TRANSFORMING REGULATION

ANSWERING THE QUESTIONS THAT MATTER MOST

What proof do we have that we are protecting the public?

The answer to that seemingly simple question, asked several years ago by Executive Director Darrel Pink, will forever change legal regulation in this province. En route to articulating how the Nova Scotia Barristers’ Society protects the public and strengthens the profession, other questions arose. Foremost among them:

Is our current system the best model for regulating legal services in Nova Scotia?

The answer to both questions:

We can do better.

CREATING THE INFRASTRUCTURE FOR ETHICAL LEGAL PRACTICE

Over the past three years, the Society has explored how regulation can be improved, how legal services could be enriched, and how access to justice could be enhanced. This exploration is profoundly changing the way the Society operates, the way it interacts with lawyers and the way it engages the public. The new model of regulation we are now implementing has broken new ground in Canada and attracted interest from around the world.

It’s founded on two premises: We must be proactive and effective. Most lawyers today do not practise the way they did 20 years ago, even a decade ago. There has been a marked shift from private practice to other legal occupations, including working in government and serving as in-house counsel.

Our most recent statistics indicate that from 2006 to 2016, the number of lawyers identifying their employment as government or public sector has grown by 21 per cent, from 417 to 502 lawyers. The number of associates and sole practitioners has increased about 10 per cent over the same time period, while the number of partners has decreased by 10 per cent.

Also changing are lawyer demographics, particularly relating to age. In 2006, 24.5 per cent of the total practising membership had been called to the Bar more than 27 years prior. In 2016, that group comprised almost 30 per cent of practising lawyers – and 50 per cent of sole practitioners. In 2006, just under 50 per cent of practising lawyers had spent 17 or more years at the Bar while in 2016, nearly 53 per cent are in that group.

This new environment requires a new approach. As a regulator, we must be more responsive to a diverse and profoundly changing environment, encourage ethical legal practice, and foster innovation in legal services.

For the Society, the new way of doing business can be summed up in four words: risk-focused, proactive, principled and proportionate. As President R. Daren Baxter QC, TEP describes it, the Society is identifying practice issues before they become problems; reducing prescriptive regulation based on expectations that lawyers will exercise sound, professional judgment; and tailoring regulation to the different circumstances of the lawyer based on the level of risk to the public.

“The Society’s new approach is to encourage innovation and then get out of the way.”

- R. Daren Baxter QC, TEP, President
STANDARD OPERATING PROCEDURE

“Triple P” is more than a catchphrase. It’s a new way of doing business for the Society, its members and the public we serve to protect.

For example, the Professional Responsibility (PR) department, which manages many of the Society’s key public protection and regulatory risk-management processes and tools, has integrated Triple P in a myriad of ways. These include changing the conversation with complainants and lawyers at the earliest intake call stage. This has involved expanding our knowledge of resources to help educate both parties; encouraging informal dispute resolution at every appropriate stage; and developing a greater level of frankness and candour with complainants to help better manage their expectations of our process.

Next year we will be embarking on specific new approaches to the complaints intake process, including new language, improved phone and web-based communications about our process, the ability to file complaints electronically, and softening the adversarial approach inherent in the existing complaint systems.

The department is also sharing risk information with other departments. This involves considering the organization as an umbrella for confidential information, rather than just the PR department, and participating in biweekly multidepartment “Rounds” meetings to engage in more holistic and accurate risk-assessment and response. We really are all in this together.

In fact, Triple P is becoming operational in all that we do at the Society. Here are a couple of examples:

- An articled clerk is about to be called to the Bar when it’s discovered that a required course was not completed. Under the old rules, the clerk (whose parents have flown in for the occasion) would not be called to the Bar and entry into the profession would be delayed. Triple P asks if this is ultimately a reasonable and reasoned decision. Other options, such as requiring the course to be completed over the next 12 months, are available. Risk is minimal.

- A complaint is launched against a lawyer for what could potentially lead to a formal hearing. In investigating the complaint, it becomes clear that the issue is not the result of any deliberate intention but more from being overwhelmed and underprepared for the demands of running a practice. A meeting is set with the lawyer. Tools and resources are identified to help in moving forward. The complainant agrees.

This is evolution, not revolution.

- Darrel Pink, Executive Director

HELPING LAWYERS PLAN FOR THEIR FUTURE

Juggling a myriad of time-sensitive tasks is second nature to many lawyers. What can get lost trying to keep all those balls in the air is some down-to-earth thinking about what happens when you retire or move on to another position. For larger firms and lawyers not in private practice, there may be a human resources framework or policy in place to direct this thinking and move planning forward. For small firms and sole practitioners, however, succession planning often gets put on the shelf.

We’d like to help make succession planning more accessible. In 2015, we endorsed a Triple P approach of proactive supervision to ensure that more sole practitioners and small firm lawyers have effective succession plans in place. This year, we established a Succession Planning Task Force, chaired by Heidi Foshay Kimball QC, which will guide our ongoing efforts and activities.

The terms of reference for the new task force centre around advising Council and making recommendations on all issues relating to implementation of succession planning for lawyers, including how the Society can help minimize the risks associated with the end of lawyers’ careers.

The task force will also investigate how incentives might assist lawyers in the implementation of succession planning and identify useful resources. For example, with respect to file retention, the focus will be on developing best practices, which will require the development of checklists to provide convenient and practical support as lawyers begin to address their succession planning issues.

We know the time for lawyers to make their future is now.
improving the lawyer’s practice benefits everyone. If efforts to get practice issues resolved fail, further disciplinary action can be undertaken. *Risk is mitigated.*

**NEW SELF-ASSESSMENT PROCESS**

The Society is moving away from regulating individual lawyers to regulating legal service providers – law firms, legal departments and more. This year, the Legal Services Support Pilot Project tested and evaluated a proposed self-assessment process, tools and related resources.

Ten core elements comprise the new Management System for Ethical Legal Practice (MSELP).

Fifty law firms were asked to complete their self-assessment in relation to the MSELP, and clear trends emerged from their feedback. Most notably: Lawyers recognize and embrace the elements as the foundations of an ethical and competent practice. A pilot project is now in development for in-house and government lawyers.

The Society has requested amendments to the *Legal Profession Act* to facilitate self-assessment reporting, along with other changes that will enable regulation of firms and legal service providers rather than just individuals.

**A NEW TYPE OF LEGAL PROFESSIONAL**

Technology, demographics and marketplace demands are all central factors in the shifting sands that have defined – and redefined – the way lawyers work and the way the public interacts both with the profession and the justice system. The impact of these changes is apparent in our new approach to regulation. Our request for legislation anticipates a new type of legal professional, the licensed paralegal, who can deliver a limited scope of legal services.

This is not breaking new legal ground in Canada. The Law Society of Upper Canada, for instance, has regulated paralegals since 2007. However, escalating access to justice issues makes it imperative that professional, affordable legal services be made available to Nova Scotians.

Under the anticipated model for our province, licensed paralegals might be independent or work in firms. They will be able to deliver services directly to clients, within the limited scope of approved services. *Bottom line: legal services are more accessible and cost-effective.*

**HERE’S WHAT WE KNOW**

This year we began a new system for mandatory continuing professional development (MCPD) that requires lawyers to complete an annual, written plan and advise us they’ve done this. In keeping with our Triple P approach, staff have been out in the legal community offering sessions on how to complete a CPD plan and explaining the principles as well as the reasoning and the rules. In addition, we have created online resources to assist lawyers in creating plans for themselves. It’s not about micromanaging how lawyers keep current, it’s about ensuring they have the skills and knowledge they need, when they need it.

