference and work plans that will be approved by Council.

STRATEGIC DIRECTION 1 – EXCELLENCE IN REGULATION & GOVERNANCE

Transforming regulation and governance in the public interest

ACTIVITY 1.1.0 – Examine and approve an outcomes focused regulatory model

Through research and engagement with lawyers, will evaluate all aspects of the regulatory structures in order to determine what the optimum regulatory model is regarding oversight of lawyers and the delivery of legal services.

Outcome – A thorough review of all aspects of legal regulation and a determination of what changes ought to be made

Responsibility – ED, Council

Workplan
May 2013 – Council approves Strategic Framework, planning begins
July 2013 – Project plan being submitted to Council for approval
July-August – Research and preparation of discussion paper; begin engagement
October – Council Workshop
November – Council completes “feasibility” phase
November to February – Engagement and consultation with lawyers and stakeholders; development work ongoing
March – April – Council considers stakeholder input, budget implications, risk analysis, implementation plan; further engagement as required
May – Council approves model and plan for next phase of implementation

Status
July 2013 – Planning and engagement of expert advisors has begun, Phase 1 workplan submitted to Council for approval
September 2013 – Research and planning ongoing; workshop agenda presented to Council for input.
**ACTIVITY 1.2.0**

**Examine and approve a framework for risk identification and management**

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<thead>
<tr>
<th>Workplan</th>
<th>Status</th>
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<tbody>
<tr>
<td>July 2013 – research being undertaken on aspects of risk.</td>
<td>July – initial research and planning has commenced</td>
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<tr>
<td>September – Council education about organizational risk management</td>
<td>September – Council Education delivered by Rob Carruthers of Deloitte, LLP.</td>
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<tr>
<td>November to March – Development of risk management framework;</td>
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<tr>
<td>Council engagement in initial risk assessment</td>
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<tr>
<td>April – May – Council consideration and approval of framework for risk</td>
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<td>identification and management</td>
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**Outcome –** There is a framework for risk identification and management

**Responsibility –** ED, Exec., Council

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**ACTIVITY 1.2.1**

**Admissions & Credentials**

**The Credentials C’tee and E&C staff will begin to examine the skills taught at the Skills Course and during articling to ensure that they address the competencies lawyers will need in the future and not only ‘yesterday’s skills.’ The Society will contribute its learnings to the National Admissions Project.**

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<tr>
<th>Workplan</th>
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<tr>
<td>September – Credentials C’tee will begin its work and this portion of AP</td>
<td>September - Credentials Committee Workplan presented to Council for</td>
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<td>will be updated with committee’s plan</td>
<td>Approval. Annual Activity Plan to be updated for November Council</td>
</tr>
<tr>
<td>January – Credentials C’tee will provide interim report to Council</td>
<td>Meeting.</td>
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**Outcome –** The Society identifies the skills newly admitted lawyers will require to begin practice in a dynamic legal marketplace

**Responsibility –** E&C, Credentials C’tee
## STRATEGIC DIRECTION2 – IMPROVING THE ADMINISTRATION OF JUSTICE

### Enhancing access to legal services and the justice system for all Nova Scotians

**ACTIVITY2.1.0 – Examine and approve regulatory changes to enhance access to legal services**

Council and the ED will ensure that a regulatory review is conducted to identify changes that could enhance access to legal services, in accordance with the Strategic Framework and Council Policies 2.5 and 18.27.

**Outcome** – Council adopts regulatory changes aimed at enhancing access to legal services and the justice system, with an established evaluation plan for those changes

**Responsibility** – Council, ED

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<tr>
<td>July – To be discussed at Council and direction to be given September – workplan to be brought to Council based upon input</td>
<td>July – on Council Agenda September – workplan deferred to November to allow for reflection on Transforming Regulation and A2J Initiatives.</td>
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**ACTIVITY2.2.0 – Advocate for enhanced access to legal services and to the justice system for equity-seeking and economically disadvantaged groups**

Following consultation, analysis of the situation in NS and evaluation of the Society’s capacity to lead, convene and partner on various A2J matters, the Society will develop a plan that identifies areas for advocacy and complementary activities to promote access.

**Outcome** – Council adopts an advocacy plan to

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<tr>
<td>July – To be discussed at Council and direction to be given September – A2J plan to Council, and workplan to be updated</td>
<td>July – draft A2J Workplan presented to Council for input September – Revised A2J Workplan presented to Council.</td>
</tr>
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</table>
enhance access to legal services and the justice system, and an evaluation framework for that plan

**Responsibility** – Council, ED, Equity committees

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**STRATEGIC DIRECTION 3 - FOUNDATIONAL ACTIVITY**

**ACTIVITY 3.1.0 – Establishing outcomes and consistently measuring performance**

Develop an understanding of how outcomes and performance measurement can be applied to its work and then apply their learnings to Society activities/programs in a purposive and deliberate way in order to both learn from experience and to be able to apply those learnings when expanding the use.

**Outcome** – 1. An understanding of performance assessment; 2. A performance measurement model will be adopted

**Responsibility** – ED, Executive, Council, + required outside resources

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<thead>
<tr>
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<tr>
<td>September – Council education about outcomes measurement</td>
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<tr>
<td>November - Council will be presented with specific information about potential performance measurement steps and models for the Society for discussion</td>
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<tr>
<td>January – continued Council dialogue about performance measurement implementation</td>
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<tr>
<td>March – specific implementation plan presented to Council for input and discussion</td>
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<tr>
<td>April – Council approval of a performance measurement model</td>
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<tr>
<td>July – n/a</td>
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<tr>
<td>September – Council discussion about Enterprise Risk Management, and work on Transforming Regulation, to contribute to Council’s understanding of this item.</td>
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ACTIVITY 3.2.0 –
Building effective relationships and promoting partnerships through meaningful, transparent and deliberate engagement

A plan for involvement of lawyers, law firms and law departments in each aspect of the strategic framework is to be developed. This will include visits to County Bars, meetings with justice stakeholders, communication with all members as well as other activities.

Outcome – A strategic engagement and communications plan, including an evaluation framework for the plan.

Responsibility – ED, Executive, Council

Workplan
July – September – incorporation of strategic lawyer and stakeholder engagement in Council workplans and Committee workplans.
September – Council education about Society (ED) Liaison Committees and other stakeholder engagement opportunities.
November – March – Council members engage with lawyers and stakeholders about Strategic Framework initiatives.
March – Council reviews draft Strategic Engagement and Communications Plan.
April – Council approves Plan and evaluation framework for plan effectiveness.

Status
July – Council workplan for transforming regulation incorporates strategic engagement.
September – D.Pink to speak to Council about roles and responsibilities of ED Liaison Committees.

ACTIVITY 3.3.0 -
Adopting best practices and contributing to national regulatory initiatives

Committees identify in their work plans the best practices they will apply and how they will report on them to Council.

Outcome – Best practices in each area of the Society’s work are identified and adopted.

Responsibility – C’tee Chairs, ED, President

Workplan
July – Council to consider as part of its consideration of c’tee work plans.
September – Committee Work plans to be approved.
February – President to report to Council on status of Committee Workplans.
April - May – Council receives Committee year-end progress reports against workplans.

Status
July – n/a
September – Council to review and approve Committee Workplans.

ACTIVITY 3.3.1 -
Best Practices – Developing Criminal Law

7/21
<table>
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<tr>
<th>Practice Standards</th>
<th>Workplan</th>
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<tbody>
<tr>
<td>Research and developmet and lawyer consultation will precede the introduction of new practice standards.</td>
<td>July – Council to create committee</td>
<td>September – Council to review and approve Committee Workplan; Annual Activity Plan to be updated for November meeting.</td>
</tr>
<tr>
<td><strong>Outcome</strong> — Best practices by way of standards and practice guidance for criminal law are adopted.</td>
<td>September – Committee work plan to be approved and this portion of AP will be updated with committee’s plan.</td>
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<td><strong>Responsibility</strong> – Prof. Standards (Criminal Law) Committee and Council</td>
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EXCELLENCE IN REGULATION AND GOVERNANCE

Transforming regulation and Governance in the public interest

IMPLEMENT AND EVALUATE THE OUTCOMES FOCUSED REGULATORY MODEL

IMPROVING THE ADMINISTRATION OF JUSTICE

Enhancing access to legal services and the justice system for all Nova Scotians

IMPLEMENT AND EVALUATE THE APPROVED FRAMEWORK FOR RISK MANAGEMENT

EVALUATE EFFECTIVENESS OF REGULATORY CHANGES DESIGNED TO ENHANCE ACCESS TO LEGAL SERVICES

EVALUATE THE EFFECTIVENESS OF ADVOCACY ACTIVITIES AND THE EXPERIENCE OF EQUITY-SEEKING GROUPS IN THE JUSTICE SYSTEM
# 2013 – 2016 Strategic Framework

## Purpose
The purpose of the Society is to uphold and protect the public interest in the practice of law.

The Society is an independent, trusted and respected regulator of the legal profession. Acting in the public interest, we provide leadership, value and support to a competent, ethical, inclusive and engaged legal profession. We enable the legal profession to enhance access to justice and uphold the rule of law.

## Vision
The Society is an independent, trusted and respected regulator of the legal profession. Acting in the public interest, we provide leadership, value and support to a competent, ethical, inclusive and engaged legal profession. We enable the legal profession to enhance access to justice and uphold the rule of law.

## Strategic Directions

### Excellence in Regulation and Governance
- Transforming regulation and governance in the public Interest
- Establishing outcomes and consistently measuring performance
- Building effective relationships and promoting partnerships through meaningful, transparent and deliberate engagement

### Improving the Administration of Justice
- Enhancing access to legal services and the justice system for all Nova Scotians
- Advocate for enhanced access to legal services and to the justice system for equity-seeking and economically disadvantaged groups
- Evaluate the effectiveness of advocacy activities and the experience of equity-seeking groups in the justice system

## Priorities

### Strategic Initiatives 2013-2014
- Examine and approve an outcomes focused regulatory model
- Examine and approve a framework for risk identification and management
- Implement and evaluate the outcomes focused regulatory model
- Implement and evaluate the approved framework for risk management

### Strategic Initiatives 2014-2016
- Examine and approve regulatory changes to enhance access to legal services
- Evaluate effectiveness of regulatory changes designed to enhance access to legal services
- Evaluate the effectiveness of advocacy activities and the experience of equity-seeking groups in the justice system

## Values
- Commitment to Excellence
- Fairness
- Respect
- Integrity
- Visionary Leadership
- Diversity
- Accountability

The Society achieves this Strategic Plan through the work of dedicated professional staff, elected members of Council and volunteers in Committees. The Society follows a written Annual Activity Plan, which establishes the specific outcomes, initiatives and timeline to achieve the Society’s strategic objectives. The Society strives to work collaboratively and in partnership with justice system participants.

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1. Equity-seeking groups include women, Aboriginal peoples, racialized peoples, persons with disabilities and persons seeking equality on the basis of their sexual orientation and gender identity.
### EXECUTIVE DIRECTOR 2013

#### JULY
- Arrange for meeting for officers with AG
- A2J work confirm dates for liaising with communities
- Prep of A2J goals
- Equity Office Plan

#### AUGUST
- Set Activities for Review
- Start to organize County Bar visits
- A2J Plan
- Publish Report to the Community – ‘Making a Difference’

#### SEPTEMBER
- Set meetings with NSLA, PPS, DoJ (NS) Legal Services, County Bars, Large Firms, LRC, Law Foundation, LINS
- Recognition reception

#### OCTOBER
- Invite Minister to address Council in January
- Notices re election process – 2nd VP
- Organization Review – RPM Program – jointly with LIANS
- Complete research paper on regual reform

#### NOVEMBER
- Plan meeting with CBA Exec
- Joint Meeting – How to broaden agenda?
- Present to Council NSBS CPD work
- National Admission Standards – Suitability – Respond to FLSC

#### DECEMBER
- EXECUTIVE COMMITTEE 2013

#### JULY
- Review Activity Plan-identify areas for attention
- Consider draft goals for A2J work – Recognition Reception – Review plans
- ED Evaluation
- Committee Chairs meeting – prep of work plans
- RPWG – Discuss how we move forward with this

#### AUGUST
- Report on MCPD
- Access to Justice work plan
- How to proceed with outcomes measurement? Recognition Reception plan

#### SEPTEMBER
- Meeting with LIANS Board (deferred in light of CLIA developments)
- Review committee work plans
- Report on MCPD

#### OCTOBER
- Regulatory Reform workshop
- National Action Committee on Access to Justice – Workshop
- GEC workshop on A2J in honor of 20th anniversary of Touchstones
- Report

#### NOVEMBER
- Trust Account Monitoring Report*
- Admissions Monitoring Report*
- LIANS Report to Council*
- ED Review of Exec. Expectations
- Set date for 2013 Annual Meeting
- Cred, Com to report on FLSC ’Suitability” proposals under National Admissions Standards

#### DECEMBER
- Managing Partners Meeting with CBA Exec

### COUNCIL 2013

*Matters in italics are reports from the ED*

#### JULY
- 12 Month Calendar Review*
- Committee Work Plans - review expectations
- Regulatory Reform – Review Plan
- A2J – Review draft goals
- ED Evaluation Report

#### AUGUST
- No meeting

#### SEPTEMBER
- Report on 2013 ALR and MCPD*
- A2J Plan to Council
- Outcomes Measurement and Evaluation Workshop
- Recognition Reception
- Work Plans Approved
- Intro Risk Management

#### OCTOBER
- Regulatory Reform workshop
- National Action Committee on Access to Justice – Workshop
- GEC workshop on A2J in honor of 20th anniversary of Touchstones
- Report

#### NOVEMBER
- Trust Account Monitoring Report*
- Admissions Monitoring Report*
- LIANS Report to Council*
- ED Review of Exec. Expectations
- Set date for 2013 Annual Meeting
- Cred, Com to report on FLSC ’Suitability” proposals under National Admissions Standards

#### DECEMBER
- No meeting
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<td>Strategic Plan changes</td>
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20 Questions
Directors of Not-For-Profit Organizations Should Ask about Risk

WRITTEN BY
Hugh Lindsay, FCA, CIP
How to use this publication

Each “20 Questions” publication is designed to be a concise, easy-to-read introduction to an issue of importance to directors. The question format reflects the oversight role of directors which includes asking a lot of questions. For each question there is a brief explanatory background and some recommended practices.

The questions are intended to be relevant to most not-for-profit organizations, particularly to those with staff resources who can manage the organization’s risks with policy direction, approval and support from the board. The “answers” or comments that accompany the questions summarize current thinking on the issues and practices of not-for-profit governance. There are many views on the best way to govern and manage not-for-profit organizations and a number of governance models. This document describes general principles that apply in most situations. If your organization has a different approach, you are encouraged to test it by asking if it provides an appropriate answer to these questions.

After the comments there are lists of recommended practices that directors can use to assess their understanding of their organization and to prompt further questions if they are not fully satisfied with the answers. They represent aspirations, not absolute standards that must be met immediately.

Directors who come from a for-profit business may find that their experience, although helpful, will not always provide the best answers in the not-for-profit environment. Appendix 1 compares and contrasts for profit and not-for-profit governance.

Readers who want more details on specific topics may refer to the section on “Where to Find More Information.” Most of the CICA 20 Questions series of publications for directors were written for business boards but are relevant to not-for-profit boards.
20 Questions
Directors of
Not-For-Profit Organizations
Should Ask about
Risk
Preface

The Risk Management and Governance Board of the Canadian Institute of Chartered Accountants (RMGB) has developed this briefing to help members of not-for-profit boards of directors understand their responsibility for the oversight of risk.

Not-for-profit organizations are very diverse and range from small all-volunteer groups to large, sophisticated enterprises. This document is primarily intended for organizations with an executive director and staff resources who can manage the organization’s risks with policy direction, approval and support from the board. It covers the same principles of risk management that are described in CICA’s 20 Questions Directors Should Ask about Risk but from the perspective of a not-for-profit organization. In particular, it assumes that members of not-for-profit boards may not be familiar with business practices and terminology and would appreciate explanations and examples that are more relevant to the not-for-profit sector.

A Board is most likely to be effective in managing risk when it has members chosen for the experience, skills and knowledge they bring to the organization—and practices good governance as described in CICA’s 20 Questions Directors of Not-for-profit Organizations should ask about Governance.

The Risk Management and Governance Board acknowledges and thanks the members of the Not-for-Profit Organizations Task Force for their invaluable advice, Patrick Doig of Marsh Canada Limited and Monica Merrifield of the YMCA of Greater Toronto for their helpful suggestions and reviews, Hugh Lindsay, FCA, who wrote this briefing under their guidance and the CICA staff who provided support to the project.

Brian Ferguson, CA
Chair, Risk Management and Governance Board
Introduction

Risk is a reality for every individual and organization. Anyone who serves on the board of a not-for-profit organization quickly learns that things don’t always run smoothly. Board members work hard with staff and volunteers to have an organization that earns the support of members, donors, funding agencies, customers and other stakeholders because it has a good reputation for delivering relevant, valued programs and services. But this is not easy. There is always a degree of uncertainty about how things will turn out.

There are many things that can go wrong—from minor, day-to-day incidents to major crises—that may adversely affect the delivery of programs and services, damage the organization’s reputation or, at worst, threaten its capacity to survive. These “risks” can generally be reduced or avoided by good risk management—the oversight of which is one of the key responsibilities of a board of directors.

As in other aspects of governance, the board is responsible for establishing policy, approving decisions that are beyond the authority of staff, and overseeing the management of risk. A board may delegate much of the work involved in managing risk, but can never delegate its responsibility for oversight.

The nature and extent of the board’s role in risk management can vary with the size and sophistication of the organization and its staff. In larger organizations, the board can often rely on staff to manage day-to-day risks and provide much of the information and analysis the board needs when considering approval of policies, strategies and major decisions. In organizations whose staff have less knowledge, experience or skill to manage risks effectively, the board may find it necessary to be more “hands-on”—providing guidance and information to staff and requiring board approval of relatively small decisions. In situations where it is apparent that “letting management manage” isn’t working, the board may need to become even more actively involved; taking charge, if necessary, to prevent problems from becoming crises.

The capacity of staff to manage risk will be an important consideration in how the board organizes itself to oversee risk issues. Risk isn’t always an agenda item in itself. It’s often a consideration in other board activities, including: strategic planning, policy and decision making, approval of projects and programs, reviewing operational and financial performance, and the work of the audit, investment, compensation and other committees.

Although risk is a reality of life, it’s not something most people are comfortable discussing. This can be particularly true for not-for-profit organizations where trusting relationships are valued. Raising the issue of risk may be embarrassing because it implies a lack of trust and confidence, but it is essential if the organization is to survive and succeed.

This document explains what “risk” and “risk management” mean, describes how risks can be identified and managed, and provides guidance for boards on how to carry out their oversight responsibilities. There are three sections:

- Risk Context and Policy—describes how the board can prepare itself to oversee the management of risk, support a risk-aware culture, and establish risk-related policies.
- Managing Risk—describes what the board should expect to hear from staff about their techniques for identifying and assessing risks, and developing strategies and procedures for managing them.
- Monitoring and Learning—discusses the information the board should expect to get from staff on the measurement of risk and performance, and their learning from crises and other experiences. The section also discusses how the board can evaluate its own effectiveness in overseeing risk management.
Risk Context and Policy

Effective risk management—like other aspects of governance—begins at the top. It calls for a board of directors with the knowledge and ability to approve risk policies and to oversee their implementation.

Good governance practices by the board are essential to risk management because they establish the tone of the organization and provide the context in which the board exercises oversight of the organization’s activities.

A board’s policies and decisions on risk-related matters are more likely to be accepted as legitimate when it has earned the respect of members, staff and other stakeholders for its competence and integrity. This can be valuable when tough decisions and actions are necessary and emotions run high.

The questions in this section explore the board’s role in three areas:

- Supporting a risk-aware climate or culture (Questions 1, 2 and 3)
- Developing and maintaining the board’s capacity to oversee risk management (Questions 4, 5 and 6)
- Approving the risk tolerance policy (Question 7)

**Risk** is the chance of something happening that will have an impact on objectives. It is measured in terms of consequences and likelihood.

**Risk management** includes the culture, processes, and structures that are directed towards the effective management of potential opportunities and adverse effects.

**Risk management process** includes the systematic application of management policies, procedures, and practices to the tasks of establishing the context, identifying, analyzing, assessing, managing, monitoring, and communicating risk.

Based on definitions developed by the Joint Technical Committee OB/7, Risk Management. Standards Australia and Standards New Zealand, Australian/New Zealand Standard 4360:2004: Risk Management.
1. **What does “risk” mean in this organization?**

Before the board can effectively oversee the management of risk, it needs to know what the term “risk” means for the organization. To some people, “risk” means “threat”—something that could harm the organization or prevent it from achieving its objectives. Others see risk as including “opportunity”—something that could help the organization to achieve new objectives or improve its ability to achieve existing ones. Both definitions are valid. In this document, “risk” generally refers to threats and potential barriers to opportunities. The management of opportunities is discussed in *20 Questions Directors of Not-for-profit Organizations Should Ask about Strategy and Planning.*

Risk takes many forms but, essentially, is anything that affects an organization’s ability to meet its objectives and preserve its reputation. Organizations are more likely to consistently meet their objectives when they have effective processes for identifying and managing risks. They may do so by considering and addressing risk under a number of categories which include:

- **Compliance risk**—the risk of fines and other regulatory penalties for such offences as failure to remit payroll deductions, violation of privacy laws, etc. Also restrictions on the use of funds from donors and funding agencies.
- **External risk**—the risk of becoming irrelevant, losing the support of the public and funding sources, and failing to respond to economic, demographic and other trends.
- **Financial risk**—the risk of fraud, financial failure and decisions based on inadequate or inaccurate information.
- **Governance risk**—the risk of ineffective oversight and poor decision-making.
- **Information technology risk**—the risk that the information technologies used in the organization may not provide dependable service and accurate, secure information that is available when needed.
- **Operational or Program risk**—the risk of poor service delivery, day-to-day crises, and misuse or neglect of human capital and other resources.
- **Reputation risk**—the risk of losing goodwill, status in the community, and the ability to raise funds and appeal to prospective volunteers.
- **Strategic risk**—the risk of inappropriate or unrealistic programs and initiatives, and failure to keep the organization strong and relevant.

Because there are different ways of defining risk, it is of critical importance that the board, staff and (where appropriate) volunteers, all have a common understanding of what the term “risk” means in terms of their individual responsibilities.

**Recommended practices**

- The organization’s policies and procedures for risk management include definitions and categorization of risks
- These definitions and categorization of risks are communicated, as appropriate, to staff, volunteers and other stakeholders
- The organization should have specific policies for accepting and managing key risks (i.e. Investment management, insurance coverage, etc.)
2. What are the organization’s ethical values?

A reputation for integrity is essential to most not-for-profit organizations. Members, donors, funding agencies and others may be unwilling to support organizations they don’t trust. The users of programs and services need to feel that they will be treated with respect and receive value from their participation. Similar considerations apply to other stakeholders. The loss of an ethical reputation can be devastating.

The integrity of an organization depends on the behaviour and actions of the people in it, who should all share the same understanding of ethics—the values and standards that determine how board members, staff, volunteers and other stakeholders behave and treat others. The standards, which are usually set out in a Code of Conduct (Code), establish the boundaries of acceptable behaviour and sanctions for lapses. Organizations that have a strong Code reduce the risk and associated costs of fraud, conflicts and other events that could harm the organization and its reputation.

FOR MORE INFORMATION, SEE THE CICA PUBLICATION 20 QUESTIONS DIRECTORS SHOULD ASK ABOUT CODES OF CONDUCT

The Code should be approved and championed by the board, communicated to staff, volunteers, contractors, suppliers and business partners, and be enforced. If this is done well, the organization is likely to develop a reputation for honesty, integrity and principled behaviour.

**Ethics in practice**

Oxfam has a zero-tolerance policy on fraud and corruption. Our approach is to reduce their likelihood and impact by education and awareness-raising, risk management, internal controls, and having dedicated resources to help management prevent, reduce or recover any losses suffered as a result of fraud and corruption. This is true in all cases no matter how high the level of corruption is in the countries where we work. As a policy, Oxfam staff do not pay bribes in order to go about their business.

Source: Oxfam: Accountability Report 2006/07

There are several areas of risk that may be addressed in a Code of Conduct, including:

- Individuals, acting on behalf of the organization, committing illegal acts or failing to comply with laws and regulations
- Individuals, acting on behalf of the organization, behaving in ways that, while not illegal, are damaging to the organization’s reputation: e.g. disrespectful treatment of others, providing misleading information, etc.
- Individuals behaving illegally for personal gain: e.g. committing fraud or theft
- Individuals inappropriately benefitting from their association with the organization: e.g. receiving gifts from suppliers, making personal use of computers and other resources, hiring close family members, etc.

An effective Code will include provisions for “whistle-blowing” by individuals who wish to communicate their concerns candidly and confidentially. The provisions should include describing how and to whom concerns may be reported and the rights of whistle-blowers to be protected from retaliation from those who might be adversely affected by their action.

**Recommended practices**

- The board approves the Code of Conduct
- The board supports the Code and leads by example
- Directors should sign the Code of Conduct annually evidencing they have read it and are complying with it
- The Code is communicated to staff, volunteers and key stakeholders
- The Code includes sanctions against those who deviate from it
- The Code is enforced
- The Code contains provisions for whistle-blowing
3. What are the major risks and uncertainties facing the organization?

The board’s responsibility for the oversight of risk includes making sure that the organization has procedures for identifying, assessing and managing risks and uncertainties. This applies to all the risks that an organization faces. There are usually just too many risks for the board to follow individually, so, in most cases, the board will confine its oversight role to satisfying itself that risk management procedures exist and are followed. The processes for identifying and managing risks are discussed in questions 9 through 15.

Some risks, however, could severely affect the organization’s ability to achieve its objectives and continue operations. It is important that the board and staff know and understand what these major or “key” risks are, and what is being done to manage them.

Major risks can be important considerations for the board when reviewing strategic and operational plans, capital projects and new programs. It is advisable to consider a range of scenarios—what might happen if, for example: key components of operating costs increase by 10%, 50% or 100%, an expected grant is reduced or cancelled, a fund-raising event only achieves 50% or 75% of its goal, or the computer system goes down at a critical time.

Recommended practices

- The organization has a structured process for identifying, monitoring and managing the organization’s major risks and providing regular briefings to the board
- Planning includes considering a range of scenarios (including the worst-case) for major changes in costs and funding, catastrophic events and other major risks

**Examples of major risks**

- Loss of a major source of funding
- Reductions in the market value of investments and the income from them
- Unsuccessful fund-raising projects
- Fraud
- Failure of a project or strategic initiative
- Inadequate responses to emergencies
- Irrelevance because programs or services are no longer in demand or distinctive
- Excessive increases in the cost of human and other resources
- Actual or alleged sexual misconduct or abuse by an employee or volunteer
- Loss or theft of information
- Inability to perform critical functions that depend on technology
4. How does the board get the knowledge and experience it needs to oversee risk management?

A board of directors can be very effective in overseeing risk when its membership includes people who are familiar with the kinds of risk the organization is likely to face. A well-balanced board will typically include members who, collectively, have knowledge and experience of the field in which the organization specializes as well as such professional fields as law, accounting and other relevant disciplines.

Recommended practices

The board’s nominating practices recognize the need to include directors who are familiar with the fields in which the organization is active, and the risks it faces.

The board takes steps to raise the awareness and understanding of risk among directors by:

- Including an overview of the organization’s risk management processes and major risks in orientation sessions for new directors
- Holding periodic educational sessions on risk issues and processes

The board uses internal and external experts to advise the board and committees on specific risk issues.

FOR MORE INFORMATION, SEE THE CICA PUBLICATION 20 QUESTIONS DIRECTORS SHOULD ASK ABOUT BUILDING A BOARD

The knowledge and experience of board members should be supplemented by regular training and updates on risk issues. This begins with an overview of risks in director orientation sessions and continues in board meetings, planning sessions and meetings of committees that have responsibility for the oversight of risk.
5. How does risk get on the board’s agenda?

Board agendas are often very full. Important issues such as risk can be easily overlooked—especially when there are seemingly more “urgent” issues to consider. Although the Executive Director may have considerable influence in setting the agenda, it is the Chair and the board that should ultimately decide what to include. The Chair of the board plays a valuable role in raising risk issues by including them in board agendas and supporting debate at board meetings.

There are a number of occasions that are appropriate for discussing risk at board sessions, including:

- Strategic planning sessions
- Reports at board meetings from staff on performance and risk issues
- Motions at board meetings to approve major programs or projects
- Periodic sessions specifically to discuss the major risks
- In-camera board sessions

**Recommended practices**

The board:

- Participates in the strategic planning process
- Schedules specific times for receiving and discussing reports on risk from staff
- Encourages members to ask questions and provide advice and direction at appropriate times during board meetings
- Includes in-camera sessions in all board meetings

6. How does the board organize itself to oversee risk management?

Although the entire board is responsible for the oversight of risk, some areas of risk management can be complex and time consuming to review. Boards may find it more effective to delegate the detailed work of overseeing certain aspects of risk to one or more committees. In such cases, the board must make sure that it is informed of the findings of the committees and that no significant aspect of risk is overlooked.

As a general rule, board committees should be responsible for overseeing the risk management processes in the area for which the committee is responsible: e.g. investments, finance, construction projects, member discipline (in professional organizations), etc. Recognizing that this can leave gaps, organizations may delegate responsibility for overseeing the co-ordination of risk management to a specific committee—typically the Audit Committee (sometimes known as the Audit and Risk Committee).

**Recommended practices**

- The board and its committees have written policies and procedures that define their responsibilities for overseeing risk management
- Where the board elects to delegate specific risk-related responsibilities to board committees, the committees are required to report their activities to the full board at least annually

**The Audit Committee and Risk**

Oxfam’s Audit Committee meets regularly with the external auditors, both with and without the presence of management. The group agrees the external audit plan, reviews the external auditor’s management letter, and monitors implementation of actions required as a result. The Committee also has the responsibility of ensuring that the audit, risk management, and control processes within Oxfam are effective... The Committee undertakes a detailed review of the draft Annual Plan, the Risk Register and the Annual Report and Accounts prior to their submission to Council.

Oxfam Annual Report & Accounts 2006/07
7. How does the board decide how much risk the organization can take on?

Organizations are more likely to succeed and survive when they understand their risk tolerance—the amount of risk they are willing to assume. Boards of directors can provide direction by approving risk tolerance levels that “optimize” risk by balancing risk and opportunity. Risk tolerance has, essentially, two components: appetite for risk and capacity for risk.

Appetite for risk reflects the willingness of an organization’s members to take risks. Some organizations take the position of “nothing ventured, nothing gained”. They see taking risks as the best way to succeed. Others are “risk averse”, fearing that risky strategies could destroy an organization that knows its limitations and does a good job of meeting its modest objectives.

Most successful organizations find a balance. They recognize that risks that appear to be barriers to innovative and potentially valuable strategies may be manageable by sound planning and control activities. For example: organizations that promote and support high-risk sports (e.g. skydiving, rock climbing, etc) are at risk of litigation over deaths and injuries from accidents. They can reduce their risk by having training programs and standards that make the sport safe and enjoyable for informed participants and spectators.

An organization’s capacity for risk is based on the strength of its finances, donor support, reputation and credibility, and the experience and competence of volunteers and staff. A well-financed organization with experienced, competent and well-equipped staff and volunteers is in a good position to succeed in new initiatives and to survive setbacks.

The board ideally should approve a formal “risk tolerance” policy and guidelines that establish the level of risks the organization is prepared to accept as it pursues its objectives. It can be valuable to record the discussion and decisions for future reference.

Points to consider in risk-tolerance discussions and policies include:

- The amount of money that the organization is prepared to lose if a revenue-generating or fund-raising project is less successful than anticipated
- The potential risk to the organization’s reputation and credibility if a strategy or project is poorly received or otherwise unsuccessful
- The limits of the authority of the Executive Director or CEO—beyond which board approval is needed
- The information the board should receive before making its decision to approve strategies, policies and projects

Recommended practices

The board approves a risk tolerance policy that:

- provides guidance to staff and volunteers as to how much risk they may take
- is consistent with the organization’s values and capacity for taking risk
- is reviewed at least annually

When the board is called upon to approve a specific proposal or action the board receives a balanced picture with information about:

- The potential risks and how they will be managed, as well as the potential opportunities
- The alternatives that were rejected as well as the proposal being advanced
- The worst case scenario
- Staff’s concerns and uncertainties as well as its optimistic expectations
Managing Risk

Managing risk involves everyone in an organization—the board, staff and volunteers. But, in most cases, risk is only one aspect of an individual’s responsibilities. Without clear policies and procedures, risk management can be everyone’s job and no one’s job. It is important to establish who is responsible for managing certain types of risks and what they should do.

Risk management involves asking:
- What could happen that would affect our ability to meet our objectives?
- How likely is it to occur?
- How serious might it be?
- What should we do to reduce the risk?
- How can we be prepared to respond to problems?

Boards of directors need to know, in general terms, how the organization identifies, assesses and manages risks.

The questions in this section are those that members of a board could ask about processes the organization has for managing risk in the following areas:
- Assigning responsibility for risk management (Question 8)
- Identifying, assessing and managing risk (Questions 9–13)
- Communicating and coordinating risk management (Question 14)
- Crisis management (Question 15)

8. Who is responsible for managing risks?

Although the board has overall responsibility for risk management, it generally delegates to the Executive Director and staff most of the detailed aspects of identifying, assessing, and managing the risks that the organization faces—subject to board policy and approval.

A major policy decision for a board is the amount of authority it gives to the Executive Director—who manages risk on a day-to-day basis. To avoid misunderstanding it is important to have a written job description that establishes the powers and limitations of the Executive Director in the context of the risk tolerance policy.

The amount of authority the board wishes to delegate to staff is a key consideration in hiring and assessing the Executive Director. The board’s Compensation Committee can help by including risk management skills, experience and performance in their hiring and assessment processes.

Recommended practices

The board approves:
- A written job description for the Executive Director
- Written policies specifying the Executive Director’s authority and requirements for board approvals (Executive Director limitations)
9. **How does the organization identify the risks that it faces?**

Identifying the risks that an organization faces, and assessing how serious they might be, is a challenging task. Planning for the risks you know about is relatively straightforward. It can be very difficult to anticipate the unexpected. The problem is made harder by our reluctance to think the unthinkable.

Experienced risk managers know that no single approach to identifying risk is good enough in itself so they use a number of approaches in combination. Commonly-used approaches may include a combination of:

- **Internal processes** — interviews, questionnaires, brainstorming, etc.
- **Self-assessment and other facilitated workshops**
- **Strengths, weaknesses, opportunities, and threats (SWOT) analysis**
- **External sources** — comparison with other organizations, discussion with peers, benchmarking, risk consultants, etc.
- **Tools, diagnostics, and processes** — checklists, flowcharts, scenario analysis, etc.
- **Audits** (e.g. a safety or environmental audit)

These approaches can be used to identify risks from a variety of perspectives or categories, including:

- **Sources of risk** — governance, strategic, operational/program, financial, external, informational, compliance and information technology (see Question 1)
- **Objectives** — the risks that could keep the organization from achieving each of its objectives: e.g. events, programs, building projects, etc.
- **Areas affected** — reputation, assets, revenues, costs, performance, staff, volunteers, customers and other stakeholders
- **Specific hazards or perils** — fire, theft, earthquake, liability, etc. The hazard-based approach is usually based on the policy coverages available from insurers
- **Capacity gaps** — inexperienced or inadequate human resources (human capital), or inadequate systems and processes to track performance

- **Risk drivers** — pressure points that if left unchecked contribute to increased risk exposure, for example, **growth** or speed of operational expansion, **culture** or degree of information-sharing, and **information management** or flow of information within an organization

- **The degree of control that the organization has over the risk**, e.g.:
  - Natural disasters and political, economic, social, and financial risks over which an organization has very little control
  - Factors such as public expectations, reputation, competition, and changes to legislation and regulations, over which the organization may have some influence but very little control
  - The choice of programs, events and major projects over which an organization can have a great deal of control

**Recommended practices**

The organization has a methodical process for identifying risks that involves an appropriate variety of approaches, techniques and participants

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10. How does the organization assess the risks that it faces?

Before an organization decides how it will manage each of the risks it has identified, it needs to assess them to determine how they might affect the organization and its objectives.

This usually involves considering how frequently the risk is likely to occur and how severe its consequences might be. A commonly-used technique for doing this is known as “risk mapping” which uses a matrix that can be used to assess specific risks by displaying the relationship between their potential frequency/likelihood and severity/impact.

**Risk mapping**

![Risk Map Diagram]

The results of the assessment can be used to decide how to manage the risks.

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2 The risk map model is reproduced with the kind permission of the YMCA of Greater Toronto.

**Recommended practices**

The organization has processes and criteria for assessing risks

**Risk scoring**

The risk map may be used in combination with a scoring system that assigns a value to the potential frequency and severity of each risk. (e.g. 1 = least frequent or severe 5 = most frequent or severe.) Multiplying the scores gives a risk score that can be used to rank risks and identify those that are considered “major” and to be reported to the board (Question 3).
11. What strategies does the organization use to manage risk?

Once risks have been identified and assessed, it is time to decide how to manage them. For example: small risks that occur frequently can often be managed by good procedures and training. Big, but infrequent, risks may also require insurance (see Question 13) and/or contingency planning (Question 15).

There are, essentially, four ways to manage risk:

**Avoiding risk**—Just don’t do something that seems too risky. This can be a legitimate strategy but it can stop good things from happening if people are too cautious and “risk averse”. Avoiding risk may seem like a conservative or safe approach but can result in missed opportunities and poor results for the organization. Before abandoning a promising idea, it makes sense to weigh the potential risks and benefits and explore control activities and other ways to manage the risks.

**Transferring risk**—Share the risk with someone else. Buying an insurance policy is one way to do this, especially for perils like fire, theft and liability. Another way to transfer risk is to establish contractual relationships with other organizations that have the expertise and resources to handle specialized issues and risks.