The main focus for credentialing this year has been on risk assessment and applying the Triple P principles to our decision-making. As a result of this, we have begun to change our approach to credentialing decisions. We start each analysis by looking at what risk may be involved to the public. We then consider what is the most proactive, principled and proportionate way to approach the decision. Examples include finding ways to permit people to return to practice without necessarily rewriting the Bar exam, permitting more flexible articling arrangements, abridging articles to avoid creating unnecessary burdens, and finding ways to test the skills of foreign transfers without insisting that they article or work under supervision. We are striving to avoid situations where people cannot work for a prolonged period of time if there is no risk to the public.
One of the three priorities in the Society’s 2016-2019 Strategic Framework is promoting equity, diversity and inclusion in the legal profession. This is an ongoing and essential objective, and we are looking inward and outward. In the last year, Society staff – along with members of Council and committees – attended a day-long session on cultural competence and workshops exploring worldview and unconscious bias. Internal guidelines for the use of gender-inclusive language are also being prepared, to be launched soon during Pride Week in July 2017.

PROGRESS ON PUBLIC ENGAGEMENT

The Society’s continuing shift to a regulatory model that is principled, proactive and proportionate has led the Equity & Access Office to redefine the role of community engagement in our programs and activities. By deepening relationships within the profession and the community, we have become better able to identify problems before they become crises and to spend time and financial resources on the most pressing areas of need.

In late 2015, we launched #TalkJustice. Over the past year, this innovative community-engagement approach was adopted for broader application by the Access to Justice Coordinating Committee, which also includes the Chief Justice, the Justice Minister, the Nova Scotia Legal Aid Commission, CBA-NS, the Schulich School of Law and a public representative.

The #TalkJustice project is currently asking Nova Scotians to help improve delivery of justice and legal services by sharing their stories and experiences via an online tool at talkjustice.ca. Working with partners in government requires us to generate more robust statistical data from our community engagement work. A unique questionnaire developed with SenseMaker® research software is helping us to gain greater insight into how people experience legal services. It’s able to gather and process large numbers of stories to reveal patterns, relationships and the statistical data that is often required to begin systems-level change.

Community workshops, roundtables and town halls are also a key aspect of the #TalkJustice approach. Over the past year, the Society has partnered with such groups as United Way Halifax and Bridgewater’s Be the Peace Institute to generate community discussions that are contributing to the #TalkJustice research.

This year we also delved more deeply into the land title issues that staff and members of the Racial Equity Committee heard about repeatedly in meetings with community members in North Preston, East Preston and Cherrybrook. The Society and a group of pro bono lawyers are key partners in the North Preston Land Recovery Initiative, which is working to resolve the historic legal injustice. The Society also participates in a stakeholders’
group that includes the Halifax Regional Municipality, African Nova Scotian Affairs and the Department of Natural Resources. The land title issue generated significant local and national media attention this year due in large part to _Untitled_, an online documentary series by radio, television and journalism students at the Nova Scotia Community College – a project that was initially inspired by a class visit from the #TalkJustice team.

Law societies in the Atlantic region are working collaboratively to address the Truth and Reconciliation Commission’s Call to Action #27, which calls upon law societies to ensure lawyers receive appropriate cultural competency training. This project involves the development of education and training for articled clerks and lawyers on cultural competency, residential schools, Indigenous law and the realities of racism and discrimination.

It’s about listening to what people have to say, then helping when and how we can – in a risk-focused, principled, proactive and proportionate way.

Engagement with the public, with the legal profession and internally within our own staff is a central part of the work we’re undertaking to reshape the regulatory landscape in Nova Scotia. It is not about change for the sake of change, and it is not about tinkering with an existing model. This is a fundamentally new way of looking at legal regulation, looking at how we deliver services and ultimately, proving to ourselves that we are protecting the public in the ways that matter most.

“We’re not there yet. There needs to be a mind shift.”
- Emma Halpern, Equity & Access Officer

#TalkJustice

Help improve how justice and legal services are delivered in Nova Scotia. The Society’s #TalkJustice initiative continues to gather public input, in partnership with the Courts of Nova Scotia, the Department of Justice and Nova Scotia Legal Aid.

Lawyers and clients have experiences to share – tell us your story using the online tool at talkjustice.ca, under “Share your story”. We want to know what’s working well and what could be better.
# 2016 – 2019 Strategic Framework

**Purpose**

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

<table>
<thead>
<tr>
<th>Strategic Directions</th>
<th>Excellence in Regulation and Governance</th>
<th>Administration of Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Priorities</strong></td>
<td>Transform regulation in the public interest</td>
<td>Enhance access to legal services and the justice system</td>
</tr>
<tr>
<td></td>
<td>Implement and adjust as necessary legal services regulation</td>
<td>Promote increased access to legal services through regulatory initiatives and monitor their impact</td>
</tr>
<tr>
<td></td>
<td>Implement the Regulatory Objectives</td>
<td>Promote substantive equality and freedom from discrimination in the delivery of legal services and the justice system</td>
</tr>
<tr>
<td></td>
<td>Implement a framework for enterprise risk management</td>
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</tr>
</tbody>
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**Strategic Initiatives**

- Evaluating outcomes across all areas of activity and consistently measuring performance
- Supporting national regulatory initiatives and adopting best practices
- Promoting and maintaining effective relationships through sincere, substantive and sustained engagement and adopting restorative approaches
- Focusing on the future and making sound, informed financial decisions

**Foundational Activity**

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<th>Values</th>
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<tr>
<td>Commitment to Excellence</td>
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The Society advances this Strategic Framework through the work of a motivated and professional staff and members of Council and committees. The Society follows an Annual Activity Plan, which establishes the specific outcomes, initiatives and timeline to achieve the Society’s strategic priorities and initiatives. The Society strives to work collaboratively and in partnership with justice system participants.
A lot has happened over this last Council year – much more than is possible to discuss in this short report. We began the year with the adoption of a new Strategic Framework for 2016-2019, which is a continuation of the Society’s work in two broad areas: transforming regulation and governance in the public interest; and enhancing access to legal services and the justice system for all Nova Scotians. We moved from talk to action. Our focus is on implementing changes in the way we regulate, with a view to easing the regulatory burden and encouraging innovation in the delivery of legal services.

Council has adopted a “Triple P” – proactive, principled and proportionate – approach to regulation. Using a risk-based philosophy, we seek to: (i) identify practice issues before they become problems (proactive); (ii) reduce prescriptive regulation based on expectations that lawyers will exercise good, professional judgment appropriate to the circumstances (principled); and (iii) tailor regulation to the different circumstances of lawyers based on the level of risk to the public (proportionate). This new approach now guides all aspects of the Society’s work and is responsive to a diverse and rapidly changing world, intended to enhance the quality of legal services and to facilitate innovation. It is our hope that getting out of the way will encourage innovation and enhance access to affordable legal services. I am confident that the next generation of lawyers will embrace innovation.

We believe that the public interest and the interest of lawyers are not mutually exclusive. Helping lawyers be their best is in the public interest. It is incumbent upon each of us to be a leader in enhancing access to legal services and the justice system, and to do our part in promoting equity, diversity and inclusion in our profession.

All law firms, including sole practitioners, will maintain their own Management System for Ethical Legal Practice or “MSELP”: 10 elements, based on existing ethical rules, which provide tools to support enhanced quality of practice. We are proposing that law firms, on a triennial basis, will complete a self-assessment with the benefit of a workbook and resources to assist them in achieving their MSELP expectations.

The Society has requested amendments to the Legal Profession Act to mandate the MSELP as a regulatory tool (targeted to commence in January 2018), and other changes that will enable law firms to broaden their legal service delivery. The request for legislation also contemplates a new type of legal professional — a ‘licensed paralegal’ — who can deliver limited scope legal services once qualified and licensed by the Society. This will require the adoption of detailed regulations by the new Council if the requested legislative authority is granted.

We have also taken steps to improve our fiscal planning. The Society now undertakes a three-year approach to budgeting, with a view to financially planning for the activities approved by Council. The operational costs of the Society are, and have been for some time, extremely well managed. The new budgeting process will ensure prudent financial planning for new programs and activities.

Perhaps the biggest change to affect the Society in our modern history will occur over the ensuing year. Our long-serving Executive Director Darrel Pink will move on to new challenges at the end of his current contract – in January 2018. Darrel recognizes that it is an appropriate time for a change at the top, signalling the completion of our passage into the new regulatory world. He is a world-class visionary who stewarded the Society through numerous challenges over his 28 years of leadership. I had the pleasure of watching Darrel in action, not only at home but at national and international gatherings of regulators. Darrel’s insight, vision and leadership are nationally and internationally revered. On behalf of the Society and its membership, I express our sincere gratitude to Darrel for his exemplary leadership and wish him the very best in his future endeavours.