**Mitigating risk**—Develop procedures with checks and balances (control activities and procedures) to detect and reduce the likelihood and/or severity of risks. High-risk fields like medicine have sophisticated processes to protect patients and staff. Accountants use internal controls to protect assets and keep accurate financial records. Arts groups balance artistic merit with potential box office success in creating programs that will attract and retain audiences.

**Accepting risk**—Provided that the risk is unlikely or would not cause serious harm to the organization, it may make more sense to accept and monitor it. An annual outdoor event might be less successful if it rains or snows. However, the organizers believe that many participants will feel it is so important to them that they prefer to show up and get wet rather than have it cancelled.

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**Take care when you share risk**

Sharing risks can be risky if your partner lets you down, damages the organization’s reputation or exposes it to litigation. Great care is needed in selecting insurers, outside service providers and other partners.

The organization and its partners should put their expectations and responsibilities in writing to avoid costly misunderstandings.

**Residual Risk**

Risk management may include more than one approach. For example: the organization may establish procedures and controls to mitigate some risks – then buy insurance to cover the “residual” risk of things that procedures can’t cover.

In selecting risk management strategies, cost is an important consideration. The cost of managing a risk should generally be compatible with its potential consequences. For example: it may make more sense to trust volunteers who collect small amounts of money than to spend staff time on trying to control the funds; renting a tent for an outdoor event, or letting people get rained on may make more financial sense than buying insurance against rain.

**Recommended practices**

The organization’s strategies for managing risk are:

- Compatible with its values, objectives and risk tolerance
- Realistic in balancing cost and protection
- Supported by strong internal processes and reliable partners

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12. What records does the organization keep on its risks?

Identifying and assessing risks and developing strategies and procedures for managing them can be time consuming—particularly when doing it for the first time. Having a good system can save the information in a way that can be quickly and easily updated and provides a strong basis for managing risks.

One way of doing this is to use a “risk register” that contains details of risks, who is responsible for managing them and how they are to be managed and reported. A register can be a simple worksheet or spreadsheet, or a sophisticated computer software product that records, analyzes and provides reports on risk information. For an example of a risk register, see Appendix 2.

It can be valuable to have a record of the decisions that were made in developing items for the risk register and the information on which they were based. This can be done by keeping minutes of the decisions or by adding notes to the risk register.

**Recommended practices**

- A senior employee is responsible for the maintenance of the risk register
- The risk register is updated and reviewed at least annually
13. What is the organization’s financial capacity to take on risk?

An organization’s capacity to take opportunities, respond to urgent needs and prevent disasters all require it to have the capacity to “finance” risk. Not-for-profit organizations frequently have limited financial resources for funding new projects and recovering from unexpected setbacks. There are essentially two ways in which they can strengthen their financial position: maintaining financial reserves, and buying insurance.

Financial reserves — money set aside for specific or general purposes (restricted or unrestricted net assets) — can provide the funding for new projects, programs and other initiatives before they are funded by grants, donations or earned revenues (fees, ticket sales, etc). They can also provide a cushion in cases where, for example, a fund-raising project fails to meet its targets, an anticipated grant is reduced or eliminated, or costs run higher than expected.

Financial Reserves Policy

The Society effectively budgets its operations on a break-even basis and uses unrestricted excess revenue over expenses to maintain adequate financial reserves and develop its humanitarian programs.

The Society has set aside $43.5 million in permanent reserves to ensure the capability of operations should there be unexpected events.

Canadian Red Cross: Annual Report, 2007/08

There are, however, many risks that cannot be completely mitigated by security, procedures and other control measures — and that could result in losses that an organization could not absorb from its operating budget or financial reserves. Insurance can provide protection at reasonable cost for some of these risks. It is generally preferable to have all insurance coordinated by one staff person, working with an experienced insurance broker who is familiar with the risk management needs of not-for-profit organizations and the fields in which the organization is active.

In reviewing insurance coverage, directors should pay particular attention to:

- Adequacy of coverage and policy limits — the amount and extent of coverage should be tailored to the risks the organization faces and the amount it can afford to pay
- Exclusions — policies may exclude, or limit, coverage of important perils such as liability for sexual abuse or harassment
- Deductibles — increasing the amount the organization must pay towards each claim can reduce the insurance premium but could be costly if there are numerous claims
- Protection of directors — some policies cover the organization, its employees and Directors for errors and omissions. This form of coverage may be beneficial for the organization but may not provide adequate protection to directors

FOR MORE INFORMATION, SEE THE CICA PUBLICATION 20 QUESTIONS DIRECTORS SHOULD ASK ABOUT DIRECTORS’ AND OFFICERS’ INDEMNIFICATION AND INSURANCE.

Be prepared for claims

Records and broker contact information should be accessible in case a claim occurs when the staff person coordinating and responsible is on vacation or out of the office.

Appendix 3 describes the kinds of insurance policies that are available for not-for-profit organizations.

Recommended practices

- The organization has policies for setting and spending financial reserves, and maintaining them at an appropriate level
- The organization’s insurance programs are an integral part of the risk management program
- The organization makes use of knowledgeable and experienced professionals when buying insurance
- The board reviews the scope of the insurance program and adequacy of coverage limits for the organization and for directors, officers, staff and volunteers
- The board approves an investment policy when there are material funds on hand (e.g. during a building campaign) stipulating the quality of investments and the risk profile that is desired
14. How are the board’s expectations for risk management coordinated across the organization and communicated to staff and volunteers?

Every department and committee in an organization has—or should have—some degree of “risk ownership”. In most cases, staff and volunteers are responsible for the risks directly related to their day-to-day activities. There may also be specialists who handle specific aspects of risk such as insurance, credit and environment. All the risk management activities should be coordinated so that no major risk is overlooked. In larger organizations, this can be accomplished by designating a risk manager or other senior staff person to be responsible for coordinating risk management across the organization. In smaller organizations, the Executive Director may need to assume responsibility for risk management. The individual responsible for risk management maintains the risk management process and advises and collaborates with senior staff members on risk issues.

Organizations that have structured volunteer programs that are led or coordinated by experienced staff or volunteers can include risk awareness in their training programs and procedures. Those with less formal ways of involving volunteers need to carefully assess the risks and decide how to address them. This may require considerable tact and diplomacy, particularly when approaching long-time volunteers who are not used to being told what to do.

**Recommended practices**

The organization has:

- A risk manager or other senior staff person who is responsible for coordinating risk management across the organization
- A program of communication and training on risk that includes creating awareness of risk, promoting a risk-aware culture, and providing guidelines on policies and procedures for managing specific risks to staff and volunteers

**Risk Awareness**

- If I don’t follow procedures, someone might get hurt
- If I’m rude to a customer, I could damage the organization’s reputation
- If I cannot resolve a customer complaint myself, I should promptly refer it to someone who can
- If I see something that looks wrong, I should talk about it to my supervisor

When people know what they are expected to do and understand how to recognize and respond to risks, problems are less likely to occur—and easier to resolve. People also need to know and understand the risks that affect other departments and the organization as a whole, and the consequences of their own actions for others. This requires management to provide training and guidance to staff and volunteers as well as written policies, procedures and job descriptions. The goal should be to create a “risk-aware culture” in which people are encouraged to take appropriate action to manage risks or report them to others.
15. What plans does the organization have for responding to crises?

Even the best-run organizations will experience crises from time to time. Most of these can be described as “operational incidents”—the day-to-day, minor crises of running the organization and serving individual customers. With good management, these can be avoided or promptly resolved by staff and volunteers. Directors are not normally involved in operational incidents unless they are symptoms of problems in executive performance or strategic planning.

A more serious situation is the “potential crisis”—a problem that grows larger over time and becomes critical if it is not addressed. Boards should pay close attention to potential crises and insist on plans and action to resolve them. This is not always easy. It is tempting to deny the threat and to procrastinate.

A third category is the “sudden crisis”—an event that occurs unexpectedly and has a major effect on the organization. Sudden crises include natural disasters, sabotage and outages of vital services such as power, water or computers. They may also result when operational incidents are mismanaged or when a neglected potential crisis becomes a real crisis.

Do we have a crisis?

Recognizing that there is a crisis or an impending/evolving crisis is often the most difficult aspect of crisis management. One approach is to apply a “litmus test.” The following questions are from Crisis Management: Planning for the Inevitable by Steven Fink.

1. Is there a good chance that this situation will, if left unattended, escalate in intensity?
2. Might the situation foster unwanted attention by outsiders, such as the news media or some regulatory agency?
3. Is it likely that the situation might interfere with normal business operations in some manner?
4. Could it make you look bad or cause people (the public at large, or investors) to lose confidence?
5. How is it going to affect your bottom line?

This test can apply to any kind of crisis.

Sudden crises call for prompt, decisive action, effective communication and teamwork between the Executive Director and board. They also call for leadership, discipline, calmness, and sound judgment. The board should ensure that the organization has a commonly understood approach to crisis management and plans for business continuity. Board members need to know what to look for and make sure it happens. Anything less can make the crisis worse.

For more information, see the CICA publication 20 Questions Directors Should Ask About Crisis Management

Being prepared for a sudden crisis involves more than the capacity to manage the crisis itself, it means having the resources and resilience to continue operations. Organizations that have survived crises were best able to recover if they:

- Had a well-tested Business Continuity Plan
- Had a leader who could rise to the occasion and take prompt, decisive action to deal with the immediate crisis
- Communicated promptly and frankly with staff, customers, suppliers, other important stakeholders and the news media
- Demonstrated practical compassion for the injured, frightened and bereaved
- Were prepared for the mundane and predictable problems of business continuity: alternative computer and communication systems, off-site back up of vital records, contact information and more
- Had the financial and other resources to absorb the effects of the crisis and return to normal—strong balance sheets, positive cash flow and good cost control
Appendix 4 has more information on crisis and business continuity planning.

**Recommended practices**

- The organization has a board-approved Business Continuity Plan which is regularly tested.
- The board’s agenda planning includes regularly scheduled briefings to the board or designated committees on the organization’s preparedness for foreseeable emergencies, such as the sudden death or incapacity of the Executive Director, major fire, facility failure, natural disasters, disease outbreaks (e.g. SARS) and terrorism.
- The organization has a board-approved crisis management plan including escalation and communication protocols.

**Crisis response**

Effective crisis response happens when:

- There’s a written plan that describes what to do in a crisis.
- Employees are trained in the use of the plan.
- The plan is always available and accessible in print and electronic format.
- The plan is regularly tested under realistic conditions.
- Employees are empowered to act on their own initiative in times of crisis.
Monitoring and Learning

Ignorance may be bliss, but not when it comes to risk management. The sooner you know about a problem, the better are your chances of resolving it before it gets out of hand. That’s why effective organizations have systems for collecting, analyzing and reporting information they can use to take corrective action. They also take the time to learn from their experiences and grow stronger.

The diversity and uncertainty of risk make it impossible to have only one definitive risk measurement that can be monitored. Monitoring and learning from risk involves questions such as:

• Are we achieving the results we planned?
• Are we monitoring and learning from control breakdowns and losses?
• What are we doing about the major risks we have identified?
• Do we have the necessary guidelines or policies and procedures?
• Do they work—or will they?
• How well are we doing in managing risk?
• Are “near misses” recorded, tracked and used for learning?

The specific questions will depend on the organization. The answers will come from the processes for measuring, monitoring, and reporting risk.

This section describes techniques for developing and using information to manage risk and to learn from risk-related events.
16. How does the organization’s performance compare with its plan and budgets?

When things start going wrong, there are often warning signs—costs get out of control, expected income doesn’t come in, plans and projects slip behind schedule, etc. Many of these signals can be picked up by monitoring the organization’s key performance indicators or drivers against plans and budgets.

As part of its reporting to the board, staff should provide regular information on the status of plans and budgets. Staff should monitor the differences (variances) in financial and non-financial (e.g. people served, satisfaction ratings, etc.) indicators between actual results and board-approved plans and budgets. When the variances are significant, staff should bring them to the attention of the board and describe what they will do to get things back on track. This may require further board approval if plans and budgets need major revision.

**Recommended practices**

The board receives regular reports on:

- Performance against board-approved strategies and plans
- Variances from plan and budget
- Results of periodic testing of crisis plans
17. What is the status of the risks facing the organization?

When boards approve strategic and operating plans, they do so on the basis of assumptions about factors, both within the organization and in the external world, that can change at any time and significantly affect the risks facing the organization and its plans.

Comparing performance against plans to detect problems and manage risks is a useful technique, but one that reacts to problems that have already happened. It is important, in addition, to review the planning assumptions and the status of major risks to identify trends and warning signals before they cause problems. The board should expect staff to report:

- What is happening
- How it might affect the organization
- How staff plan to respond

Some factors are relatively easy to monitor—currency exchange rates, commodity prices, interest rates, etc. Others, such as political, regulatory and social trends are harder to quantify and assess. In either case, it may be difficult to predict the consequences. Even if the information is incomplete or partial, it can stimulate valuable discussion and reduce the risk of complacency and inaction.

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**Recommended practices**

Staff report to the board regularly on:

- The status of major risks including current exposure and effectiveness of risk management techniques
- How the strategic environment is changing, what new risks and opportunities are appearing, how they are being managed and what, if any, modifications in strategic direction should be adopted
- Progress on closing major gaps in risk management capabilities
- Reviews of compliance with risk tolerance policy limits
- Breaches of the Code of Conduct
- Litigation against the organization
- Formal and potential complaints against the organization, e.g. harassment allegations, human rights complaints, labour board investigations
- New and potential crises
- The status of any crises that are currently being managed
18. How can the board be sure that the information it gets on risk from management is accurate and reliable?

Boards generally have a close relationship with the Executive Director who attends board and some committee meetings to provide most of the information and answer most of the questions. The result can be that the board receives information that supports the Executive Director’s viewpoint and, at worst, could be slanted or misleading. To get a broader perspective on the organization and its risks, the board should arrange to meet and hear from a number of sources in addition to the Executive Director.

This can be a sensitive area. Boards should be alert to the risks when the Executive Director is the only source of information to the board and be concerned when an Executive Director unreasonably restricts board access to senior staff. Effective Executive Directors usually look for opportunities to develop senior staff by encouraging them to make presentations and answer questions at board meetings, and to talk freely to board members at other times.

Regardless of the source, board members should demonstrate healthy skepticism and ask themselves if the information they get is consistent and rings true. In larger organizations, the board may periodically request a formal review and report on the effectiveness of the risk management process from an objective and independent source outside of senior management (e.g. internal audit, external auditor, consultant, etc.).

The board should also be informed of concerns reported by whistle-blowers and the action taken or proposed by staff (see Question 2).

**Recommended practices**

- The board gets information from a cross-section of knowledgeable and reliable sources in addition to the Executive Director, such as senior staff, auditors and external advisors
- The board receives reports on concerns expressed by whistle-blowers

**Does this make sense?**

Experienced board members listen carefully to reports from staff. They are not afraid to ask questions if they don’t understand what they are hearing or if it doesn’t make sense to them. They persist until they are satisfied. They may ask that the board discuss their concerns without staff present, or take up the matter with the Chair after the meeting.
19. What has the organization learned from its experiences with risk?

Organizations that review and analyze their response to crises, problems and successes can profit from their experience if they take advantage of the opportunities for improvement. This is a particularly important factor in building and maintaining an organization’s reputation. Making mistakes can be understandable and forgivable. Failing to learn from them is not.

When things go wrong it’s usually a combination of factors—human error, poor communication, inadequate inspection and maintenance, and more. An after-the-fact review can help diagnose underlying causes and suggest solutions that could reduce the risk of similar problems in the future. This usually works best when the focus of the review is on problem-solving rather than fault-finding.

**Recommended practices**

The organization:

- Promptly reviews the most significant lessons learned from each major event, surprise and disaster and how it has responded to these findings
- Takes action to improve the handling of similar events in the future
- Has effective knowledge transfer processes so that significant findings and lessons learned (both positive and negative) can be transferred quickly and effectively across the organization
20. What does the board do to assess its effectiveness in overseeing risk?

The board’s responsibility for overseeing risk includes assessing how well the board and its committees perform. This can be done as part of a regular (preferably annual) governance assessment and after a serious crisis or event in which the board was, or should have been, involved.

The annual assessment would be based on the points raised in this document and consider, in particular:

- Does the board champion and support risk management?
- Does the board support the Code of Conduct and lead by example?
- Does the board have members with the knowledge and experience to manage risk?
- Do the board members receive orientation and updates on risk issues?
- Does the board agenda provide for regular reporting and discussion of risk issues?
- Are the board and its committees effectively organized to oversee risk management?
- Does the board make use of opportunities to integrate risk management with other board processes, such as strategic planning, business planning, annual budget reviews, new program approval, etc?

A post-crisis review might include considering:

- Did the board stay calm, get accurate information and assess the situation?
- Was the board’s involvement timely and appropriate?
- Did the board recognize and reconcile dissenting views expressed by directors?
- Did the board stay on top of the situation?
- Was the board helpful to the Executive Director?
- Did staff conduct a thorough post-crisis review and report on it to the board?
- Did the crisis reveal any weaknesses in strategic planning, risk identification and risk management processes?
- How might the directors apply what they learned to improve the way the board functions and relates to the Executive Director?
- How can the board turn this crisis into an opportunity?

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**Recommended practices**

- The board has a program for assessing how effective it has been in meeting its responsibilities for the oversight of risk.
- The board conducts post-crisis reviews of the effectiveness of its response.
Conclusion

Managing risk is an integral part of good governance. It is a consideration in everything a board, staff and volunteers do and the reason for establishing a risk-aware culture in an organization.

Risk management does not necessarily imply risk aversion. Rather, organizations should balance opportunities and threats to achieve objectives in a way that is compatible with their values and tolerance for risk. Successful risk management can seem boring—it’s largely a matter of following good practices and procedures, and constant attention to detail. Failures in risk management can be more interesting, but also painful and expensive.

An effective board has members who knowledgeably promote the benefits of opportunities, members who wisely warn of threats, strong policies and procedures, and a chair who can guide the board in making sound decisions and overseeing management in the successful execution of strategies.
Appendix 1

A COMPARISON OF CORPORATE AND NOT-FOR-PROFIT GOVERNANCE.³

Corporate directors and others with business experience who become members of not-for-profit boards often experience culture shock in their new roles. Some of this is due to basic differences between the corporate and not-for-profit sectors—particularly the profit motive—but there are other significant factors including the size, sophistication and maturity of the organization and the field in which it operates. It would be nice to have a simple comparative chart that compares and contrasts governance in the two sectors. Unfortunately things are not that straightforward. The following observations on governance and operations may help newcomers from the corporate world to adapt to their roles as members of not-for-profit boards.

GOVERNANCE

Fundamentally governance is governance—there is no substantive difference in good governance between the corporate and not-for-profit sectors. This document is modeled after one written for corporate directors⁴ and the scope is essentially identical. Many not-for-profit organizations have governance practices that equal the best in the corporate sector.

There is more variation in governance within a sector (business or not-for-profit) than there is between sectors. A director of a large public company would probably feel more at home on the board of a large not-for-profit than on the board of a small, start up business.

The directors of not-for-profit organizations, unlike their corporate counterparts, are not paid for their services and may be expected to cover out-of-pocket expenses and make donations. Experience shows that volunteer board members are no less seriously committed to the vision, mission and goals of their organizations than corporate directors. They work hard, believe in what they are doing and make a large contribution to its success—just like their business counterparts.

The underlying principles for nominating directors are essentially the same for both corporations and not-for-profits. In both cases the nomination process involves identifying the organization’s needs—especially the strategic ones—and matching them to the skills and experience of prospective candidates. In practice, not-for-profits tend to be more open to diversity and to accept promising nominees with limited or no board experience.

Corporate boards have been shrinking in size and frequently have fewer than ten members. Boards of not-for-profits are often larger to accommodate representation from a range of stakeholders—but the value of this is being questioned.

³ This material is based on CICA’s 20 Questions Directors of Not-for-profit Organizations Should Ask about Governance.
⁴ CICA’s 20 Questions Directors Should Ask about Risk
Corporate directors are seldom expected to participate in operating activities—the “two hats” challenge for not-for-profit directors. They may, however, be expected to provide active assistance in their fields of expertise—particularly in raising capital—which could affect their governance objectivity.

Not-for-profit organizations, unlike for-profit businesses, frequently benefit from the contribution of time, ideas and expertise by volunteers. With no pay cheque or service contract, volunteers get much of their reward from a sense of achievement and contribution to the organization. These are important factors for paid workers but essential for volunteers who may quit if they do not feel valued or respected. Organizations that dedicate significant time and skilled effort to motivating and managing their volunteers, like those that have good human resource practices, are generally rewarded with dedicated and loyal service.

There is almost as much variation in the pay and working conditions of employees of not-for-profit sector as there is in corporations. Some not-for-profits have highly-paid professional staff and incentive-based compensation, others provide minimal pay and benefits—just as in the business world.

Many not-for-profits are quite entrepreneurial—this is increasingly the case as government support is reduced or matched to funds raised or earned by the organizations. Like companies, they use business techniques to improve their marketing, service delivery and customer service. On the other hand, businesses are becoming aware of the importance of stakeholders other than shareholders and recognizing the value of practicing social responsibility.

The accounting rules for not-for-profits are, for the most part, similar to those for businesses. There are, however, rules that will be unfamiliar to those whose experience is with business accounting. The differences are mostly related to the treatment of deferred revenues and of endowments, restricted and unrestricted funds. Any organization needs to have access to financially literate individuals who understand the specific accounting requirements of the field in which they operate.

Not-for-profit organizations generally have a little tolerance for deviations from budgets and low indebtedness on the balance sheet as compared to many corporations.

All organizations need ways to measure success. Although only corporations use measures related to shareholder value (earnings per share, return on investment, dividend yield, share price, etc.), both they and not-for-profits use many other measurements—both financial and non-financial.
The following is a simple, abbreviated example of the kinds of information that might be recorded in a risk register.

<table>
<thead>
<tr>
<th>Risks identified</th>
<th>Likelihood</th>
<th>Severity</th>
<th>Overall (gross) risk</th>
<th>Control procedure</th>
<th>Retained (net) risk</th>
<th>Monitoring process</th>
<th>Responsibility</th>
<th>Action required</th>
<th>Date of review</th>
</tr>
</thead>
</table>
| Low investment returns                               | Medium     | High     | Medium/high          | • Board-approved investment policy  
• Professional investment management                                                 | Low                | Investment Committee reviews performance reports quarterly                        | Chair, Investment Committee | Include reviews in board agendas                       | Quarterly      |
| Injuries to participants in sports programs           | High       | Medium   | Medium               | • Safety training for coaches and players  
• First aid training for coaches  
• Emergency procedures  
• Incident reports  
• Liability insurance                                                      | Low                | Observe sports training                                                            | Sports director   | Report serious incidents to board  
• Include reviews in board agendas                                         | Ad hoc          
• Annual                                                        |
| Abuse of vulnerable individuals by staff and volunteers | Medium     | High     | High                 | • Screening of staff and volunteers  
• Awareness training  
• Anonymous reporting phone number                                             | Medium             | • Supervision  
• Review incident reports                                                      | Volunteer coordinators  
• Managers and supervisors                                                      | Report serious incidents to board  
• Include reviews in board agendas                                         | Ad hoc          
• Quarterly                                                      |
| Loss of information systems and information           | High       | High     | High                 | • Frequent off-site back-up of files  
• Alternative processing resources  
• Emergency procedures and training                                              | Low                | • Review incident reports  
• Review of controls by auditors                                               | Vice President – Information Systems  
• Chair, Audit Committee                                                      | Report serious incidents to board  
• Include reviews in board agendas                                         | Ad hoc          
• Annual                                                          |
Appendix 3 — Insurance

The following material is reproduced with the kind permission of the Insurance Bureau of Canada from their brochure “Insurance for voluntary organizations: Things to consider”.

WHAT TYPES OF PROTECTION CAN MY ORGANIZATION PURCHASE?

There are many, many types of insurance coverage available. The type and amount of insurance coverage you purchase will depend entirely on the type of service your organization provides. Some examples of types of coverage you may need are listed below.

**Commercial general liability insurance (otherwise known as CGL)** is the most basic form of commercial insurance. If an organization has only one type of insurance, it is most likely commercial general liability. CGL policies cover claims in a number of basic categories of business liability:

- Bodily injury (e.g., a client or visitor is injured as a result of the work of your organization)
- Property damage
- Personal injury (including slander or libel)
- Advertising injury
- Tenant’s legal liability
- Non-owned automobile insurance (e.g., volunteers using their own cars for the organization’s business)

In addition to covering the claims listed above, commercial general liability policies also cover the cost of defending or settling claims—even if the claims are fraudulent.

**Directors’ and officers’ insurance, or D&O**, provides coverage for boards of directors against “wrongful acts,” which might include actual or alleged errors, omissions, misleading statements, and neglect or breach of duty on the part of a board of directors.

**Errors and omissions insurance (sometimes called E&O, professional liability insurance or malpractice insurance)** provides protection for those who give advice, make educated recommendations, design solutions or represent the needs of others. People who may benefit from this type of coverage include teachers, financial planners, consultants and placement services workers. It can be important coverage for anyone who deals with clients who could claim that something done on their behalf was done incorrectly, and that this error cost them money or caused them harm in some way.

**Commercial auto insurance** is required if your organization or its volunteers operate a car as part of your organization’s activities. It will protect your organization in the event of accident, theft, injury and other damages involving your organization’s vehicles. It will also protect your employees while they are driving insured company vehicles. There are a variety of coverages available for your organization’s cars. Your coverage will depend on how you use the cars.

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6 For more information, see CICA’s 20 Questions Directors Should Ask about Directors’ and Officers’ Liability Indemnification and Insurance
Appendix 4
— Crisis and Business Continuity Planning

Organizations need plans for responding to both the immediate and longer-term consequences of crises in three key areas:

Crisis response
- Take immediate action to protect lives, property and the environment
- Find out what’s going on and identify what the organization knows and doesn’t know
- Appoint a core team who has been trained to manage the crisis and free team members from their regular responsibilities
- Promptly notify the company’s insurance company and legal counsel of potential claims
- Make sure that day-to-day operations continue as far as possible

Communications
- Designate a single individual to handle crisis-related communications and communicate frankly to stakeholders and the news media
- Demonstrate commitment to communities directly affected by the crisis by sending in the appropriate corporate representative — this may be the Executive Director, but not necessarily
- Communicate directly and frequently to the company’s stakeholders including employees, customers, suppliers, shareholders and regulators — both during the crisis and subsequently
- Appoint a devil’s advocate to provide a reality check on the organization’s response to the crisis — this could include outside experts such as public relations consultants and lawyers
- Give the board regular briefings

Business resumption
- Implement or develop a plan to resume normal operations
- Continue to communicate with the company’s stakeholders as the plan unfolds

---

7 The material in this Appendix comes from 20 Questions Directors Should Ask about Crisis Management, pages 6 and 7.
Where to find more information

*CICA Publications on governance

**THE 20 QUESTIONS SERIES**

20 Questions Directors and Audit Committees Should Ask about IFRS Conversions
20 Questions Directors Should Ask about Building a Board
20 Questions Directors Should Ask about CEO Succession
20 Questions Directors Should Ask about Codes of Conduct
20 Questions Directors Should Ask about Crisis Management
20 Questions Directors Should Ask about Crown Corporation Governance
20 Questions Directors Should Ask about Director Compensation
20 Questions Directors Should Ask about Directors’ and Officers’ Liability Indemnification and Insurance
20 Questions Directors Should Ask about Executive Compensation
20 Questions Directors Should Ask about Governance Assessments
20 Questions Directors Should Ask about Internal Audit (2nd ed)
20 Questions Directors Should Ask about IT
20 Questions Directors Should Ask about Management’s Discussion and Analysis (2nd ed)
20 Questions Directors Should Ask about Responding to Allegations of Corporate Wrongdoing
20 Questions Directors Should Ask about Risk (2nd ed)
20 Questions Directors Should Ask about their Role in Pension Governance
20 Questions Directors Should Ask about Special Committees
20 Questions Directors Should Ask about Strategy (2nd ed)

**THE CFO SERIES**

Deciding to Go Public: What CFOs Need to Know
Financial Aspects of Governance: What Boards Should Expect from CFOs
How CFOs are Adapting to Today’s Realities
IFRS Conversions: What CFOs Need to Know and Do
Risk Management: What Boards Should Expect from CFOs
Strategic Planning: What Boards Should Expect from CFOs
THE NOT-FOR-PROFIT SERIES*

20 Questions Directors of Not-for-profit Organizations Should Ask about Fiducary Duty
20 Questions Directors of Not-for-profit Organizations Should Ask about Governance
20 Questions Directors of Not-for-profit Organizations Should Ask about Risk
20 Questions Directors of Not-for-profit Organizations Should Ask about Strategy and Planning

THE CONTROL ENVIRONMENT SERIES*

CEO and CFO Certification: Improving Transparency and Accountability
Internal Control: The Next Wave of Certification. Helping Smaller Public Companies with Certification and Disclosure about Design of Internal Control over Financial Reporting
Internal Control 2006: The Next Wave of Certification—Guidance for Directors
Internal Control 2006: The Next Wave of Certification—Guidance for Management
Understanding Disclosure Controls and Procedures: Helping CEOs and CFOs Respond to the Need for Better Disclosure

OTHER CICA PUBLICATIONS

CAmagazine:
   Christopher K. Bart: “Lasting inspiration, May, 2000, pp. 49-50
   Hugh Lindsay: “Plugging the holes”, December 1997, p. 43.


RISK MANAGEMENT STANDARDS

Implementing Turnbull—A Boardroom Briefing, Institute of Chartered Accountants in England & Wales, September 1999
AS/NZS 4360:2004 Risk Management, Standards Australia
Enterprise Risk Management—Integrated Framework, Applications Techniques, COSO, September 2004

*Available for purchase in hard copy or free download at www.rmgb.ca
OTHER REFERENCES


Deloitte, The Effective Not-for-Profit Board (undated)

Dimma, William A., Tougher Boards for Tougher Times: Corporate Governance in the Post-Enron Era. John Wiley & Sons Canada Ltd, 2006. (Chapter 22 provides a comparison between corporate and not-for-profit governance.)


WEBSITES

Alliance for Nonprofit Management, Washington, DC www.allianceonline.org

Altruvest Charitable Services www.altruvest.org

Canadian Society of Association Executives www.csaecanada.org www.csae.com


Charity Village www.charityvillage.ca

Imagine Canada www.imaginecanada.ca

United Way of Canada: Board Development www.boarddevelopment.org
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Hugh Lindsay is a founder and president of FMG Financial Mentors Group Inc. He specializes in writing, training and consulting in corporate governance, risk management and strategic planning. In addition to being a Chartered Accountant, he is a Chartered Insurance Professional and a member of Financial Executives International. Prior to entering full-time consulting in 1992, he held senior financial and internal audit positions with a university and a major insurance company. Hugh is an Associate Member of Continuing Studies at Simon Fraser University.

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A FRAMEWORK FOR BOARD OVERSIGHT OF ENTERPRISE RISK

by John E. Caldwell, CA
Preface

The Risk Oversight and Governance Board (ROGB) of the Canadian Institute of Chartered Accountants (CICA) has developed the framework described in these pages to assist boards of directors to fulfill their responsibility for the oversight of risk.

Our discussion of risk oversight issues features a nine-step process to assist directors to:
- better identify and address critical risks
- understand how risks are interconnected
- recognize the potential compounding of risks should unfavourable events occur at the same time.

While boards should not be involved in day-to-day risk management, recent events highlight the need for more proactive and direct engagement over and above traditional oversight of risk management processes.

The ROGB acknowledges and thanks the members of the Directors Advisory Group for their invaluable advice, John E. Caldwell, the author, and the CICA staff who provided support for the project.

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Introduction

In the aftermath of financial crises and a global recession, board oversight of enterprise risk continues to be a topical issue for board deliberation. The re-examination of the board’s role in the oversight of enterprise-wide risk has not been limited to investors or boards asking what could have been done to better understand and proactively address exposures. The SEC, New York Stock Exchange and other regulatory bodies continue to examine disclosure requirements related to various forms of enterprise risk. Risk oversight is a high priority for most boards, but for many it is also more-or-less uncharted territory.

What is the appropriate role of the board in corporate risk management? Traditional governance models support the notion that boards cannot and should not be involved in day-to-day risk management. Rather, through their risk oversight role, directors should be able to satisfy themselves that effective risk management processes are in place and functioning effectively. The risk management system should allow management to bring to the board’s attention the company’s material risks and assist the board to understand and evaluate how these risks interrelate, how they may affect the company, and how these risks are being managed. To meaningfully assess those risks, directors require experience, training and knowledge of the business.

The number of well publicized bankruptcies each year—both unforeseen and anticipated—shows that over-reliance on or absence of effective, management-led enterprise risk processes and models can have unexpected or even catastrophic results. These high-profile corporate disasters are often cited as extreme examples of failure of enterprise risk management systems and board oversight. For most corporations, however, the consequences of failure are more likely to be underperformance and destruction of shareholder value.

Effective risk management and board oversight should not be premised on risk avoidance. Every corporation is exposed to and takes risks daily. What is important is to manage the balance of risk and reward and to identify and minimize the consequences of a negative occurrence to the extent possible.

In our view, boards must take a more active and direct role in risk assessment well beyond traditional oversight of typical risk management processes. In particular, risks associated with leadership and strategy are prime examples of areas where a board must assert itself more directly since management cannot be expected to objectively assess its own performance, capabilities and strategy in such areas from a risk perspective. Unlike other embedded responsibilities of boards and committees, such as the oversight of financial reporting and disclosure, there are no standards for risk oversight and few, if any, authoritative sources on which boards may rely.

This document is not intended to advise directors on how to create an enterprise risk management system or a technical management-led risk process; these are more suited to development by management. We also do not address crisis management in the event of an occurrence. Rather, our intent is to provide a practical approach to risk oversight designed specifically for boards of directors, including a framework, methodology and toolsets.

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1 For information on Crisis Management see 20 Questions Directors Should Ask about Crisis Management.
Executive Summary of Critical Issues

Oversight

What is the board’s role in the context of risk oversight? Typically, boards of directors are tasked with providing oversight on identifying, assessing and to the extent possible mitigating corporate risk. It is the general view that boards are expected to provide an oversight role of the risk management systems and processes as well as continuously reviewing both the planning and outcomes of such processes.

This implies that oversight is somewhat passive and involves significant reliance on management. But there are valid circumstances in which boards must take a leadership role in assessing risk. For example, a primary risk might be an ill-advised strategy or a failure to execute strategy. How does management critically evaluate the very strategy it developed or objectively assess its ability to execute? Similarly, the quality and effectiveness of a corporation’s leadership, including the chief executive officer can pose a major risk. How is it possible for management to assess itself?

Questions for directors to ask:

• Does the board clearly understand its oversight mandate and role?
• Is the board sufficiently active in fulfilling this part of its mandate?
• Do the directors share a common, practical understanding of their responsibility for risk oversight? Is this view the same as that of the CEO and executive team?
• Does the board properly distinguish its responsibility for risk oversight from risk disclosure?
• Are the objectives of the board’s responsibility for risk understood?

Directors’ individual knowledge and understanding of risk

If directors were asked whether they understand business risk, we believe most would say they do. Yet time after time, corporations find themselves in distressed situations and even bankruptcy, which invariably prompts the question, “Where were the directors?”

Questions for directors to ask:

• Do board members have an adequate, up-to-date appreciation of the nature, types and sources of risks faced by the organization?
• Does the board truly understand the interdependencies and how events or conditions occurring simultaneously can spell disaster?
• Are seemingly unthinkable business risks ignored because their occurrence is thought to be unlikely?
• Does the board have the necessary blend of business and industry knowledge and experience to assess risk?

Board’s primary objectives for enterprise risk management

By conventional thinking, the primary objectives of board oversight of risk are preserving the viability of the enterprise and improving shareholder value. In reality, the likelihood of total failure for most businesses is remote.
Questions for directors to ask:

- Beyond the obvious objective of preserving the corporation’s viability, do board members understand that the most likely outcome of ineffective risk management is underperformance and the destruction of shareholder value?
- Conversely, does the board recognize that a key objective of a robust enterprise risk oversight process should be to enhance performance and improve shareholder value?

Determining a corporation’s capacity, tolerance and appetite for risk

Whether advertently or not, every corporation faces risk constantly. In fact, an ongoing management responsibility is evaluating and adequately balancing risk with reward.

Questions for directors to ask:

- Does the board periodically consider and quantify the corporation’s capability to take on and manage risk?
- Does the board understand the differences between risk capacity, risk tolerance and risk appetite?
- Does the board consciously assess risk and reward when considering major strategic or tactical initiatives?
- Does the board have a framework within which to make meaningful judgments around risk tolerance and risk appetite?
Board organization and structure for addressing risk

Various models of board organization are currently used for the oversight of risk. In many cases, risk assessment is delegated to one or more board committees. In other cases, the board as a whole takes on the responsibility. In some cases, boards simply fail to assign this responsibility at all.

**Questions for directors to ask:**

- Is the assignment of risk oversight clearly mandated?
- Are the chair of the board and CEO committed to a dynamic and robust risk management environment?
- If risk oversight is delegated to one or more committees, are the committees capable of overseeing risk in its broadest form?
- Is sufficient time set aside to carry out this responsibility?
- Do the board’s agendas promote integration of risk issues with other agenda items such as strategy, organization and finance?

Management approach to enterprise risk

Management approach to risk can vary widely. At one extreme are highly structured enterprise risk management processes with dedicated organizational resources. At the other extreme are more unsophisticated and passive approaches that address risk as an afterthought, usually regarding major expenditures, or through a SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis.