R. Daren Baxter QC, TEP
President
At the end of this Council year, the Society is well on its way to transforming how it regulates the legal profession in Nova Scotia; how it promotes the public interest and delivery of legal services; and how it meets its regulatory objectives. Although great progress has been made, there are significant challenges and obstacles ahead that could divert the Society from achieving its primary strategic objectives; however, the commitment to face and overcome these challenges has been a key aspect of the work done to date. No doubt that will remain the case.

The Society’s change agenda has been advanced without any compromising on its ongoing regulatory work — complaints get investigated; hearings are held; new members join the profession after undergoing training and assessment; trust accounts are maintained; and everything else continues. There are details on all of this Society work throughout this Report.

My focus, therefore, will be on the ongoing change agenda and what lies ahead to complete the transformative work.

LEGAL SERVICES REGULATION

Much of what has been accomplished falls under a newly defined class of work for the Society we call “legal services support.” This is the result of a maturing understanding of the connection between regulating legal services delivery and enabling/assisting lawyers and law firms to enhance their delivery of legal services. This was clearly demonstrated by the legal services pilot project, conducted from September 2016 to February 2017. Lawyers and firms can benefit from assessing their own practice, using excellent resources and having conversations with the Society, before issues arise.

With Council’s approval of implementation of a comprehensive legal services support program starting in January 2018, all lawyers and law firms in private practice will undertake self-assessment of their practices on a triennial cycle. To do so, they will reflect on and report to the Society regarding the ten elements in the Management System for Ethical Legal Practice (MSELP). They will set goals for improvement in areas they identify. The Society will then assist them in addressing those goals either passively through the provision of online services or more actively through direct contact, conversation and in-person discussion.

As the process of developing the self-assessment tool has continued, we have also been advancing our thinking and action to build legal services support into many of the engagements the Society has with lawyers at both the staff level and at the Complaints Investigation Committee. Complaints are now addressed with a Triple P perspective — how we can be proactive, principled and proportionate in addressing the matter. This work has progressed to the point where models are being considered that would have the Society convert to an early resolution program in professional responsibility that might have us eliminate complaints, in the traditional sense, and change fundamentally how we respond to matters that raise issues of lawyers’ behaviour. I expect that the Executive Director’s and Professional Responsibility reports next year will describe how these changes have been made and the positive impact of them.
We also now use a “risk lens” to evaluate all regulatory issues and tailor our responses accordingly. Regulation staff meet biweekly at a “rounds meeting” to share their perspectives and expertise and now share analysis on many matters. The result has been to eliminate requirements once imposed as a matter of course. For example, we can now determine when a lawyer is closing a trust account that may not require a final accountant’s report. We assess the risk and if necessary determine when the requirement for filing such a report can be waived.

ACCESS TO JUSTICE

Last year we began some early work to advance strategic communication and engagement with the public on justice matters. With a full year of #TalkJustice behind us, there are now many clear signs of the value and importance of this work. Hearing from the public about the perspectives of, and experience with, the justice system is allowing us to build evidence about issues that can lead to real and sustained change. Although there is considerably more information to gather, we have begun to collaborate on this work with the Chief Justice, the Department of Justice and the Nova Scotia Legal Aid Commission. Ongoing work will allow for the creation of education programmes and specific goals that should improve people’s experience with the justice system.

Our work to promote diversity, equity and inclusion in the profession and the justice system remains a high priority. Recent appointments to the provincial and family courts represent an important step toward what will hopefully be long-term progress on the goal of greater diversity on the bench. But with each success there are new challenges. Through the Society’s Equity & Access Office, real consultation about how we systematically address the Truth and Reconciliation Commission’s Calls to Action are underway. In this work, we will collaborate with the Schulich School of Law and the Mi’kmaq and African Nova Scotian communities to ensure a comprehensive and sustainable program is developed that will allow lawyers to better understand when they need to have greater cultural competence, knowledge and skills to address issues that have been long ignored or improperly addressed by lawyers.

This will be my final report as Executive Director of the Society. My career at this organization has allowed me to develop and advance numerous skills; to work with colleagues who share my passion for legal regulation as a key instrument to promote and protect the public interest in the delivery of legal services; to work with outstanding leadership in the profession in Nova Scotia and to lead a dedicated and extremely competent staff at the Society. Each of these will be missed; however, my hope, on a personal level, is to remain engaged with this work in some way as I believe we are well on the road to modernizing and dramatically improving the quality and nature of legal services regulation in Nova Scotia and, in some small way, influencing those changes across the country and beyond our borders.

MANAGEMENT SYSTEMS FOR ETHICAL LEGAL PRACTICE

Legal service providers are required to have the following elements in place to ensure an effective infrastructure for ethical legal practice:

1. Maintaining appropriate file and records management systems;
2. Communicating in an effective, timely and civil manner;
3. Ensuring confidentiality;
4. Avoiding conflicts of interest;
5. Developing competent practices;
6. Ensuring effective management of the legal entity and staff;
7. Charging appropriate fees and disbursements;
8. Sustaining effective and respectful relationships with clients, colleagues, courts, regulators and the community;
9. Working to improve diversity, inclusion and substantive equality; and
10. Working to improve the administration of justice and access to legal services

The Legal Services Support Pilot Project tested a draft self-assessment process for these 10 core elements, which were developed through consideration of the Legal Profession Act and regulations, the Code of Professional Conduct, the Professional Standards and complaints and claims experience, with extensive input from lawyers and other stakeholders. Learn more at nsbs.org/legal-services-regulation.
It has been a great honour to work at the Society. I am indebted to Council members over the years for their support, to twenty-eight presidents with whom I have worked and to the profession in Nova Scotia for supporting and understanding the Society’s often difficult but profoundly important role.

Darrel Pink
Executive Director
EDUCATION & CREDENTIALING

Between May 1, 2016 and April 30, 2017 staff made 1,525 rulings. This is compared to the 2016 fiscal year when staff made 1,467 rulings and the 2015 year when staff made 1,428 rulings. We continue to see an increase in the number of rulings made by the department on a yearly basis.

What follows is a breakdown of the various types of rulings that staff make and statistics about the credentialing work carried out by the department.

There are some interesting trends in the data. We saw an increase in lawyers changing to non-practising status. It appears that members are changing to non-practising before making the leap to retired. There was also a significant increase in the number of domestic transfers. We went from 25 to 49, almost a 100 per cent increase; and had a corresponding increase in foreign transfers, which rose from 4 to 8. We saw a decrease in registration of law corporations, likely due to a change in tax laws. In addition, we had a significant increase in the number of lawyers returning to practice this year and the request for certificates of standing has almost doubled, as an increasing number of Requests for Proposals (RFPs) require that lawyers provide these with their proposals.

<table>
<thead>
<tr>
<th>CREDENTIALING RULINGS</th>
<th>FISCAL YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary Practice Permit</td>
<td>24</td>
</tr>
<tr>
<td>Temporary Practice Permits (NMA)</td>
<td></td>
</tr>
<tr>
<td>Change of Category (up)</td>
<td>45</td>
</tr>
<tr>
<td>Change of Category (down)</td>
<td>94</td>
</tr>
<tr>
<td>Domestic transfers</td>
<td>24</td>
</tr>
<tr>
<td>Foreign transfers</td>
<td>7</td>
</tr>
<tr>
<td>Foreign Legal Consultants</td>
<td>2</td>
</tr>
<tr>
<td>Temporary mobility from outside Canada</td>
<td>6</td>
</tr>
<tr>
<td>Readmission following resignation</td>
<td>1</td>
</tr>
<tr>
<td>Resignations</td>
<td>22</td>
</tr>
<tr>
<td>Retirements</td>
<td>19</td>
</tr>
<tr>
<td>Certificates of Standing</td>
<td>77</td>
</tr>
<tr>
<td>Notary Public applications</td>
<td>79</td>
</tr>
<tr>
<td>Application for law corporation</td>
<td>42</td>
</tr>
<tr>
<td>Application for LLP</td>
<td>3</td>
</tr>
<tr>
<td>Renewal of law corporation</td>
<td>462</td>
</tr>
<tr>
<td>Renewal of LLP</td>
<td>4</td>
</tr>
<tr>
<td>Opening trust account</td>
<td>18</td>
</tr>
</tbody>
</table>

Please note: The Society’s fiscal year runs from May 1 to April 30.
ARTICLING AND ADMISSION RULINGS

The articling process involves a variety of rulings, starting with the approval of the articling application up to and including the application for admission. Below is a list of the types of staff rulings and statistics for most of those rulings.