**Questions for directors to ask:**

- Does management have a robust framework and comprehensive process to assess risk?
- Does the board accept management’s assessment of risk too readily even when it appears superficial?
- Are risk management processes or systems well designed such that risk is managed holistically and not in silos?
- Does the corporation have adequate systems and processes in place to monitor the effectiveness of risk management?
- Do the board and management learn from and act on instances where risk management strategies and systems have been ineffective?
- Can management adequately and objectively assess risk when it is the architect of the risk management framework?
- Does management have the openness and humility to recognize its shortcomings and the courage to recognize flawed strategy and change course?
- Is risk tolerance and risk appetite set out in the company’s strategic plan? Is it appropriate?
Interrelationships and compounding effect of risks

Company failures, much like air disasters, usually result from many factors occurring simultaneously. In hindsight, the origins of these unfortunate and often disastrous events are painfully apparent.

**Questions for directors to ask:**

- Does management understand the interconnectivity and interdependencies of risks?
- Does the board recognize that the corporation may have several embedded exposures so that even relatively minor risks can produce significant unfavourable consequences?
- Are risk interrelationships ignored because the likelihood of a negative occurrence is deemed remote?
- Does the board have an adequate framework to understand the interrelationships, interdependencies and compounding effect of risks?

**Strategic risk**

Strategic plans are developed to map future direction, delineate the basis of a corporation’s competitive advantage and set out specific plans to achieve financial and other objectives. Since strategy ultimately involves choices, risks are inherent in virtually every strategic plan.\(^2\)

**Questions for directors to ask:**

- Does the board understand and discuss the linkages between strategy and risk?
- Does the board assess strategic plans in terms of their potential failure and the attendant consequences?
- Does the board integrate assessment of risk and choices about risk into strategic plans?
- Does the board have a framework and toolsets, such as competitive analysis and stress test modelling, to assist it to understand the consequences of strategic risk?

**Adequacy and timeliness of relevant information**

Boards of directors and board committees typically receive substantial information on quarterly performance, annual and longer-term plans, together with committee-specific information.

**Questions for directors to ask:**

- Beyond risk-related strategic plan supplements and financial reporting data, do boards receive comprehensive reports on risk?
- Is this information sufficient to make well-reasoned judgments about risk and risk management?

\(^2\) For more information see 20 Questions Directors Should Ask about Strategy, 3rd ed.
External advice

Typically, boards of directors have access to expert advice related to areas such as legal, accounting, compensation, financing, and mergers and acquisitions.

Questions for directors to ask:

• Are there reputable experts to advise the board on various risk matters?
• Does the board regularly engage such experts?

Executive performance evaluation and compensation

Boards evaluate executives using a variety of metrics and other criteria. Compensation philosophy and evaluation criteria are typically designed to align the executives’ objectives with the corporation’s goals.

Questions for directors to ask:

• Does the board include risk management as a criterion for executive evaluation?
• Are current compensation practices aligned or at odds with prudent risk management?
A Board Risk Oversight Framework

A common concern among boards of directors is the lack of a comprehensive framework and toolsets to assist boards to structure an effective, robust enterprise risk oversight process. The board’s responsibility for risk oversight and management’s responsibility for enterprise risk management should be clearly delineated. This document defines a framework and a systematic approach incorporating elements of a traditional enterprise risk management process but is tailored to the board’s oversight role. Before reviewing this framework, it may be helpful to contrast enterprise risk from management’s perspective versus the board’s oversight role.

Enterprise risk management

Enterprise risk management (ERM) is a management tool that encompasses the methods and processes used by organizations to manage risks related to the achievement of their objectives. A typical ERM framework guides management on how to:

- identify particular adverse events or circumstances relevant to the organization’s objectives
- assess the likelihood and magnitude of impact
- determine a response or mitigation strategy
- monitor progress.

By identifying and proactively addressing risks, companies can improve performance and protect and create value for shareholders.

ERM may also be described as a risk-based approach to managing an enterprise that integrates strategic planning, operations management, and internal control. ERM is evolving to address the needs of various stakeholders who want to understand the broad spectrum of risks facing complex organizations and ensure those risks are appropriately managed.

Board oversight of risk

The board’s role in risk oversight is similar in some ways to the role of the audit committee. The audit committee does not prepare financial statements, draft disclosures, or maintain the system of internal control. Rather, the audit committee bears responsibility for overseeing the financial reporting and related internal control processes.

Similarly, boards of directors are not expected to unilaterally identify, analyze, mitigate and monitor enterprise risk. Rather, boards must oversee the risk management systems and processes and continuously review the associated outcomes and planning. As stated earlier in this document (and worthy of repetition), the oversight role should not be passive or, too reliant on management. Successful board risk oversight processes requires board confidence in management, access to relevant and reliable information and effective functioning of a board overall.

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Model for board involvement in risk oversight

A model risk oversight framework is depicted on page 13. In summary, the key activities involve:

- identifying risks
- analyzing, validating and prioritizing them
- determining risk tolerance and risk appetite
- managing risks through various response strategies
- ongoing monitoring.

The participants who contribute to this model’s effective functioning may vary among organizations. In larger organizations, this group usually includes:

- the board of directors
- the executive organization
- operational and functional staff
- risk and compliance management, including internal audit and legal counsel
- external advisers, such as external audit, legal firms, and consultants
- other stakeholders, such as lenders and investors, in certain cases.

In smaller organizations, many activities could be combined and assigned to executives and senior managers or outsourced.

Clearly, the executive organization led by the chief executive officer bears overall accountability for managing enterprise risk. The board of directors has responsibility for oversight and is ultimately accountable for the corporation’s overall performance and the safeguarding of its assets. Within the risk management framework, the board also would be expected to provide varying degrees of input and counsel into risk identification, analysis and validation, prioritization, risk tolerance and risk appetite, response strategies and monitoring activities.

As referenced earlier, boards should take a more active role in overseeing certain specific types of risk. Depending on the degree of the risk, the degree of board involvement would be at one of the three levels.

Level 1 Risks

Level 1 risks include customary operational risks, such as health, safety and environment and facility or system disruption, and other risks where the potential adverse effect on the business is moderate or has been offloaded such as through an insurance program or other means.

Provided the board is satisfied with the efficacy of the risk management systems and processes, board oversight for Level 1 Risks would involve customary questioning, review of periodic reporting, counselling and monitoring.

Level 2 Risks

Board involvement in risk oversight would be heightened for Level 2 Risks, which fall into two categories:

1. high-impact risks that cannot be adequately mitigated
2. risks involving the presence of management bias.
For high-impact Level 2 Risks, the board would work closely with the executive organization to understand, quantify, prioritize, mitigate and monitor such risks. For example, financing risk falls within this category where the enterprise has significant liquidity exposure by virtue of its business model, its capital structure, or the potential balance sheet impact of another adverse occurrence.

For Level 2 Risks involving potential management bias, board involvement would expand to fully understanding the underlying facts and assumptions and how the risk might be quantified, validated, monitored and stress-tested through financial modelling. For example, strategic risk would fall into this category since management developed and was committed to execute the strategy and would have difficulty objectively assessing its viability and associated risks.

Increasing board involvement does not imply that the board takes the lead at the exclusion of management. Rather, this should be a highly collaborative effort between the board, the CEO and the executive organization.

**Level 3 Risks**

Level 3 Risks include instances where management is clearly conflicted or heavily biased, and so these risks should command the highest level of board involvement. The obvious and arguably most important example of Level 3 Risk lies in assessing the CEO's performance, capability and suitability. Clearly, this is a critical responsibility for which the board must take a leadership role.

There are times when boards must take a more active or leadership role in assessing risk. For instance, a primary risk might be an ill-advised strategy or a failure to execute strategy. How does management critically evaluate the very strategy it developed or objectively assess its ability to execute? Similarly, the quality and effectiveness of a corporation’s leadership—including its chief executive officer—can pose a major risk. Is it fair or even possible for management to assess itself?
Preparing to Implement the Framework

Overview

The highest quality strategic plans are unlikely to succeed if they are not effectively implemented. Thus, the ultimate success or failure of employing this risk oversight framework may lie in its execution. Given the unique circumstances of each corporation and its board of directors, there is no single implementation model. Each board must determine its own appropriate execution methodology.

In its early stages, executing risk oversight may be unknown territory for many boards. Accordingly, they should be prepared to modify the framework as the implementation unfolds. As with other important board processes, the full implementation of a comprehensive board oversight methodology may require several cycles over two or three years. Success will depend on committed leadership, planning and direct involvement by both the board and senior management.

A detailed implementation road map is set out in Appendix II.

Leadership

Unquestionably, the success of the board oversight of risk is directly tied to the leadership of the process. While it is tempting to assign the leadership of risk oversight to a committee chair, without the support and sponsorship of the board’s chair and the chief executive officer, the process is unlikely to become broadly accepted or embedded in the board’s annual agenda. It is equally important for the CEO to recognize and support the board in fulfilling its responsibility to assess organizational risk at the chief executive level and critically assess management’s strategy from a risk perspective.

Direct board involvement

The board’s risk oversight must be hands-on. It should be much less about reviewing management presentations and more about drawing on the full board’s capabilities and experience through thoughtful discussion and interaction. The time commitment by both board and management will be significant. The board and CEO must show committed leadership to overcome management resistance to the process due to the amount of time required.

Board versus committee risk oversight

Each board must determine how it wishes to assign responsibility for overseeing enterprise risk. Some may wish to delegate all or part of the responsibility to one or more existing committees or to a new, separate committee. Certain risks clearly lend themselves to committee oversight such as financial and organizational risks. However, as with oversight of strategy, the entire board is ultimately responsible for overseeing risk and would benefit from drawing on the board’s full resources.
Separate meetings

Because of importance and time requirements, most boards regularly schedule separate meetings to review the corporation's strategic plan. For the same reasons, boards should consider dedicated sessions to address enterprise risk, particularly in the first year or two to work through inevitable implementation issues. It is worthwhile to schedule risk sessions following the strategic plan meeting to allow board members to reflect on strategic risk while it is top of mind.

Session planning

The board and management may find it helpful to scope the risk sessions in advance and to understand the data and analytical requirements. This process likely will be iterative since risk oversight remains somewhat uncharted territory. The board and management may find it worthwhile to work through each of the nine process steps set out in this document to determine the desired outcome and input requirements. At the end of each session, the board should review any gaps in the data or process to better prepare for future meetings.

A detailed framework for implementation is set out in Appendix II.

Role and use of advisers and stakeholders

In this document, we often refer to the role of external advisers and consultants, largely in providing specific expertise or unbiased analysis and advice. For small and mid-sized companies, extensive use of advisers may be unaffordable. Boards of such companies are encouraged to explore creative ways to obtain expert advice within cost constraints.

In some instances, gathering input from stakeholders is highly advisable. Specifically, in examining the enterprise’s capital structure from a risk perspective, it might be useful to obtain the views of the company’s lenders. Similarly, in determining risk tolerance and risk appetite as discussed in section VII, it would be useful to understand shareholder sentiment and related investment thesis in connection with risk.

Role of management

The chief executive officer's support is critical to implementing the risk oversight framework. The staff members involved in risk management (such as risk officers and internal auditors) are equally important, and their knowledge, expertise, independence and resources can be invaluable in assisting the board in developing objective analysis and providing useful insights.
Risk parameters

In light of much-publicized bankruptcies or near-bankruptcies, when boards consider enterprise risk, they commonly focus on catastrophic risks that could threaten the corporation’s viability. This focus is clearly warranted. However, most businesses do survive and for corporations that have strong balance sheets and solid track records, boards may be tempted to reduce their emphasis on risk oversight. We assert that risk parameters should go beyond identifying risks that endanger the corporation’s sustainability. The risk parameters should include any event or condition that could materially affect long-term performance or cause material destruction of asset or shareholder value.

The combination of a robust board led risk oversight process and establishing appropriate risk parameters to include potential occurrences that could affect long term performance or the destruction of asset or shareholder value has the tangential benefit of improved company performance and board governance practices across the critical corporate functions.

The Framework

Below we set out a risk oversight framework that is specifically tailored for use by boards of directors. The nine-step process is designed to assist boards better identify, understand and address critical risks. Most importantly, the framework includes a process for understanding the interconnectivity of risks and the potential compounding effect of unfavourable events occurring simultaneously. The framework may also assist boards to better understand their corporations’ tolerance and appetite for risk in planned and unplanned activities and events and guide development of their response or mitigation strategy.
I. Establish context
Understand current conditions in which the organization operates from an internal, external and risk management perspective

II. Identify risks
Document material threats to the organization’s achievement of its objectives and value of its assets

III. Analyze consequences
Quantify the impact of the risk and likelihood of occurrence

IV. Analyze interconnectivities and compounding effects
Aggregate risks and understand relationships, interdependencies, and the compounding effect of simultaneous occurrences

V. Re-analyze consequences
Re-calibrate and, if possible, create probability distributions of outcomes of interrelated risks

VI. Prioritize
Rank risks in order of importance, blending severity with likelihood of occurrence and potential for mitigation

VII. Assess Risk Capacity, Tolerance and Risk Appetite
Determine the entity’s capability, tolerance and appetite for potential consequences of risk

VIII. Choose Response Strategy
Develop plans to avoid, reduce or control, share or insure, accept, or, in certain cases, potentially exploit risks

IX. Monitor
Continually measure and monitor the risk environment and the performance of the risk management strategies
An enterprise risk is the threat that an event or action will adversely affect an organization’s ability to achieve its strategic goals and mandate. An Enterprise Risk Management Plan (ERM) is a governance tool which provides for the:

- Identification of enterprise risks that can have an impact on the achievement of the Law Society’s strategic goals and mandate
- Determination of relative priority of these risks based on their potential to occur and the extent of the impact
- Management of the risks through mitigation strategies, retaining, reducing, avoiding or transferring the risks

To successfully manage these risks, a framework for risk identification, measurement and monitoring has been developed by Management and will be reported to the Audit Committee on an annual basis.

The process going forward will be:

- Management Board will play a central role, with the Chief Executive Officer being the main liaison per the Executive Limitations
- The ERM plan will be maintained through semi-annual discussions by Management Board and related departments to refresh the Risk Schedule and related risk management efforts
- The Risk Schedule will be updated in conjunction with the annual review of the Key Performance Measures to the Audit Committee, and then to the Benchers
- Should a risk change or a new risk occur, the escalation process will be to inform the appropriate Management Board member, and/or the CEO, with a report out to the President (or Executive Committee) when required, subject to the Executive Limitations

The top eight strategic residual risks are noted below, with the full Risk Schedule attached as Appendix A.

<table>
<thead>
<tr>
<th>Category</th>
<th>Risk</th>
<th>MB Lead</th>
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</thead>
<tbody>
<tr>
<td>Regulatory</td>
<td>R1: Adverse change in Provincial Legal Profession Act or government policy direction</td>
<td>CEO</td>
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<tr>
<td>Regulatory</td>
<td>R3: Conflict of interest event by Benchers or staff</td>
<td>CEO</td>
</tr>
<tr>
<td>Financial</td>
<td>F2: Economic and/or financial market downturn</td>
<td>CFO</td>
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<tr>
<td>Operational</td>
<td>O1: Natural disaster</td>
<td>CEO</td>
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<tr>
<td>Operational</td>
<td>O3: Breach of confidential and/or FOIPPA information to members, employees and/or the public</td>
<td>Tribunal Counsel</td>
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<tr>
<td>Operational</td>
<td>O4: Unauthorized access to data and information</td>
<td>CIPO and CFO</td>
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<tr>
<td>Lawyers Insurance</td>
<td>LIF3: Catastrophic theft under Part B of the LPL policy</td>
<td>Dir of Insurance</td>
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<tr>
<td>Lawyers Insurance</td>
<td>LIF8: Investment devaluation</td>
<td>CFO</td>
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<tr>
<td>Risk Category</td>
<td>Risk Statement</td>
<td>Potential Consequences</td>
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</tbody>
</table>
| REGULATORY    | R1: Adverse change in Provincial Legal Profession Act or government policy direction | • Political: direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self regulation  
• Reputational: diminished public perception of independence | Red | • Bencher Strategic Plan  
• Meet KPMs and monitor Bellwether  
• Continuous review of regulatory model  
• Requests for appropriate amendments to Legal Profession Act  
• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law  
• Bencher policies and training  
• Hearing panel composition and training  
• Media monitoring  
• Crisis communication plan  
• 2011 Regulatory Plan – continued implementation  
• More formal government relations process instituted  
• Legal Profession Act Amendments - 2012 | | Chief Executive Officer (CEO) |
| REGULATORY    | R3: Conflict of interest event by Benchers or staff | • Political: direct government intervention in the Law Society authority and structures  
• Reputational: diminished public perception of independence along with a loss of reputation with the membership | Red | • Hearing panel composition (public and lawyer members) and training  
• Bencher policies and training  
• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law including investigations conducted by independent, external counsel where appropriate  
• Crisis communication plan | | CEO |
<table>
<thead>
<tr>
<th>Risk Category</th>
<th>Risk Statement</th>
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<th>Residual Risk Level</th>
<th>Planned (in Progress) Strategies and Controls</th>
<th>Management Board Lead</th>
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</thead>
<tbody>
<tr>
<td><strong>FINANCIAL</strong></td>
<td>F2: Economic and/or financial market downturn</td>
<td>• Financial: investment devaluation as well as losses of market value in the building and revenue</td>
<td>Red</td>
<td>• Enhanced role of Tribunal Counsel</td>
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<td>• Quarterly reviews of investment performance and benchmarking</td>
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<td>• Investment managers and pooled funds</td>
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<td>• Long-term leases</td>
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<td>• Real estate expert advice and monitoring</td>
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<tr>
<td><strong>OPERATIONAL</strong></td>
<td>O1: Natural disaster</td>
<td>• Operational and financial: injury of staff and/or building damage • Operational: service disruption • Financial: unexpected costs</td>
<td>Red</td>
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<td>• Fire and earthquake safety plan and training</td>
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<td>• Information technology backup plan</td>
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<td>• Comprehensive earthquake training completed in 2011, annual earthquake drills (Shake-Out) instituted</td>
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<td>• 2007 Building Due Diligence report confirms the buildings met building codes when built, 835 was updated to current standards in 1992, due diligence report notes that 845 and 835 buildings should not sustain catastrophic failure in a major</td>
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</table>

Chief Financial Officer & Director of Trust Regulation (CFO) CEO
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<tr>
<th>Risk Category</th>
<th>Risk Statement</th>
<th>Potential Consequences</th>
<th>Inherent Risk Level</th>
<th>Residual Risk Level</th>
<th>Planned (In Progress) Strategies and Controls</th>
<th>Management Board Lead</th>
</tr>
</thead>
<tbody>
<tr>
<td>OPERATIONAL</td>
<td>O3: Breach of confidential and/or FOIPPA information to members, employees and/or the public</td>
<td>Reputational: diminished public perception of independence and possible loss of reputation with membership</td>
<td>Seismic event</td>
<td>Information technology security policy, process and procedures</td>
<td>Perform privacy review – report completed and action plan being implemented in 2013</td>
<td>Tribunal Counsel</td>
</tr>
<tr>
<td>OPERATIONAL</td>
<td>O4: Unauthorized access to data and information</td>
<td>Reputational: diminished public perception of independence and possible loss of reputation with membership</td>
<td></td>
<td>Member file and case file management procedures</td>
<td>Establish privacy of information policies - same</td>
<td></td>
</tr>
<tr>
<td>LAWYERS INSURANCE FUND</td>
<td>LIF3: Catastrophic theft under Part B of the LPL policy</td>
<td>Reputational: diminished public perception of the profession, Financial: significant investigation expense and settlement payments</td>
<td>Trust rules and audit program</td>
<td>Proactive claims and risk management practices</td>
<td>Review of security system profiles and policies – part of privacy review recommendations</td>
<td>Director of Lawyers Insurance Fund</td>
</tr>
</tbody>
</table>
## Law Society of British Columbia

**Enterprise Risk Management**

**Risk Schedule – Prioritized**

**Updated February 2013**

<table>
<thead>
<tr>
<th>Risk Category</th>
<th>Risk Statement</th>
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<th>Inherent Risk Level</th>
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<th>Residual Risk Level</th>
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<th>Management Board Lead</th>
</tr>
</thead>
<tbody>
<tr>
<td>LAWYERS INSURANCE FUND</td>
<td>LIFS: investment devaluation</td>
<td>• Financial: insufficient reserves or surplus</td>
<td>Red</td>
<td>• Investment policies and procedures (SIIP)</td>
<td>Green</td>
<td>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</td>
<td>CFO</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Political: direct government intervention in the Law Society authority and structures as well as the possible loss of the right to self regulation</td>
<td></td>
<td>• Investment managers and pooled funds</td>
<td></td>
<td>• S.86 Legal Profession Act (statutory protection against lawsuits and liability)</td>
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<tr>
<td></td>
<td></td>
<td>• Reputational: diminished public perception of independence along with a loss of reputation with the membership</td>
<td></td>
<td>• Quarterly reviews of investment performance</td>
<td></td>
<td>• D &amp; O policy underwritten by Chartis</td>
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<td></td>
<td></td>
<td>• Financial: lawsuit defense and settlement costs</td>
<td></td>
<td>• Real estate expert advice and monitoring</td>
<td></td>
<td>• Hearing panel training</td>
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</tr>
<tr>
<td>REGULATORY</td>
<td>R2: Loss of a lawsuit alleging a failure of the Law Society to follow due process</td>
<td></td>
<td></td>
<td>• Maintenance of surplus levels</td>
<td></td>
<td>• 2011 Regulatory Plan – continued implementation</td>
<td>Chief Legal Officer (CLO)</td>
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<tr>
<td></td>
<td></td>
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<td>• Federation - National admission and discipline standards being developed</td>
<td></td>
<td>• Enhanced role of the Tribunal Counsel</td>
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</tr>
<tr>
<td>REGULATORY</td>
<td>R4: Failure of the Law Society to stay within jurisdiction and/or wrongful prosecution</td>
<td>• Political: direct government intervention in the Law Society authority and structures</td>
<td></td>
<td>• Appropriate procedures for investigation and prosecution of legal matters commensurate with administrative law</td>
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<td>• CLO and Tribunal Counsel</td>
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<td></td>
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<td>• Reputational: diminished public perception of independence along with a loss of reputation with the membership</td>
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<td>• Bencher policies and training</td>
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<td>• Crisis communication plan</td>
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<td>• Hearing panel training</td>
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<td></td>
<td>• Enhanced role of the Tribunal Counsel</td>
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<tr>
<td>REGULATORY</td>
<td>R5: Loss of a lawsuit</td>
<td>• Political: direct government</td>
<td></td>
<td>• Appropriate procedures for investigation</td>
<td></td>
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<td>CLO and Tribunal</td>
</tr>
<tr>
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<td></td>
<td>alleging failure to sanction or deal with a lawyer</td>
<td>intervention in the Law Society authority and structures</td>
<td>Yellow</td>
<td>and prosecution of legal matters commensurate with administrative law</td>
<td>Green</td>
<td></td>
<td>Counsel</td>
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<td></td>
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<td>• Reputational: diminished public perception of independence along with a loss of reputation with the membership</td>
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<td>• Bencher policies and training</td>
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<td></td>
<td></td>
<td>• Financial: costs and damages imposed through possible litigation</td>
<td></td>
<td>• S.86 Legal Profession Act (statutory protection against lawsuits and liability)</td>
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<tr>
<td>REGULATORY</td>
<td>R6: Loss of a lawsuit alleging wrongful deprivation of lawyers (prospective) membership (livelihood)</td>
<td>• Reputational: diminished public perception of independence along with a loss of reputation with the membership</td>
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<td>• D &amp; O policy underwritten by Chartis</td>
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<td>CLO and the Director of Education and Practice</td>
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<td></td>
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<td>• Financial: costs and damages imposed through possible litigation</td>
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<td>• Crisis communication plan</td>
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<td>• Hearing panel composition and training</td>
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</table>
| REGULATORY    | **R7**: Admission decisions are not reflective of the character, fitness, and competencies of a prospective lawyer | - Political: possible loss of the right to self regulation  
- Reputational: diminished public perception of independence  
- Financial: costs and damages imposed through possible litigation | Green               | - Law Society Admission Program  
- Revised Credentialing standards and procedures                                                                 | Green               | - Legislative amendment to allow internal Law Society appeals of prior decisions  
- National admission standards being developed | Director of Education and Practice                                           |
| FINANCIAL     | **F1**: Misappropriation of Law Society financial assets                          | - Reputational: loss of reputation with the membership  
- Financial: loss of revenue, increased fees                                                                      | Green               | - Internal controls  
- Schedule of authorizations  
- External audit  
- Monthly and quarterly financial review process  
- Crime insurance                                                                 | Green               | - Long-term leases, effect early renewals when appropriate  
- External property management firm expertise  
- Building maintenance plan  
- Building due-diligence reviews  
- 10 year capital plan  
- Annual operating and capital budgets                                                                                     | CFO                    |
| FINANCIAL     | **F3**: Loss of tenants                                                          | - Financial: losses of market value in the building and lease revenue                     | Green               | - - - - - - - - - - -                                                                        | Green               | - Long-term leases, effect early renewals when appropriate  
- External property management firm expertise  
- Building maintenance plan  
- Building due-diligence reviews  
- 10 year capital plan  
- Annual operating and capital budgets                                                                                     | CFO                    |
<table>
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<tr>
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<tbody>
<tr>
<td>FINANCIAL</td>
<td>F4: Unexpected escalation of operating costs</td>
<td>• Financial: loss of revenue</td>
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<td>• Executive limitations</td>
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<td>CFO</td>
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<td>• Schedule of Authorizations</td>
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<td>• Ten-year capital plan</td>
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<td>FINANCIAL</td>
<td>F5: Inaccurate or untimely financial reporting</td>
<td>• Reputational: loss of reputation with the membership</td>
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<td>• Internal control system</td>
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<td>CFO</td>
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<td></td>
<td></td>
<td>• Financial: loss of revenue or increase in costs</td>
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<td>• Executive limitations</td>
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<td></td>
<td></td>
<td>• Operational: poor decision-making</td>
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<td>• Annual external audit</td>
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<td>• Investment policies and procedures (SIIP)</td>
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<tr>
<td>FINANCIAL</td>
<td>F6: Lower member base</td>
<td>• Financial: loss of revenue to the Law Society</td>
<td></td>
<td>• Bencher Strategic Plan</td>
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<td>CEO</td>
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<td>• Research into profession demographics</td>
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| **OPERATIONAL**         | O2: Failure (not related to a natural disaster) in the infrastructure and/or security of the building | • Operational and financial: injury of staff and/or building damage  
                          |                                                                                  |                   | • Off-site storage and servers  
                          |                                                                                  | • Review of security system profiles and policies – part of privacy review recommendations | CFO and CIPO       |
|                         |                                                                                  | • Operational: service disruption                              |                   | • Information technology backup plan  
                          |                                                                                  |                                                                                  |                      |
|                         |                                                                                  | • Financial: unexpected costs                                  |                   | • External property management firm  
                          |                                                                                  |                                                                                  |                      |
|                         |                                                                                  | • Building due-diligence reviews                                |                   | • Building maintenance plan  
                          |                                                                                  |                                                                                  |                      |
|                         |                                                                                  | • Ten-year capital plan                                        |                   | • Insurance coverage  
                          |                                                                                  |                                                                                  |                      |
| **OPERATIONAL**         | O5: Loss of data and information                                                 | • Reputational: diminished public perception of independence and possible loss of reputation with membership |                   | • Off-site storage and servers  
                          |                                                                                  | • Review of security system profiles and policies – part of privacy review recommendations | CIPO and CFO       |
|                         |                                                                                  | • Operational: service disruption                              |                   | • Information technology backup plan  
                          |                                                                                  |                                                                                  |                      |
|                         |                                                                                  | • Financial: unexpected costs                                  |                   | • Information technology security policy, process and procedures  
                          |                                                                                  |                                                                                  |                      |
|                         |                                                                                  | • Records management policies and LEO                          |                   | • Off-site Iron Mountain storage for closed files  
                          |                                                                                  |                                                                                  |                      |
|                         |                                                                                  | • Succession planning and cross training                        |                   | • Insurance coverage  
                          |                                                                                  |                                                                                  |                      |
|                         |                                                                                  | • External website security review completed in 2012           |                   | • External website security review completed in 2012  
                          |                                                                                  |                                                                                  |                      |
| **STAFF AND WORKING ENVIRONMENT** | SW1: Loss of key personnel                                                        | • Operational: service disruption as well as loss of corporate knowledge |                   | • Succession planning and cross training  
<p>| | | |
|                                                                                  |                                                                                  |                      |
|                         |                                                                                  | • Operational: service disruption                              |                   |                                                                                  |                   |                                                                                  | CEO                   |</p>
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<thead>
<tr>
<th>Risk Category</th>
<th>Risk Statement</th>
<th>Potential Consequences</th>
<th>Inherent Risk Level</th>
<th>Existing Strategies and Controls to Mitigate the Risk</th>
<th>Residual Risk Level</th>
<th>Planned (In Progress) Strategies and Controls</th>
<th>Management Board Lead</th>
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</table>
| **STAFF AND WORKING ENVIRONMENT** | SW2: Inability to recruit and/or retain skilled staff as an organization | • Operational: service disruption as well as loss of corporate knowledge | - Compensation and benefits program  
- Market benchmarking  
- Employee Recognition Program  
- Human resource and operational standards, policies and procedures  
- Succession planning and cross training  
- Employee survey and action plans  
- Annual performance management and coaching process  
- Hiring practices and use of recruiting firms  
- Professional, leadership and skills development program |                   | - Redesign Employee Recognition Program – RREX recognition and reward program being implemented in 2013 | CEO                   |
| **STAFF AND WORKING ENVIRONMENT** | SW3: Labour action (strike) | • Operational: service disruption | - Cross training  
- Compensation and benefit philosophy  
- PEA negotiations – completed three year contract 2013 - 2015  
- Employee Recognition Program  
- Human resource and operational standards, policies and procedures |                   |                                    | CIPO                  |
| **STAFF AND WORKING ENVIRONMENT** | SW4: Unhealthy or unsafe conditions | • Operational and reputational: injury to staff and/or diminished levels of staff performance  
• Operational: service disruption | - Human resource and operational standards, policies and procedures  
- Health and Safety Committee  
- First Aid attendants  
- Fire and earthquake safety plan and training  
- Property management firm expertise and |                   |                                    | CFO                   |
<table>
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<tr>
<th>Risk Category</th>
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<th>Inherent Risk Level</th>
<th>Existing Strategies and Controls to Mitigate the Risk</th>
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<th>Planned (In Progress) Strategies and Controls</th>
<th>Management Board Lead</th>
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</thead>
</table>
| STAFF AND WORKING ENVIRONMENT | SW5: Loss of a lawsuit on human rights issues by staff                         | • Operational and reputational: diminished levels of staff performance  
• Financial: unexpected costs | building maintenance plan  
• Workers Compensation coverage                          |                                                                      |                                                                       | CFO                                                              |                       |
| LAWYERS INSURANCE FUND      | LIF1: Inadvertent loss of captive structure for LIF                            | • Financial: requirement to restructure insurance program     | Legal and tax advice (review) of appropriate structure       |                                                                       |                                                                       | Director of Lawyers Insurance Fund |                       |
| LAWYERS INSURANCE FUND      | LIF2: Loss of third-party lawsuit against captive, insurance operations or in-house counsel | • Financial: exposure to compensatory damage award           | Established and documented quality control (Claims Manual)  
S.86 Legal Profession Act (possible statutory protection against lawsuits and liability)  
E & O insurance policy underwritten by Markel |                                                                       |                                                                       | Director of Lawyers Insurance Fund |                       |
| LAWYERS INSURANCE FUND      | LIF4: Catastrophic losses under Part A of the LPL policy                        | • Financial: significant investigation expense and settlement payments | Policy wording on limits and “related errors”  
Proactive claims and risk management practices  
Monitoring of LPL insurance trends and risks  
Maintenance of surplus levels  
Stop-loss reinsurance treaty underwritten by ENCON in place from 2012 forward |                                                                       |                                                                       | Director of Lawyers Insurance Fund |                       |
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<th>Planned (In Progress) Strategies and Controls</th>
<th>Management Board Lead</th>
</tr>
</thead>
<tbody>
<tr>
<td>LAWYERS INSURANCE FUND</td>
<td>LIFS: Significant error in advice to insured or payment (non-payment) of individual claim</td>
<td>Financial: unnecessary payments</td>
<td>Green</td>
<td>Established and documented quality control (Claims Manual)</td>
<td>Green</td>
<td>• Established and documented quality control (Claims Manual)</td>
<td>Director of Lawyers Insurance Fund</td>
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<td>E&amp;O insurance policy underwritten by Markel</td>
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<td>• E&amp;O insurance policy underwritten by Markel</td>
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<tr>
<td>LAWYERS INSURANCE FUND</td>
<td>LIF6: Error in actuarial advice</td>
<td>Financial: insufficient reserves</td>
<td>Yellow</td>
<td>External actuarial</td>
<td>Yellow</td>
<td>• External actuarial</td>
<td>Director of Lawyers Insurance Fund</td>
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<td>External auditor reviews of actuarial methodology and numbers</td>
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<td>Monitoring of LPL insurance trends and risks</td>
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<td>Maintenance of surplus levels</td>
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<td>• Maintenance of surplus levels</td>
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<tr>
<td>LAWYERS INSURANCE FUND</td>
<td>LIF7: Lawsuit for “bad faith” failure to settle / denial of coverage</td>
<td>Reputational: loss of reputation with the public or profession, Financial: exposure to excess damage award</td>
<td>Yellow</td>
<td>Established and documented quality control (Claims Manual)</td>
<td>Yellow</td>
<td>• Established and documented quality control (Claims Manual)</td>
<td>Director of Lawyers Insurance Fund</td>
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<td>Protocol to avoid “bad faith” losses</td>
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<td>Maintenance of surplus levels</td>
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## Likelihood

<table>
<thead>
<tr>
<th>Likelihood (Rating)</th>
<th>Estimated Chance of a Single Occurrence Within Five Years</th>
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</thead>
<tbody>
<tr>
<td>High (4)</td>
<td>80 - 100%</td>
</tr>
<tr>
<td>Medium-High (3)</td>
<td>60 - 80%</td>
</tr>
<tr>
<td>Medium (2)</td>
<td>40 - 60%</td>
</tr>
<tr>
<td>Low (1)</td>
<td>0 - 40%</td>
</tr>
</tbody>
</table>

## Consequences

<table>
<thead>
<tr>
<th>Consequences (Rating)</th>
<th>Financial Consequences</th>
<th>Operational Consequences</th>
<th>Reputational Consequences</th>
<th>Political Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>High (5)</td>
<td>A material loss of financial assets or cash:</td>
<td>A substantial proportion of operations cannot be restored in a timely manner, essential services are unable to be delivered, and/or there is a significant loss of corporate knowledge that will result in the under-achievement of the Law Society's mandate</td>
<td>An irreparable loss of member and stakeholder trust in, or severe public criticism at a national and provincial level that brings disrepute to the reputation of, the Law Society</td>
<td>Change in the mandate and/or the imposition of a new governance as well as management structure for the Law Society is enacted by the government</td>
</tr>
<tr>
<td>Medium-High (4)</td>
<td>&gt; $750,000 in general, or 200% of gross case reserves/expected value for LIF claims, or &gt;20% negative return for LIF investments</td>
<td>A substantial loss of financial assets or cash: $500,000 - $750,000 in general, 190% of gross case reserve expected value for LIF claims &gt;15% negative return for LIF investments</td>
<td>Part of the operation cannot be restored in a timely manner, with some disruption to essential services, and/or a loss of corporate knowledge that can impact on the ability to render key decisions for the Law Society in the short to medium term</td>
<td>A substantial loss of member and stakeholder trust in, or sustained public criticism at a provincial level of, the Law Society which will be difficult to remedy over the short to medium term</td>
</tr>
<tr>
<td>Level</td>
<td>Loss Description</td>
<td>Consequence</td>
<td>Implication</td>
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<tr>
<td>Medium (3)</td>
<td>A moderate loss of financial assets or cash: $250,000 - $500,000 in general 180% of gross case reserves/expected value for LIF claims 10% negative return for LIF investments</td>
<td>Some parts of the operation will be disrupted, but essential services can be maintained, and/or there is some loss of corporate knowledge that warrants management attention but the implications for which are limited to select projects or processes</td>
<td>A change in Provincial direction affecting the operations of the Law Society is likely, but can be addressed within the current governance and management structure</td>
<td></td>
</tr>
<tr>
<td>Low-Medium (2)</td>
<td>A manageable loss of financial assets or cash: $100,000 - $250,000 in general 170% of gross case reserves/expected value for LIF claims 5% negative return for LIF investments</td>
<td>Some inefficiency will exist, leading to increased cost and/or time in the provision of essential services, and/or a loss of corporate knowledge that may result in minor disruptions in specific projects or processes</td>
<td>A relatively minor setback in the building of member and stakeholder trust in, or “one off” unfavorable local public attention put toward, the Law Society</td>
<td></td>
</tr>
<tr>
<td>Low (1)</td>
<td>A relatively immaterial loss of financial assets or cash: &lt; $100,000 in general 160% of gross case reserves/expected value for LIF claims &lt;5% negative return for LIF investments</td>
<td>No measurable consequence</td>
<td>Minor, non-routine changes may occur in regulation of relevance, and the nature of guidance that is provided by the government, to the Law Society</td>
<td></td>
</tr>
<tr>
<td>Likelihood</td>
<td>Low</td>
<td>Low-Medium</td>
<td>Medium</td>
<td>Medium-High</td>
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<tr>
<td>High</td>
<td>4</td>
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<tr>
<td>Medium-High</td>
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<tr>
<td>Medium</td>
<td>2</td>
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<tr>
<td>Low</td>
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Risk Intelligent governance

A practical guide for boards
Preface

This publication is the 16th whitepaper in Deloitte's series on Risk Intelligence. The concepts and viewpoints it presents build upon those in the first whitepaper in the series, The Risk Intelligent Enterprise™: ERM Done Right, as well as subsequent titles.

The series includes papers that focus on roles (chief audit executive, board of directors, etc.); industries (energy, life sciences, etc.); and issues (corporate social responsibility, global uncertainty, etc.). You may access electronic versions of all the whitepapers in the series free of charge at www.deloitte.com/RiskIntelligence. For complimentary print copies, contact your Deloitte practitioner. (See contact information on pages 16-17.)

Unfettered communication is a key characteristic of the Risk Intelligent Enterprise. We encourage you to share this whitepaper with colleagues — executives, board members, and key managers at your company. The issues outlined herein will serve as a starting point for the crucial dialogue on raising your company's Risk Intelligence.

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9 ..... Area of focus #6: Benchmark and evaluate the governance process
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13 Nine fundamental principles of a Risk Intelligence program
14 U.S. contacts
15 International contacts

As used in this document, "Deloitte" means Deloitte & Touche LLP, a subsidiary of Deloitte LLP.
Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries.
A note to readers

If you’re like many corporate directors, you’ve long since accepted — even embraced — the responsibility for risk governance as a fundamental part of your corporate oversight role. But awareness and acceptance are one thing; effective action can be quite another. Many directors we’ve spoken with are still getting their arms around how to put risk governance into practice: how to broach the subject with management, how to build risk into the overall governance process, how to push through changes and make them stick. If the boards you sit on have been wrestling with issues like these, then this paper is for you.

In this paper, we aim to give board members a practical, action-oriented guide to enabling and executing Risk Intelligent governance. At the heart of the paper are six sections describing “areas of focus,” each of which represents what we view as a key facet of risk governance. In each section, you’ll find a brief description of the intended goals of that area of focus; a list of suggested actions that can help you pursue those goals; a sampling of questions that can help jump-start discussions among yourselves and with management; and a list of selected tools, proprietary to Deloitte, that we believe can facilitate the execution of your responsibilities.*

Because the whole discussion is set in the context of Deloitte’s Risk Intelligent Enterprise™ framework, several themes central to our concept of Risk Intelligence — risk-taking as a means of value creation, candid communication and collaboration between boards and management, the bridging of organizational silos — surface repeatedly among the actions, questions, and tools we suggest for all six areas of focus. The intent is not to imply a lack of reader attention, but to reflect and reinforce the importance of these themes across multiple aspects of achieving Risk Intelligent governance.

We offer this “practical guide and toolkit” to directors not as a comprehensive solution or a universally applicable formula, but as food for thought and a catalyst for focused action. You can use each individual section as a reference and a guide to your efforts in that particular area of focus. You can read the entire document for a more comprehensive view of the essential steps we think boards can take to enable risk governance. And you can share it with management and other key leaders to help them understand your expectations and goals.

If you want to dig deeper into any or all of the topics we’ve presented, please don’t hesitate to contact us with questions and comments. We hope you find this document useful in helping you guide your organization towards Risk Intelligence.

* A complete list of tools is available on page 14.
Foreword: A sixfold approach to Risk Intelligent governance

At many organizations, risk governance and value creation are viewed as opposed or even as mutually exclusive, when in fact they are inseparable. Every decision, activity, and initiative that aims to create or protect value involves some degree of risk. Hence, effective risk governance calls for Risk Intelligent governance—a approach that seeks not to discourage appropriate risk-taking, but to embed appropriate risk management procedures into all of an enterprise’s business pursuits.

Deloitte’s concept of the Risk Intelligent Enterprise integrates nine principles related to the responsibilities of the board, senior management, and business unit leaders into a cohesive risk management framework. Risk governance is at the apex of the framework: the unifying touchstone and guide to all of the organization’s risk management efforts. But on a more detailed level, what does effective Risk Intelligent governance entail? Based on our experience working with boards in their risk governance efforts, we have identified six distinct actions a board can take to help enable a Risk Intelligent governance approach:

1. Define the board’s risk oversight role
2. Foster a Risk Intelligent culture
3. Help management incorporate Risk Intelligence into strategy
4. Help define the risk appetite
5. Execute the Risk Intelligent governance process
6. Benchmark and evaluate the governance process

Collectively, these “areas of focus” reflect the view that risk-taking for reward and growth is as important as risk mitigation to protect existing assets. By treating risk as intrinsic to the conduct of business, Risk Intelligent governance elevates risk management from an exercise in risk avoidance to an essential consideration in every decision, activity, and initiative.
A practical guide to Risk Intelligent governance
Area of focus #1: Define the board’s risk oversight role

Effective risk oversight begins with a solid mutual understanding of the extent and nature of the board’s responsibilities as compared to those of management and other stakeholders. Key board-level responsibilities include setting the expectations and tone, elevating risk as a priority, and initiating the communication and activities that constitute intelligent risk management. The ultimate goal is to assist management in creating a cohesive process in which risks and their impacts are routinely identified, evaluated, and addressed.

A board should possess enough collective knowledge and experience to promote a broad perspective, open dialogue, and useful insights regarding risk.

Actions to consider in defining the board’s risk oversight role:

Define the board’s risk governance roles and responsibilities. The entire board is accountable for overseeing risk management and should be involved in the risk oversight process. Depending on the organization’s needs and the board’s structure and composition, however, it may make sense to allocate specific aspects of risk oversight responsibility to specific board committees (for instance, the board may form a special purpose committee of members with extensive background in a certain risk area to discuss risks of that type as they are brought to the board’s attention). Having various committees play complementary roles in risk oversight — and share their findings and insights with each other and the entire board — can help set the tone that risk oversight is important to all board members. Even in boards where the nominal responsibility for risk oversight rests with a single committee, such as the audit committee or a risk committee, all board members should recognize that risk oversight is broader than that single committee. In any case, all such roles and responsibilities should be formally defined and clearly understood.
Consider board composition.
In our view, a board should possess enough collective knowledge and experience to promote a broad perspective, open dialogue, and useful insights regarding risk. Consider performing a periodic evaluation, perhaps carried out by the nominating or governance committee, of the board’s overall composition as well as each member’s experiences, knowledge, and special characteristics and qualities. Having the right mix of board members at the table will allow for discussions that are founded on Risk Intelligent knowledge and perspective.

Establish an enterprise-wide risk management framework.
Like any organizational process, risk management requires a framework that defines its goals, roles, activities, and desired results. Deloitte’s concept of the Risk Intelligent Enterprise describes an approach to risk that can strengthen an existing framework or constitute a framework itself. If the enterprise lacks a risk management framework, you can ask management to develop one with your input. Several organizations, such as the Casualty Actuarial Society, the Committee of sponsoring Organizations of the Treadway Commission (CDSO), and the Treasury Board of Canada Secretariat, among others, have developed risk management frameworks that can serve as a useful starting point. Ideally, the chosen framework will help management establish goals, terms, methods, and measures, as well as gauge the need for specific programs (such as a contract risk and compliance program or training programs on risk awareness).

Perform site visits.
Consider touring the organization’s facilities to enhance your understanding of work processes and the risks associated with value creation and preservation. A number of boards today are indeed using site visits to broaden their knowledge of — and demonstrate their interest in — the work of the enterprise.

Questions to ask about risk oversight:
- How is risk overseen by our various board committees? Is there appropriate coordination and communication?
- Are we getting the information and insights we need for key decisions?
- Which framework has management selected for the risk management program? What criteria did they use to select it?
- What mechanisms does management use to monitor emerging risks? What early warning mechanisms exist, and how effective are they? How, and how often, are they calibrated?
- What is the role of technology in the risk management program? How was it chosen, and when was it last evaluated?
- What is the role of the tax function in the risk management program? Are we taking steps to demystify tax by gaining a high-level understanding of not only the downside consequences of tax risks, but also the upside potential that a robust tax risk management program can offer?

Tools to use in defining the board’s oversight role:
- Risk Intelligence Map
- Board-Level Risk Intelligence Map
- Board-Level Documentation of Risk Oversight
- Board Members’ Skills Matrix

Steps some boards have taken to improve risk governance:
- Revised committee charters to include risk-related concerns
- Benchmarked their practices against peer companies
- Obtained guidance from associations of directors and similar sources
- Focused more attention on risk management and its value and shortcomings
- Reviewed ethical guidelines and codes of conduct
Area of focus #2: Foster a Risk Intelligent culture

In a Risk Intelligent culture, people at every level manage risk as an intrinsic part of their jobs. Rather than being risk averse, they understand the risks of any activity they undertake and manage them accordingly. Such a culture supports open discussion about uncertainties, encourages employees to express concerns, and maintains processes to elevate concerns to appropriate levels.

Actions to consider in fostering a Risk Intelligent culture:

Lead by example in communicating about risk.
Ask management about the risks of specific decisions, activities, and initiatives. Set expectations with senior executives and business unit leaders about what information the board expects and how it will be conveyed. Set the tone for an open and candid dialogue. Also, work with management to develop appropriate messaging about the risk environment for the rest of the organization.

Build cohesive teams with management.
Culture change occurs not by decree but through interactions with management. Create opportunities to engage with management and to learn more about their risk management practices. These interactions can form the basis of a continual, iterative process of alignment that both allows you to refine your views and priorities, and enables management to adjust its practices to reflect your guidance.

Reward Risk Intelligent behavior.
Consider incorporating risk-related objectives into your company's executive compensation structures. You may also wish to urge management to weave risk management practices into job descriptions, training, work processes, supervisory procedures, and performance appraisals.

Consider a third-party assessment.
In addition to self-assessment, commissioning an independent external review of your risk governance policies, procedures, and performance can yield useful benchmarking information and shed light on leading risk governance practices.

Questions to ask about the organizational culture:

- How are we communicating our Risk Intelligence messages and assessing the extent to which Risk Intelligence is understood throughout the enterprise?
- Are people comfortable in discussing risk, or are they afraid to raise difficult issues? How quickly do they raise issues?
- How might our compensation programs encourage inappropriate short-term risk taking? How can we change these programs to encourage Risk Intelligent risk-taking instead? What mechanisms exist to recover compensation when excessive risk-taking occurs?
- Has the organization developed a common language around risk that defines risk-related terms and measures and that promotes risk awareness in all activities and at all levels?
- How have we demonstrated the significance of risk governance in our documentation and communications?
- What tools are we using to gauge our risk governance effectiveness, and with what results? What benefit might we derive from an independent evaluation?

Tools to use in fostering a Risk Intelligent culture:

- Illustrative Risk Management Policies
- Cultural Assessment
- Risk-Focused Board Self-Assessment
Area of focus #3: Help management incorporate Risk Intelligence into strategy

Since one of a board’s main responsibilities is to oversee the strategy-setting process, helping management incorporate Risk Intelligence into strategy is an inherent part of your overall corporate governance role. Drawing on a solid practical understanding of the enterprise’s efforts around value creation and preservation, you can work with management to collaboratively move from a negative “incident” view of risk to a more positive “portfolio” view that considers risks and rewards in a broader strategic context.

Actions to consider in helping management incorporate Risk Intelligence into strategy:

Design processes for integrating risk management into strategic planning.

Consider augmenting the overall strategic planning process with processes for considering risks across the organization, prioritizing the risks, and appropriately allocating risk management resources. Consider the scenario-planning process and whether it incorporates both upside and downside risks, as well as a view into the overall risk exposures and opportunities. You may wish to develop processes that help verify that risk management incorporates value creation as well as preservation, that the risk appetite is identified and risk tolerances are understood, and that risk is handled accordingly. Also, you can include discussions about risk at retreats devoted to strategy.

Monitor strategic alignment.

Monitoring strategic alignment involves analyzing the risk-return tradeoff in setting the company’s financial goals, the proposed means of reaching those goals, and likely constraints. To execute this monitoring, you will need to maintain visibility into strategic planning and risk-reward decisions. Make it clear that any changes or events with potentially significant consequences for the organization’s reputation, as well as its financial position, are to be brought to your attention and considered at the board level.

Establish accountability.

As the company’s overall governing body, the board should establish and reinforce executive accountability for risk management. One way to do this is to expect full disclosure by management of the risks associated with each aspect of the strategy. Give management ongoing feedback about your satisfaction with their level of disclosure and the quality of risk-reward analyses. You might also consider a formal evaluation process, led by the board chairman, lead director, or governance committee, for specific executives.

Questions to ask when helping management incorporate Risk Intelligence into strategy:

• How can we build Risk Intelligence into decisions about capital allocation, acquisition, succession planning, and other strategic initiatives?
• How should risk-return tradeoffs be weighed in strategic planning and review sessions? How can we generate more meaningful discussion of these tradeoffs?
• What is the process for identifying and evaluating changes in the external environment? How are these findings considered in strategic planning?
• How realistic is the strategy? Under what scenarios would the strategy be achieved — or fail to be achieved — and what are the intended results or plans if it fails?
• What would it take — in resources, knowledge, alliances, or conditions — to increase the likelihood of achieving the desired results and to reduce the chances of failure?

Tools to use in helping management to incorporate Risk Intelligence into strategy:

• Board Members’ Skills Matrix
• Risk Environment Snapshot
• Illustrative Risk Management Policies
• Board Risk Oversight Process Map

Steps some boards have taken to encourage a Risk Intelligent approach to strategic planning:

• Increased the frequency of discussions of risk with management
• Engaged in defining high-level risk indicators with management
• Evaluated risk appetite and tolerances with management
• Identified activities, decisions, and transactions (typically by size) to be brought to the board’s attention
• Obtained information on risk-related leading practices for their industry
Area of focus #4: Help define the risk appetite

Risk appetite defines the level of enterprise-wide risk that leaders are willing to take (or not take) with respect to specific actions, such as acquisitions, new product development, or market expansion. Where quantification is practical, risk appetite is usually expressed as a monetary figure or as a percentage of revenue, capital, or other financial measure (such as loan losses); however, we recommend that less quantifiable risk areas, such as reputational risk, also be considered when setting risk appetite levels. While the CEO proposes risk appetite levels, the board ought to approve them — or challenge them and send them back to the CEO for adjustments — based on an evaluation of their alignment with business strategy and stakeholders’ expectations.

Risk appetites may vary according to the type of risk under consideration. Using a Risk Intelligent approach, companies ought to have an appetite for rewarded risks such as those associated with new product development or new market entry, and a much lower appetite for unrewarded risks such as non-compliance or operational failures. Some risks just come with the territory. If you are in the chemical business, there will inevitably be environmental spills and health and safety incidents. If you don’t have the appetite for those types of risks, then you probably shouldn’t be in that business. Once you have accepted this reality, you should do everything to prevent, rapidly detect, correct, respond to, and recover from any such incident.

Once the risk appetite is defined, management then should define specific risk tolerances, also known as risk targets or limits, that express the specific threshold level of risk by incident in terms that decision-makers can use (for instance, in completing an acquisition, the risk tolerance may be defined as a stop-loss threshold of a specified value). Management may have no tolerance for unethical business conduct or for environmental, health and safety incidents by adopting a zero incidents policy.

One important management responsibility is to continually monitor the company’s risk exposures, evaluate actual risk exposure levels against the stated risk appetite, and adjust risk tolerances and policies as necessary to align actual risk exposure with the desired risk exposure as defined by the risk appetite. By having management report on this process to the board, board members can gain insight into whether there may be opportunities for further risk-forward strategies or, conversely, if the organization is overly "stretched" in its risk levels.

Actions to consider in helping to define the risk appetite:

Distinguish between risk appetite and risk tolerance.
Many business unit leaders and some senior executives fail to distinguish between risk appetite and risk tolerance. As a result, many organizations either set arbitrary risk tolerances that do not track back to an overall risk appetite, or wrongly assume that a general statement of risk appetite gives decision-makers enough operational guidance to stay within its parameters. You can help your organization steer clear of these traps by assisting management in developing a cogent approach to defining the risk appetite, specifying risk tolerances, and communicating them across the enterprise.

Serve as a sounding board.
Make yourself available as a resource for helping senior executives understand and reconcile various views of risk within the organization. One way to do this is to ascertain how management balances and aggregates the business units’ risks as well as how management sets various risk tolerances, particularly in relatively risky businesses or markets.
Questions to ask regarding risk appetite:

- What size risks or opportunities do we expect management to bring to our attention?
- How does management determine the organization’s risk appetite? Which risk categories are considered, and how do they relate to management’s performance goals and compensation metrics?
- In developing the risk appetite, how did management incorporate the perspectives of shareholders, regulators, and analysts — and experiences of peer companies?
- How are risk tolerances set? How does that process account for risk appetite? How do risk tolerances relate to the risk appetite and to risk categories?
- What scenario-planning or other models are used in setting the risk appetite and tolerances? How do these tools account for changing circumstances and for the human factor?

Tools to use in helping to define the risk appetite:

- Risk Intelligence Map
- Risk Environment Snapshot
- Illustrative Risk Management Policies
- Board-Level Documentation of Risk Oversight

Companies ought to have an appetite for rewarded risks...and a much lower appetite for unrewarded risks.
Area of focus #5: Execute the Risk Intelligent governance process

A Risk Intelligent governance process should be strategic in design, promote awareness of the relationship between value and risk, and efficiently and effectively allocate the company’s risk management resources. Effective execution of the process depends on maintaining a disciplined, collaborative approach focused on process design, process monitoring, and accountability.

**Actions to consider in executing the Risk Intelligent governance process:**

**Work with management on process design.**
A joint approach to process design can help establish processes that both you and management feel are effective, yet not overly burdensome. Collaborate with executives to develop value creation and risk management objectives, board responsibilities, and mechanisms for elevating key risk issues. It’s often useful to establish policies that detail the circumstances under which management must obtain board approval for decisions, while noting that the board’s role is risk governance rather than risk management.

**Monitor the overall risk management process.**
Set up procedures for evaluating and overseeing the processes by which risks are systematically identified, reported, and managed. To execute effective monitoring, it’s important for you as board members to keep abreast of the company’s vulnerabilities, risk appetite, and risk tolerances; understand the risk management system; and bring an integrated view of the organization’s risk management methods to discussions with the executive team.

Conduct formal risk management program assessments.
A risk management program assessment can include questions about risk governance, risk infrastructure and management, and risk ownership. This provides a comprehensive view of the process and enables all stakeholders to see how they fit into both the basic process and any improvement efforts.

**Clarify accountability at the board and management levels.**
Complete, ongoing disclosure of major risk exposures by the CEO to the board is fundamental to a Risk Intelligent governance process. We suggest that you work with the CEO to verify that responsibility for specific risks and related activities has been assigned to specific members of the management team. In doing this, it’s important for the board and the CEO to maintain a constructive, collaborative relationship — but that need not stop you from discussing difficult issues with management and questioning practices when doubts arise.

**Questions to ask when executing the governance process:**
- Are people at all levels — across silos — actively engaged in risk management? If so, how? If not, why not?
- What criteria does management use to prioritize enterprise risks? How well does the company’s allocation of risk management resources align with those priorities?
- How is management addressing the major opportunities and risks facing the company? How do we know that these are, in fact, the major opportunities and risks, and that the steps management is taking to address them are appropriate?
- How do we know when risks are increasing, holding steady, or decreasing? What processes does management use to identify and monitor these trends over time?
- How often do we discuss risk with management? What issues have been brought to our attention in the past six to twelve months?

**Tools to use in helping to define the risk appetite:**
- Risk Intelligence Map
- Cultural Assessment
- Board-Level Documentation of Risk Oversight
- Risk Environment Snapshot

It’s important for the board and the CEO to maintain a constructive, collaborative relationship.
Area of focus #6: Benchmark and evaluate the governance process

Risk governance is a continual process, and systematic mechanisms for evaluating and improving risk governance proficiency can greatly benefit your efforts to identify, prioritize, and implement improvements as well as give you visibility into the organization's progress toward a Risk Intelligent governance approach. Such mechanisms allow you to gauge your current stage of development relative to peers; they can also help track the progress of your governance program along a Risk Intelligence "maturity model." You might also consider obtaining periodic independent assessments of your risk governance processes.

Actions to consider in benchmarking and evaluating the governance process:

*Use internal monitoring and feedback.*
Periodically ask for feedback from senior executives on how well you and your fellow board members have played your risk oversight role. As part of this effort, you may wish to request relevant reports from internal audit and/or the risk management team. You may also review the methods by which management assesses the risk management program.

*Participate in continuing education and updates.*
To keep your own knowledge up to date, it's helpful to receive ongoing updates on approaches to risk management and on risks developing in the internal and external environment.

*Solicit independent viewpoints.*
An independent review of your risk governance program can help you identify what is working, locate any gaps, and prioritize areas for improvement. Consider having management present the summary results along with a plan for any corrective actions.

*Include risk as a topic in the annual board self-assessment.*
The board's annual self-assessment process provides a broad view into how the full board feels that it is performing in its overall governing body role. Including questions in the assessment form focused specifically on risk governance effectiveness can be a valuable guide to measuring your effectiveness in providing Risk Intelligent governance. Your nominating and/or governance committee may wish to consider reviewing the assessment form to verify that it includes such language.

Ask for feedback from senior executives on how well you and your fellow board members have played your risk oversight role.

Questions to ask when benchmarking and evaluating the governance process:
- How have we gone about assessing our risk governance and management programs? What other tools might we use in this assessment?
- To what extent are our compliance, internal audit, and risk management teams employing Risk Intelligent approaches? How are risks aggregated across our businesses?
- What value might we derive by engaging a third party to assess our organization against leading practices, industry peers, and other benchmarks?
- How can we improve our risk governance proficiency, stay current, and share knowledge about risk governance—both individually and collectively?
- What steps can we take to improve the quality of our risk governance and management processes?

Tools to use in benchmarking and evaluating the governance process:
- Risk Intelligence Diagnostic Tool and Maturity Model
- Cultural Assessment
- Risk Environment Snapshot
- Risk-Focused Board Self-Assessment
Toward Risk Intelligent governance
Risk Intelligent governance stands among the most valuable contributions a board can make to its organization. As seasoned business leaders, your combined breadth of perspective, depth of experience, and knowledge of the enterprise can lend support to the organization’s risk management efforts that is not only invaluable, but also unavailable elsewhere.

Through Risk Intelligent governance, you can help management and the enterprise:
- Allocate risk management resources in a cost-effective manner
- Assist in shaping the organization’s response to regulatory issues
- Employ risk management for competitive advantage
- Drive long-term growth while preserving assets
Deloitte’s Risk Intelligent governance toolkit

Risk Intelligence Diagnostic Tool and Maturity Model — a guide to assessing the current level of development of an organization’s risk management approach along several key dimensions. This tool includes questions to diagnose the efficacy of risk oversight (for boards and board committees) and risk management (for senior executives and risk owners). With this tool, the board and management can identify and prioritize opportunities for further developing their risk management capabilities.

Risk Environment Snapshot — a tool designed to provide rapid insight into the organization’s risk culture, risk processes, and their risk roles and responsibilities. The Risk Environment Snapshot, formulated as a brief list of questions to be answered by your executive team, provides a quick “snapshot” view into areas such as the organization’s risk control environment, risk assessment processes, monitoring activities, information and communication, control activities, and the extended enterprise. It offers you a quick, high-level view of how well management is currently managing risk and how well the board is overseeing the process, establishing a meaningful baseline for further analysis and monitoring.

Board-level Documentation of Risk Oversight — a guide to help boards develop and clearly document risk oversight policies and procedures. This Deloitte proprietary tool offers a view of peer companies’ disclosed policies, identifies practices to consider, and helps the board evaluate its current documentation.

Cultural Assessment — an (at least) annual survey, more detailed than the Risk Environment Snapshot, for assessing the organization’s ethical and risk climate and increasing the board’s understanding of potential issues in those areas. Deloitte can conduct this proprietary survey and provide customized reports to help the board assess the effectiveness of their risk programs, identify improvements, and consider steps to further mitigate risks.

Illustrative Risk Management Policy — a guide for creating risk management policies specific to the organization. This tool aims to help leaders develop a common definition of risk and a unified risk management framework, which enable the board and management to outline a risk management policy. The resulting organization-specific policy can then help the board and management develop the organization’s risk management charters and communicate policies across the organization.

Board Members’ Skills Matrix — a tool to help assess the knowledge and experience of each board member in areas such as operations, finance, marketing, and risk management. The tool collects and organizes this information and relates it to the company’s business objectives, allowing the board to identify existing capabilities and potential gaps. It can also help identify board education and training needs, or a need for additional capabilities.

Risk Intelligence Map — a Deloitte proprietary guide to key risks, as well as potential interactions among risks, that may reside or arise in each area of the organization. This tool is useful in facilitating a structured discussion about risk and related priorities.

Board-Level Risk Intelligence Map — a map, derived from the Risk Intelligence Map, that helps the board identify areas of risk that it is responsible for overseeing.

Risk-Focused Board Self-Assessment — This tool provides areas for consideration and examples of questions to include with regard to Risk Intelligent governance within the board’s annual self-assessment.

Board Risk Oversight Process Map — a framework that can assist the board in developing and implementing its value creation/preservation and risk oversight processes. The framework includes five elements: 1) stakeholder concerns and increased regulation, 2) oversight policies and processes, 3) education and communication, 4) board focus and monitoring, and 5) analysis and feedback. The last item might include, for example, root cause analysis of triggered risk-related warning mechanisms or past risk management failures.
Nine fundamental principles of a Risk Intelligence program

1. In a Risk Intelligent Enterprise, a common definition of risk, which addresses both value preservation and value creation, is used consistently throughout the organization.

2. In a Risk Intelligent Enterprise, a common risk framework supported by appropriate standards is used throughout the organization to manage risks.

3. In a Risk Intelligent Enterprise, key roles, responsibilities, and authority relating to risk management are clearly defined and delineated within the organization.

4. In a Risk Intelligent Enterprise, a common risk management infrastructure is used to support the business units and functions in the performance of their risk responsibilities.

5. In a Risk Intelligent Enterprise, governing bodies (e.g., Boards, Audit Committees, etc.) have appropriate transparency and visibility into the organization’s risk management practices to discharge their responsibilities.

6. In a Risk Intelligent Enterprise, executive management is charged with primary responsibility for designing, implementing, and maintaining an effective risk program.

7. In a Risk Intelligent Enterprise, business units (departments, agencies, etc.) are responsible for the performance of their business and the management of risks they take within the risk framework established by executive management.

8. In a Risk Intelligent Enterprise, certain functions (e.g., Finance, Legal, IT, HR, etc.) have a pervasive impact on the business and provide support to the business units as it relates to the organization’s risk program.

9. In a Risk Intelligent Enterprise, certain functions (e.g., internal audit, risk management, compliance, etc.) provide objective assurance as well as monitor and report on the effectiveness of an organization’s risk program to governing bodies and executive management.
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<table>
<thead>
<tr>
<th>PRIORITY</th>
<th>TASKS</th>
<th>TIMEFRAME</th>
<th>RESPONSIBLE</th>
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</thead>
<tbody>
<tr>
<td>Advocacy</td>
<td>Raise the profile and awareness of access to justice issues within the province.</td>
<td></td>
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<td></td>
<td>Advocate for:</td>
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<tr>
<td></td>
<td>• increased partnerships and collaboration,</td>
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<td></td>
<td>• greater access to legal education and information,</td>
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<td></td>
<td>• increased support for dispute resolution opportunities, and</td>
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<td>• increased access for all Nova Scotians to legal professionals and court services.</td>
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<tr>
<td>Education</td>
<td>Re-education/re-learning of lawyers regarding working with non-lawyers in the justice system</td>
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<td></td>
<td>To include:</td>
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<td></td>
<td>• a review of our education curriculum for the Skills Course,</td>
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<td></td>
<td>• partnership with the Schulich School of Law at Dalhousie in the area of student education and CPD delivery,</td>
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<tr>
<td></td>
<td>• increased education opportunities for lawyers through innovative and meaningful CPD programming</td>
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<tr>
<td></td>
<td>Public education on what to expect from lawyers, courts and other justice system providers.</td>
<td>September 2013</td>
<td>Shanisha Grant and Emma Halpern</td>
</tr>
</tbody>
</table>
### Delivery of legal services

<table>
<thead>
<tr>
<th>New and innovative models for the delivery of legal services are an essential component of any access to justice strategy.</th>
<th>Look at a number of possible regulatory models that could result in changes to the delivery of legal services model and address:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• The expansion of the role of supervised paralegals and other non-lawyers in the delivery of legal services.</td>
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<td></td>
<td>• Support for lawyers who are interested in offering limited scope retainers and unbundled legal services.</td>
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<td></td>
<td>• Contemplating new business structures and law firm ownership models</td>
</tr>
</tbody>
</table>

### Collaboration

<table>
<thead>
<tr>
<th>Access to justice initiatives will be developed through collaborative efforts, ideas, and resources of lawyers, service users, government officials, legal academics, judges, social services agencies, health services agencies, community agencies and others in order to develop strong sustainable and innovative programming and to address the underlying issues that create barriers to access to justice.</th>
<th>Collaboration and cooperation through</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>• the creation of a number of liaison committees and</td>
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<td></td>
<td>• a commitment to bring all stakeholders to the table when important issues arise</td>
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<td></td>
<td>• Creation of a strategic engagement and communications plan</td>
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</tbody>
</table>

September 2013  
ED and Marla Cranston
## Mandate and Responsibilities

**Mandate:**
The Code of Professional Conduct Committee supports Council in the governance of the Society by advising with respect to potential amendments to the Code of Professional Conduct (the Code) with reference to:

- the Society's purpose to uphold and protect the public interest in the practice of law and the Society's vision to provide leadership, value and support to a competent, ethical, inclusive and engaged legal profession; and
- the benefits of maintaining uniform national rules of ethics and professional conduct for lawyers.

**Responsibilities:**

- Review any matters identified by Council as being in need of further consideration and report to Council;
- Liaise with Federation Model Code of Conduct Committee and Council on proposed changes to the Model Code;
- Consult and engage with members, committees and other stakeholders as appropriate, respecting proposed amendments to the Code;
- Make recommendations to Council respecting amendments to the Code, consistent with the Committee’s mandate.

## Matters assigned by Council’s Activity Plan

There are no matters specifically assigned to the Code of Professional Conduct Committee under the Council “Activity Plan” at this time.

The following are initiatives being undertaken by Code of Professional Conduct Committee in the upcoming year:

## Details for each Project/Initiative

<table>
<thead>
<tr>
<th></th>
<th>Name of project:</th>
<th>Discussion About the Society’s Strategic Framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Goal/outcome of project:</td>
<td>To identify ideas, concerns, suggestions and input for Council about the Strategic Initiatives and how the Committee can contribute to achieving success.</td>
</tr>
<tr>
<td></td>
<td>Timeframe for completion:</td>
<td>October 2013</td>
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</tbody>
</table>
2. **Name of project:** Discussion About Best Practices, Partnerships and Engagement Strategies  

**Goal/outcome of project:** To identify and prepare report on what best practices are used by the Committee, what partnerships are part of the Committee’s work, and how the Committee communicates and engages with lawyers or the public about its work. To consider whether other strategies or improvements might be adopted by the Committee.

**Timeframe for completion:** November 2013

**Resources required (volunteer, staff):** Professional Responsibility Counsel.

3. **Name of project:** Language Rights  

**Goal/outcome of project:** Review draft language rights rule as suggested by the Federation of Law Societies, engage in stakeholder consultations as appropriate and prepare recommendation on proposed Code amendment to Council.

**Timeframe for completion:** October 2013

**Resources required (volunteer, staff):** Professional Responsibility Counsel.

4. **Name of project:** Property Related to a Crime  

**Goal/outcome of project:** Review draft rule as may be suggested by the Federation of Law Societies, engage in stakeholder consultation as appropriate and provide recommendations on proposed amendments to Council.
<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
<th>Pending Development of a proposed Model Code amendment by the Federation of Law Societies.</th>
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</thead>
<tbody>
<tr>
<td>Resources required (volunteer, staff):</td>
<td>Professional Responsibility Counsel</td>
</tr>
</tbody>
</table>

5. **Name of project:** Consideration of other issues or suggested amendments as requested by the Federation of Law Societies' Standing Committee

**Goal/outcome of project:** Review draft rules as may be suggested from time to time by the Federation of Law Societies, engage in stakeholder consultation as appropriate and provide recommendations on proposed amendments to Council.

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
<th>Pending Development of a proposed Model Code amendment by the Federation of Law Societies.</th>
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</thead>
<tbody>
<tr>
<td>Resources required (volunteer, staff):</td>
<td>Professional Responsibility Counsel</td>
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</table>

6. **Name of project:** Consideration of other issues or suggested amendments as requested by members of the Society

**Goal/outcome of project:** Consider requests for review of rules and/or suggested amendments as may be received from time to time by members of the Society. If appropriate, issues and/or suggested amendments may be submitted by the Committee to the FLSC’s Standing Committee for consideration.

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
<th>Pending receipt of any such requests.</th>
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<tbody>
<tr>
<td>Resources required (volunteer, staff):</td>
<td>Professional Responsibility Counsel</td>
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</table>

**Additional Comments on Plans or Progress**
Complaints Review Committee

Committee Mandate and Responsibilities

Mandate: To provide timely and fair reviews on behalf of any complainant requesting same.

Responsibilities:
Accept Requests for Review
Review all evidence provided by all parties prior to meetings
Discuss issues as a committee
Reach consensus regarding disposition of complaint
Prepare written decisions, with reasons, to all parties, including the NSBS

Committee Chair:
Marla Niekamp

Sub-committees, if any, and names of Chairs:

Matters assigned to Committee by Council’s Activity Plan

Details for each Project/Initiative
1.
Name of project: Our only mandate is to receive, review and decide all questions coming to us through the Request for Reconsideration.

Goal/outcome of project:

Provide timely and fair response and decisions.

Timeframe for completion:

According to designated timelines.

Resources required (volunteer, staff):

NSBS Staff to receive requests, provide initial notification to all parties, scan files to communities.

Contract clerical staff in Pubnico, as required.

2.

Name of project:

Goal/outcome of project:

Timeframe for completion:
Resources required (volunteer, staff):

3.

Name of project:

Goal/outcome of project:

Timeframe for completion:

Resources required (volunteer, staff):

4.

Name of project:

Goal/outcome of project:
Timeframe for completion:

Resources required (volunteer, staff):

**Additional Comments on Committee’s Plans or Progress**
The Complaints Investigation Committee ("CIC") has a mandate and responsibilities set by the Act and Regulations. D. Bruce Clarke, Q.C., is the Committee Chair. Bruce McKean is the Vice-Chair. There are no subcommittees.

There are no matters specifically assigned to CIC under the Council “Activity Plan”.

The following are initiatives being undertaken by CIC in the upcoming year:

1)  “Ungovernability” and the Repeat Offender

CIC will be having a workshop on this issue on July 18, 2013, with a goal of referring the matter to the Professional Responsibility Policies and Procedure Committee ("PRPPC") as appropriate.

This project may assist in governance in the public interest and help in considering a framework for risk identification and management.

2)  Creativity in Sanctions

CIC intends to continue its work of identifying mechanisms and options most likely to impact in a positive way on the future behavior of members involved in the discipline process. This will include tracking examples that have been used successfully in the past.

In doing so, CIC will consider whether regulations should be amended. Options may be referred to PRPPC as appropriate.

There is no set time frame for this project and it will be considered over the course of the year as matters arise.

One result of this work may be to enhance access to legal services.

3)  Greater Staff Responsibility for Interviews and Reporting

Commencing last year, it was discussed that staff had evolved a greater responsibility for interviewing and for reporting to CIC.
The goal is to find the best use of volunteer time and an appropriate balance between staff involvement and peer involvement. This supports the Council strategic direction of excellence in governance.

A consideration of this will continue through the run of the year.

4) **Cultural Competence**

Last year we had a presentation on this topic and CIC resolved to pay attention to it, as appropriate, in upcoming matters.

We will be discussing extending this to all equity-seeking groups as defined in the Strategic Framework.

5) **Framework for Thresholds**

A few years ago, CIC developed a framework for referral to hearing. Last year we began testing a framework for Consent Reprimands.

This process has not been completed and will continue through the year. It is not expected that this will require regulatory amendment.

6) **Developing a Process for Self-Assessment**

The Strategic Framework seeks to establish outcomes and measure performance.

CIC does not have a performance measurement and it may not be an appropriate committee to have one.

In the upcoming year, CIC will begin thinking about whether measurement criteria are appropriate and, if so, what they might consist of. This might result in a referral to PRPPC.
# Credentials Committee

## Committee Mandate and Responsibilities

<table>
<thead>
<tr>
<th>Credentials Committee - Terms of Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type</strong></td>
</tr>
</tbody>
</table>
| **Mandate** | • The Credentials Committee carries out the responsibilities assigned to it under Part I of the Act and Parts 3, 5 and 6 of the Regulations.  
• The Credentials Committee supports Council in the governance of the Society by recommending to Council changes to policy relating to the credentials process |
| **Responsibilities** | • Refer to Part I of the Act and Parts 3, 5 and 6 of the Regulations  
• To consider and recommend to Council policy direction relating to aspects of the credentials process that impact the Society’s obligations to applicants, members, and other affected individuals, or that impact key outcomes of the credentials process  
• To consider and recommend to staff for its approval operational or administrative procedures for the carrying out of credentials functions  
• To make recommendations to Council for its approval respecting the *Legal Profession Act*, and Regulations governing the credentials process  
• Appoint a Credentials Review sub-committee |
| **Composition** | • At least six and no more than nine members  
• At least three members shall be serving members of Council  
• Appointments shall be made and vacancies filled by Council  
• The Committee shall include at least one Public Representative currently elected to Council  
• The Committee shall include a representative from Schulich School of Law at Dalhousie University |

Mandate: Terms of Reference for the Credentials Committee

- Regulatory Committee
- The Credentials Committee carries out the responsibilities assigned to it under Part I of the Act and Parts 3, 5 and 6 of the Regulations.
- The Credentials Committee supports Council in the governance of the Society by recommending to Council changes to policy relating to the credentials process.

### Responsibilities

- Refer to Part I of the Act and Parts 3, 5 and 6 of the Regulations.
- To consider and recommend to Council policy direction relating to aspects of the credentials process that impact the Society’s obligations to applicants, members, and other affected individuals, or that impact key outcomes of the credentials process.
- To consider and recommend to staff for its approval operational or administrative procedures for the carrying out of credentials functions.
- To make recommendations to Council for its approval respecting the *Legal Profession Act*, and Regulations governing the credentials process.
- Appoint a Credentials Review sub-committee.