<table>
<thead>
<tr>
<th>TYPE OF RULING</th>
<th>FISCAL YEAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Articled clerk applications</td>
<td>59 67 55 65 70 69 71 79</td>
</tr>
<tr>
<td>Articling plans</td>
<td>57 48 62 68 69 66 79</td>
</tr>
<tr>
<td>Education plans</td>
<td>11 20 15 61 68 62 75 70</td>
</tr>
<tr>
<td>Principal applications</td>
<td>6 11 12 39 23 49 57 52</td>
</tr>
<tr>
<td>Change in supervising lawyer/principal</td>
<td>3 2 2 1 7 0 8</td>
</tr>
<tr>
<td>Extension of articles</td>
<td>? 29 16 22 23 26 25</td>
</tr>
<tr>
<td>Applications for admission</td>
<td>88 99 81 81 96 111 90 120</td>
</tr>
<tr>
<td>Termination of articles</td>
<td>1 2 0 0</td>
</tr>
<tr>
<td>Secondment of articles</td>
<td>0 3 17 16 17</td>
</tr>
<tr>
<td>Application to work outside articles</td>
<td>1 1 0 2 1 2 1</td>
</tr>
<tr>
<td>Abridgement of articles</td>
<td>7 5 8</td>
</tr>
</tbody>
</table>

Much has been made about the lack of articling jobs in Nova Scotia. The information reported in the media is anecdotal at best. It is important to remember a number of things:

1. The number of articled clerks has been relatively consistent over the last seven years. Although we have not reported on the current fiscal year, so far we have 57 articled clerks, who started on June 1 and 5 who started between January 1, 2017 and May 30, 2017 or are starting after June 1. This is a significant increase over last year. Ten months remain in this fiscal year in which clerks can commence articles; it remains to be seen if we will continue to have additional clerks during the year.

2. Not all graduates from the Schulich School of Law wish to remain in Nova Scotia to article.

3. Not all articling jobs are given to graduates of the Schulich School of Law at Dalhousie University; it has always been the case that clerks in Nova Scotia are hired from a variety of provinces and law schools. In addition, over the last number of years we have had increasing numbers of clerks with foreign law degrees. Seven of the June admittees have foreign law degrees and of the admittees between October 2016 and April 2017, eight had foreign law degrees.

4. Not all articling positions commence on June 1. As indicated previously, we see an increasing trend where clerks are hired throughout the year. In the past year, articled clerks commenced articles in almost every month, including January, February, March and April of this year.

5. The Society is not involved in the hiring process for articulated clerks. Therefore we are only aware of clerks once they secure positions and make applications to start articles. In some instances, we are aware when someone is looking but only if they contact us.

6. The number of lawyers/firms accepting clerks has stayed relatively consistent over the last seven years. The larger firm numbers remain constant while the small firms, governments and solo practices fluctuate...
each year depending on budgets and need for a clerk. The number has generally been between 30 and 40 each year. The numbers for last year and this current year are as follows:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>Number of firms / lawyers with clerks</th>
</tr>
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<tbody>
<tr>
<td>2015</td>
<td>40</td>
</tr>
<tr>
<td>2016</td>
<td>48</td>
</tr>
<tr>
<td>2017</td>
<td>53 to date</td>
</tr>
</tbody>
</table>

You will note that we have seen an increase in firms/lawyers taking clerks so far this year. The Society has worked at becoming more flexible in articling arrangements so that clerks can find viable options for their articling year. We continue to work with clerks and firms who wish to establish shared articles and have had discussions with the law school about promoting shared articles.

**SKILLS COURSE**

As has been the case in recent years, we continue to see a fluctuation in the number of students who enrol in the course. We have not yet completed registration for the current fiscal year, however to date we have 62 students registered, including five from Prince Edward Island. Although the Law Society of PEI had indicated it was going to run its own Skills Course, this has not yet started. Therefore we expect to have a similar number of PEI clerks registered this year. The numbers over the last eight years look like this:

<table>
<thead>
<tr>
<th>Fiscal year</th>
<th>NS students</th>
<th>PEI students</th>
<th>Total students</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>83</td>
<td>9</td>
<td>92</td>
</tr>
<tr>
<td>2016</td>
<td>65</td>
<td>8</td>
<td>73</td>
</tr>
<tr>
<td>2015</td>
<td>68</td>
<td>6</td>
<td>74</td>
</tr>
<tr>
<td>2014</td>
<td>71</td>
<td>11</td>
<td>82</td>
</tr>
<tr>
<td>2013</td>
<td>64</td>
<td>8</td>
<td>72</td>
</tr>
<tr>
<td>2012</td>
<td>54</td>
<td>8</td>
<td>62</td>
</tr>
<tr>
<td>2011</td>
<td>65</td>
<td>9</td>
<td>74</td>
</tr>
<tr>
<td>2010</td>
<td>57</td>
<td>4</td>
<td>61</td>
</tr>
</tbody>
</table>

We continue to monitor both the online and in-person modules of the course. Students were more compliant this year in completing their assessments on time. Students continue to have difficulty with the writing and drafting assessments but are able to demonstrate competency with additional feedback. In the previous fiscal year, the Society introduced a new Practice Management Module and Evaluation to bring us in line with the National Admission Standards. As a result of these early experiences, some changes are being made to the module for the current year.
BAR EXAMINATION

We are in our 21st year with the current Bar Examination. We continue to have good results with the examination, however the Society will need to consider implementing a new assessment process as we move forward, given the impending retirement of our Bar Exam Consultant. We are currently in discussion with the prairie provinces, New Brunswick and PEI about how we might work together to create a uniform assessment. On the advice of our psychometrician, we have begun to use only first-time writers and first-time failures in our statistical analysis, so the numbers for the last two sittings of the Bar Examination will not be consistent with previous years.

The examination results have looked as follows over the last number of years:

<table>
<thead>
<tr>
<th>Exam sitting</th>
<th>Applicants writing</th>
<th>Number of repeaters</th>
<th>Passes (first time)</th>
<th>Failures (first time)</th>
<th>Total failures</th>
<th>Failure rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017-01</td>
<td>25 first time</td>
<td>15</td>
<td>18</td>
<td>7</td>
<td>8</td>
<td>28.00%</td>
</tr>
<tr>
<td>2016-01</td>
<td>14 first time</td>
<td>2</td>
<td>12</td>
<td>2</td>
<td>3</td>
<td>14.28%</td>
</tr>
<tr>
<td>2015-07</td>
<td>51 first time</td>
<td>10</td>
<td>51</td>
<td>2</td>
<td>2</td>
<td>3.9%</td>
</tr>
<tr>
<td>2015-01</td>
<td>21 first time</td>
<td>9</td>
<td>15</td>
<td>6</td>
<td>7</td>
<td>28.57%</td>
</tr>
<tr>
<td>2014-07</td>
<td>49 first time</td>
<td>5</td>
<td>40</td>
<td>9</td>
<td>12</td>
<td>22.5%</td>
</tr>
<tr>
<td>2014-01</td>
<td>26</td>
<td></td>
<td>21</td>
<td>5</td>
<td></td>
<td>19.23%</td>
</tr>
<tr>
<td>2013-07</td>
<td>62</td>
<td></td>
<td>53</td>
<td>9</td>
<td></td>
<td>14.5%</td>
</tr>
<tr>
<td>2013-01</td>
<td>30</td>
<td></td>
<td>26</td>
<td>24</td>
<td></td>
<td>13.33%</td>
</tr>
<tr>
<td>2012-07</td>
<td>55</td>
<td></td>
<td>39</td>
<td>16</td>
<td></td>
<td>29.09%</td>
</tr>
<tr>
<td>2012-01</td>
<td>16</td>
<td></td>
<td>15</td>
<td>1</td>
<td></td>
<td>6.25%</td>
</tr>
<tr>
<td>2011-07</td>
<td>44</td>
<td></td>
<td>42</td>
<td>2</td>
<td></td>
<td>1.5%</td>
</tr>
<tr>
<td>2011-01</td>
<td>23</td>
<td></td>
<td>18</td>
<td>5</td>
<td></td>
<td>17.4%</td>
</tr>
<tr>
<td>2010-07</td>
<td>56</td>
<td></td>
<td>53</td>
<td>3</td>
<td></td>
<td>5.35%</td>
</tr>
</tbody>
</table>

Staff continue to offer exam-writing seminars before each sitting of the examination and they also provide a review service for any failing candidates. Generally most failing applicants take advantage of having their exam reviewed by Society staff.