### Composition

- At least six and no more than nine members.
- At least three members shall be serving members of Council.
- Appointments shall be made and vacancies filled by Council.
- The Committee shall include at least one Public Representative currently elected to Council.
- The Committee shall include a representative from Schulich School of Law at Dalhousie University.
| Committee Chair                        | • The Committee Chair shall be appointed by Council  
|                                        | • The Committee Chair is responsible for annually reviewing with the Committee: Council Policy 16, these Terms of Reference, and the Society’s Strategic and Annual Plans |
| Procedures and Work Product           | • Quorum for the committee shall consist of three members  
|                                        | • The Committee shall operate in accordance with Council  
|                                        | • The Committee shall maintain minutes of its meetings  
|                                        | • Decisions of the Committee are compiled in the Credentials Committee Precedents  
|                                        | • The Committee may appoint sub-committees to assist it with its work. |
| Reporting                             | • The Committee performs a regulatory function for the Society and in that respect is independent from Council  
|                                        | • In its advisory capacity, the Committee may make recommendations for policy  
|                                        | • The Committee shall provide a report on its work to Council no later than the May Council meeting |
| Staff support                        | • Director of Admissions and Professional Development. |

Committee Chair:  
Robert Pineo  

Sub-committees, if any, and names of Chairs:  

Internal Review Subcommittee: Mark Everett?  
Bar Examiners Committee: Julia Cornish QC  

Matters assigned to Committee by Council’s Activity Plan
### Details for each Project/Initiative

<table>
<thead>
<tr>
<th></th>
<th>Name of project:</th>
<th>Goal/outcome of project:</th>
<th>Timeframe for completion:</th>
<th>Resources required (volunteer, staff):</th>
</tr>
</thead>
</table>
| 1. | Work towards the national harmonization of admission and discipline standards and the accreditation of law schools | There is greater harmony of key regulatory standards among Canada's Law Societies | Unknown at this time as this is being led by the Federation. | Note – Director, E&C serves on one of the national committees  
E&C staff, Credentials Committee |
| 2. | Review of Education Plans and requirement for Barristers’ and Solicitors’ experience during articles and role of principal | To ensure that the current differentiation is still viable given the reality of practice and to assist both principals and clerks in the creating and evaluating the articling experience. | January 2014 | E&C staff and Credentials |
| 3. | Review of skills needed by new lawyers | the current national admission standards are reviewed in light of the current reality of the practice of law. The appropriate skills are identified (e.g. risk management, limited scope retainers, use of technology), and tested to ensure that newly called lawyers have the correct skills to begin the practice of law today. | End of Fiscal Year – The review will be done by then. The changes may be implemented over time given that there is a national initiative and presumably we will want to ensure that there is |
national harmony in these changes.

Resources required (volunteer, staff):
E&C staff, liaison other Societies and Federation, Credentials and Council

<table>
<thead>
<tr>
<th>4. Name of project: Abridging Articling Period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goal/Outcome of Project:</strong> Given that there are decreasing numbers of clerking positions available, the Society has been asked to consider whether students who complete a term at DLAS should be given credit toward their articling requirements. At this stage, we will look at whether this is feasible, what it might look like, and the ramifications for both articling and abridging articles for both DLAS and others.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong> End of Fiscal year</td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong> E&amp;C staff, Credentials Committee, Council, DLAS staff.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>5. Name of project: Policy Development</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goal/outcome of project:</strong> All policies governing regulatory work are up-to-date and FRPA compliant. Includes work on the following policies: Foreign Legal Consultants, Readmission Following Disbarment, Reinstatement of former judges, changes of category applicants who have been practicing elsewhere in Canada, information provided to Principals regarding articled clerk performance in Bar Admission Course, and abridging practice requirement for Principals.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong> End of fiscal year</td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong> E&amp;C staff, Credentials Committee, Council</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6. Name of project: Aboriginal Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of project:</td>
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<tr>
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</tr>
<tr>
<td>Goal/outcome of project:</td>
</tr>
<tr>
<td>Timeframe for completion:</td>
</tr>
<tr>
<td>Resources required (volunteer, staff):</td>
</tr>
</tbody>
</table>

8. Name of project: **Changes to policy etc. required as a result of FRPA review**

<p>| Goal/outcome of project: | to ensure that the current processes are as effective and efficient as possible and that they meet with the government’s approval. |
| Timeframe for completion: | April 2014 |
| Resources required (volunteer, staff): | E&amp;C staff, Credentials Committee |</p>
<table>
<thead>
<tr>
<th></th>
<th>Name of project: <strong>Continued Evaluation of Skills Course</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Goal/outcome of project: To ensure that the current skills course is running effectively and appropriately.</td>
</tr>
<tr>
<td></td>
<td>Timeframe for completion: This is ongoing but requires accountability to both Credentials and Council. In addition, there may be changes required as a result of the implementation of the National Admission Standards</td>
</tr>
<tr>
<td></td>
<td>Resources required (volunteer, staff): E&amp;C Staff, Credentials Committee</td>
</tr>
<tr>
<td>10.</td>
<td>Name of project:</td>
</tr>
<tr>
<td></td>
<td>Goal/outcome of project:</td>
</tr>
<tr>
<td></td>
<td>Timeframe for completion:</td>
</tr>
<tr>
<td></td>
<td>Resources Required:</td>
</tr>
</tbody>
</table>

**Additional Comments on Committee’s Plans or Progress**

The Department has taken over all of credentialing in the past year including changes of category down, resignations, certificates of standing. The work has been progressing and systems are being put in place but staff may require some policy direction from the committee over the year. If that is required staff will advise the chair and the committee.
Committee Mandate and Responsibilities

**Mandate:** The Finance Committee supports Council in the governance of the Society by monitoring the finances of the Society, acting on behalf of Council in regard to the annual audit of the Society finances, and acting on behalf of Council in respect of the management of the Society investments.

**Responsibilities:**

**Financial Reporting Responsibilities**
- Monitors the Executive Director's prudent and effective management of the Society's resources
- Monitors Executive Director’s internal controls and policies for areas of risk
- Monitors Executive Director’s preparation of the annual budget for presentation to Council
- Reviews performance against budget during the course of the year
- Receives from management satisfactory explanations for all forecast variances from budget that are greater than 5 percent of budget or greater than $10,000 of budget
- Encourages efficiency in the management of the Society's finances and in the expenditure of Society funds

**Investment Responsibilities**
- In accordance with the Society's Investment Policy, oversees the prudent implementation of the Policy including the regular review of investment results and the performance of the Society's Investment Manager as required by it
- Selects the Society’s external investment manager
- Sets the investment parameters for the Society on behalf of Council

**Audit Responsibilities**
- Annually recommends to Council the appointment of the external auditor
- Meets with the Society's external auditor in preparation for and following the annual external audit to ensure the audit function is effectively performed and to reinforce the external auditor's independence
- May meet with the Society’s external auditor at any time
- Recommends audited financial statements to the annual meeting of members of the Society

Committee Chair:
Bill Mahody

Sub-committees, if any, and names of Chairs:
<table>
<thead>
<tr>
<th>Details for each Project/Initiative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong> Name of project: <em>Accounts Receivable Policies</em></td>
</tr>
<tr>
<td>Goal/outcome of project: Following on from the work of the Professional Responsibility Policy and Procedures Committee (PRPPC), review and advise regarding accounts receivable and collection policies and in particular amounts owed as a result of the Professional Responsibility process and payments from the Lawyers’ Fund for Client Compensation.</td>
</tr>
<tr>
<td>Timeframe for completion:</td>
</tr>
<tr>
<td>Resources required (volunteer, staff):</td>
</tr>
<tr>
<td><strong>Update:</strong></td>
</tr>
<tr>
<td><strong>2.</strong> Name of project: <em>Review the Independence, Performance, and Appointment of the Society’s Investment Advisor</em></td>
</tr>
<tr>
<td>Goal/outcome of project: Review and, if appropriate, recommend changes in the Society’s investment advisor.</td>
</tr>
<tr>
<td>Timeframe for completion: Spring 2014</td>
</tr>
<tr>
<td>Resources required (volunteer, staff): Sub-committee of the Finance Committee, Director F&amp;A, Controller</td>
</tr>
<tr>
<td><strong>Update:</strong></td>
</tr>
<tr>
<td><strong>3.</strong> Name of project: <em>Monitor Internal Controls and Documentation of Procedures</em></td>
</tr>
<tr>
<td>Goal/outcome of project: As part of the Committee’s responsibility to monitor risk, ensure the Society’s Internal Controls and procedures around financial controls and processes are documented.</td>
</tr>
<tr>
<td>Timeframe for completion: On going – staff reports due January 2014 and March 2014</td>
</tr>
<tr>
<td>Resources required (volunteer, staff): To be prepared by staff</td>
</tr>
<tr>
<td><strong>Update:</strong></td>
</tr>
<tr>
<td><strong>4.</strong> Name of project: <strong>Impact of Transformation of Regulation and Governance</strong></td>
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<td>---</td>
</tr>
</tbody>
</table>
| **Goal/outcome of project:**  
As the Society examines and approves an outcomes focused regulatory model, identify and consider its impact on the financial resources of the Society and its financial impact on funders. |
| **Timeframe for completion:**  
On-going through the year |
| **Resources required (volunteer, staff):** |
| **Update:** |

<table>
<thead>
<tr>
<th><strong>5.</strong> Name of project: <strong>Monitor the Advancement of the Society’s initiative in the area of Risk Management</strong></th>
</tr>
</thead>
</table>
| **Goal/outcome of project:**  
Identify and consider impact of proposed changes to Risk Management Initiatives. Critically assess the costs and perceived benefits from any proposed changes. |
| **Timeframe for completion:**  
On-going through the year |
| **Resources required (volunteer, staff):** |
| **Update:** |

<table>
<thead>
<tr>
<th><strong>6.</strong> Name of project: <strong>Monitor the preparation of the Society’s Annual Budget and recommend improvements to the process</strong></th>
</tr>
</thead>
</table>
| **Goal/outcome of project:**  
Monitor the production of the Society’s annual budget and its process prior to its recommendation to, and adoption by, Council. Seek efficiencies and improvements to the effectiveness of the process. |
| **Timeframe for completion:**  
Prior to Council’s April 2014 meeting |
| **Resources required (volunteer, staff):** |
| **Update:** |

<table>
<thead>
<tr>
<th><strong>5.</strong> Name of project: <strong>Fulfill the Committee’s mandate with respect to the annual financial audit.</strong></th>
</tr>
</thead>
</table>
| **Goal/outcome of project:**  
Actively engage with the Society’s Auditors prior to and following the annual audit. Ensure that the committee is able to recommend the Financial Statements to the Society and make an informed recommendation for independent auditor for 2015. |
| **Timeframe for completion:**  
Spring 2014 – prior to the 2014 Annual Meeting. |
<p>| <strong>Resources required (volunteer, staff):</strong> |
| <strong>Update:</strong> |</p>
<table>
<thead>
<tr>
<th>Additional Comments on Committee’s Plans or Progress</th>
</tr>
</thead>
</table>
Governance and Nominating Committee

Committee Mandate and Responsibilities

Mandate:
The Committee supports Council in the governance of the Society by:
- Assisting with the recruitment, appointment and election of members of Council and Officers of the Society
- Supporting Council’s commitment to the principles and practices of good governance

Responsibilities:
- Establish and ensure an open and transparent nominating and election process for Council positions, that provides candidates for all positions
- Recruit a Second Vice President nominee
- Recruit candidates for Public Representatives on Council for appointment by Council
- Consult with the Equity Officer, the Racial Equity Committee and other relevant organizations prior to finalizing nominations
- Support Council’s governance of the Society, including but not limited to:
  - recommending changes to the Legal Profession Act and Regulations and changes to Council Policies
  - Monitor and review Council governance policies
  - Support, as requested by the Executive Committee or by Council, the regular evaluation of Council or its Committees
- Annually recommend, for Council approval, committee appointments

Committee Chair: Tim Daley QC

Sub-committees, if any, and names of Chairs:

Matters assigned to Committee by Council’s Activity Plan

Promote best practices in areas of governance.
Under the strategic initiative to ‘transform governance’ address any matters specifically assigned to the Committee (See Item 2 below)

Details for each Project/Initiative

1. Name of project:
   Review of Council Policies
<table>
<thead>
<tr>
<th>Name of project</th>
<th>Goal/outcome of project:</th>
<th>Timeframe for completion:</th>
<th>Resources required (volunteer, staff):</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Ensure that all Council Policies remain current, (NB policy regarding public rep on Exec C’tee)</td>
<td>Nov. 2013</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Name of project: Council Election Process</td>
<td>January 2014</td>
<td>See Appendix 1 for key statutory and regulatory provisions. VRees may assist</td>
</tr>
<tr>
<td>3.</td>
<td>Name of project: Mentoring for New Council members</td>
<td>November 2013</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Name of project: Committee Structure and Work Plans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional Comments on Committee’s Plans or Progress</td>
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<td>------------------------------------------------------</td>
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</table>

Review format, process for approval, review and monitoring of Committee Work Plans to determine that they are ‘best practices’ in terms of ensuring that Council’s work is advanced, that committees are advancing the strategic framework and the committee Chairs are actually following their plans. Consider any required changes to CP 16 re Committees.

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
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<thead>
<tr>
<th>Resources required (volunteer, staff):</th>
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<thead>
<tr>
<th>Additional Comments on Committee’s Plans or Progress</th>
</tr>
</thead>
</table>
Appendix 1

Legal Profession Act

Members of Council

7 (1) The Council consists of

(a) such number of members of the Society elected or appointed as prescribed by the regulations;
(b) the Attorney General of the Province for the time being or a representative appointed by the Attorney General;
(c) the President, First Vice-president and Second Vice-president of the Society;
(d) the Dean of the Faculty of Law of Dalhousie University; and
(e) at least three persons who are not members of the Society and who are appointed in the manner prescribed by the regulations.

(2) The Executive Director is a non-voting member of the Council.

(3) Persons elected or appointed to the Council take office at the first meeting of the Council after the annual meeting of the Society that follows their election or appointment and, subject to the regulations, hold office until their successors take office.

(4) The regulations prescribing the number of members to be elected from each district for the purpose of clause (1)(a) must provide for a sufficient number of elected members to ensure that a majority of the Council is made up of members of the Society.

Nova Scotia Barristers’ Society Regulations

2.3 Council

2.3.1 For each election starting in 2011, the elected members of Council referred to in Section 7(1) of the Act shall be

(a) Two practising lawyers from the Cape Breton District;
(b) Two practising lawyers from the Southwestern District;
(c) Two practising lawyers from the Central District; and
(d) Four practising lawyers from the Halifax Regional Municipality; and
(e) Three practising lawyers or non-practicing members from anywhere in the Province.

**At-large members of Council**

2.3.1.1 Persons elected pursuant to reg. 2.3.1(e) are referred to as ‘at-large’ members of Council.

**District**

2.3.2 For the purpose of subregulation 2.3.1, a lawyer practise primarily in the district that corresponds to the current mailing address for the lawyer on file at the Society.

**2.4 Elections**

The Executive Director is responsible for the proper conduct of any elections required by these Regulations.

**Secret Ballots**

2.4.1 Elections are to be held by secret ballot.

…

**Eligibility to Vote**

2.4.3 All members of the Society in good standing who are resident in the Province may vote for members of Council in the election being held in the district corresponding to their current mailing address on file at the Society.

2.4.4 All members of the Society in good standing may vote for the at-large members of Council.

**2.5 Council Election Years**

2.5.1 An election shall be conducted in each odd-numbered calendar year to elect:

(a) practising lawyers to be members of Council, from a district, and
(b) either practicing lawyers or non-practicing members of the Society to the at-large positions on Council

**District Nominations**

2.5.2 Prior to February 1 of a Council election year, the Executive Director will advertise for nominations and communicate the purpose of district and at-large elections to those who are eligible to be nominated and to vote.

**District Nominations Requirements**

2.5.3 The nomination of a candidate for election to Council is valid only if

(a) it is in writing, signed by five members of the Society in good standing who are eligible to vote in the district in which the nominee seeks to be a candidate;

(b) the nominee consents in writing to the nomination, and

(c) the nomination and consent are received by the Executive Director on or before the date nominations close.

**District Nominations Close**

2.5.3.1 The nominations for District elections will close on February 15.

**District Acclamation**

2.5.4 If the number of candidates nominated does not exceed the number to be elected in a district, the Executive Director must declare that those nominated are elected to Council for that district.

**District Election**

2.5.5 If the number of candidates nominated exceeds the number to be elected in a district, then an election must be held for that district.

(a) appoint a practising lawyer from the district to be a member of the new Council and to take office when the new Council does, or

(b) call a by-election to fill the vacancy.

…
**District Elections Voting**

2.5.8 The voting period must remain open and ballots will be received until 5:00 pm on the third Monday in March following which the Executive Director must

(a) count the ballots;

(b) declare elected the individuals with the most votes;

(c) publish the results, including the names of the candidates, the total number of ballots cast, the total number of ballots cast for each candidate, and the total number of spoiled ballots.
<table>
<thead>
<tr>
<th>Project/Initiative/Activity</th>
<th>Objectives</th>
<th>Tasks</th>
<th>Contributor(s)/Lead</th>
<th>Deliverables/outcome measure(s)</th>
<th>Timelines</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Review existing terms of reference and amend as required.</td>
<td>To ensure terms of reference are current and consistent with Society’s Strategic Framework.</td>
<td>1. Review existing terms of reference. 2. Provide overview of Society’s Strategic Framework. 3. Determine whether revisions need to be made to existing terms of reference. 4. Amend terms of reference as required.</td>
<td>Committee as a whole.</td>
<td>A revised terms of reference, if appropriate, which is in line with the Society’s Strategic Framework.</td>
<td>Sept. 2013</td>
<td></td>
</tr>
<tr>
<td>2. Review Council policy 16 with the Committee.</td>
<td>To ensure all committee members are aware of their role.</td>
<td>1. At first meeting of committee review Council policy 16 with all members.</td>
<td>Chair</td>
<td>Committee members will understand their role and the connection between the committee and Council.</td>
<td>Sept. 2013</td>
<td></td>
</tr>
<tr>
<td>3. Consultation/discussion about the Society’s Strategic Framework.</td>
<td>To obtain feedback from committee members to assist Council in its decision making.</td>
<td>1. Circulate Strategic Framework to committee members for their review. 2. Engage in discussion at first committee meeting by reviewing the Society’s Strategic Framework and eliciting comments from committee members which would assist Council in moving forward and also assist the committee in identifying initiatives that it can undertake to support Council in this work.</td>
<td>Committee as a whole.</td>
<td>Constructive feedback that can be relayed to Council for its October 2013 meeting.</td>
<td>Sept. 2013</td>
<td></td>
</tr>
<tr>
<td>4. Best practices/partnerships and engagement strategies.</td>
<td>To identify what best practices and partnerships are used by the committee to report back to Council as to how the committee engages with lawyers and/or the public about its work.</td>
<td>1. Develop best practices to be used by the committee. 2. Create a list of partnerships (and build on the current relationships). 3. Identify how the committee engages with lawyers and/or the public about its work.</td>
<td>Committee as a whole.</td>
<td>A report to Council that demonstrates how the committee supports the foundational work of the Society.</td>
<td>1. Ongoing</td>
<td>2. Ongoing 3. Ongoing 4. May 2014</td>
</tr>
</tbody>
</table>
## Gender Equity Committee - Work Plan for 2013-2014

<table>
<thead>
<tr>
<th>Project/Initiative/Activity</th>
<th>Objectives</th>
<th>Tasks</th>
<th>Contributor(s)/ Lead</th>
<th>Deliverables/ outcome measure(s)</th>
<th>Timelines</th>
<th>Status</th>
</tr>
</thead>
</table>
| 5. Touchstones Event       | To commemorate the 20 year anniversary of the release of the Touchstones Report and to evaluate what progress has been made in promoting equality, diversity and accountability since the release of the Report. | 1. Organize event.  
2. Promote event.  
3. Hold event.  
4. Prepare Report on lessons learned as a result of the speakers and participants’ contributions at the event. | 1. Staff with volunteers.  
2. Staff with volunteers.  
3. Staff with volunteers.  
4. Staff, the Chair and volunteers. | Women’s organizations report that the event has improved their understanding and provided information with respect to the justice system (which they did not previously have) | 1. Sept. 2013  
3. Nov. 2013  
| 6. Uncommon Law 4          | To respond to various women’s community organizations who have identified problems with access to justice in relation to the women they serve. | 1. Plan an event that responds in part to the needs of these women’s organizations.  
2. Hold the event.  
3. Prepare Report outlining lessons learned and progress made in addressing access to justice issues for these women’s organization. | 1. Staff and volunteers (perhaps sub-committee) | 1. Nov. 2013  
2. Spring 2014  
3. Spring 2014 | |
| 7. Dara Gordon Event       | To promote and facilitate active involvement of women lawyers in leadership roles in the broader legal and business communities. | 1. Organize event.  
2. Promote event.  
3. Hold event.  
4. Obtain feedback from participants as to impact of event. | 1. Staff with volunteers.  
2. Staff with volunteers.  
3. Staff with volunteers.  
4. Staff, the | 1. Nov 2013  
2. Jan 2014  
3. Apr 2014  
4. Apr 2014 | |
### Gender Equity Committee - Work Plan for 2013-2014

<table>
<thead>
<tr>
<th>Project/Initiative/Activity</th>
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<th>Status</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Chair and volunteers.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 8. Develop performance measures for activities. | To be able to assess impact of activities in achieving committee’s mandate. | 1. Establish baselines for measurement.  
2. Apply measurement lens to all activities.  
3. Develop measurement tools. | Committee as a whole. | 1. Nov 2013  
2. Ongoing  
3. May 2014 | |
| 9. Employment Equity | Support the Equity Office in ongoing initiatives to support employment equity in the legal profession. | 1. Introduction to Council  
2. Strategic plan  
3. Recommendation for specific Employment Equity program and outcomes  
2. Jan 2013  
3. Ongoing  
4. Ongoing | |
### Committee Mandate and Responsibilities

**Mandate:** See attached terms of reference

**Responsibilities:** See attached terms of reference

**Committee Chair:** Raymond F. Larkin, QC

**Sub-committees, if any, and names of Chairs:**

LOSS Subcommittee – Marjorie Hickey, QC

### Matters Assigned to Committee by Council’s Activity Plan

1.1 **TBA**

### Details for each Project/Initiative

1. **Name of project:** Use of Recording Devices at Hearings

   **Goal/outcome of project:** There is a clearly articulated policy to support s. 44(9) of the LPA respecting the use of recording devices during hearings, which provides guidance to hearing panels and counsel, and supports the goal of accountability and transparency in the Society’s hearings process

   **Timeframe for completion:** September 2013

   **Status:**

   **Resources required:** PR Counsel, PRPPC

2. **Name of project:** National Discipline Standards – year two of pilot project

   **Goal/outcome of project:** Implementation of Standards is completed, new benchmarks are established
and being monitored at NSBS, with a view to excellence in governance and enhancing public protection. Consider how to measure whether PR processes make a measureable difference in terms of managing risk and providing public protection.

| Timeframe for completion: March 31, 2014 |
| Status: |
| Resources required: Director, PR staff, PRPPC |

### 3. Name of project: **Law Office Search and Seizure Guidelines**

**Goal/outcome of project:** Update current NSBS LOSS Guidelines to ensure currency and relevancy; consider incorporation of new directions re seizure of electronic records and equipment, cloud data, etc from LSUC Guidelines; engage with stakeholders to ensure policies and procedures in place to assist all with their respective roles in the process. Ensure appropriate involvement of the NSBS in the public interest, appropriate seizure and retention of evidence and lawyer materials and information in all forms.

| Timeframe for completion: December 2013 |
| Status: |
| Resources required: PR Counsel, Director, PRPPC, LOSS Subctte |

### 4. Name of Project: **Dealing with Member Convictions from Other Law Societies**

**Goal/outcome of project:** There is consistency between the LPA (s. 48, and 38(1)) and reg. 9.6.6 regarding the onus on the member in NS who is the subject of a professional misconduct finding in another province, and the CIC’s authority in this regard is clarified.

| Timeframe for completion: December 2013 |
| Status: |
| Resources: Jurisdictional research?; PR Counsel; PRPPC; Council |

### 5. Name of project: **Guidance to CIC re dealing with repeat offenders and ungovernability**
**Goal/outcome of project:** In the interest of public protection, excellence in regulation and enhancing the reputation of the profession, consider the concerns and experiences of the CIC and legal advice obtained to date in order to provide guidance on thresholds and appropriate steps for dealing with repeat offenders and ungovernable members. Consider any necessary amendments to the regulations, or policy development.

**Timeframe for completion:** January 2014

**Status:**

**Resources required:** PR Counsel, Director, PRPPC

6. **Name of Project:** **CIC Policies and Procedures Manual**

**Goal/outcome of project:** The CIC Policies and Procedures Manual is fully updated, reflects best practices in governance, and assists the CIC with all aspects of their authority and work in the interests of excellence in governance, and ensuring a fair, thorough, transparent and efficient professional responsibility process for complaints.

**Timeframe for completion:** Spring 2014

**Status:**

**Resources required:** PR Staff, PRPPC, Subcommittee?

7. **Name of Project:** **Hearing Committee Policies and Procedures Manual**

**Goal/outcome of project:** The Hearing Committee Policies and Procedures Manual is fully updated, reflects best practices in governance, and assists the Hearing Committee with all aspects of their authority and work in the interests of excellence in governance, and ensuring a fair, thorough, consistent, transparent and efficient hearing process.

**Timeframe for completion:** Spring 2014

**Status:**

**Resources required:** PR Counsel, Director, PRPPC, Hearing Committee

8. **Name of Project:** **Electronic Complaints process**

**Goal/outcome of project:** A Policy and process is developed to permit filing of complaints through
<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Access to member discipline records through membership database</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal/outcome of project</td>
<td>PRPPC makes recommendation to Council re national standard recommendation for public access to formal discipline records of members through on-line membership database, factoring in considerations of relevancy, transparency, and technological ability.</td>
</tr>
<tr>
<td>Timeframe for completion</td>
<td>March 2014</td>
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<tr>
<td>Status</td>
<td></td>
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<tr>
<td>Resources required</td>
<td>PR staff, Admin technical staff (for software), PRPPC</td>
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<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Transformer Regulation and Governance in the Public Interest</th>
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</thead>
<tbody>
<tr>
<td>Goal/outcome of project</td>
<td>PRPPC is informed of relevant research and materials provided to Council, and considers and provides advice to Council respecting aspects of any proposed new model of regulation and governance which impacts the current professional responsibility process at any level; e.g. enhancement of the complaints intake process to permit increased informal resolution of quality of service complaints; consideration of practice inspections or formal liaisons to enhance risk management for higher risk firms; etc. In providing this advice, PRPPC is mindful of Council’s strategic direction to enhance access to justice, and actively considers regulatory amendments relating to the PR process which will support this direction.</td>
</tr>
<tr>
<td>Timeframe for completion</td>
<td>Phase 1 – May 2014</td>
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<tr>
<td>Status</td>
<td></td>
</tr>
<tr>
<td>Resources required</td>
<td>Executive Director, Director, PR Counsel, PRPPC, Council</td>
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<table>
<thead>
<tr>
<th>Name of project</th>
<th>Protocol for Judges to report misconduct</th>
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</thead>
<tbody>
<tr>
<td>Goal/outcome of project</td>
<td>Clear protocol in place at all levels of court to provide guidance to members of the judiciary who have concerns about the conduct of lawyers appearing in their courts.</td>
</tr>
<tr>
<td>Timeframe for completion: February 2014?</td>
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<td>----------------------------------------</td>
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<tr>
<td>Status:</td>
<td></td>
</tr>
<tr>
<td>Resources required: Court Liaison Committees, Executive Director, Director, PR Counsel, PRPPC, Council</td>
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</table>

**Additional Comments on Committee’s Plans or Progress/projects added during year**
### Provincial Court Liaison Committee

#### Committee Mandate and Responsibilities

**Mandate:**
The Provincial & Family Court Liaison Committee supports the Executive Director in ensuring effective liaison with the Provincial & Family Courts

**Responsibilities:**
This Joint Committee provides a means for ongoing liaison and communication between the Provincial & Family Courts of Nova Scotia and the Nova Scotia Barristers' Society about matters of mutual concern and interest. There are 3 main tasks for the Committee:

- to identify practice and policy issues of mutual concern and interest;
- to recommend means for addressing these issues;
- to communicate the results of this process to the Court and to the Society for further communication to the profession or elsewhere

**Committee Chair:**
Mark Covan

**Sub-committees, if any, and names of Chairs:**
None.

#### Matters assigned to Committee by Council’s Activity Plan

#### Details for each Project/Initiative

1. **Name of project:**  
   **Practice Directive Initiative.**

   **Goal/outcome of project:**  
   Provide research and make recommendations to the Provincial Court concerning appropriate practice directives; review and make recommendations to the Provincial Court concerning draft practice
<table>
<thead>
<tr>
<th><strong>Name of project:</strong></th>
<th><strong>Goal/outcome of project:</strong></th>
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<tbody>
<tr>
<td><strong>Video Access Initiative:</strong></td>
<td>Provide support and make recommendations concerning greater inmate access for counsel at the Burnside Correctional Facility; provide support and make recommendations concerning the use of the video-link for routine court appearances to provide: greater access to justice; reduced facility disruption and stress for inmates; improved court efficiency; reduction in cost for the justice system.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong></td>
<td>Ongoing.</td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong></td>
<td>Committee volunteers.</td>
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</table>

<table>
<thead>
<tr>
<th><strong>Name of project:</strong></th>
<th><strong>Goal/outcome of project:</strong></th>
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<tbody>
<tr>
<td><strong>Provincial Court Efficiency</strong></td>
<td>To contribute the committee’s perspective to various initiatives being considered by the Provincial Court in order to address issues such as collapsing dockets and overall efficient processing of matters through the Provincial Court.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong></td>
<td>Ongoing.</td>
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<tr>
<td><strong>Resources required (volunteer, staff):</strong></td>
<td>Committee volunteers.</td>
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<table>
<thead>
<tr>
<th><strong>Name of project:</strong></th>
<th><strong>Goal/outcome of project:</strong></th>
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<td>Timeframe for completion:</td>
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<tr>
<td>Resources required (volunteer, staff):</td>
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</table>

**Additional Comments on Committee’s Plans or Progress**
| Professional Standards (Criminal Law) Committee |
| Committee Mandate and Responsibilities |
| **Mandate:** The Professional Standards (Criminal Law) Committee supports Council in the governance of the Society by developing professional standards for the area of criminal law. |
| **Responsibilities:** |
| • Make recommendations to Council with respect to identification of: |
|   • existing applicable professional standards in criminal law practise and emerging criminal law issues which may require the development of professional standards; |
|   • changes in the professional standards of criminal law practice and emerging criminal practice issues that require amendments to existing NSBS Professional Standards – Criminal Law. |
| • Annually review the NSBS Professional Standards – Criminal Law, amend as necessary and advise Council with respect to potential amendments to the Standards, including providing notice of the amendments for Council approval; |
| • Annually review the footnotes and references to the NSBS Professional Standards – Criminal Law and provide notice to Council with respect to amendments thereto; |
| • Identify and provide resources and tools to assist members to practise in accordance with the Standards; |
| • Act as a resource on issues of professional standards for criminal law as may be requested by Council. |

| Committee Chair – Ron MacDonald QC |

| Sub-committees, if any, and names of Chairs |
| n/a |

| Matters assigned to Committee by Council’s Activity Plan |
| 1. Review of Committee TOR and Council Policy 16 |
| 2. Discussion about Society’s Strategic Framework |
| 3. The Committee will create a variety of Standards, according to the Projects noted below. The Committee will measure its success by the amount of work completed. The Committee consults broadly with practicing lawyers in this work by asking for their input and considering their responses prior to finalization of any Standards. The Standards are communicated to the membership by email and are available to the membership and the public via the internet. |

| Details for each Project/Initiative |
## Details for each Project/Initiative

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<tr>
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<th>Name of project:</th>
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<td>Goal/outcome of project:</td>
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<td>Timeframe for completion:</td>
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<td>Resources required (volunteer, staff):</td>
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<td>Goal/outcome of project:</td>
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<td>Timeframe for completion:</td>
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<td>Resources required (volunteer, staff):</td>
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<td>Goal/outcome of project:</td>
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<td>Timeframe for completion:</td>
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<td>Resources required (volunteer, staff):</td>
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<td>Goal/outcome of project:</td>
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<td>Timeframe for completion:</td>
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<tr>
<td>Resources required (volunteer, staff):</td>
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**Additional Comments on Committee’s Plans or Progress**
TERMS OF REFERENCE FOR PROFESSIONAL STANDARDS (CRIMINAL LAW) COMMITTEE

These Terms of Reference should be read in conjunction with the Legal Profession Act, the Regulations issued there under, and the Council Policies relating to Committees.

<table>
<thead>
<tr>
<th>WORKING GROUP – TERMS OF REFERENCE</th>
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<tbody>
<tr>
<td><strong>Type</strong></td>
</tr>
<tr>
<td><strong>Mandate</strong></td>
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</tbody>
</table>
| **Responsibilities** | • Make recommendations to Council with respect to identification of:  
  • existing applicable professional standards in criminal law practise and emerging criminal law issues which may require the development of professional standards;  
  • changes in the professional standards of criminal law practice and emerging criminal practice issues that require amendments to existing NSBS Professional Standards – Criminal Law.  
  • Annually review the NSBS Professional Standards – Criminal Law, amend as necessary and advise Council with respect to potential amendments to the Standards, including providing notice of the amendments for Council approval;  
  • Annually review the footnotes and references to the NSBS Professional Standards – Criminal Law and provide notice to Council with respect to amendments thereto;  
  • Identify and provide resources and tools to assist members to practise in accordance with the Standards;  
  • Act as a resource on issues of professional standards for criminal law as may be required by Council. |
| **Composition** | • At least five (5) and not more than ten (10) members  
  • Members may, but need not be, members of Council  
  • Appointments shall be made and vacancies filled by Council  
  • Members should be experienced practitioners in Criminal Law in both the superior and provincial courts |
| **Chair** | • Committee Chair shall be appointed by Council  
  • Committee Chair need not be a member of Council  
  • The Committee Chair is responsible for annually reviewing with the Committee: Council Policy 16, these Terms of Reference, and the Society’s Strategic and Annual Plans |
| **Procedures and Work Product** | • The Committee shall operate in accordance with Council Policy 16  
  • The Committee may appoint sub-committees to carry out its work |
<p>| <strong>Reporting</strong> | • The Committee is advisory to Council |</p>
<table>
<thead>
<tr>
<th><strong>Staff support</strong></th>
<th><strong>Director LIANS</strong></th>
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</table>

### Professional Standards (Family Law) Committee

#### Committee Mandate and Responsibilities

**Mandate**
Supports Council in the governance of the Society by developing professional standards for the area of family law.

**Responsibilities**
1. Make recommendations to Council with respect to identification of:
   a) existing applicable professional standards of family law practice and emerging family law issues which may require the development of professional standards
   b) changes in the professional standards of family law practice and emerging family issues which require amendments to existing NSBS Professional Standards – Family Law
2. Annually review the NSBS Professional Standards – Family Law and advise Council with respect to potential amendments to the Standards, including providing a draft of proposed amendments for Council approval
3. Annually review the footnotes and references to the NSBS Professional Standards – Family Law and provide notice to Council with respect to amendments thereto
4. Identify and provide resources and tools to assist members to practice in accordance with the Standards
5. Act as a resource on issues of professional standards for family law as may be required by Council

**Committee Chair – Jill Perry**

**Sub-committees, if any, and names of Chairs**

n/a

#### Matters assigned to Committee by Council’s Activity Plan

1. Review of Committee TOR and Council Policy 16
2. Discussion about Society’s Strategic Framework

#### Details for each Project/Initiative

1. **Name of project:**
   - **Annual Review of Standards**
2. **Goal/outcome of project:**
   - Ensure Standards and their references/footnotes remain a comprehensive, accurate
reflection of current law.

**Timeframe for completion:**

Present any necessary "above-the-line" changes to Council in order to ensure changes are made within the 2013/14 Council year. Make "below-the-line" changes as the need for same arises.

**Resources required (volunteer, staff):**

The committee will rely on assigned staff, volunteer committee members, and general membership (by way of consultation with family lawyers prior to finalizing any amendments).

<table>
<thead>
<tr>
<th><strong>2. Name of project:</strong></th>
<th><strong>NSBS Strategic Planning</strong></th>
</tr>
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<tbody>
<tr>
<td><strong>Goal/outcome of project:</strong></td>
<td>Develop articulation of relationship between Committee’s work and Nova Scotia Barristers’ Society Strategic Framework for 2013-2016.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong></td>
<td>To be determined.</td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong></td>
<td>The committee will rely on assigned staff, volunteer committee members, and consultation with NSBS executive if deemed necessary/appropriate.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>3. Name of project:</strong></th>
<th><strong>Evaluation of Family Standards</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goal/outcome of project:</strong></td>
<td>Decide whether or not an evaluation of the impact of the Standards is desirable and, if so, design and implement an appropriate evaluation tool.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong></td>
<td>To be determined.</td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong></td>
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</tr>
<tr>
<td>The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (eg: website, communications).</td>
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</table>

<table>
<thead>
<tr>
<th><strong>Additional Comments on Committee's Plans or Progress</strong></th>
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<tbody>
<tr>
<td>n/a</td>
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<tr>
<td>Law Office Management Standards Committee</td>
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<td>------------------------------------------</td>
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</table>

### Committee Mandate and Responsibilities

**Mandate:**

The Law Office Management Standards Committee supports Council in the governance of the Society and its purpose of protecting the public interest in the practice of law by developing professional standards for the management of law offices in Nova Scotia.

**Responsibilities:**

1. **Identify for Council:**
   - a) existing professional standards of law office management and emerging law office management issues which may require the development of professional standards that fulfill the Society’s obligations to regulate in the public interest; and
   - b) changes or variations in standards of law office management and emerging law office management issues which may require amendments to the NSBS Law Office Management Standards and make recommendations to Council accordingly;

2. Identify, and assist lawyers in the establishment and implementation of, resources and tools to assist with practice in accordance with the Standards.

3. Annually review the NSBS Law Office Management Standards and advise Council with respect to potential amendments thereto, including a draft of proposed amendments.

4. Annually review the footnotes and references to the NSBS Law Office Management Standards and provide notice to Council with respect to amendments thereto.

5. Act as a resource on issues of law office management standards as may be requested by Council.

**Committee Chair:** Gavin Giles QC

**Sub-committees, if any, and names of Chairs:** TBA

### Matters assigned to Committee by Council’s Activity Plan
1. Review of Committee TOR and Council Policy 16
2. Discussion about Society’s Strategic Framework
3. The Committee will create a variety of Standards, according to the Projects noted below. The Committee will measure its success by the amount of work completed. The Committee consults broadly with practising lawyers in this work by asking for their input and considering their responses prior to finalization of any Standards. The Standards are communicated to the membership by email and are available to the membership and the public via the internet.

Details for each Project/Initiative

1. Name of project:

**Maintenance and Back-up of Lawyer/Law Firm Electronic Data**

**Goal/outcome of project:**

Discussion paper for Council and lawyers/law firms on the development of policy guidelines/best practices (including possible ethical provision) governing the maintenance and back-up of lawyer/law firm electronic data. Such discussion paper to include references to any existing legal and regulatory requirements, any existing standards or policy guidelines from other jurisdictions and any standard practices currently in use by lawyers/law firms in Nova Scotia. Such discussion paper also to include references to the security and confidentiality of electronic data maintained or backed-up by off-site service providers. Such discussion paper also to include references to the requirement or desirability for different policy guidelines or best practices for accounting and trust account electronic data and for all other forms of electronic data (correspondence, documents, e-mail messages, voice-mail messages and in-coming materials scanned to an electronic medium).

**Timeframe for completion:**

Initial report to Council in December, 2013

Final report to Council: TBA

**Resources required (volunteer, staff):**

Committee and volunteer resources have been assigned and research is underway.

2. Name of project:

**Client Service Standards**

**Goal/outcome of project:**

Discussion paper for Council and lawyers/law firms on the desirability and utility of the development by lawyers/law firms of practice, law firm size, main client base and location specific client service standards. Such discussion paper to include general references to existing lawyer/law firm client service standards in Nova Scotia and elsewhere. Such discussion paper also to include possible guidelines for communications between the lawyer and client including, but not limited to:
- client retention, certainty of fees and billing/payment obligations/expectations
  - client intake standards
    - due diligence
    - conflicts
    - credit checks
  - basis for fee accounts
  - hourly rates
  - variability of hourly rates
  - premiums and discounts
  - disbursements
- expectations of/on clients (facts, case theories, evidentiary development, witnesses)
- declinations
- severance of lawyer/law form – client relationship post commencement
- the use of alternative fee arrangements where requested or appropriate
- approaches to client communication including lawyer/law firm availability to clients, after hours communications and periods when communications will be unavailable
- protocols for communications deadlines, storage and availability of client information

**Timeframe for completion:**

Initial report to Council in April, 2012

Final report to Council: October, 2013

**Resources required (volunteer, staff):**

The subject is under introductory discussion but there are other priorities. Some committee and volunteer resources have been assigned and some research has been undertaken.

3. **Name of project:**

**Lawyer/Law Firm Information Management Systems**

**Goal/outcome of project:**

Discussion paper for Council and lawyers/law firms on the development of policy guidelines for lawyers/law firms relative to management systems including, but not limited to:

- diary or ticker systems (appointments, filing dates, closing and other transactional deadlines and agendas, limitation periods)
- computerized and manual accounting systems
- conflicts checks and verifications

**Timeframe for completion:**

Initial report to Council in January, 2014

Final report to Council: March, 2014
<table>
<thead>
<tr>
<th>Resources required (volunteer, staff):</th>
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4. **Name of Project**  
**Time Keeping**

<table>
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<tr>
<th>Goal/Outcome of Project</th>
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<tbody>
<tr>
<td>Discussion paper for Council.</td>
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<tr>
<th>Timeframe for completion</th>
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<tbody>
<tr>
<td>Initial report to Council: TBA</td>
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<tr>
<td>Final report to Council: TBA</td>
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<table>
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<tr>
<th>Resources required (volunteer, staff):</th>
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<td>TBA</td>
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**Additional Comments on Committee’s Plans or Progress**

**Generally:**

This Work Plan is designed only to highlight the Committee’s present objectives. The Work Plan is not an undertaking with respect to either the described projects or the stated timeframes.

The Committee intends to tackle the described projects by way of loosely structured sub-committees, each of which will have defined roles.

The Committee intends its initial reports to Council to be close-to-completed work products to which few revisions will be expected. As such, final reports to Council can be expected within four-six weeks of the subject interim reports. These timeframes can be subject to change depending on Council’s response to each interim report.

**Additional Studies:**

The four (4) topics referred to in this Work Plan generally follow some of the early Committee expectations which have been stated by the Executive. The Committee expects that its topics will expand. When they do, additional Work Plans (or Work Plan amendments) will follow.
The initial work of the Committee may include, but is not limited to, financial management (accounting, billing, trust accounts); information management, file retention/destruction, document management systems, technology (electronic storage, practice management software, data security, hardware/devices); risk management (communication, documentation, retainers/declinations, managing client expectations, diary systems, back-up systems); conflicts.
### Professional Standards (Real Estate) Committee

#### Committee Mandate and Responsibilities

**Mandate:**
The Professional Standards (Real Estate) Committee supports Council in the governance of the Society by developing professional standards for the area of real estate law.

**Responsibilities:**
1. Make recommendations to Council with respect to identification of:
   a) existing applicable professional standards of real estate law practice and emerging real estate law issues which may require the development of professional standards.
   b) changes in professional standards of real estate law practice and emerging real estate law issues which require amendments to existing NSBS Real Estate Law Professional Standards.
2. Annually review the NSBS Real Estate Law Professional Standards and advise Council with respect to potential amendments thereto, including a draft of proposed amendments.
3. Annually review the footnotes and references to the NSBS Real Estate Law Professional Standards and provide notice to Council with respect to amendments thereto.
4. Identify and provide resources and tools to assist members to practice in accordance with the Standards.
5. Act as a resource on issues of professional standards for real estate law as may be requested by Council.

**Committee Chair** – Erin O’Brien-Edmonds and Tony Robinson

**Sub-committees, if any, and names of Chairs**

n/a

**Matters assigned to Committee by Council’s Activity Plan**

1. Review of Committee TOR and Council Policy 16
2. Discussion about Society’s Strategic Framework

**Details for each Project/Initiative**

1. The Committee will review and update or create a variety of Standards, according to the chart below. The Committee will measure its success by the amount of work in the chart is completed. The Committee partners with real estate lawyers in this work by asking for their input prior to finalization of any amendments / new Standards. The Standards are
communicated to the membership by email and are available to the membership and the public via the internet.

### Standards to be updated in September 2013 – June 2014:

<table>
<thead>
<tr>
<th>Standard Number</th>
<th>Name of Standard</th>
<th>Work Done or to be Done</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.4</td>
<td>Conflict of Interest</td>
<td>Revisions to standards as a result of the amended Code of Conduct and anticipated case law</td>
</tr>
<tr>
<td>4.3</td>
<td>Naming Standard</td>
<td>Revisions to standard to reflect differences in LRA and PPSA searching procedures and use of name on title documents</td>
</tr>
<tr>
<td>5.2 &amp; 5.3</td>
<td>PPSA and Chattels</td>
<td>Two standards to be combined to clarify lawyers obligations when purchasing real prop which includes personal property</td>
</tr>
<tr>
<td>Number to be assigned 5.2</td>
<td>HST</td>
<td>New standard to be developed to give guidance on issues relating to HST in real estate transactions</td>
</tr>
<tr>
<td>Possible new standard</td>
<td>Subdivision Standard</td>
<td>New Standard relating to issues of inherited interests on subdivisions and clarification on how to deal with infant parcels on subdivision</td>
</tr>
<tr>
<td>New Standard</td>
<td>Conveyancing Standard</td>
<td>limited scope retainers regarding, unbundling of legal services including and manner of tenure issues</td>
</tr>
<tr>
<td>Practice Tools</td>
<td></td>
<td>Development of practice tools including opening letters to clients in real estate transaction</td>
</tr>
<tr>
<td>General</td>
<td></td>
<td>Ongoing review and update of standards and addition of practice</td>
</tr>
</tbody>
</table>
2. Identify tools and resources to assist members in practice, in particular, identify and recommend resources to be made available to members through the LIANS website. Develop samples of materials and precedents as an Addendum to the Standards to be referenced in the footnote portion of the Standards. Develop “practice notes” for Standards. These tools and resources are to be communicated to the membership by email and are available to the membership and the public via the internet.

Additional Comments on Committee’s Plans or Progress

n/a
## Racial Equity Committee

### Committee Mandate and Responsibilities

**Mandate:**
The Racial Equity Committee supports Council in the governance of the Society by monitoring and providing advice about programs that address issues of racism and discrimination in the legal profession and in relation to access to justice, including programs to increase access to the legal profession.

**Responsibilities:**

- Develop policy options for the promotion of equity and diversity in the legal profession in Nova Scotia for adoption by Council.
- Identify barriers to and facilitate active involvement of racialized and Aboriginal lawyers in the volunteer functions of the Society, on Council and on other Committees.
- On behalf of Council, maintain awareness and information regarding issues of race as they relate to the legal profession, access to justice or the administration of justice.
- Raise, for Council and members of the Society, awareness of the issues of racial inequity in the legal profession.
- Identify barriers and provide advice to Council about:
  - How to facilitate entry into the Nova Scotia legal profession of racialized and Aboriginal Peoples.
  - Racial equity related experiences encountered by racialized and Aboriginal Peoples as members of the Nova Scotia legal profession.
  - Programs and initiatives for the Nova Scotia legal profession on racial equity and cultural competency.
- Under the direction of the Equity Officer, assist in carrying out the Committee’s approved programs and initiatives.

### Committee Chair:

Naiomi S. Metallic

### Sub-committees, if any, and names of Chairs:

- Race and Law Paper Prize Subcommittee Chair – Hanaa Al Sharief
- Legal Information and Pro Bono Services Subcommittee Chair – Lauren Grant
- Inclusion of Aboriginal Content in Bar Exam Materials Subcommittee Chair – Naiomi Metallic
- Partnership with Tripartite Justice- Joan Stevens
- Cultural Competence Education- Robert Wright
- Employment Equity- Ashley Pledger
### Matters assigned to Committee by Council’s Activity Plan

Activities under Strategic Framework

<table>
<thead>
<tr>
<th>Details for each Project/Initiative</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong> Name of project: Networking Event</td>
</tr>
<tr>
<td>Goal/outcome of project: Provides an opportunity for racialized and Aboriginal lawyers, clerks and law students and internationally trained lawyers to network and liaise with each other. We will not be hosting a fall networking event this year and instead we will be re-allocating the funds for this event towards the National Black Law Students Conference (Jan/Feb 2014)</td>
</tr>
<tr>
<td>Timeframe for completion: June 2014</td>
</tr>
<tr>
<td>Resources required (volunteer, staff): Cost is $2500 to $3000, Organizing required by staff and volunteers</td>
</tr>
</tbody>
</table>

| **2.** Name of project: Race and Law Paper Prize Subcommittee Chair – Hanaa Al Sharief |
| Goal/outcome of project: Award a Schulich School of Law student with the prize in May 2014 |
| Timeframe for completion: May 2014 |
| Resources required (volunteer, staff): Prize money from Stewart McKelvey, Minimal funds required for materials and plaque. Volunteer and staff subcommittee does organizing and judging. |

<p>| <strong>3.</strong> Name of project: Judicial Appointments and Judicial Appointment Guidelines |
| Goal/outcome of project: A judiciary that is more representative of the Nova Scotian public. Judicial Appointment – Partner with CBA Equality and Equity Committees. Send out information to Racialized and Aboriginal lawyers regarding the application process. |
| Timeframe for completion: Ongoing |
| Resources required (volunteer, staff): Staff and volunteer time |</p>
<table>
<thead>
<tr>
<th></th>
<th>Name of project:</th>
<th>Goal/outcome of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>Legal Information and Pro Bono Services</td>
<td>To provide legal information sessions to racialized and Aboriginal communities. A particular focus this year will continue to be on the Black Educators Association, WADE, and the Association of Black Social Workers. Through the relationships we have formed with these organizations, we intend to involve the Executive Committee in supporting initiatives spearheaded by these organizations. We will also continue to reach out to racialized communities to provide legal information workshops, possible organizations for future partnerships are: the Halifax Refugee Clinic, African Diaspora Association of the Maritimes, and organizations that support Arabic speaking communities.</td>
</tr>
<tr>
<td></td>
<td>Subcommittee Chair – Lauren Grant</td>
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<tr>
<td></td>
<td>Timeframe for completion:</td>
<td>Ongoing</td>
</tr>
<tr>
<td></td>
<td>Resources required (volunteer, staff):</td>
<td>Both volunteer and staff time will be required</td>
</tr>
<tr>
<td>5.</td>
<td>Internationally Trained Lawyers Initiatives</td>
<td>Goal/outcome of project: Continue to support the Equity Office in delivering of support services to internationally trained lawyers. Focus for this year will be on the Observership Program. Continue to welcome internationally trained lawyers to participate in programs and events.</td>
</tr>
<tr>
<td></td>
<td>Timeframe for completion:</td>
<td>Ongoing</td>
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<tr>
<td></td>
<td>Resources required (volunteer, staff):</td>
<td>Both volunteer and staff time will be required</td>
</tr>
<tr>
<td>6.</td>
<td>Employment Equity Initiatives</td>
<td>Goal/outcome of project: Continue to support the Equity Office in ongoing initiatives to support employment equity in the legal profession. October meeting to discuss how we want to work on and make Employment Equity a greater priority (measurement, data, self-assessment). Possible outcomes include: 1. Strategic plan 2. Recommendation for specific Employment Equity program and outcomes 3. Budget. Implementation of strategy in 2014 – We will seek a working group of Council to support this initiative. Introduction to council for November.</td>
</tr>
<tr>
<td></td>
<td>Timeframe for completion:</td>
<td>Ongoing</td>
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<tr>
<td></td>
<td>Resources required (volunteer, staff):</td>
<td>Primarily staff time will be required</td>
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<tr>
<td>7.</td>
<td></td>
<td>Name of project:</td>
</tr>
<tr>
<td>Inclusion of Aboriginal Content in Bar Exam Materials</td>
<td>Subcommittee Chair – Naiomi Metallic</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------------</td>
<td>--------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Goal/outcome of project:</td>
<td>To continue discussions with the NSBS Admissions Department and the Credentials Committee to support the inclusion of Aboriginal Law content in the Bar Exam materials.</td>
<td></td>
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<tr>
<td>Timeframe for completion:</td>
<td>Ongoing</td>
<td></td>
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<tr>
<td>Resources required (volunteer, staff):</td>
<td>Volunteer and staff time</td>
<td></td>
</tr>
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8. | Name of project: Cultural Competence Education | Subcommittee Chair – Robert Wright/Emma Halpern |
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Goal/outcome of project:</td>
<td>Offer ongoing cultural competence education for lawyers in Nova Scotia. Continue to identify the gaps in substantive law/cultural competency and work with stakeholders to identify issues (e.g. Bar Exam; Skills Course)</td>
</tr>
<tr>
<td></td>
<td>Link this work to measuring outcomes that will be developed for Employment Equity. Identify areas for training and potential trainers - put the “call” out for trainers.</td>
</tr>
<tr>
<td></td>
<td>Create/develop profiles of trainers.</td>
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<tr>
<td></td>
<td>Investigate/develop tools to permit legal workplaces to identify cultural competence needs.</td>
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<tr>
<td></td>
<td>Explore the possibility of creating video/webinar.</td>
</tr>
<tr>
<td>Timeframe for completion:</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Resources required (volunteer, staff):</td>
<td>Staff and volunteer time</td>
</tr>
</tbody>
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<tbody>
<tr>
<td>Goal/outcome of project:</td>
<td>In partnership with the Tripartite Justice Committee and the lead project researcher, review the Marshall Commission recommendations that pertain to the legal profession, assess the progress made so far on these recommendations and the next steps needed to begin to address these issues keeping in mind the 2012 social and political context</td>
</tr>
<tr>
<td></td>
<td>Working with Tripartite on implementation of DMJ – report and recommendations – and participate in implementation of the recommendations.</td>
</tr>
<tr>
<td></td>
<td>Make council aware of findings. Jane will present to Council and highlight the effect on lawyers. Executive Director and Executive Committee involvement at high level meeting and other meetings as requested.</td>
</tr>
<tr>
<td>Timeframe for completion:</td>
<td>Ongoing</td>
</tr>
<tr>
<td>Resources required (volunteer, staff):</td>
<td>Staff and volunteer time</td>
</tr>
</tbody>
</table>

10. Name of project:
<table>
<thead>
<tr>
<th>Supporting Touchstone Event</th>
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</thead>
<tbody>
<tr>
<td><strong>Goal/outcome of project:</strong> An event to mark 20 years since the Touchstones Report. It connects to our work in Access to Justice.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong> Ongoing</td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong> Staff</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of project: National Black Law Students Conference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goal/outcome of project:</strong> Provide ongoing support to the organizers of the National Black Law Students Conference. Consider the possibility of linking our liaison efforts with the African Canadian communities to an event taking place at this conference</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong> February 2014</td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong> Financial support for the conference and staff and volunteer time</td>
</tr>
</tbody>
</table>

### Additional Comments on Committee’s Plans or Progress

The REC will continue to provide ongoing support to the IB&M Initiative. The REC will liaise with the CBA Equity Committee and with the Gender Equity Committee.
August 30, 2013

Delivered by E-mail – dpink@nsbs.org

Mr. Darrel I. Pink
Executive Director
Nova Scotia Barristers' Society
800 - 2000 Barrington Street
Cogswell Tower
Halifax NS B3J 3K1

Dear Mr. Pink:

Re: Supreme Court Liaison Committee Work Plan

The following is offered for you to include in the overall Liaison Committee Work Plan to be submitted to NSBS Council.

The practicing lawyers on the Committee participated in a conference call on August 29th to review the NSBS Strategic Framework and particularly, the priorities and strategic initiatives. With the overriding theme of access to justice, we brainstormed what this included and came up with the following themes: openness and transparency, easily understandable, equitable/non-discriminatory, publically acceptable and efficient/not wasteful.

We then had a discussion regarding goals of the Committee and potential items for the agenda. It was recognized, that in large part, initiatives which are brought forward require buy-in from the Bench and accordingly, it is difficult to either establish any particular item as a concrete goal or place a timeline on it. Nonetheless, in no particular order, the following issues were brought up:

1. **Criminal Specialization** – members of the Committee would like consideration and commitment on a go-forward basis for specialization on the bench for a criminal division. Among other reasons, it was observed that not infrequently, judges unfamiliar with criminal concepts or Charter issues are requesting briefs. This increases the time and costs for the client and may also engage an appellate level review.

2. **Self-represented Litigants and their Effect on the System** – There was a lengthy discussion regarding self-represented litigants. It was generally recognized that self-represented litigants add costs to the court process due to their unfamiliarity with Civil Procedure Rules and legal concepts. (This does not even address the issue of OPCA’s.) A number of possible options were discussed including the potential for periodic sessions on civil procedure for lay people, the possibility of partnering with the law school to assist in providing general advice on civil procedure etc. Members of the Committee queried whether there was a "standard" information package which could be developed for self-represented litigants when filing an action which would provide an overview as to how to present a case. It is noted that certain information is available on the Court's website. At minimum, a standard form could be provided which directs a
litigant to that information which is already available. (This may already be done, but our Committee was unaware of the current practice.) Any initiatives in this category may well engage the interests of the Department of Justice or others.

We note the excellent report prepared by Dr. Julie MacFarlane as part of the National Self-Represented Litigants Project (May 2013) http://www.representing-yourself.com/reportM15.pdf and suggest that some of the recommendations in that report could be fruitfully addressed through this Committee (and the other Liaison Committees).

Some frustration was expressed with respect to delays occasioned in the Prothonotary’s Office when staff is required to spend 35-40 minutes with an individual unfamiliar with the Rules and process. The concept of a separate line for members of the Bar was brought forward.

3. **Transparency** – the concept of transparency wove through a number of topics discussed. The view was that more and more should be able to be done electronically and that better real-time use can be made of the Court’s website. A simple request is that the daily docket be posted (as reflected on the LED screen by the front desk). There is a desire for more electronic communications – whether for scheduling, reminders, appointments and eventually, ideally, e-filing.

4. **Timeliness of Decisions** – The issue of timeliness of decisions and the awkwardness of endeavouring to secure information as to status of these decisions remains an issue. It was noted that some judges have a practice that if a decision is outstanding for greater than six months he or she will write to counsel noting that fact and advising that it is a priority. The Committee would like to see this communication with counsel be made a general practice along with a timeframe for the decision.

5. **Civil Procedure Rules Forms** – The CPR have been translated into French but the Forms have not– or at least they have not been released publically. The understanding of the Committee is that there is some reluctance to release the Forms as Court Administration feels there is a danger that they will be filed and they are not “sanctioned” as official versions. The Committee suggests that to assist in understanding, the Forms should be released for information purposes with a bold warning across the top that they are not acceptable for filing. This may be an issue for the Rules Committee if the Forms have not yet been translated.

It is felt that the Prothonotary’s Hints and Tips provides a useful means of communicating with members of the Bar. In addition, individual members of the Committee seek input prior to meetings and follow-up after meetings but there is some concern as to the reach of these communications. It has been suggested that further communication could occur through Inform or perhaps on the NSBS website. This may be a matter for discussion with Council (albeit not a judicial issue).
Mr. Darrel I. Pink
August 30, 2013
Page 3

I hope that the above meets your requirements for a “workplan”. I am scheduled to meet with
A.C.J. Smith on September 12th and the Committee meets as a whole on November 14th.

Yours truly,

Nancy G. Rubin

NGR/lmc

cc      Mark Rieksts
       Josh Arnold, Q.C.
       Gilles Deveau
       Jason Cooke
       Robert Carter
       Robert Pineo
Supreme Court Liaison Committee (Family)  
August 26, 2013

This committee provides an opportunity for members of the profession, the Department of Justice and the judiciary to communicate on matters of mutual concern.

Our work plan for the coming year will include the following:

1. Organizing a followup session with psychologists and social workers who regularly work in the Court system to work towards improving the language in court orders for assessments; to give direction as to the court’s expectations, and to encourage more professionals in the mental health field to offer their services on litigation files. This will include planning an education session for mental health professionals on practice issues such as confidentiality; maintaining neutrality, and preparing for cross examination in court.

2. Review final evaluation of the recently established Nova Scotia family law website.

3. Continue discussions about decreasing wait times for court appearances and educate the Bar about the new Chambers process for summary matters.

4. Follow up on steps that can be taken to reduce times for service of documents by sheriffs, since this is a significant factor causing delay in the time for a file to get from conciliation to court room;

5. Work with judiciary and court staff to understand the status of the new differential response intake process and determine our role in ensuring members of the Bar are aware of it

6. Continued response to feedback from practitioners about Rule 59, including the process for divorce by agreement.

7. Discussion of the National Committee on Access to Justice in Civil and Family Matters Committee Report.

8. Address problems with enforcement of custody/access orders.
MEMORANDUM TO COUNCIL

From: Complaints Investigation Committee
Date: September 16, 2013
Subject: Resignation of Lawrence Scaravelli, QC

Date – 2013-09-16 
Executive Committee – 2013-09-17 
Approved for submission to Council 
yes

Date – 2013-09-27
Council

Recommendation/Motion:

The Complaints Investigation Committee is recommending that Council approve Lawrence Scaravelli’s application to resign his membership from the Nova Scotia Barristers’ Society pursuant to subregulation 5.8.8 of the Legal Profession Act.

On July 30, 2013, Victoria Rees, Director of Professional Responsibility, spoke by telephone with Mr. Scaravelli’s counsel, John Merrick, QC. At that time, Mr. Merrick confirmed Mr. Scaravelli’s request to be permitted to resign his membership in the Nova Scotia Barristers’ Society. Mr. Merrick was advised that pursuant to subregulation 5.8.2(e), Council shall not consider an application to resign while there are complaints against a member which remain under investigation. He was further advised that the Complaints Investigation Committee may consent to the resignation pursuant to subregulation 5.8.8.

The Complaints Investigation Committee has agreed to consent to Council’s consideration of Mr. Scaravelli’s request to resign from the Society, and is therefore recommending that Council approve Mr. Scaravelli’s application to resign.

Executive Summary:

The Society received a copy of the decision dated July 21, 2011 from the Nova Scotia Court of Appeal in the matter of Antoine Fraser re the Crown and Lawrence Scaravelli, intervenor. Of note was Justice Saunders’ finding at paragraph 54 that “… I am satisfied that the appellant has demonstrated that the conduct and failures of his trial counsel amount to incompetence and that the incompetence resulted in a miscarriage of justice,
necessitating a new trial.” The Court made note of particular concerns giving rise to this finding, which included that he:

- Did not explain to Mr. Fraser in a meaningful way the process or objectives for challenging jurors for cause, nor his right to do so, in line with the principles of the *Parks* decision
- Did not provide Mr. Fraser with the level of careful investigation and preparation expected of a reasonably competent criminal trial lawyer
- Adopted a defence theory and strategy that was unreasonable and ineffective
- Conducted cross-examinations during the preliminary hearing that fell below the standard of a reasonably competent criminal trial lawyer
- Did not properly communicate with and effectively prepare Mr. Fraser for trial and cross-examination
- During the Appeal hearing, provided explanations for his conduct that were vague, seriously deficient, incomplete and inaccurate, and which demonstrated in the Court’s view, a disdain for the appeal process

The Executive Director commenced an investigation pursuant to subregulation 9.2.3 based on the Court of Appeal’s decision. The investigation of this matter, which included obtaining an expert legal opinion, concluded that Mr. Scaravelli appeared to have ignored his client’s wishes and instructions throughout the retainer. He chose to ignore key potential witnesses and evidence that could have seriously discredited the Crown’s case. The file was managed consistently badly throughout; i.e. the quality of service did not worsen through the file, it was simply very poorly managed from start to finish.

A Practice Review was also conducted, and the resulting report identified a number of practice deficiencies, all of which were seen and magnified in the Fraser matter: no retainer agreements, no work in progress records, unsupported billings, no formal diary or bring-forward system resulting in missed Court dates and appointments, file organization problems, inadequate legal research and some trust account management issues.

Based on the significant concerns revealed by the investigation of this matter and the practice review, including concerns about Mr. Scaravelli’s capacity, the Complaints Investigation Committee referred Mr. Scaravelli to the Fitness to Practise program in February 2012. His voluntary and consensual involvement in that process resulted in his ceasing to appear in court effective April 2012, and the winding up of his practice beginning mid-2012. Mr. Scaravelli has confirmed that all of his client files have been transferred to Patrick Atherton or Tanya Nicholson and any remaining trust monies have been transferred to the account of the new law firm, Atherton Nicholson.

In July 2013, Mr. Scaravelli was referred back to the Complaints Investigation Committee by the Fitness to Practise Committee (FTPC) based on his failure to adhere to aspects of his Remedial Agreement with that Committee. As a result, the FTPC was unable to conclude for purposes of remaining under the jurisdiction of the FTP program that Mr. Scaravelli did not have the capacity to practice law with reasonable skill and judgment that is not substantially impaired by a physical, mental or emotional condition, disorder or addiction. Upon referral back to the CIC, this Committee concluded that although the medical assessments were not able to definitively conclude that Mr. Scaravelli was and is suffering from an incapacity, the Complaints Investigation Committee determined that based on the evidence on file in this regard, and all relevant information and circumstances, it would be in the best interests of the public, and Mr. Scaravelli, to recommend that Council accept his resignation.
Analysis:

Regulatory Authority

The regulations made pursuant to the *Legal Profession Act* provide as follows:

5.8 Application to Resign
5.8.1 A practising lawyer may apply to Council to resign.

Content of Application
5.8.2 An application under this regulation shall be in the prescribed form and shall provide the following

(a) contact information,
(b) professional history,
(c) confirmation that
   (i) all clients’ matters have been completed, or
   (ii) arrangements have been made to the clients’ satisfaction to have their files, documents and papers returned to them or turned over to another practising lawyer,
   and, if applicable, that
   (iii) all foundation documents required to be kept pursuant to Part 8 of the Regulations have been transferred in accordance with that part,
   (iv) all money or other property held in trust has been accounted for and either paid over to the person entitled to them or has been transferred to another practising lawyer for the benefit of the person or persons entitled to them;
   (v) the lawyer does not hold money or other property in trust for any person;
   (vi) the trust account is closed or will be closed by a certain date;
(d) the reason for applying to resign,
(e) that the lawyer is not aware of any claim or complaint against the lawyer in the lawyer’s professional capacity or in respect of the lawyer’s practice,
(f) the lawyer’s undertaking that following approval of the resignation by Council that the lawyer will not engage in the practice of law.

Authority of Discipline Committee Unaffected
5.8.8 Council shall not consider an application under this regulation if there any ongoing procedures under Part III of the Act unless the Complaints Investigation Committee consents to the resignation.

Summary:

Although Mr. Scaravelli’s application to resign was not received in the prescribed form, the information required in subregulation 5.8.2 was provided by Mr. Scaravelli in an application he had submitted seeking to change his category to retired in late June 2013.

Mr. Scaravelli is 69 years old and has now been out of practice for approximately 18 months. He has had some significant health issues since at least March 2012. As noted above, his client files have been transferred to new counsel, returned to the clients or remain in the possession of his former firm. His trust account has also been assumed by his former firm.
The Complaints Investigation Committee has considered whether or not, in the face of this complaint it is in the public interest to pursue charges, or to consent to Mr. Scaravelli’s request to resign. The Committee does not believe that pursuing charges is necessary in order to protect the public interest, in light of Mr. Scaravelli’s request; pursuing charges and a full hearing would involve significant financial and human and resources, would not further the public interest and would likely achieve a similar outcome of his cessation of practice. It should be noted that should Mr. Scaravelli seek to apply for readmission in Nova Scotia or in another jurisdiction in future, the credentialing process would involve the review of all information related to his complaints and membership history.

The Complaints Investigation Committee therefore believes it would be in the public interest to recommend to Council approval of Mr. Scaravelli’s request to resign from the Society. The mandate of the Society is to uphold and protect the public interest in the practice of law. To that end, the Committee believes that the public interest would be served by Mr. Scaravelli’s ceasing to practice law by way of resignation.

**Precedents**

**Frank Elman – 2004**

Frank Elman was a partner with Elman, Kuna in Sydney and was admitted to the Bar in 1957. Mr. Elman had three previous formal hearings in 1993, 1996 and 1999 prior to becoming the subject of a new complaint which was scheduled for hearing in 2004. The subject of that complaint was similar to the issues addressed at his hearing in 1993, which resulted in Mr. Elman being reprimanded and ordered to pay costs and fines which totaled $6583.81.

The charges against Mr. Elman related to 11 clients and involved conflict of interest between lawyer and client.

Charges were served on Ms. Elman in February 2003; however, dates for the Hearing were finally arranged for the fall of 2004. Mr. Elman applied to retire from the Society effective June 30, 2004. He was advised by letter dated June 29, 2004 that his application should not be approved in light of the outstanding charges against him.

It was agreed between counsel to propose that Mr. Elman:

1. immediately retire from the Society;
2. undertake not to seek reinstatement in Nova Scotia or elsewhere;
3. advise that his firm has closed and the files and practice have been transferred to Sheldon Nathanson; and
4. pay to the Society $2,500 toward the costs of the investigation

The parties agreed that the complaint could be reopened in the event that Mr. Elman applied for reinstatement. This proposal was recommended to the Investigative Committee on the basis that it was in the public interest to ensure that Mr. Elman was no longer going to be acting as solicitor for clients borrowing money from Homeowners Mortgage Limited and because some of the intended witnesses were reluctant and some expected testimony was suspect. Council approved this proposal.
**Caroll Daniels – 2004**

Following an extensive investigation of numerous complaints relating to incompetence and professional misconduct in respect of her family law practice, Ms. Daniels was served with charges on August 10, 2004. The charges against her were extensive.

In September 2004, Ms. Daniels wrote to the Executive Director advising that she had filed for bankruptcy and that she was closing her practice. She was aware that the Act and Regulations prohibited her from resigning from the Society as a result of the outstanding discipline matter, and that she recognized that she would be suspended at the end of the quarter as she did not have the funds to pay her fees.

Counsel for the Society was directed to approach Ms. Daniels with a proposal to resolve the matter while meeting the objects of the discipline process. The Society offered to pay for Ms. Daniels’ independent legal advice prior to executing the agreement, which she accepted. The agreement provided that:

1) Ms. Daniels would resign from the Society;
2) Ms. Daniels would not apply for readmission for 12 months from the effective date of the agreement;
3) Ms. Daniels would file a final Form 20 within 3 months of closing her practice;
4) the charges would be stayed unless any terms of the agreement were breached; and
5) no costs would be sought.

This agreement was presented to the Investigative Committee for approval. The Committee agreed to recommend the proposal to Council. On October 29, 2004, Council accepted the agreement and approved Ms. Daniels application to resign on the terms of the Agreement.

**William Jordan – 2010**

In April 2010, Mr. Jordan had five open complaints under investigation by the Department of Professional Responsibility. His practising certificate had been suspended on April 1, 2009, and on that date, the Complaints Investigation Committee resolved to appoint a receiver of his practice.

Over the course of the investigation of the five complaints, Mr. Jordan’s submissions were consistently delayed, evasive, incomplete or non-existent. In his communications with the Society, he failed to provide appropriate responses to questions asked of him. At his interview on April 8, 2009, Mr. Jordan undertook to provide specific information and documentation by set dates, and he has failed to fulfill any of these undertakings. Since June of 2009, Mr. Jordan had not provided any further response to any of the open complaints against him, nor had he responded to communications from the Society.


Mr. Jordan was suspended three times for fees payments returned NSF.

He was suspended for failure to file his annual Trust Account Report on four occasions.

He was also disciplinarily suspended on:
  * June 19, 2006 for failing to comply with the directions of the Complaints Investigation Committee (reinstated on June 22, 2006);
* August 1, 2007 for failing to meet the conditions imposed by the Hearing Committee (reinstated August 9, 2007)); and
* May 1, 2009 for failing to meet the conditions imposed by the Hearing Committee (remains suspended).

Mr. Jordan was:
* reprimanded by a Hearing Panel, subjected to random practice audits for one year and ordered to pay costs of $10,000 in May 1995 re complaints arising from a practice investigation in 1993 for doing substantial inappropriate work on files and charging excessive fees;
* reprimanded by a Hearing Panel in January 1996 for initiating unsolicited work for an Estate and submitting excessive amounts to the Executor - ordered to pay $1,200 plus GST on or before March 31, 1996;
* reprimanded by a Hearing Panel in March 2007 for failing to cooperate with representatives of the Society who were conducting a financial and practice audit and ordered to pay costs of $20,817.40 plus HST (remains suspended for failing to make final payment on this costs order).

In April 2010, based on Mr. Jordan’s failure to cooperate with completion of the investigations, and his request to be permitted to resign from the Society, the Complaints Investigation Committee determined that it would be in the public interest to recommend to Council approval of his request to resign. The Committee was of the view that the public interest would be served by Mr. Jordan ceasing to practice law by way of resignation. As a result, this matter was considered by Council at its meeting on May 28, 2010, and his request to resign was approved, pursuant to subregulations 5.8.1 and 5.8.8.

Mr. Jordan was advised by letter that all persons with open complaints against him would be advised in writing of the decision and that their complaint files are therefore being closed as a result of the resignation. He was further advised that if he applies for readmission, the Credentials Committee will have access to all information regarding his complaints history.
**Terms of Reference**

**Special Advisor on Mental Health Awareness (Timothy Daley QC)**

**Draft Terms of Reference**

These Terms of Reference should be read in conjunction with the *Legal Profession Act*, the Regulations issued there under, and the Council Policies relating to Committees.

<table>
<thead>
<tr>
<th>Terms of Reference</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Context</strong></td>
<td>This role is designed to provide an opportunity to promote a positive message of awareness about mental health in the legal profession, which was effectively pursued while Tim Daley was President of the NSBS. This appointment is complementary to existing initiatives and programs by the NSBS and should support the good work of LIANS and the LAP and its service providers.</td>
</tr>
</tbody>
</table>
| **Roles and responsibilities** | The Special Advisor will:  
  - Promote, through speaking and writing opportunities, mental health awareness in the legal profession;  
  - Constructively and in a positive manner identify opportunities for the Society to change its practices or regulations, if such change could enhance mental health awareness or improve the regulation of the practice of law. Such opportunities should be communicated to the President or Executive Director as appropriate;  
  - When speaking or writing as a representative of the NSBS, identify as such, acknowledge the support of the NSBS and promote the work of LIANS and the LAP;  
  - Meet with Council from time-to-time to discuss mental health awareness in the profession.  
  - Provide a report from time to time to the President about his activities and the perceived impact of them. |
| **NSBS Responsibilities** | The NSBS will:  
  - Promote the Special Advisor to lawyers in Nova Scotia and to other law societies as a speaker on the topic of mental health awareness;  
  - Pay for reasonable out-of-pocket expenses incurred for travel, meals and parking in accordance with Society guidelines;  
  - Provide an opportunity for the Special Advisor to meet with Council from time-to-time. |
| **Term** | The role will continue until June 15, 2014, and can be extended upon mutual agreement.  
  - The role can be terminated by either party upon 7 days’ notice. |
MEMORANDUM TO COUNCIL

From: Glen Greencorn

Date: 2013-08-27

Subject: Annual Lawyer Report - 2013

For: Approval ☐ Introduction ☐ Information ☑

Recommendation/Motion:
This report is provided for information only; there are no recommendations or motions.