CALL TO THE BAR

In the last fiscal year, 120 lawyers were called to the Bar. This is up by 30 from the previous fiscal year. The calls looked like this:

<table>
<thead>
<tr>
<th>Month of call</th>
<th>Total number called</th>
<th>Articled clerks</th>
<th>Transfers</th>
<th>Readmission following resignation</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2012</td>
<td>49</td>
<td>46</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>July 2012</td>
<td>4</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>September 2012</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>October 2012</td>
<td>7</td>
<td>1</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>December 2012</td>
<td>6</td>
<td>1</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>February 2013</td>
<td>4</td>
<td></td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>
This was our third fiscal year with only four call ceremonies. Generally the new system has worked well. Transfers from within Canada are able to work in Nova Scotia while awaiting call and articled clerks may extend their articles. Transfers from outside Canada and those who have never been called and are no longer able to article are faced with a hurdle in some instances where the call is delayed. To remedy this, we are sometimes able to get these individuals called before they complete their articles or supervision with an undertaking to complete the supervision period once they have been called. We would like to once again attempt to have the Court accept paper calls so applicants are not waiting for months to be called to the bar. Our last effort in this regard was unsuccessful. One challenge we continue to face is having appropriate courtrooms that will hold both the applicants and their guests. In addition, Society staff are required to set up and take down the seats in the courtrooms, which is an extra burden on limited resources.

In terms of clerks securing work once they have completed articles, below is a snapshot of the jobs secured by clerks in time for the call to the Bar each June. The numbers have remained pretty consistent the last few years. Generally those still looking in June find jobs over the summer and into the fall. It is interesting to note that almost 82% of the current clerks called have positions.

<table>
<thead>
<tr>
<th># Clerks called June</th>
<th># Clerks with jobs</th>
<th># Clerks looking</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2017 – 66</td>
<td>54</td>
<td>12</td>
</tr>
<tr>
<td>June 2016 – 51</td>
<td>42</td>
<td>9</td>
</tr>
<tr>
<td>June 2015 – 50</td>
<td>38</td>
<td>12</td>
</tr>
<tr>
<td>June 2014 – 57</td>
<td>37</td>
<td>20</td>
</tr>
<tr>
<td>June 2013 – 54</td>
<td>36</td>
<td>16</td>
</tr>
</tbody>
</table>

Jacqueline Mullenger  
Director, Education & Credentials
The Equity & Access Office program is determined by a series of strategic considerations that seek to ensure three things:

1. That the Office’s work is bound by the **scope** set out by:
   - **Legislation**
     
     The 2010 amendment of the *Legal Profession Act* included a requirement that the Society regularly engage with Nova Scotia’s diverse communities. Section 4(2)(d)(i) of the Act states that “In pursuing its purpose, the Society shall seek to improve the administration of justice in the Province by regularly consulting with organizations and communities in the Province having an interest in the Society’s purpose, including, but not limited to, organizations and communities reflecting the economic, ethnic, racial, sexual and linguistic diversity of the Province.”

     - **The Strategic Framework**
       
       Late 2016 saw a new Strategic Framework take effect at the Society. It renews the focus on enhancing access to legal services and the justice system, and places a new focus on equity, diversity and inclusion and adopting restorative approaches.

2. That **operational priorities** are set out through:
   - **Community feedback** – As our presence becomes more deeply rooted in equity-seeking communities, the time it takes for their feedback to reach us is much shorter. This has made us much more nimble in how we respond to feedback. It has also increased our capacity to anticipate community interests and build them into our activities from the outset. Put simply, “community engagement” has gone from being a discrete activity to being deeply woven throughout all aspects of the Office’s work.
   - **The Racial Equity and Gender Equity Committees** – The Equity & Access Office supports the work of the Racial Equity and Gender Equity Committees. The work plans of the Committees are described in detail below.

3. That **goal setting and evaluation** are grounded in sound application of theory
   - **Restorative approaches (goal setting)** – While an in-depth discussion of relational theory is beyond the scope of this report, it is sufficient to state that the goal of a restorative approach is to promote the *equality of relationships* between parties. Equal relationships are measured through mutual respect (recognition of the rights and needs of others), mutual concern (knowledge of and interest in the well-being of others), and mutual dignity (recognition of the inherent value in others). Restorative approaches are trauma-informed, culturally competent and anti-racist in nature. The goals outlined below describe the work of the Office in restorative terms: they seek to outline what it means to change how the justice system is experienced by equity-seeking Nova Scotians.
• **Complexity theory (evaluation)** – The Equity & Access Office learned about complexity theory through a meeting with Valerie Pottie-Bunge and Angela Poirier of the Nova Scotia Department of Justice. In short, complexity theory divides problems into four realms: simple, complicated, complex and chaotic. The chart below provides a brief description of these realms.

<table>
<thead>
<tr>
<th>Type of problem</th>
<th>What it looks like</th>
<th>What to do about it</th>
<th>External example</th>
<th>Justice system example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple</td>
<td>Clear cause and effect</td>
<td>Best practice</td>
<td>Replacing a light bulb</td>
<td>Using a mobile app to address the public's legal information needs</td>
</tr>
<tr>
<td>Complicated</td>
<td>Cause and effect are discoverable but not immediately apparent</td>
<td>Expertise</td>
<td>Fixing a car that won't start</td>
<td>Providing unbundled legal services to self-reps</td>
</tr>
<tr>
<td>Complex</td>
<td>Cause and effect are unpredictable and are only obvious in hindsight</td>
<td>Emergent practice: experimentation and collaboration</td>
<td>Protecting an endangered species</td>
<td>Addressing systemic discrimination</td>
</tr>
<tr>
<td>Chaotic</td>
<td>Cause and effect are unknowable; no time to think</td>
<td>Novel practice: ad-hoc urgent decisions to stabilize situation</td>
<td>Fleeing a house fire</td>
<td>Addressing widespread public protest in the face of an unpopular judicial decision</td>
</tr>
</tbody>
</table>

**MAJOR ACTIVITIES**

Last year, Equity & Access Office activity occurred under three main pillars:

- cultural competence;
- equity in the profession; and
- community engagement.

While these remain the primary types of activities the Equity & Access Office undertakes, they are now organized in terms of the goals they work toward achieving:

- more culturally competent and trauma-informed lawyers;
- a more diverse and inclusive profession; and
- a more accessible and restorative justice system.

**MORE CULTURALLY COMPETENT AND TRAUMA-INFORMED LAWYERS**

These activities involve supporting lawyers and law firms in their efforts to build the skills, attributes and attitudes necessary for meeting Nova Scotians’ legal needs in ways that respect the dignity of all persons.