Executive Summary:
This analysis is based on the 1,871 Annual Lawyer Reports filed for 2013 (1,887 Annual Lawyer Reports were filed for 2012). A current "snapshot" of the membership is attached at the end of this report.

When the first Annual Lawyer (Member) Report was conducted in 2006 respondents were split among four, roughly equal sized, quartiles to facilitate analysis. The breaks were based on years since the respondents call to the bar; 0-7 years, 8-16 years, 17-26 years, and 27+ years. Those four quartiles continue to be used for analysis.

Key among the findings is the continuing aging of the membership. In 2006 twenty four and a half percent (24.5%) of the total practising membership had been called to the bar more than 27 years prior. In 2013, twenty nine and six tenths percent (29.6%) of the practising membership fall into that category. In 2006, just under fifty percent of practising lawyers were 17 or more years at the bar. In 2013 almost fifty three percent (52.8%) are 17 or more years at the bar.

In the case of sole practitioners, in 2006 forty one percent (109 of 266 sole practitioners) had been called to the bar more than 27 years prior – in 2013 that percentage had grown to just over fifty one percent (148 of 288). The number of sole practitioners experienced its fourth consecutive year of growth. In 2008 and 2009, 239 lawyers identified as being “sole practitioners”. In 2010, that number grew to 248, in 2011 it was 249, in 2012 it was 263, and in 2013 it grew to 288. Of particular note, the number of identified sole practitioners in the 0-7 year of call quartile grew from a low of 14 in 2010 to 30 in 2013 – an increase of 88% over three years.

One trend that has appeared is the growth in the number of lawyers identifying their employment type as “Government or Public Sector”. From 2006 to 2013 the number of lawyers identifying their employment type in this way has grown by 18.2% (from 417 to 493). While all quartiles showed an increase in this employment type, the most pronounced growth has occurred in the 0-7 year call quartile. That quartile has increased by 37.7% (from 90 to 124).

As a concern about risk to clients and a potential risk to the Society, the Society began asking questions about lawyers’ succession plans in 2007 and has refined those questions over the years. In 2013, 548 lawyers are operating in small firms (less than 5) or as sole practitioners. While many of these lawyers had plans that addressed some requirements, roughly 28.5% lacked at least one of the considerations and 77 sole practitioners identified that they had no succession plan. Furthermore, sole practitioners were asked to identify another lawyer
who would assume responsibility for the sole practitioner’s clients, files, and office obligations. Of the 288 sole practitioners, 80 (27.8%) did not identify a lawyer.

Analysis:
Aging of the Population:

In 2006 the total number of respondents was 1,785. In 2013 the total number of respondents was 1,871 – a net growth of 86 Practising Lawyers. The number of Practising Lawyers more than 27 years at the bar grew from 432 in 2006 to 557 in 2012 (a net growth of 125 lawyers and a growth rate of 28.9% over six years). In 2013 that number declined for the first time (by two, to 555). This quartile still comprises the largest segment of the practicing population at 29.6%.

The group of lawyers more than 17 years post call (the 17-26 groups and the 27 + group) now makes up 52.8 % of the Society’s Practising Membership (Exhibit 1 - Number of Respondents by Year of Call).

Employment Type:

For this question respondents could choose whether they were a Sole Practitioner, an Associate, a Partner, otherwise associated with a law firm, employed in the private sector, employed in the public sector, or “other”. Overall (see Exhibit 2 - Employment Type – All), 460 (24.6%) of respondents identified that they were a Partner, 493 (26.4%) reported as being employed by the government or in the Public Sector, 308 (16.5%) reported as being an Associate, and 288 (15.4%) reported as being a Sole Practitioner.

The one apparent trend in employment type is the growth of Government and Public Sector Lawyers. Over the seven years the Society has been tracking this data, the number of Government and Public Sector Lawyers has increased from 417 in 2006 to 493 in 2013 - an increase of 76 or 18.2% over the seven years. Additionally, it is
the only employment type that has never declined year over year (the 493 reported in 2013 equals the number reported in 2012).

The number of Sole Practitioners had declined each year since from 2006 through 2008, was stagnant in 2009, increased by nine in 2010, increased by one in 2011 and jumped by 14 in 2012 and by 25 in 2013 to its current total of 288. In 2013 the number of Sole Practitioners in the 0 to 7 year quartile increased by a net of five (from 25 to 30). The same increase was experienced in 2012 and in 2011 the increase in that quartile was six. The number of sole practitioners in the 0-7 quartile in 2013 (30) is the largest number in that quartile since the Society began the Annual Lawyer Report.

The number of Sole Practitioners more than 27 years continues to comprise the largest percentage of Sole Practitioners and the percentage has increased from 40.98% in 2006, to 44.36% in 2007, 46.44% in 2008, 49.0% in 2009, 50% in 2010, 51% in 2011, 52.1% in 2012 and (due to growth in the number of sole practitioners in the 0-7 quartile) is 51.4% in 2013. In real numbers, the number of sole practitioners in the 27+ quartile has grown from 109 in 2006 to 148 in 2013.

### Sole Practitioners by Year of Call

![Sole Practitioners by Year of Call](image-url)

<table>
<thead>
<tr>
<th>Year of Call</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
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<tbody>
<tr>
<td>27+ Years</td>
<td>109</td>
<td>114</td>
<td>111</td>
<td>117</td>
<td>124</td>
<td>127</td>
<td>137</td>
<td>148</td>
</tr>
<tr>
<td>17-26 Years</td>
<td>76</td>
<td>75</td>
<td>66</td>
<td>68</td>
<td>73</td>
<td>70</td>
<td>72</td>
<td>69</td>
</tr>
<tr>
<td>8-16 Years</td>
<td>53</td>
<td>43</td>
<td>39</td>
<td>36</td>
<td>37</td>
<td>32</td>
<td>29</td>
<td>41</td>
</tr>
<tr>
<td>0-7 Years</td>
<td>28</td>
<td>25</td>
<td>23</td>
<td>18</td>
<td>14</td>
<td>20</td>
<td>25</td>
<td>30</td>
</tr>
</tbody>
</table>

**Area of Law:**

The Annual Lawyer Report asked respondents to identify the amount of time they spent in 12 areas of law and “other”. The analysis included in this report is the aggregate for each grouping. For example 818 total lawyers reported spending an average of 35.5 percent of their time in Civil Litigation. This translates into 15.5% of an average lawyer’s time \((818 \times 35.5%)/1,871\) total respondents.

On average, lawyers spend 15.52% of their time in Civil Litigation, 11.96% in Real Estate, and 14.11% in Criminal. Other represents 10.55%, Corporate/Commercial makes up 11.92%, and Family Law comprises 10.03%.
On average the percentage of time spent in both Civil Litigation and Real Estate has declined each year since 2006. While the percentage of time spent in Criminal has shown steady growth, it declined in 2013 (Exhibit 3).

Exhibits 4 through 7 show the relative averages of each area of law in total and for each quartile over time. It is worth noting that while Tax makes up only 2.6% of an average lawyer’s workload, for the 151 lawyers that reported doing some tax work; it comprises 32.2% of their workload. A similar statement could be made for Securities, which is only 1.02% of the average lawyer’s workload. For the 88 lawyers doing this work in Nova Scotia, it is an average of 21.7% of their work.

The 288 Sole Practitioners reported that, on average, 27.8% of his/her time is spent in Real Estate, 15.9% in Family Law, 16.0% in Wills and Estates, and 9.2% in Civil Litigation. Exhibit 8 shows the relative averages of each area of law for Sole Practitioners.

Based on the increasing numbers of sole practitioners in the 0-7 quartile, additional analysis was done on the work these lawyers are doing. On average, the thirty lawyers in that group spend 29.7% of their time in family law, 13.6% in real estate and 12.5% in criminal law. Exhibit 9 provides the details of the 12 areas of law for this group from 2010 to 2013.

**Self Identified Communities**

The Annual Lawyer Report asks respondents to self identify in a number of groups (respondents must answer this question but are given the option of “I choose not to answer this question”. Of the 1,871 respondents, 421 “chose not to answer” and a further 1,193 responded “none of the above”.

68 (5.8%) lawyers responded as being Acadian/Acadien, 45 (3.8%) identified as Mi'kmaq/Aboriginal, 43 (3.7%) identified as African Nova Scotian/Black, 37 (3.2%) identified as Gay, Lesbian, Bi-Sexual, Transgendered, 31 (2.7%) identified as Disabled, and 21 (1.8%) identified as a Visible Minority.

Overall, sole practitioners self identified as follows; 11 (3.8%) as Acadian/Acadien, 3 (1.0%) as African Nova Scotian/Black, 8 (2.8%) as Mi'kmaq/Aboriginal, 1 (0.3%) as Visible Minority, 6 (2.1%) as Gay, Lesbian, Bi-Sexual, Transgendered, and 6 (2.1%) as Disabled.

Within the group of 30 lawyers who reported as Sole Practitioners in the 0-7 quartile, 4 (13.3%) identified as being Mi'kmaq/Aboriginal, 3 (10%) as Acadian/Acadien, and 3 (10%) as Gay, Lesbian, Bi-Sexual, Transgendered. While these numbers are small, they are disproportionate to the larger population of sole practitioners and the Society as a whole.

**Risk**

548 respondents are operating as sole practitioners or in firms of five or fewer lawyers. Those respondents were asked a series of questions about a documented succession plan dealing with current active clients, inactive files, long term storage, and the winding down of their practice. While some lawyers addressed some of these requirements, roughly 28.5% lacked at least one of these considerations. 77 (26.7%) of all sole practitioners answered “no” to every succession plan question. Additionally, 80 (27.8%) sole practitioners did not identify another lawyer who would assume the responsibility for these responsibilities.

Of the 30 identified sole practitioners in the 0-7 quartile, 12 (40%) did not identify a lawyer who would assume responsibility for their practice. Additionally within this group, 10 (33.3%) answered no to all of the succession planning questions.

The Annual Lawyer Report required respondents to answer questions about computer use and access by others. 1,841 respondents identified that they used a computer in their practice. 115 lawyers identified that their computer was accessible by individuals not associated with their practice and of those only 91 had signed confidentiality agreements with those who have access.
On the issue of insurance protection for electronic files, 355 lawyers acknowledged that they had such coverage, 486 lawyers stated that they had no coverage and 1,030 didn’t know.

Practice Management

Aside from office automation tools (Word, Outlook, WordPerfect, OpenOffice), 349 lawyers reported using PC Law and 85 lawyers reported using Amicus Attorney.

Compliance

Through this year’s Annual Lawyer Report, one lawyer recognized that he was not in compliance with his duty to report and has subsequently done so. Other lawyers reported receiving more than $7,500 in cash and, with this year’s report, were required to explain it before filing the report.

Exhibits/Appendices:
Exhibit 1 - Number of Respondents by Year of Call

- 2006: 49.91%
- 2007: 52.81%
- 2008: 49.91%
- 2009: 52.81%
- 2010: 49.91%
- 2011: 52.81%
- 2012: 49.91%
- 2013: 52.81%
Exhibit 3 - Area of Law - All
Exhibit 9  0-7 Quartile Sole Practitioner Area of Law
MEMORANDUM TO COUNCIL

From: Glen Greencorn  
Date: August 27, 2013  
Subject: Issues Raised by the 2013 Annual Lawyer Report

<table>
<thead>
<tr>
<th>Date –</th>
<th>Executive Committee</th>
<th>Approved for submission to Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date –</td>
<td>Council</td>
<td></td>
</tr>
</tbody>
</table>

Analysis:
The results of the Annual Lawyer Report 2013 (ALR) are summarized and highlighted in my memo of August 26. While that report consists only of the findings, it does raise issues and concerns which Council will need to consider and deal with.

Risk

In keeping with the Society’s strategic initiative to “examine and approve a framework for risk identification and management” the findings from the ALR raise several concerns.

Succession Plans
With almost 30% of sole practitioners failing to identify a lawyer willing to assume responsibility for the practitioner’s practice should the Society make this a regulated requirement for sole practitioners? Should the Society prepare to take over a sole practitioners’ practice in the event of a sudden cessation of practice? If the latter is the choice, then should there be some financial requirement of sole practitioners to fund such a program or should the Society establish a financial reserve for this purpose?

Almost 27% of sole practitioners do not have a succession plan. There is currently no legislated requirement for such a plan – should there be? If not within the regulations should it be part of the practice management standards? The risks to the Society and to the practitioner’s clients are similar to the ones noted above.

New Sole Practitioners
The statistical results from the “new” lawyers who are sole practitioners point to a failure of these practitioners to recognize or identify the need for a succession plan. 33% of these sole practitioners have no succession plan and 40% did not identify another lawyer who could assume responsibility for their practice. Aside from the regulated
Trust Account Education program, there is no legislated requirement for sole practitioners to demonstrate that they are prepared for the demands of sole practice. Should such a requirement exist?

Cyber Security
While the majority of lawyers use a computer in their practice (1,841 of the 1,871 respondents) only 355 (19.3%) knew that they had insurance protection for their electronic files. 486 stated that they had no such coverage and 1,030 simply didn’t know. With the risk of electronic theft of client’s data, should such coverage be required? Do we need policies/regulations that address potential access to confidential information by third parties? Is this different from other requirements to protect client property?

115 lawyers stated that their computer is accessible by individuals not associated with their practice yet only 91 stated that they had signed confidentiality agreements with those who have access. Again, there is a possible risk of theft and erasure of client data. Should confidentiality agreements be mandated?

Demographic Concerns
The upward trend in the number of “young” lawyers operating as sole practitioners raises a number of questions and possible issues. The most obvious one is “why”. We can speculate that it is a function of the economy and a lack of suitable associate positions. The concern with this group however, is, are they prepared for the professional and management responsibilities associated with operating a sole practice? Should the Society require some evidence of competence before allowing a lawyer to set up a sole practice?
COUNCIL WORKSHOP
OCTOBER 24, 2013
8:30 AM – 4:00 PM
NSBS CLASSROOM
TRANSFORMING REGULATION – WHAT MIGHT IT LOOK LIKE?

Participants (approx. total)
- NSBS Council Members (21)
- Guests from other law societies – Don Thompson QC (Alberta) and Allan Fineblit QC (Manitoba)
- Senior staff (5)
- Others – Tim Daley QC, Past President

Goal
To introduce to Council the key concepts that will be the foundation for our work in transforming regulation and transitioning to an outcomes-focused model, based on a framework for identification and management of risk.

Objectives
Council:
1) Is informed about and better understands the changing landscape for legal practice and its implications for legal regulation including outcomes focused regulation (OFR);
2) Explores the concept of ‘public interest’, regulatory purpose and the range of possible roles and responsibilities for the Barristers’ Society;
3) Considers the regulatory models and best practices developed elsewhere, determines what elements might be appropriate for Nova Scotia, what is missing from our regulatory model and what aspects of our current models should be maintained;
4) Identifies the elements for a ‘best practices regulator’ and agrees on next steps;

Design approach
The primary learning mode will be to:
- Provide background information through research paper and presentations
- Answer questions on details
- Undertake a dreaming/brainstorming session on the attributes of the ‘best practices legal regulator’; what it looks like, does, does not do – (not the how, but the what)
- Work in small groups:
  o to discuss two key questions: who do we regulate? and what do we regulate? Each group will also address – ‘what are the purposes of regulation?’ (by creating a list) and ‘how will we know if we are successful?’
- report back the results
- compare the results of the two sessions and develop a single list in both areas
- review next steps
<table>
<thead>
<tr>
<th>Time</th>
<th>Activity (Session)</th>
<th>Purpose</th>
<th>Presenter</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:30 – 8:45</td>
<td>Welcome and setting the stage</td>
<td>Outline the day’s goals and where we hope to be by day's end</td>
<td>Rene</td>
</tr>
<tr>
<td></td>
<td>Introduction of the morning sessions and purpose of the retreat</td>
<td></td>
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</tr>
<tr>
<td>8:45 – 10:00</td>
<td>1. Public Interest, self-regulation, and risk</td>
<td>To review with Council:</td>
<td>Darrel/Ken</td>
</tr>
<tr>
<td></td>
<td>1.1 Q &amp; A</td>
<td>• Elements of regulating in the public interest</td>
<td>Allan Fineblit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The elements of self-regulation</td>
<td>Don Thompson</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The risks we currently address in regulation</td>
<td></td>
</tr>
<tr>
<td>10:00 - 10:30</td>
<td>2. The Profession in Nova Scotia</td>
<td>Review our demographics – numbers in various types of practice, diversity</td>
<td>Glen</td>
</tr>
<tr>
<td>10:30 – 10:45</td>
<td>Break</td>
<td></td>
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</tr>
<tr>
<td>10:45 – 11:30</td>
<td>3. A Global Perspective</td>
<td>How is regulation of the profession changing globally, and what best practices are emerging? This will include information about OFR</td>
<td>Victoria</td>
</tr>
<tr>
<td>11:30 – 12:30</td>
<td>4. Concurrent Small Groups</td>
<td>Each group will engage in a brainstorming session to address the ‘who’ and ‘what’ questions. ‘Who’ will look at the entities and address individuals, firms, law corps, etc. `‘What’ will look at legal services and whether we should change our focus and why, e.g., create a concept of ‘reserved legal services For both of these discussions some facilitators’ notes will be prepared to ensure we cover all the identified issues. For both there will be a need to consider ‘risk’ and ‘outcomes measurement’ to some extent.</td>
<td>4.1 Rene/Jill</td>
</tr>
<tr>
<td></td>
<td>4.1 Who do we regulate?</td>
<td></td>
<td>4.2 Tilly/Tim</td>
</tr>
<tr>
<td></td>
<td>- The purposes of regulation</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>- How will we know if we are successful?</td>
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<td></td>
<td>4.2 What do we regulate?</td>
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<td></td>
<td>- The purposes of regulation</td>
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<td></td>
<td>- How will we know if we are successful?</td>
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<td></td>
<td>Optional approach</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>4.1 Thinking about the materials, and your own</td>
<td></td>
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</tbody>
</table>
experiences, what are some of the key changes taking place and foreseeable in the Canadian, and Nova Scotian legal marketplace? How will these impact the regulation of the profession?

4.2 Thinking about the materials, and the models of regulation both new and old, what aspects of the regulatory models appealed to you (can be part of one and a different part of another) and which do you believe could be potentially relevant and effective in the context of a new regulatory model in Nova Scotia?

<table>
<thead>
<tr>
<th>Time</th>
<th>Session Title</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>12:30 – 1:00</td>
<td>Lunch</td>
<td></td>
</tr>
<tr>
<td>1:00 – 2:00</td>
<td>Report Back and Discussion</td>
<td>This session will bring together results of both discussions. They will be recorded on both the Group flip charts and by Rene/Tilly</td>
</tr>
<tr>
<td>2:00 – 2:30</td>
<td>Verifying ‘Public Interest’ elements</td>
<td>Create a list of all elements that need to be included to ensure we regulate in the public interest.</td>
</tr>
<tr>
<td>2:30</td>
<td>Identifying the elements of a “Best Practices Regulator”</td>
<td>Council members will begin to look at the ‘how’ of what we do – not in detail but by considering their views of best practices, as they perceive them, they will start to determine</td>
</tr>
<tr>
<td>Break</td>
<td></td>
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<tr>
<td>4:00</td>
<td>Creating a Vision for a Best Practices Regulator</td>
<td>For what purpose do we regulate? What do we regulate? Who do we regulate? How do we regulate?</td>
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<td></td>
<td>Next steps</td>
<td></td>
</tr>
<tr>
<td></td>
<td>End</td>
<td></td>
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</tbody>
</table>
Facilitation Plan: (Darrel Pink)

**Session #1**
- Goal of the session:
- Timing:
- **Key Questions:** (to be displayed on overhead PowerPoint)

**Session #2**
- Goal of the session:
- Timing:
- **Key Questions:** (to be displayed on overhead PowerPoint)

**Session #3**
- Goal of the session:
- Timing:
- **Key Questions:** (to be displayed on overhead PowerPoint)

**Session #4**
- Goal of the session
- Facilitation Methodology
- Groups
- Timing:
- **Key Questions:** (to be displayed on overhead PowerPoint)
Executive Director’s Report  
September 27, 2013

By the Numbers

<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Practising Lawyers</td>
<td>1921</td>
<td>1908</td>
<td>1904</td>
<td>1915</td>
<td></td>
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<tr>
<td>Non-practising Members</td>
<td>710</td>
<td>733</td>
<td>736</td>
<td>729</td>
<td></td>
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<tr>
<td>Retired Members</td>
<td>101</td>
<td>99</td>
<td>99</td>
<td>94</td>
<td></td>
</tr>
<tr>
<td>Articled Clerks</td>
<td>67</td>
<td>65</td>
<td>64</td>
<td>65</td>
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</tr>
</tbody>
</table>

I am writing this in August before leaving for holidays and a conference in September. I will report on the IILACE (International Institute of Law Association Chief Executives) meeting in Berlin in my October report. This year the conference is being held in conjunction with the Conference of European Bars.

One of my personal performance goals this year is to ensure that I take the full amount of vacation that I have under my contract. In most past years I have failed to do so and though we stress that all employees ought to take their allotted vacation, I have observed this in the breach. I am intent on ensuring that does not occur this year and I promise there will be beautiful photos from a trip to Norway!!

In August I attended the 2nd International Legal Regulators Conference in San Francisco. Elaine Cumming and I lead a workshop on ‘Fitness to Practice’, using our program as a model for the facilitation. It was very well received and I expect there will be follow up with our colleagues from many jurisdictions as they approach this topic in their own countries.

The Conference was one of the best I have ever attended as it consisted of 60 expert regulators. Though largely from the common law world, they bring a full range of perspectives about the rapidly changing environment in which we work. Two sessions stood out for me: the one dealing with MCPD and the move that many jurisdictions to treat CPD as they do regulation itself, i.e. there should be a demonstrable impact from education for lawyers and it should be planned and demonstrable and the session that looked at risk based regulation. We do an admirable job here, given our size and resources, but there are many things we are aware of that we have yet to fully assess, such as a number of cyber risks, that we will need to better consider.

Operational Matters

Canadian Lawyers Insurance Association (CLIA)

In late August the Law Society of Alberta served notice on CLIA that it will be withdrawing from the Reciprocal on June 30, 2014. LIANS is Nova Scotia’s member of CLIA as it relates to the mandatory and voluntary excess insurance programs. Though we are pleased that they have given this amount of notice, the issues and complications of their departure are significant for all members of CLIA. For Melanie McGrath, Director of Insurance, Cheryl Canning, Chair of the LIANS Board, the LIANS Board itself, and John Traves QC, our member on the CLIA Board, there is a substantial amount of work to do, both to deal with Alberta’s departure and to prepare for a CLIA without Alberta.

There is a strong desire among the remaining nine law societies to make CLIA work and we have begun to do the detailed planning that it will take to make that happen. Our stated goal is to ensure that CLIA operates efficiently and cost effectively for all subscribers, which in our view means there must be a
significant reduction in the costs involved in CLIA’s operations. The Executive Committee will be meeting with the LIANS Board once the nature of the issues to be considered becomes clearer and Council will be kept appraised of developments.

**Twenty Year Comparisons**

It was my intention that in July members of Council had material that provided some 20 year comparisons of our numbers. For reasons that I cannot explain, they were not contained in the memo that Council had. Here is what should have been there:

How do we know that our regulatory model, one that has been in effect for generations, achieves our statutory goal of protecting the public interest? What is the best means for oversight of a profession where 661/1874\(^1\) = 35.8\% of lawyers practise in a corporate or government law department, and where a 510/1874 = 27.2\% practice in firms of ten+ lawyers\(^2\)?

<table>
<thead>
<tr>
<th>Year</th>
<th>Government Lawyers</th>
<th>Corporate</th>
<th>Large Firms (10+)</th>
<th>Small Firm and solos</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993 (1410 lawyers in NS)</td>
<td>238 – 16.9%</td>
<td>95 – 6.7%</td>
<td>347 – 24.6%</td>
<td>730 – 51.8%</td>
</tr>
<tr>
<td>2013 (1839 lawyers in NS)</td>
<td>479 – 26.0%</td>
<td>172 – 9.4%</td>
<td>496 – 27.0%</td>
<td>692 – 37.6%</td>
</tr>
</tbody>
</table>

Contrast this with the profession in 1993 when there were 1410 lawyers: 24.6 \% practiced in large firms (of 10+ lawyers), only 6.7 \% practiced in government or corporate law departments for a total of 680/1410 or 48.2\% whereas 730 practiced in small forms or sole practices i.e. 51.8\%. I am now able to advise that our pattern is not being reflected in all other jurisdictions. We are pulling numbers together for the fall Federation of Law Societies Conference which will give us a better indication of national trends.

Council will receive an update from Glen on the 2013 ALR at this meeting.

**July Month End issues**

We had just fewer than 60 lawyers who failed to file their Annual Lawyer Reports by July 31. Every lawyer received at least three reminders prior to the deadline and then another on August 1, indicating that if was not received by the end of that day suspension would occur.

In the end we were required to suspend two practicing lawyers for failure to file. This is always unfortunate but it is simply not fair to allow lawyers to ignore their obligations, especially fulfilling them, by completing the ALR, has been made as simple as we can possible make it.

**Renovations at the Law Courts**

The Library did return to the Law Courts on the week-end of July 20\(^{th}\). However, not all of the work on the renovations of the 7\(^{th}\) floor had been completed and the space was not open to the public. That access commenced on August 9. There were numerous issues with the move and the dismantling and reassembling of the library. This was very difficult for staff but they did their best to address the issues and problems as they arose. I am very proud of the way they have handled this major disruption in their work. It has affected our ability to implement fully our plans for the library but if all goes well as the fall

\(^1\) There are currently 1958 Practising members of the NSBS. Of those, 1839 are in NS.
\(^2\) The totals are 510+661=1171. Therefore 1171/1874=62.5\% of Practising Lawyers in NS are either not in private practice or are a member of a firm of 10 or more.
progresses we will be on track to complete a number of initiatives that will allow the library to better support the Society’s regulatory role and continue to provide basic services to lawyers.

**Regulatory Reform**

**Transforming Regulation and Governance**

Victoria Rees had a very successful visit to London in late July. Council will see the results of that at our workshop in October.

As I mentioned in July the Federation of Law Societies of Canada will be having as the topic for its conference in October ‘Re-visioning Legal Regulation’. The work we are doing will be the focus of many of the discussions there.

**Access to Justice**

**Pride Reception**

The 11th annual Pride Reception, co-hosted with the Sexual Orientation & Gender Identity section of the CBA-NS, took place on July 25. By all accounts, this event was a resounding success; the speakers, food and venue were all very well received.

Over the past 11 years this event has moved from a small cluster of lawyers in the Society board room to a significant, well-respected event attended by over 100 lawyers and members of the public. The Pride Reception is and should remain a foundational activity of the Society because by its focus on the LGBT Community it continues to builds relationships and partnerships through effective, transparent and deliberate engagement.

This year, relationships were forged with the Rainbow Refugee organization and the Rainbow Railroad, organizations dedicated to assisting LGBT refugees to find routes to safety from persecution and imminent harm. The important comments of the keynote speaker, Michael Battista of Jordan Battista LLP in Toronto, advocated directly for enhanced access to justice for LGBT refugees. Through our support of this speaker we are getting this important message out and continuing our mandate to support equity-seeking communities. Michael’s comments will be highlighted in our communications with lawyers in the coming months.

Equally important, this event enhances the cultural competence of our members by illustrating our commitment to LGBT issues and by providing a venue for these issues to be discussed openly and respectfully by the legal community.

**National Action Committee on Access to Justice in Civil and Family Matters**

This is the committee chaired by Justice Cromwell. It is expected that its final report will be released in September. The Society has been asked and we have agreed to host one of the sessions Justice Cromwell will hold across the country to address the Report and urge local commitments to the recommendations that are made. Though we do not yet know what those recommendations will be we have invited a wide group from the justice sector to attend a workshop on October 31. All the Chief Justices and Judges have committed to attend as has the Deputy Minister of Justice (we await word on the Minister’s attendance – recognising that an election may have some impact on planning). As well we have invited five leading groups from the community to participate and have had an enthusiastic response from them.

As is reflected in the A2J Work Plan that Council has before it this month, our approach to this topic is premised on collaboration with the Society leading in areas where it can and cooperating with others where the leadership is to come from them.
Other Matters

Fair Registration Practices Act
The Review Officer under the Act has completed her first review of the Society’s compliance with FRPA requirements. We are in compliance on all accounts. There are some recommendations made regarding improvements in the area of transparency. This largely relates to how we post information on our website and whether it is comprehensible, especially as it relates to internationally trained lawyers for whom English may not be a first language. We are committed to improving this material and work to do so has already begun.

The staff time to complete the FRPA Review was considerable. Jackie Mullenger had many meetings with the Review Officer: there was an extensive questionnaire with documents attached; and there was considerable time spent reviewing, commenting on and correcting the draft Report. We were one of the first regulators to go through the process and hopefully much has been learned from this experience so that other regulators will benefit from the spade work we did and future reviews of us (every two years) will require considerably less effort.

These comments from Jackie Mullenger, Director, Education & Credentials:

This is further to my report on FRPA in May 2013. Since that time, The FRPA Review Officer has completed her first review of our credentialing processes. The Director of Education & Credentials spent approximately two full days completing the annual data questionnaire and the Review Questions. She then met with the Review Officer on 5 separate occasions. Each meeting lasted approximately 4 hours for a total of 20 hours. In addition, she spent one full day reviewing the draft report and making changes.

The Review Officer’s report is included in Council’s package. She found that overall the Society is in compliance with the requirements of FRPA. She did request that we complete the following action items in the next 24 months:

1. NSBS will review the content of the website and reorganize to allow the user to better navigate the site.
2. NSBS will write a policy on the acceptance of alternate information.
3. NSBS will follow up with the NCA about barriers faced by international applicants.
4. NSBS will write a policy regarding access to records.

The Director has begun work on these items and plans to have them completed in the next twelve months.

Summer Conferences
International Conference of Legal Regulators
I attended two conferences this summer. The second Conference of International Regulators was held in San Francisco. Though the attendance was slightly smaller than the initial conference last year, it is my view that the quality was substantially higher. Almost every person in the room was a fulltime regulator and thus the level of knowledge and expertise was extremely high.

I am attaching a copy presented the session on ‘Fitness to Practice’ which engendered a vigorous discussion (at the end of a very long day). There were many ideas about the appropriateness of our approach and though all recognize the need to address health matters that impact on capacity, not all agreed that a separate program is the correct way to address this.
Canadian Legal Conference – CBA
I attended this conference in Saskatoon. Emma Halpern, our Equity Officer, was receiving the Ally Award from the SOGIC section of the CBA for her work in supporting the LGBT community and I wanted to be there for that. The Conference program was very good. With keynotes from Peter Mansbridge and John Ibitson/Darrell Bricker (authors of The Big Shift) there were great presentations on some larger issues affecting Canada. I attended sessions coming from the CBA’s work on Access to Justice, addressing Self-represented Litigants, and its Futures Initiative, addressing innovation in practice and cloud computing for law firms. (This session confirmed my view that cyber security is a significant issue that law societies have to address as we began to this year in our ALR.) There was also an excellent keynote and workshop on diversity in the profession.

Regulation in Practice
2nd International Legal Regulators Conference
5-7 August 2013, San Francisco

Day 1
Session
Welcome and introduction
9.00 - 11.00

Topic
What powers do I need to be an effective regulator of legal services?
Government review of legislation covering the regulation of lawyers and legal services is a growing trend. This session will look at the powers that regulators need in order to make different models of legal regulation work, drawing on experiences from around the world. We will aim to produce at the end of this session, a checklist of powers that regulators need in order to meet the different objectives they may be given, whether by legislation or delegation from a Court, Bar Association or other body.

Break
11.30 - 13.00 Risk based regulation
Has your view of risk kept pace with your jurisdiction, and the way law is practised?
How does risk based regulation work in practice?
This session will look in more detail at risk based approaches to regulation – tools for identifying regulatory risk and how to respond to it. We will also look at the themes that have emerged from those following this approach and in particular at law firm finance and IT/cyber security risk.

Lunch

14.30 - 16.00 The role of intelligence and investigation in legal regulation
Intelligence has an important role to play in identifying problem practices before they become public. This session will look at the role of an investigation function and dealing with whistleblowers. It will also consider what to think about if you are considering setting up such a function in your regulator.

Break

16.30 - 18.00 Fitness to Practice, regulatory responses and cooperating with representative bodies
Legal practice is taking place in an increasingly stressful environment and many disciplinary issues may be related to underlying mental health, physical health (such as untreated HIV infection) or substance abuse issues. This session will look at how regulators might identify the warning signs at an early stage and how they might work with others to ‘prevent’ rather than ‘cure’ problems.

Day 2

9:00 - 10.30 Keeping lawyers equipped for practice
The need for those who are providing legal services to remain equipped for practice beyond initial qualification is self-evident. However it is not easy to translate this need into an effective requirement. This session will reflect on experience of CLE systems in different jurisdictions and seek to identify how we can make such systems more results
Break
11.00am - 12.30pm
The challenges of dual qualification
A growing number of lawyers are choosing to hold more than one qualification. This session will look at the motivations for holding such qualifications and tease out the problems that this poses for regulators. We will seek to examine whether there is scope for any convergence in how we treat dual qualified lawyers.

Lunch Break
14.00 - 15.30

Opening session of the NOBC
The opening session of this conference traditionally begins with brief updates on developments in jurisdictions of all of those participating. This is an opportunity to hear about what is challenging regulators in the USA and from the other jurisdictions participating in the conference.

15.45 - 17.15

NOBC session: The changing purpose and goals of attorney regulation - experience from outside the USA
The system for regulating lawyers in England and Wales has been redesigned. The Solicitors Regulation Authority (SRA) is the new independent arm to which the Law Society of England and Wales was required by Act of Parliament to delegate its regulatory powers. The Law Society now has purely representational responsibilities while all admission, conduct and disciplinary powers are vested in the SRA. This panel will explore how the purpose and goals of lawyer regulation are being redefined in parts of Great Britain and elsewhere internationally and what we can learn from their experience.
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<th>FULL_NAME</th>
<th>NOTE</th>
<th>TRANSACTION_DATE</th>
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<td>Mr. L. Edward Hicks</td>
<td>PRAC (Exempt - Fed Govt) to RES</td>
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</tr>
<tr>
<td>Mr. Michael Hicks</td>
<td>NP to RES</td>
<td>07/19/2013</td>
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<td>Mr. David Raniseth</td>
<td>PRAC (Insured - Full Rate) to NP</td>
<td>09/01/2013</td>
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<tr>
<td>Mr. Anthony Joseph Magliaro</td>
<td>NP to PRAC (Insured - Full Rate)</td>
<td>09/13/2013</td>
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<td>Mr. Alexander MacBain Cameron</td>
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<td>Peter Ignatius Chisholm</td>
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<td>Ms. Elizabeth Lorna Soria</td>
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<td>Mr. Stephen Michael Hellsten</td>
<td>NP to RES</td>
<td>07/19/2013</td>
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<td>Ms. Cynthia Joy Matthews Hellsten</td>
<td>NP to RES</td>
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<tr>
<td>Mr. Kenneth Jenner Carlyle Armour</td>
<td>PRAC (Insured - Full Rate) to RES</td>
<td>07/19/2013</td>
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<tr>
<td>Ms. Alanna Dawn Robinson</td>
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<td>Mr. Christopher John Forbes</td>
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<tr>
<td>Ms. Carla Brookes Ball</td>
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<td>09/19/2013</td>
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<td>Mr. Gerald Allen Grant</td>
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<td>Mr. Frederick Philip Carpenter</td>
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<td>Ms. Isabelle Margaret Alice French</td>
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<td>Mr. James Gerald Elliott Ball</td>
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<tr>
<td>Ms. Susannah Margison</td>
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<td>Mr. Eric Patrick MacRae</td>
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<td>Ms. Julie-Ann T. Sobowale</td>
<td>PRAC (Insured - Full Rate) to NP</td>
<td>08/01/2013</td>
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<tr>
<td>Ms. Ludmilla Jarda</td>
<td>PRAC (Insured - Full Rate) to NP</td>
<td>09/01/2013</td>
</tr>
<tr>
<td>Mr. Paul Gregory McNeil</td>
<td>NP to PRAC (Insured - Full Rate)</td>
<td>08/28/2013</td>
</tr>
<tr>
<td>Mr. John Todd Martin</td>
<td>NP to PRAC (Insured - Full Rate)</td>
<td>09/13/2013</td>
</tr>
</tbody>
</table>
MEMORANDUM

MEMO TO: Finance Committee
FROM: Glen Greencorn
DATE: August 29, 2013
SUBJECT: Financial Statements to July 31, 2013

Income/Operating Statement:
As these financial statements are for the first quarter, very few forecast amounts are prepared to year end.

Revenue:
In total, Revenue is favourable to plan to date by $2,314 or 0.2%. While Practising Membership Fees are $8,747 favourable to budget on a year to date basis, the number of paying practising members at August 1, 2013 stands at 1,892, just 2 more than the budgeted count of 1,890 and just 1 higher than the August 1, 2012 membership count. The average practising membership count over the first three months of this year was 1,890.

Expenditures:
While most year to date expenditure variances are attributable to timing (the budget is spread based on historical spending patterns but the actual expense is incurred either earlier or later in the year) the variance in “Rent” will persist and grow through the year. During the preparation of the budget I erred and miscalculated the operating costs by roughly $2.50 per square foot. The full year impact will be approximately $29,000.

Director’s Certification:
I, Glen Greencorn, Director, Finance and Administration of the Society, certify that the Society is in full compliance with respect to the collection and remittance of all statutory employee deductions including deductions for Federal and Provincial Income Tax, Employment Insurance, and Canada Pension Plan. I also certify that the Society is in full compliance with respect to the collection and remittance of the Harmonized Sales Tax.