According to complexity theory, activities in support of this goal fall into the *simple* domain. They are designed to address problems where the relationship between cause and effect is clear. Goals are designed to be achieved in the near term.
Cultural competence instruction

The Equity & Access Officer provided in-person training in cultural competence to a wide variety of audiences, including articled clerks in the Skills Course, law students at the Schulich School of Law at Dalhousie University, the Public Prosecution Service and attendees of multiple conferences, including one addressing the needs of survivors of sexualized violence. This year also saw Society staff, Council and Committee chairs attend a half-day cultural competence workshop hosted by Robert Wright, and a seminar on mitigating unconscious bias.

Pride events

The annual Pride Reception was held in July 2016 at the Delta Halifax, with keynote speaker Colin Druhan, Executive Director of Pride @ Work Canada. He also facilitated a workshop about LGBTTI-friendly terminology for Society staff and Council members. Additionally, the Equity & Access Office worked with CBA-NS to organize a delegation of lawyers to march for the first time as a profession in the 2016 Halifax Pride Parade.

Strength in Leadership – Remembering Dara Gordon QC

Through the strength of her leadership and as a highly regarded lawyer, Dara Gordon QC made many contributions to her country, her province and her profession. This annual leadership event, held in her memory with support from McInnes Cooper, provides the opportunity for lawyers to come together to discuss women’s leadership in the legal profession. This year’s speaker was the Honourable Justice Linda Lee Oland of the Nova Scotia Court of Appeal.

Creation of an internal Society guide for the use of gender-inclusive language

Work on this project began last year, with the completion of a Pro Bono Students Canada project that provided an environmental scan of relevant policies and best practices. The new guide is set to be released during the Society’s Pride events in July 2017.

Truth and Reconciliation Commission (TRC) education modules

The Equity & Access Office is working collaboratively with its Atlantic region counterparts to share resources and information pertaining to concrete ways that law societies can begin to address the Truth and Reconciliation Commission’s Call to Action 27:

“27. We call upon the Federation of Law Societies of Canada to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.”

This project involves the development of education and training for articled clerks and lawyers on cultural competency, residential schools, Indigenous law and the realities of racism and discrimination. Currently we are researching education that is occurring across the country and hosting conference calls every two months to share information and advice.

Trauma-informed lawyering education

A video available on the Equity Portal provides information about the knowledge, skills and capacities to recognize the signs of trauma in clients and suggestions for mitigating retraumatization from the justice system. It also identifies the supports and services available for sexual assault survivors in Nova Scotia. The Society has also hosted a workshop for articled clerks to increase their awareness of the prevalence of secondary wounding in the justice system, understanding of a trauma-informed approach, and the services at Avalon Sexual Assault Centre.
Ongoing work continues in researching and collecting best practices and other pertinent resources for lawyers assisting domestic violence and sexual assault victim/survivors. The goal of this initiative is to provide legal professionals with knowledge, skills and capacities to respond and provide support to victims/survivors of domestic/sexual assault, and to provide a broad analysis of sexual violence as a social issue.

Partnership continues with the Be the Peace Institute on its 2017-2019 initiative addressing the roots and consequences of violence against women and girls in Nova Scotia. Through the Gender Equity Committee, we provide support and advice as the Institute designs and develops alternatives to the traditional justice models.

**Model Code review**

This is a national initiative being undertaken by the Law Society Equity Network (LSEN) and chaired by the Equity & Access Officer. Four areas of review have been articulated:

1. Explicit inclusion of culturally competency in the Model Code of Professional Conduct;
2. Review of the Code through the lens of the TRC Calls to Action and implementation of related edits and additions;
3. Review of the Discrimination and Harassment chapter to make it more effective;

**A MORE DIVERSE AND INCLUSIVE PROFESSION**

These activities involve supporting lawyers in their efforts to meet obligations related to Regulatory Objective #5 and to promote diversity and inclusivity in the profession as a whole. According to complexity theory, activities in support of this goal fall into the complicated domain. They are designed to address problems where cause and effect are discoverable but not immediately apparent. Goals are designed to be achieved in the medium term.

**Maintenance of the Equity Portal**

In collaboration with Library & Information Services, the Equity & Access Office maintains a resource portal for lawyers and law firms seeking guidance on issues of employment equity and cultural competence. The portal gathers valuable online toolkits, training and information materials created by the Equity & Access Office, and relevant items from the Barristers’ Library.

Included on the portal is an evolving cultural competence video series. The Office is receiving increasing demand for cultural competence instruction, particularly from lawyers who live outside of HRM. These short videos cover a wide range of cultural competence topics, both general (“Why Cultural Competency?”) and specific (“Trauma-Informed Lawyering for Sexual Assault Victims”).

Launched in late 2015, the portal has a growing role to play in Society legal services regulation. It allows lawyers and legal entities to identify unique needs based on area of practice, size of firm, their client base or other issues. The portal also plays an important role in the Society’s efforts to fulfil the TRC’s Call to Action 27.

**The Gender Equity Committee and Racial Equity Committee**

The Office provides administrative support and expertise to the Gender Equity and Racial Equity Committees and assists them in carrying out their priorities. The Committees support Council in the governance of the Society and advancing Council’s Strategic Framework, by monitoring and advising on programs and policies that address issues of discrimination in the legal profession and in the administration of justice. They develop policy and program options that promote equity and diversity in the legal profession in Nova Scotia and assist the Equity & Access Officer in raising awareness of equity and access issues.
The Gender Equity Committee similarly supports Council in the governance of the Society by monitoring and providing advice about matters that address issues of gender in the legal profession. This year’s Gender Equity Committee activities include:

- Advising Council on how to integrate equity and diversity into legal services regulation;
- Hosting Strength in Leadership – Remembering Dara Gordon QC;
- Sponsorship event: Create a supportive environment to share and learn from one another;
- Advising Council on gender equity issues as they arise;
- Discrimination and Harassment Initiative:
  a. design an education seminar focused on senior members of the Bar and hiring committees;
  b. partner with law school on survey;
  c. develop an initiative to support female lawyers who make disciplinary complaints regarding sexual harassment;
- Updating the *Code of Professional Conduct* and adding commentary regarding sexual assault, sexual harassment and discrimination;
- Trauma-informed education: Partnership with Status of Women and Be the Peace Institute to design an education seminar on trauma-informed and women-centred lawyering;
- Liaising with community organizations;
- Legislation and policy reform on access to justice issues impacting women;
- Creating more dialogue with organizations and government on legal issues affecting women as they arise.

The Racial Equity Committee monitors and provides 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. This year’s Racial Equity Committee activities include:

- A June networking event to honor the racialized and Indigenous clerks being called to the Bar;
- Awarding the Race and the Law Paper Prize;
- Advising Council on how to integrate equity and diversity into legal services regulation;
  - Creating an education and awareness initiative to encourage racialized members of the Bar to consider applying to the Bench; this included education for the Judicial Appointment Committee, consultation with the Minister’s Office and the Office of the Nova Scotia Judiciary, and support and promotion of the judicial application process among racialized and Indigenous members;
  - Supporting the Equity & Access Office in delivering support services to internationally trained lawyers, including through the Observership Program;
  - Continuing collaborative work with the Tripartite Justice Committee;
  - Supporting the work of the Equity & Access Office in efforts to resolve land title issues in the Prestons;
  - Incorporating cultural competence standards in family and criminal law in three main areas: jury selection; Gladue reports and sentencing of Aboriginal offenders; and immigration status intersecting with criminality.
Race and the Law Paper Prize

This award recognizes and encourages outstanding scholarship by law students in Nova Scotia, on topics pertaining specifically to issues of race and law. It is presented by the Society’s Racial Equity Committee and sponsored by Stewart McKelvey. The 2016 prize was won by Alison Aho, for "Identification and Recognition Evidence: Determining Admissibility with Respect to Race."

Integration of Internationally Trained Lawyers (ITLs) in Nova Scotia: The Observership Program

In 2008, a multi-stakeholder working group model was created in Nova Scotia for Internationally Trained Lawyers (ITLs). It includes supporting partners from government, academia and regulatory bodies, as well as many non-governmental organizations. The Society, the Immigrant Services Association of Nova Scotia (ISANS) and other members of the working group identified a number of challenges and barriers for ITLs making their way through the pathway to licensure in Canada. For example, it was discovered that little opportunity existed for these potential new Canadian lawyers to connect with the local legal profession in order to learn about the practical and procedural aspects of practising law in Canada.

In 2013, the Nova Scotia Department of Labour and Advanced Education funded a one-year pilot project for an Internationally Trained Lawyer Observership Program situated within the Society. This model pairs an ITL with a Supervising Lawyer and is designed to expose ITLs to all facets of legal practice in Nova Scotia, facilitating their entry into the legal profession. ITLs were invited to participate in a variety of activities such as attending client meetings, visiting the courts and observing day-to-day procedures in a variety of legal workplaces. Two internationally trained lawyers participated in the program this year, bringing the total number of participants to 17.

The Ku’TawTinu: Shared Articling Initiative

Currently the number of Mi’kmaq and Aboriginal lawyers practising within the province is low. Through the Ku’TawTinu: Shared Articling Initiative, we hope to create meaningful articling opportunities that will prepare Mi’kmaq and Aboriginal articling clerks for successful legal careers in this province.

The goal of this initiative is to create articling positions that will provide a well-rounded articling experience that will focus on contemporary Mi’kmaq and Aboriginal legal issues. It provides Mi’kmaq and Aboriginal law students an opportunity to substantively engage in the process and practice of Aboriginal law specifically related to legal research and litigation within Aboriginal communities. This year saw two articling clerks successfully complete the program.

Legal Services Regulation and the Management System for Ethical Legal Practice

The Equity & Access Office is a major contributor to the creation of the comprehensive list of resources to guide lawyers and legal entities through the self-assessment process. Our work ensures that promotion of diversity, inclusion, substantive equality and freedom from discrimination is embedded throughout the self-assessment tool. Additionally, the Strategy & Engagement Office will continue to play an important role in the design of the Management System for Ethical Legal Practice and the project’s outcomes measurement framework.

Legal services regulation workshop

The Equity & Access Office organized a workshop in January 2017 to explore how Nova Scotians access legal services and to imagine what the future of legal service delivery could look like. This workshop was co-hosted by United Way Halifax.
TOWARD A MORE RESTORATIVE AND ACCESSIBLE JUSTICE SYSTEM

Activities in this domain are identified through community feedback; the equity committees; authorities such the Truth and Reconciliation Commission; major social movements; and the lived experience of Equity & Access Office staff. Through these channels, the Equity & Access Office identifies several project areas that represent barriers of access to justice and require inter-system collaboration to solve.

According to complexity theory, activities in support of this goal fall into the complex domain. They are designed to address problems where cause and effect are unpredictable and are only obvious in retrospect. Goals are designed to be achieved in the long term.

#TalkJustice

Late 2015 marked the debut of #TalkJustice, a platform for members of the public to share the barriers and challenges they face when trying to access the justice system. This phase included two major projects: a social media campaign and a live event at the Mi’kmaw Native Friendship Centre.

The 2016-2017 year saw the initiative expand further within Nova Scotia’s justice system. The Nova Scotia Access to Justice Coordinating Committee (A2JCC) recognizes the impact #TalkJustice has had on our ability to bring the public voice to the centre of our work. As a result, the Committee tasked the Equity & Access Office with developing a community engagement program that was formally integrated within #TalkJustice. This partnership provides new energy, expertise and resources to #TalkJustice, and it will continue to be our most effective way of advocating for enhanced access to legal services and to the justice system for equity-seeking and economically disadvantaged Nova Scotians.

Working with partners in government requires us to generate more robust statistical data from our community engagement work. To this end, the Equity & Access Office is using SenseMaker®, a research software designed to gather large numbers of stories and present them in such a way that can reveal otherwise hidden patterns and relationships. SenseMaker® is able to take stories, a highly qualitative research method, and from them create the quantitative statistical data that is often required to begin systems-level change. The SenseMaker® public questionnaire launched in February and continues to gather stories.

The summer edition of the Society Record will focus on the work of #TalkJustice and the experiential learning central to the success of SenseMaker®. The magazine will share a diversity of stories and experiences relating to issues of access to legal services and the justice system in Nova Scotia. Content was developed in collaboration with the guest editor, poet, academic and advocate, El Jones.

Prestons land issues

In 2014, Society staff and members of the Racial Equity Committee met with community members in North Preston, East Preston and Cherrybrook to learn how they are affected by the justice system. They heard about how many community members did not have clear title to land on which they pay taxes and where their families had lived for generations. They recognized that further research and engagement were required to determine how best to resolve the issue. That summer, the Equity & Access Office hired Angela Simmonds, a Dalhousie law student from Cherrybrook. She spent two months gathering stories from residents, who described how the lack of clear title affected their lives. The stories are described in Ms. Simmonds’ final report, entitled This Land is Our Land.

Over the following year, the Society began a series of related collaborative initiatives:

- helped convene a stakeholders’ group including key staff from the Department of Natural Resources, Communications Nova Scotia, Nova Scotia Legal Aid, and the Department of Communities, Culture and Heritage, with the specific goal of making the Land Title Clarification application process more user friendly and effective;
• identified lawyers who were willing to undertake some of these files \textit{pro bono};
• collaborated with DNR in June to hold a professional development session for lawyers on the land titles legislation and application process;
• collaborated with the Schulich School of Law through Professor Jamie Baxter, who provided support through information and education on community landownership and land preservation; and
• worked with the Legal Information Society of Nova Scotia and community leaders to create and distribute information brochures on land title, taxation and wills and estates.

Then in February 2016, NSCC radio, television and journalism students launched the online documentary series \textit{Untitled}, which documented the experiences of residents in North Preston as they tried to gain legal title of their land. The series resulted in significant local and national media attention, and a number of promises were made by DNR and the Society to move this initiative forward. Specifically, the Society agreed to continue to work on relationship building in the communities and to begin working with a small group of \textit{pro bono} lawyers on select files to identify a few quick wins upfront. Over the ensuing months, a number of community members reached out to the Society looking for support to move forward on their files. In the summer of 2016, the Society identified six pilot files and six \textit{pro bono} lawyers for a very small project.

Most recently, in December 2016, the stakeholders’ group, which had been inactive for six months, was reengaged. The stakeholders now consist of NSBS, HRM, African Nova Scotian Affairs and DNR. In early 2017, a few \textit{pro bono} lawyers attended a stakeholders meeting and presented on a range of issues they are seeing come up in their files, such as challenges with the LTCA process and issues relating to probate, land registration, and subdivision. This presentation was accompanied by a briefing paper for the Deputy Ministers.

\textbf{Substantive legal education in underserved areas}

As the Equity & Access Officer carries out her work in the community, she regularly encounters legal issues where there is an insufficient supply of lawyers qualified to address them. These issues are more likely to affect Nova Scotians from equity-seeking and economically disadvantaged communities, and are more likely to involve serious legal matters such as citizenship, land ownership and incarceration. The Prestons land issues described above are an example of an underserved legal area: there are simply not enough qualified lawyers to provide \textit{pro bono} services to all those who need them. Other areas identified through our work include \textit{habeas corpus}, prison law, Aboriginal law and the intersection of immigration and criminal law.

The Society is shifting towards a risk-based model of legal services regulation that has made improving access to legal services a regulatory objective. Filling gaps in the profession’s substantive legal knowledge – especially when that knowledge can be put toward redressing historic injustices – will play an important role in fulfilling this objective. To this end, the Equity & Access Office is exploring ways to provide substantive law education. In addition to the work on the Prestons land title issues mentioned above, the Office hosted a full-day workshop on refugee law in November 2016 and a two-day workshop on prison law with Senator Kim Pate in January 2017.

\textbf{EXTERNAL LIAISON WORK}

\textbf{External committees}

The Equity & Access Office provides guidance and expertise to the following external committees:

• The Nova Scotia Access to Justice Coordinating Committee

• NSFamilyLaw.ca: A website offering information about the law, processes and services that make up family law in Nova Scotia.
• The Free Legal Clinic: The weekly Free Legal Clinic at the Halifax Law Courts is for people who are planning to take their legal problems to court, have already started a legal action, or are already in court but have little or no experience with the court process.