Glen Greencorn, CMA
Director, Finance and Administration
Nova Scotia Barristers' Society
GENERAL OPERATING FUND
BALANCE SHEET
As of 31/07/2013

<table>
<thead>
<tr>
<th></th>
<th>Unrestricted</th>
<th>Lawyers' Fund for</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General Fund</td>
<td>Client Compensation</td>
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### ASSETS

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<th>$ 2,706,232</th>
<th>$ 101,845</th>
<th>$ 2,808,077</th>
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<td>88,179</td>
<td>1,743,198</td>
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<td>Allowance for Doubtful Discipline Revenue</td>
<td>(1,620,939)</td>
<td>(88,179)</td>
<td>(1,709,118)</td>
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<tr>
<td>Net Accounts Receivable</td>
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<td>34,080</td>
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<tr>
<td>Accrued Interest Receivable</td>
<td>1,512</td>
<td>3,078</td>
<td>4,590</td>
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<td>GST Receivable</td>
<td>50,779</td>
<td>571</td>
<td>51,350</td>
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<td>Due from LIANS</td>
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<td>Interfund Account</td>
<td>30,188</td>
<td>(30,188)</td>
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<td>Prepaid Expenses</td>
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<td>126,184</td>
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<td>Investments</td>
<td>1,285,647</td>
<td>1,834,059</td>
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<td>Investment in CLIA Surplus</td>
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<td>Capital Assets</td>
<td>761,943</td>
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<tr>
<td>Accumulated Depreciation &amp; Amortization</td>
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<td>(521,578)</td>
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<td>Net Fixed Assets</td>
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<td>Total Assets</td>
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<td>$ 2,388,979</td>
<td>$ 7,475,679</td>
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### LIABILITIES

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<th>$ 152,940</th>
<th>$ 64,069</th>
<th>$ 217,009</th>
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<tbody>
<tr>
<td>Accounts Payable &amp; Accrued Liabilities</td>
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<td>Accrued Employee Entitlements</td>
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<td>Unearned Miscellaneous Revenue</td>
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<td>Law Foundation Grant 2008</td>
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<td>Deferred Membership Revenue</td>
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<td>Total Liabilities</td>
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### RESERVES

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<td>Strategic Initiative Reserve</td>
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<td>Professional Responsibility Reserve</td>
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<td>Minimum Net Asset Reserve</td>
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<td>Fund Capital Assets</td>
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<td>Lawyers’ Fund for Client Compensation</td>
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<td>Net Gain for Year</td>
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<td>67,399</td>
<td>(45,107)</td>
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<td>Total Reserves</td>
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<td>$ 2,324,910</td>
<td>$ 4,784,976</td>
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<tr>
<td>Total Liabilities and Reserves</td>
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<td>$ 2,388,979</td>
<td>$ 7,475,679</td>
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## NOVA SCOTIA BARRISTERS’ SOCIETY - GENERAL FUND

### BUDGET COMPARISON STATEMENT

**FOR THE PERIOD ENDING 31/07/2013**

<table>
<thead>
<tr>
<th></th>
<th>YTD Budget</th>
<th>YTD Actual</th>
<th>YTD Actual vs OV/UN</th>
<th>YTD Actual vs Last Year</th>
<th>Last YTD Actual</th>
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<tr>
<td>Practising Fees</td>
<td>848,138</td>
<td>856,885</td>
<td>8,747</td>
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<td>59,400</td>
<td>56,640</td>
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<td>Non-Practising Fees</td>
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<td>Retired Members</td>
<td>1,175</td>
<td>1,268</td>
<td>93</td>
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<tr>
<td>Reinstatement</td>
<td>3,285</td>
<td>763</td>
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<td>Incorporation</td>
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<td>1,500</td>
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<td>LLP Registration</td>
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<td>-</td>
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<td>-</td>
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<td>Surcharges</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td><strong>Fees Revenue</strong></td>
<td>958,635</td>
<td>960,764</td>
<td>2,129</td>
<td>0.2%</td>
<td>1,113,470</td>
</tr>
</tbody>
</table>

### Education and Credentialing Development

**E&C Revenue - See Detail Below**

- 40,100
- 37,455
- (2,645)
- -6.6%
- 322,800
- 322,800
- -
- 0.0%
- 48,160
- (10,708)

### Library

**Law Stamps**

- 21,000
- 31,575
- 10,575
- 50.4%
- 126,042
- 126,042
- -
- 0.0%
- 20,550
- 11,025

**Law Foundation Grant Revenue**

- -
- 1,238
- 1,238
- 0.0%
- -
- 1,240
- 1,240
- -
- 0.0%
- -
- 1,238

**Library-Photocopier/Fax**

- 1,080
- 564
- (516)
- -47.8%
- 3,891
- 3,891
- -
- 0.0%
- 629
- (65)

**Library-Sundry**

- 210
- 76
- (134)
- -63.8%
- 834
- 834
- -
- 0.0%
- 173
- (97)

**Library Revenue**

- 22,290
- 33,453
- 11,163
- 50.1%
- 130,767
- 132,007
- 1,240
- 0.9%
- 21,352
- 12,101

### Events

**Events Revenue - See Detail Below**

- -
- -
- -
- -
- 0.0%
- -
- -
- -
- -
- -

### Communication

**Society Record Advertising**

- -
- -
- -
- -
- 0.0%
- -
- -
- -
- -
- -

**Communications Revenue**

- -
- -
- -
- -
- 0.0%
- -
- -
- -
- -
- -

### Other Revenue

**Interest Income**

- 16,344
- 12,237
- (4,107)
- -25.1%
- 65,334
- 65,334
- -
- 0.0%
- 17,066
- (4,830)

**Sundry Revenue**

- 2,130
- 2,892
- 762
- 35.6%
- 6,830
- 6,830
- -
- 0.0%
- 2,825
- 67

**Management Fee - LIANS**

- 12,500
- 12,500
- 0
- 0.0%
- 50,000
- 50,000
- -
- 0.0%
- 12,500
- -

**Other Revenue**

- 30,974
- 27,629
- (3,345)
- -10.8%
- 122,164
- 122,164
- -
- 0.0%
- -
- (4,763)

**TOTAL REVENUE**

- 1,051,999
- 1,059,301
- 7,302
- 0.7%
- 4,308,253
- 4,359,493
- 1,240
- 0.0%
- 1,215,374
- (156,073)
## Professional Responsibility

<table>
<thead>
<tr>
<th>Budget</th>
<th>Actual</th>
<th>YTD Actual vs Budget</th>
<th>%</th>
<th>Budget</th>
<th>Forecast</th>
<th>Forecast vs Budget</th>
<th>%</th>
<th>YTD</th>
<th>YTD Actual vs Last Year</th>
<th>%</th>
<th>YTD</th>
<th>YTD Actual vs Last YTD Actual</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>Salaries &amp; Benefits</td>
<td>141,423</td>
<td>123,903</td>
<td>17,520</td>
<td>12.4%</td>
<td>559,265</td>
<td>559,265</td>
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<td>Staff Professional Development</td>
<td>-</td>
<td>2,404</td>
<td>(2,404)</td>
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<td>9,000</td>
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<td>5,370</td>
<td>2,966</td>
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<td>Professional/Membership Fees</td>
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<td>Staff Travel</td>
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<td>(3,399)</td>
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<td>Committee Expenses</td>
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<td>1,690</td>
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<td>5,800</td>
<td>-</td>
<td>0.0%</td>
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<td>2,651</td>
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<td>Courier &amp; Postage</td>
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<tr>
<td>Telephone &amp; Internet</td>
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<td>Equipment Rental &amp; Maintenance</td>
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<td>Subscriptions &amp; Books</td>
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<td>69,736</td>
<td>(5,116)</td>
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<td>674,061</td>
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<td>171,232</td>
<td>11,533</td>
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### Committee Expenses

<table>
<thead>
<tr>
<th>Budget</th>
<th>Actual</th>
<th>YTD Actual vs Budget</th>
<th>%</th>
<th>Budget</th>
<th>Forecast</th>
<th>Forecast vs Budget</th>
<th>%</th>
<th>YTD</th>
<th>YTD Actual vs Last Year</th>
<th>%</th>
<th>YTD</th>
<th>YTD Actual vs Last YTD Actual</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>3,250</td>
<td>4,151</td>
<td>(901)</td>
<td>-27.7%</td>
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<td>-</td>
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<td>4,528</td>
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<td>-</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
<td>Courier &amp; Postage</td>
<td>200</td>
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<td>200</td>
<td>100.0%</td>
<td>200</td>
<td>200</td>
<td>-</td>
<td>0.0%</td>
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<tr>
<td>Sundry Expenses</td>
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<td>(130)</td>
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<td>100</td>
<td>-</td>
<td>0.0%</td>
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<td>-</td>
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<tr>
<td>Lawyers’ Services/Legal Fees</td>
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<td>24,000</td>
<td>-</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td></td>
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<tr>
<td>Receiver and Custodian Fees</td>
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<td>-</td>
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<td>(2,414)</td>
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<td>2,400</td>
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<td>0.0%</td>
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<td>27,625</td>
<td>(14,974)</td>
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</table>

### Professional Services

<table>
<thead>
<tr>
<th>Budget</th>
<th>Actual</th>
<th>YTD Actual vs Budget</th>
<th>%</th>
<th>Budget</th>
<th>Forecast</th>
<th>Forecast vs Budget</th>
<th>%</th>
<th>YTD</th>
<th>YTD Actual vs Last Year</th>
<th>%</th>
<th>YTD</th>
<th>YTD Actual vs Last YTD Actual</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,550</td>
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<td>2,550</td>
<td>1,00</td>
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<td>10,000</td>
<td>-</td>
<td>-</td>
<td>3,008</td>
<td>3,008</td>
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<td>Volunteer Travel</td>
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<td>273</td>
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<td>2,000</td>
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<td>-</td>
<td>-</td>
<td>-</td>
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<td>Fitness to Practice Expenses</td>
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<td>0.0%</td>
<td>3,008</td>
<td>2,780</td>
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</table>

### Committee Expenses

<table>
<thead>
<tr>
<th>Budget</th>
<th>Actual</th>
<th>YTD Actual vs Budget</th>
<th>%</th>
<th>Budget</th>
<th>Forecast</th>
<th>Forecast vs Budget</th>
<th>%</th>
<th>YTD</th>
<th>YTD Actual vs Last Year</th>
<th>%</th>
<th>YTD</th>
<th>YTD Actual vs Last YTD Actual</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,600</td>
<td>2,814</td>
<td>(1,214)</td>
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<td>-</td>
<td>0.0%</td>
<td>2,445</td>
<td>(369)</td>
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<td>1,600</td>
<td>-</td>
<td>0.0%</td>
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<td></td>
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<tr>
<td>Courier &amp; Postage</td>
<td>50</td>
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<td>50</td>
<td>100.0%</td>
<td>200</td>
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<td>0.0%</td>
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<td>-</td>
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<td>1,000</td>
<td>-</td>
<td>0.0%</td>
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<tr>
<td>Lawyers’ Services/Legal Fees</td>
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<td>-</td>
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<td>0.0%</td>
<td>-</td>
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</tr>
<tr>
<td>Prosecution &amp; Hearing Expenses</td>
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<td>-46.4%</td>
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<td>20,820</td>
<td>(42,759)</td>
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<td>-0.5%</td>
<td>222,684</td>
<td>(43,420)</td>
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</tr>
</tbody>
</table>
## BUDGET COMPARISON STATEMENT
### FOR THE PERIOD ENDING 31/07/2013

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<thead>
<tr>
<th>YTD Budget</th>
<th>YTD</th>
<th>YTD Actual vs</th>
<th>OV/UN %</th>
<th>Full Year Budget</th>
<th>Forecast</th>
<th>Actual vs</th>
<th>OV/UN %</th>
<th>Last Year</th>
<th>Last YTD Actual vs</th>
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<td><strong>Education and Credentials</strong></td>
<td></td>
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</tr>
<tr>
<td>Admission Fees</td>
<td>12,250</td>
<td>8,405</td>
<td>(3,845)</td>
<td>-31.4%</td>
<td>15,400</td>
<td>15,400</td>
<td>-</td>
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<td>-</td>
<td>-</td>
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<td>29,055</td>
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<td>1,200</td>
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<td>-</td>
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<td>4,800</td>
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<td>18,500</td>
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<td>-</td>
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<td>18,500</td>
<td>-</td>
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<td>-</td>
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<td>-</td>
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<td>(3,260)</td>
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<td>14,000</td>
<td>-</td>
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<td>-</td>
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<td>-</td>
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<td>Equipment Rental &amp; Maintenance</td>
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<td>130,221</td>
<td>(13,404)</td>
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<td>-</td>
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<td>250</td>
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<td>1,000</td>
<td>1,000</td>
<td>-</td>
<td>0.0%</td>
<td>-</td>
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<td>YTD Actual vs OV/UN %</td>
<td>Full Year Budget</td>
<td>Full Year Actual</td>
<td>Full Year %</td>
<td>Forecast vs Full Year</td>
<td>OV/UN</td>
<td>YTD Budget</td>
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<td><strong>General Operating Expenses</strong></td>
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<td>-</td>
<td>-</td>
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<td>(11,216)</td>
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<td>301,721</td>
<td>312,937</td>
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<td>10.6%</td>
<td>301,721</td>
<td>312,937</td>
<td>(11,216)</td>
<td>-3.7%</td>
<td>98,646</td>
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<td>YTD Actual</td>
<td>YTD Actual vs Budget</td>
<td>%</td>
<td>Full Year Budget</td>
<td>Full Year Forecast</td>
<td>Full Year Actual</td>
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<td>-</td>
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## Nova Scotia Barristers' Society - General Fund

### Budget Comparison Statement

For the Period Ending 31/07/2013

<table>
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<tr>
<th></th>
<th>YTD Budget</th>
<th>YTD Actual</th>
<th>YTD Actual vs Budget</th>
<th>Full Year Budget</th>
<th>Full Year Actual</th>
<th>Full Year Actual vs Budget</th>
<th>Forecast Budget</th>
<th>Forecast Actual</th>
<th>Forecast Actual vs Budget</th>
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<td>0.0%</td>
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<td>(380)</td>
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<td>2,300</td>
<td>-</td>
<td>18,101</td>
<td>(16,946)</td>
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<td>(824)</td>
<td>39,318</td>
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<tr>
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<td>81,799</td>
<td>-</td>
<td>18,101</td>
<td>(16,946)</td>
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<tr>
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<td>2,500</td>
<td>-</td>
<td>7,000</td>
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<td>15,050</td>
<td>-</td>
<td>12,500</td>
<td>(10,834)</td>
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<td>37,601</td>
<td>(28,180)</td>
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# Nova Scotia Barristers’ Society - General Fund

**Budget Comparison Statement**

**For the Period Ending 31/07/2013**

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<thead>
<tr>
<th>Regulatory Programs</th>
<th>Budget</th>
<th>Actual</th>
<th>YTD Budget</th>
<th>%</th>
<th>YTD Actual vs OV/UN</th>
<th>Full Year Budget</th>
<th>Forecast</th>
<th>Actual</th>
<th>%</th>
<th>Last Year</th>
<th>Last YTD Actual vs Budget</th>
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<td>-</td>
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<td>(2,515)</td>
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<td>Lawyer's Services/Legal Fees</td>
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<td>-</td>
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<td>-</td>
<td>0.0%</td>
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<td>(6,094)</td>
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<tr>
<td>Unauthorized Practise Investigations</td>
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<td>-</td>
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<table>
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<tbody>
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<table>
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<td>Federation of Law Societies</td>
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</thead>
<tbody>
<tr>
<td>Transfer from Standards Development Reserve</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Contribution to Reserves</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

**Total Expenses**

<table>
<thead>
<tr>
<th>Budget</th>
<th>YTD</th>
<th>%</th>
<th>Actual</th>
<th>YTD Actual vs OV/UN</th>
<th>Full Year Budget</th>
<th>Forecast</th>
<th>Actual</th>
<th>%</th>
<th>Last Year</th>
<th>Last YTD Actual vs Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,149,883</td>
<td>1,051,520</td>
<td>98,363</td>
<td>8.6%</td>
<td>4,447,726</td>
<td>4,478,286</td>
<td>(30,560)</td>
<td>-0.7%</td>
<td>1,030,525</td>
<td>(20,995)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contribution to General Fund Surplus</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Discipline Repayment</td>
<td>(97,884)</td>
<td>7,780</td>
<td>105,664</td>
<td>-107.9%</td>
<td></td>
<td>(139,473)</td>
<td>(168,793)</td>
<td>(29,320)</td>
<td>21.0%</td>
<td>184,849</td>
<td>177,068</td>
</tr>
<tr>
<td>Unrealized Gain/(Loss) on Investments</td>
<td>-</td>
<td>-</td>
<td>(13,174)</td>
<td>0.0%</td>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>3,628</td>
<td>(3,628)</td>
</tr>
<tr>
<td>Transfer to Lawyers’ Fund for Client Compensation</td>
<td>(114,050)</td>
<td>(107,113)</td>
<td>6,938</td>
<td>-6.1%</td>
<td>(179,550)</td>
<td>(179,550)</td>
<td>-</td>
<td>0.0%</td>
<td>(114,570)</td>
<td>(7,458)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Net Contribution to Surplus</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer from Standards Development Reserve</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Net Contribution to Reserves</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<p>| (112,506) |</p>
<table>
<thead>
<tr>
<th></th>
<th>YTD Budget</th>
<th>Actual</th>
<th>YTD Actual vs Budget</th>
<th>%</th>
<th>Full Year Budget</th>
<th>Forecast</th>
<th>Actual</th>
<th>%</th>
<th>YTD Last Year</th>
<th>YTD Last YTD Actual vs %</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest Income</td>
<td>-</td>
<td>15,256</td>
<td>15,256</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>15,207</td>
<td>49</td>
</tr>
<tr>
<td>Lawyers' Fund for Client Compensation Revenue</td>
<td>-</td>
<td>15,256</td>
<td>15,256</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>15,207</td>
<td>49</td>
</tr>
<tr>
<td>Loss Gain on Investment Sales</td>
<td>-</td>
<td>(16,695)</td>
<td>16,695</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>(976)</td>
<td>15,720</td>
</tr>
<tr>
<td>Investment Management Fees</td>
<td>-</td>
<td>3,804</td>
<td>(3,804)</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>2,843</td>
<td>(960)</td>
</tr>
<tr>
<td>Stationery &amp; Supplies</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>199</td>
<td>199</td>
</tr>
<tr>
<td>Claims Paid</td>
<td>-</td>
<td>14,974</td>
<td>(14,974)</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>-</td>
<td>(14,974)</td>
</tr>
<tr>
<td>CLIA Premium</td>
<td>-</td>
<td>34,444</td>
<td>(34,444)</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>37,696</td>
<td>3,252</td>
</tr>
<tr>
<td><strong>Lawyers' Fund for Client Compensation Expenses</strong></td>
<td>-</td>
<td>30,526</td>
<td>(36,526)</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>39,762</td>
<td>3,236</td>
</tr>
<tr>
<td><strong>Contribution to Lawyers' Fund for Client Compensation Surplus</strong></td>
<td>-</td>
<td>(21,269.67)</td>
<td>(21,269.67)</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>(24,555.21)</td>
<td>3,286</td>
</tr>
<tr>
<td>Unrealized Gain(Loss) on Investments General</td>
<td>-</td>
<td>(18,443.60)</td>
<td>(18,443.60)</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>(15,502.35)</td>
<td>2,941</td>
</tr>
<tr>
<td>Transfer from General Fund</td>
<td>-</td>
<td>107,112.50</td>
<td>(107,112.50)</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>114,570.00</td>
<td>7,458</td>
</tr>
<tr>
<td><strong>Net Contribution To Surplus</strong></td>
<td>-</td>
<td>67,399.23</td>
<td>67,399.23</td>
<td>0.0%</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.0%</td>
<td>74,512.44</td>
<td>7,113</td>
</tr>
</tbody>
</table>
## CONSOLIDATED STATEMENT OF REVENUE AND EXPENDITURE

**FOR THE PERIOD ENDING 31/07/2013**

### Unrestricted

<table>
<thead>
<tr>
<th>Description</th>
<th>General Fund</th>
<th>Lawyers’ Fund for Client Compensation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fees</td>
<td>$ 960,764</td>
<td>-</td>
<td>$ 960,764</td>
</tr>
<tr>
<td>Admissions</td>
<td>29,055</td>
<td>29,055</td>
<td></td>
</tr>
<tr>
<td>Continuing Professional Development</td>
<td>8,400</td>
<td>8,400</td>
<td></td>
</tr>
<tr>
<td>Library</td>
<td>33,453</td>
<td>33,453</td>
<td></td>
</tr>
<tr>
<td>Events</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Communications</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Interest Income</td>
<td>12,237</td>
<td>15,256</td>
<td>27,493</td>
</tr>
<tr>
<td>TLS Secondment Revenue</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>15,392</td>
<td>-</td>
<td>15,392</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,059,301</td>
<td>15,256</td>
<td>1,074,557</td>
</tr>
</tbody>
</table>

### Expenses

<table>
<thead>
<tr>
<th>Description</th>
<th>General Fund</th>
<th>Lawyers’ Fund for Client Compensation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Library</td>
<td>127,520</td>
<td></td>
<td>127,520</td>
</tr>
<tr>
<td>General Operating</td>
<td>66,737</td>
<td>36,526</td>
<td>103,263</td>
</tr>
<tr>
<td>Administrative Salary Costs</td>
<td>209,665</td>
<td>209,665</td>
<td></td>
</tr>
<tr>
<td>Admissions</td>
<td>25,705</td>
<td></td>
<td>25,705</td>
</tr>
<tr>
<td>Continuing Professional Development</td>
<td>5,260</td>
<td></td>
<td>5,260</td>
</tr>
<tr>
<td>General A &amp; PD Expenses</td>
<td>120,778</td>
<td></td>
<td>120,778</td>
</tr>
<tr>
<td>Professional Responsibility</td>
<td>266,104</td>
<td></td>
<td>266,104</td>
</tr>
<tr>
<td>Events</td>
<td>18,422</td>
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<tr>
<td>Communications</td>
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<td>Governance</td>
<td>65,781</td>
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<td>65,781</td>
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<tr>
<td>Regulatory Programs</td>
<td>27,960</td>
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<td>27,960</td>
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<tr>
<td>Other Programs</td>
<td>40,846</td>
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<td>40,846</td>
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<tr>
<td>TLS Secondment Expenses</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>34,647</td>
<td></td>
<td>34,647</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,051,520</td>
<td>36,526</td>
<td>1,088,046</td>
</tr>
</tbody>
</table>

### Contribution to Surplus

- 7,780
- (21,270)
- (13,489)

### Unrealized Gain (Loss) on Investments
- (13,174)
- (18,444)
- (31,617)

### Allocation to (from) Lawyers’ Fund for Client Compensation
- (107,113)
- 107,113
- 

### Net Contribution to Surplus

- $ (112,506)
- $ 67,399
- $ (45,107)

### Transfer from Standards Development Reserve

- 

### Net Contribution to Reserves

- $ (112,506)
MEMORANDUM TO COUNCIL

From: Victoria Rees, Director of Professional Responsibility

Date: September 17, 2013

Subject: Quarterly Report

<table>
<thead>
<tr>
<th>Date –</th>
<th>Executive Committee</th>
<th>Approved for submission to Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date – 2013-09-17</td>
<td>Council 2013-09-27</td>
<td></td>
</tr>
</tbody>
</table>

Recommendation/Motion:

This is the regular quarterly report from the Professional Responsibility Department to Council, for your information only. No action or direction is required.

Executive Summary:

The volume of complaint calls and complaints has increased this year, but the number of complex cases and matters referred to hearing has decreased. Timeliness standards and benchmarks are being met or surpassed for the time being.

Analysis:

Complaints

Refer to the statistical chart attached. The volume of complaints this year as compared to the same period last year has increased significantly (54%). The number of complaint intake calls has increased by 11%. Interestingly, a small percentage of those who speak with a Complaints Officer end up filing written complaints, while a large majority of written complaints are filed by those who have had no interaction with our intake system. This demonstrates that our intake system is effective in filtering out those we cannot assist, and assisting those we can informally, but we need to encourage more people to contact our intake line before filing a complaint.

The complaints process at all levels is meeting and, in most cases, performing better than the timeliness benchmarks set by the National Discipline Standards; e.g. complaint calls are returned within an average of 1.9 days. Refer to the National Discipline Standards status report for NSBS attached.
The volume of complaints dismissed and resolved remains steady at an average of 85%, although more effort continues to be made to attempt to informally resolve matters rather than dismissing where appropriate, which leads to greater complainant satisfaction. The number of complaints requiring investigation has increased, putting a strain on the department’s resources, and impacting timeliness for completion of investigations. While we are still operating within the national standards, cases are taking longer to complete and refer to the Complaints Investigation Committee.

One trend we are experiencing is an increase in complaints from members of the public with mental health concerns, in situations where there needs are not apparently being met through the mental health or justice systems and they feel they have nowhere else to turn. We are usually unable to provide assistance.

The number of complex files and matters likely to be referred to hearing has decreased in the past year. This is a result, in large part, of a more creative approach being taken by the CIC to address disciplinary matters in a manner which is more likely to affect changes in lawyer behavior and attitude. For example, the CIC has had to deal recently with three serious ‘repeat offenders’ – members with lengthy complaints histories (two in excess of 20 complaints each) who continue to have complaints filed against them, and fail to demonstrate a willingness or ability to practice ethically. In these cases, the CIC has required the members to appear before them under either s. 36(2) or s. 37(1), to explore with the members in person what needs to change and how those changes will take place. The CIC feels strongly that engaging with members in this way is more effective than issuing more counsels or cautions, or referrals to hearing. The CIC has devoted considerable time to researching and considering best practices and tools for dealing with ‘repeat offenders’ and members who may ultimately be ‘ungovernable’, and the differences between the two, and has referred this as a policy matter to the Professional Responsibility Policies and Procedures Committee.

Balanced against these valuable and productive meetings, and a reduction in the number and cost of matters referred to hearing, is the volunteer and staff time required to prepare for and conduct them, and to ‘babysit’ members thereafter while they meet the various conditions set for them over a period of months or years.

Costs for investigation continue to be reduced by in-house staff carrying out nearly all of the investigative work, although this has also resulted in some delays in completion of investigations. A decision was made by the CIC and Council last Spring to increase the responsibility of PR staff for investigations and the provision of legal opinions in relation to investigations, and to focus more PR volunteer time on discussion and debate of key member conduct concerns. This new process has been rolling out as time and training allows, with success.

Ethics Inquiries and Education
The number of calls from members with ethics inquiries has significantly increased as well. We believe this is partly a result of the new Code, our education programs, and a greater awareness by members of their ethical obligations and the benefits of consulting when faced with ethical challenges. Since May 2013, Elaine Cumming, PR Counsel, and/or I have conducted the following ethics education programs:

- Two 1-hour programs at the June 15, 2013 Annual Meeting
- Professional development training for the Complaints Investigation Committee July 18, 2013
- One hour ethics program held jointly with a CBA section
- A 1½ hour ethics program at the September 13, 3013 Public Prosecution Service Fall Conference
- Bar Admission Course ethics training (assisted by CIC Chair, Bruce Clarke QC)

Compensation Fund Claims
The Compensation Fund Committee has held two meetings thus far since May, and has a few open claims under investigation relating to the former practice of Peter van Feggelen.
Fitness to Practice Program
There are currently two open matters before the Fitness to Practice Committee.

Exhibits/Appendices:

Statistical Report comparing February 1 – August 31, 2012 and 2013
National Discipline Standards Status Report chart
Professional Responsibility Statistical Report

<table>
<thead>
<tr>
<th></th>
<th>February 1 – August 31, 2013</th>
<th>February 1 – August 31, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Files Opened During Reporting Period</td>
<td>114</td>
<td>74</td>
</tr>
<tr>
<td>Files Closed During Reporting Period</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Files Opened prior to Report Start Date and Still Open</td>
<td>88</td>
<td>70</td>
</tr>
<tr>
<td>Files Closed During Report Period that were Opened prior to Report Start Date</td>
<td>25</td>
<td>63</td>
</tr>
<tr>
<td>Files opened during Reporting Period and Still Open</td>
<td>51</td>
<td>67</td>
</tr>
<tr>
<td>Files Still Open</td>
<td>104</td>
<td>77</td>
</tr>
<tr>
<td>Total Intake Calls During Reporting Period</td>
<td>269</td>
<td>243</td>
</tr>
</tbody>
</table>

Review Sub-Committee

<table>
<thead>
<tr>
<th></th>
<th>February 1 to August 31, 2013</th>
<th>February 1 to August 31, 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Review Files Opened during the current reporting period</td>
<td>16</td>
<td>12</td>
</tr>
<tr>
<td>Number of Review Files Closed</td>
<td>11</td>
<td>25</td>
</tr>
<tr>
<td>Number of Dismissals Referred for Further Investigation</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Number of Dismissals Upheld</td>
<td>11</td>
<td>25</td>
</tr>
<tr>
<td>Dismissed Outright</td>
<td>5</td>
<td>17</td>
</tr>
<tr>
<td>Dismissed after One Response</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Dismissed After two or more Responses</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>STANDARD</td>
<td>CURRENT STATUS</td>
<td>ISSUES WITH STANDARD?</td>
</tr>
<tr>
<td>----------</td>
<td>----------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>1. Telephone inquiries: 75% of telephone inquiries are acknowledged within one business day and 100% within 2 business days.</td>
<td>MEET</td>
<td>None. We exceed this standard.</td>
</tr>
<tr>
<td>2. Written complaints: 100% of written complaints are acknowledged in writing within three business days.</td>
<td>MEET</td>
<td>None. We have adopted this as our standard.</td>
</tr>
<tr>
<td>3. Timeline to close or refer complaint: 90% of all complaints are closed or referred for a disciplinary or remedial response within 12 months</td>
<td>MEET</td>
<td>None.</td>
</tr>
<tr>
<td>4. Contact with complainant and lawyer: for every open complaint, there is contact with the complainant and member at least once every 90 days once the member has been notified to report on progress.</td>
<td>MEET</td>
<td>None. Our standard is contact within 30 days. We believe this should be the standard.</td>
</tr>
<tr>
<td>5. Each citation or notice of hearing is issued and served upon the lawyer within 90 days of authorization.</td>
<td>MEET. 100% within average of 61.6 days</td>
<td>None</td>
</tr>
<tr>
<td>6. 75% of all hearings commence within 6 months of service of the citation.</td>
<td>MEET. 80% within average of 5.1 months.</td>
<td>None. New case management regulations approved 2013-01-25</td>
</tr>
<tr>
<td>7. 90% of all hearings commence within 12 months of service of the citation.</td>
<td>MEET. 100% within average of 10.2 months</td>
<td>None</td>
</tr>
<tr>
<td>STANDARD</td>
<td>CURRENT STATUS</td>
<td>ISSUES WITH STANDARD?</td>
</tr>
<tr>
<td>----------</td>
<td>----------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>8. 90% of all hearing decisions are rendered in within 60 days of the last date the panel hears submissions.</td>
<td>MEET. 100% within 60 days as required by regulations</td>
<td>None. Required under reg. 9.11.2</td>
</tr>
<tr>
<td>9. Where any of standards 3 through 8 is not being met, all parties are advised of this, and of when it is estimated the citation, notice of hearing, hearing or decision will be complete and, except where privacy or other similar reasons make it inappropriate, all parties are given the reasons why the standard is not being met.</td>
<td>N/A. Standards 3 -8 are met.</td>
<td>YES, hypothetically. We question the appropriateness, and ability to be accurate. For example, in the past, we would have had to tell a complainant that the delay is as a result of a failure to cooperate by the member and/or his or her counsel. Delays are often outside our direct control, and I would not want to provide this kind of information to a complainant.</td>
</tr>
<tr>
<td>10. There is public participation at every stage of discipline, i.e. on all hearing panels of three or more, at least one public representative; on the charging committee, at least one public representative.</td>
<td>MEET. There is at least one public representative on every disciplinary panel, two public representatives on our charging body, one public rep chairing our review committee</td>
<td>None</td>
</tr>
<tr>
<td>11. There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.</td>
<td>MEET.</td>
<td>None. 2013-01-25 approval of a new Review Committee structure to ensure greater level of independence; i.e. public rep to Chair and four other lawyer members will not currently serve on any professional responsibility-related committee</td>
</tr>
<tr>
<td>12. Hearings are open to the public.</td>
<td>MEET.</td>
<td>None</td>
</tr>
<tr>
<td>13. Reasons are provided for any decision to</td>
<td>MEET. Required under S. 44(1) of Act</td>
<td>None</td>
</tr>
<tr>
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<td>close hearings.</td>
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<td>14. Notices of hearings are published once the citation has been served.</td>
<td><strong>MEET.</strong> Our process is to publish our citations 15 days after the respondent has been served, allowing time for member to request variation of content.</td>
<td>None</td>
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<td>15. Notices of hearing dates are published at least 60 days prior to the hearing, but if the citation is served less than 60 days before a hearing commences, publication takes place as soon thereafter as practical</td>
<td><strong>MEET. 2012-07</strong> We now have Notices of Referral to Hearing, followed by Notices of Hearing once dates are confirmed, both of which include member’s name and summary of charges.</td>
<td>None</td>
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<td>16. There is an ability to share information about a lawyer who is a member of another law society with that other law society when an investigation is underway in a manner that protects solicitor-client privilege, or there is an obligation on the lawyer to disclose to all law societies of which he/she is a member that there is an investigation underway.</td>
<td><strong>MEET.</strong> There is an ability to share information about a lawyer who is a member of another law society when an investigation is underway in a manner that protects solicitor-client privilege</td>
<td>None. Provided for in our Act.</td>
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<td>17. There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.</td>
<td><strong>MEET.</strong> Specific rule and policy in place</td>
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<td>18. A complaints help form is available to complainants.</td>
<td><strong>MEET.</strong> We also have a complaint intake line which provides information at start of recording to help clarify process and manage expectations</td>
<td>None</td>
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<td>19. Complainants may file their complaints electronically.</td>
<td><strong>DO NOT MEET.</strong> We expect to have the technology in place to permit this later this year.</td>
<td>None</td>
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<td>20. There is a lawyer directory available with status information, including discipline history and information on how to access more information about that history.</td>
<td><strong>MEET IN PART.</strong> There is an on-line membership directory, but it is not linked to member discipline records.</td>
<td><strong>MAYBE.</strong> This will require a policy discussion about facilitating access to such information. We are presently considering pardons vs. limited publication, and that will impact a decision to allow easy access.</td>
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<td>21. The recidivism rate is 25% or less.</td>
<td><strong>MEET?</strong> Our rate of recidivism is 27.7% over past five years.</td>
<td><strong>YES.</strong> If this is to be a standard, there needs to be greater clarity around how this is measured. Further, we are not convinced that the rate of recidivism is an accurate measure of success. We have begun process to examine whether what we do actually MAKES A DIFFERENCE in terms of public protection and changing members’ attitudes and practice. To us, this is a more important measure of the effectiveness of our complaints system (see note 1).</td>
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<td>22. There is ongoing mandatory training for all adjudicators, including training on decision writing, with refresher training no less often that once a year and the curriculum for mandatory training will comply with the national curriculum if and when it is available.</td>
<td><strong>MEET</strong></td>
<td>None. But we strongly encourage development of a national curriculum and resources.</td>
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1. **Are we missing something?** As noted under #21, these standards greatly help us measure how we are doing our work and achieve important benchmarks for timeliness, transparency and communications (areas which have given rise to crises in other countries’ regulatory processes when done badly). But as a next phase, we should consider how what we do actually protects the public and makes a difference. While we can say that hearings are open, and are hopefully held in a timely manner with appropriate notice to the public, how do we measure whether we have achieved general and specific deterrence? Has the member’s attitude changed, or have we considered all possible options short of disbarment? I can see that to some extent, measuring recidivism begins to drill down into this, but I don’t think it is enough. We recently had a study completed which identifies means by which we might measure this, but it would be quite resource-intensive.

2. **How hard has it been to track our ability to meet these standards?** Not at all. Our data and information management systems required only a minor amount of tweaking to allow us to have system-generated reports to allow us to track this information.

| STANDARD | CURRENT STATUS | ISSUES WITH STANDARD?
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<td>23. There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.</td>
<td>MEET</td>
<td>None</td>
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MEMORANDUM TO COUNCIL

From: Cheryl Canning
Date: September 27, 2013
Subject: Update from LIANS Board re CLIA

This is an update to Council on the issues that the LIANS Board is addressing with respect to the national pooling arrangement in which we currently participate, CLIA.

At the January 25, 2013 meeting of Council, John Traves QC (the Chair of the LIANS Board) provided a brief history of the relationship between LIANS and CLIA. It was noted at that time, that many subscribers were seeking changes to the governance structure and risk (and expense) allocation of CLIA. Council was informed that there was a risk that ALIA (Alberta Lawyers Insurance Association) may opt out of CLIA which would adversely impact the costs of the remaining subscribers, including LIANS. It was noted at that time that if ALIA withdraws, LIANS would need to consider its alternatives.

By way of update, although governance work was undertaken and changes were agreed by all subscribers, in August, ALIA gave notice that it intends to withdraw from CLIA.

Advice from the CLIA General Manager’s office is that CLIA is viable without ALIA but that there will be a cost implication for all remaining subscribers.

The LIANS Board has been fully briefed and staff is working with consultants and others to examine various options so that the LIANS Board will be in a position to make a decision whether or not it intends to stay in CLIA or withdraw.

Some advantages of staying in the smaller CLIA are to continue to take advantage of the ability to pool risk, albeit within a much smaller pool, and to enhance relationships with other subscribers. Some disadvantages of staying in CLIA are that it is likely to be more expensive, at least in the short term for our insured lawyers and making change in the CLIA environment is proving to be slow. In addition, without ALIA there is a lower ability of the organization to keep premiums stable.

The LIANS Board is also looking at other options, including the possibility of increasing its level of self-retention and buying an insurance product for the upper portion of the risk. In the short term, this appears to be more cost effective. However, it is subject to the vagaries of the market. The Board is examining options for assisting with the stability of premiums.

In the meantime, considerable work remains to be done with respect to the governance structure of “CLIA 2.0” and with managing the withdrawal of ALIA and the impact that will have on all remaining subscribers.