• Indigenous Blacks & Mi’kmaq Initiative (IB&M): An initiative of the Schulich School of Law, the IB&M was established in 1989 to increase representation of Indigenous Blacks and Mi’kmaq in the legal profession in order to reduce discrimination.

• Canadian Bar Association of Nova Scotia equity committees: The Equity & Access Officer supports the work of and collaborates with the CBA-NS Equity Committees when asked.

• The Sexual Orientation and Gender Identity Conference (SOGIC): The Equity & Access Office and SOGIC jointly host the annual Pride Reception.

• The Criminal Justice Transformation Group (CGTJ): A group of justice system actors that works collaboratively to ensure the criminal justice system in Nova Scotia is strategic in bringing forth positive change.

• Supporting Access to Justice For Children and Youth in Eastern Africa (SAJCEA): A project funded by the CBA, initiated for purposes of strengthening access to justice for vulnerable children and youth in Eastern Africa through stakeholder collaboration, institutional development and capacity building and enhancement through sharing of ideas among justice, law and order sector institutions.

• The Action Group on Access to Justice (TAG): A group catalyzing solutions to Ontario’s access to justice challenges by facilitating collaboration with institutional, political and community stakeholders.

• The Law Societies Equity Network: a voluntary working group composed of law society staff and equity ombudspersons involved in promoting and encouraging equality, equity and diversity in the legal profession in each of their respective provinces.

• National Legal Strategy Coalition on Violence against Indigenous Women: A nationwide ad hoc coalition of groups and individuals formed in 2014 following the murder of Inuit university student Loretta Saunders, to marshal resources that address violence against Indigenous women.

• Community of restorative justice practitioners: The Equity & Access Officer regularly attends conferences and workshops on restorative justice, both as a participant and a presenter.

Information assistance on matters of equity & access

The Equity & Access Office is often a first point of contact for members, the media and the general public seeking information on issues of equity, inclusion and discrimination in Nova Scotia’s justice system. The Office triages these requests and provides responses or referrals to other organizations as necessary.

Notable in recent years has been an increase in lawyers making specific requests for advice on cultural competence. This reflects their increasing ability to recognize and seek guidance for cultural competence issues and that the Equity & Access Office is a leading provider of this information for Nova Scotia lawyers.

Supporting students

The Equity & Access Office has a small staff relative to its mandate. Consequently, students play a critically important role in allowing the Office to maintain its high level of output. Students help plan and run events, produce much of the Office’s research, and assist with technical and administrative functions. In return, the Office is able to provide high school, undergraduate and law school students from equity-seeking and economically disadvantaged communities with substantive career development opportunities, mentorship and professional references.

This year has seen the Office host one law student, two undergraduate practicum students and six volunteer pro bono law students on a wide range of projects and initiatives.
GOING FORWARD

The 2016-2017 year has been the Office’s busiest year to date. The Office has built on major progress made last year: toward resolving land title issues in the Prestons, new and stronger community relationships, a dramatic growth in interest in cultural competence instruction, and a steadily more diverse profession. Furthermore, the addition of the Officer, Strategy & Engagement to the Equity & Access Office team has increased the Office’s ability to create a program of activities clearly connected to the Society’s strategic priorities and the responsibilities set out in the Legal Profession Act. It also allows the Office to provide support to internal efforts required to achieve goals set out by Council in the 2016-2019 Strategic Framework.

The new Strategic Framework’s focus on equity, access and restorative approaches is indicative of how the Society has evolved to recognize that the law exists within a structure that creates inequity in Canadian society. This evolution allows the Equity & Access Office to create a program that moves our primary focus away from one-off workshops, programs or community events, and toward a program recognizing that legal services are not delivered in a vacuum: rather, legal problems occur within historical and cultural contexts and in ways that intersect with other problems of everyday life.

To successfully fulfil the Strategic Framework, the Society as a whole must go beyond merely implementing the types of activities listed above. It will require all staff and Council to regularly consider how their work impacts and is impacted by both a legacy of structural inequality in Canadian society and a concept of justice that places behaviour (rather than relationships) at its centre.

Emma Halpern
Equity Officer
### Budget highlights

1. Costs have increased in several regulatory areas because of the length and complexity of formal hearings and other cost increasing costs.

2. 2016/17 was the third year for operating deficits where the final deficit exceeded the planned deficit that was provided through the fee credits. The operating reserve balance is now below the minimum threshold (two months of expenses). In order to replenish the reserve, a special assessment of $200 per lawyer is required.

3. Due to the depletion of the operating reserves, the Society is not able to provide a fee credit from this reserve in 2017/18. A credit of $138 (2016/17 – $137) for the Lawyers’ Fund for Client Compensation (LFCC) has been provided again this year.

4. Council has mandated a multi-year approach to budgeting, focusing on areas of revenue generation and expense containment and allocation. (Projected annual fees reflect this work.)

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### PRACTISING FEES OVER THE PAST, PRESENT AND FUTURE

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### PROJECTED

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(*before HST)
PROFESSIONAL RESPONSIBILITY

SUMMARY

The Professional Responsibility department manages many of the Society’s key public protection and regulatory risk management processes and tools. It is responsible for taking steps to ensure that lawyers comply with the Legal Profession Act and Regulations, the (former) Legal Ethics Handbook, the Nova Scotia Barristers’ Society Code of Professional Conduct and, where applicable, the Land Registration Act, as well as assisting members with adherence to Professional Standards.

Our role is essential to the Society achieving its goals and values of public protection, public confidence in the regulation of lawyers, excellence in regulation, accountability and enhancing access to justice. Further, the Professional Responsibility process supports each one of the Society’s Regulatory Objectives. Sections 33 to 55 of the Act and Part 9 of the Regulations set out the authority of Committees and staff with regard to complaints, investigations and hearings, and the Fitness to Practise Program. Note: This report covers the period May 1, 2016 to May 12, 2017.

PURPOSE AND VALUES

Our role with regard to risk management, compliance and public protection includes the following:

i. Complaints intake, mediation/resolution, dismissal and Letters of Advice;
ii. Complaints investigation;
iii. Prosecutions and hearings;
iv. Trust account regulation breaches, the Trust Audit Program, and unclaimed trust fund applications;
v. The Fitness to Practise Program;
vi. Monitoring member bankruptcies and judgments;
vii. Unauthorized practice investigations;
viii. Ethics education and advice;
ix. Custodians and Receivers; and
x. Lawyers’ Fund for Client Compensation.

In terms of supporting the vision and values of the Society, the department is focused on protection of the public, risk identification and management, and excellence in regulation, which now includes the incorporation of a Triple P approach to regulation. These values and our Regulatory Objectives guide all programs, services and work. Our role is also to proactively enhance the competence of lawyers and assist them in adhering to the rules of professional conduct and practice standards. A foundational principle for this department is to identify as proactively as possible opportunities to educate, assist, monitor and guide lawyers where problems have been found or reported, and to only use ‘disciplinary’ measures where required in the public interest. What is referred to public hearing and reported in the media represents only about one per cent of the work of this department and its committees. Fairness, transparency and accountability are key to effective regulation of legal services in these areas.
IMPLEMENTING TRIPLE-P IN PROFESSIONAL RESPONSIBILITY

The PR department continues to adopt new ways to integrate the Triple P approach – proactive, principled and proportionate – into our processes. All PR committees are now fully engaged in and extremely supportive of this approach. Below are some examples:

- **Changing the conversation with complainants and lawyers at the earliest intake call stage** – This has included expanding our knowledge of tools and resources to help educate both parties; encouraging informal dispute resolution at every appropriate stage; and a greater level of frankness and candour with complainants to help better manage their expectations of our process. This year, we will be embarking on specific new approaches to the complaints intake process, including new language, improved phone and web-based communications about our process, the ability to file complaints electronically, and softening the adversarial approach inherent in the existing complaint systems.

- **Sharing of risk information among departments** – This involves considering the ‘organization’ as an umbrella for confidential information, rather than just the PR department; and participating in biweekly multi-department Rounds meetings to engage in more holistic and accurate risk assessment and response.

- **Considering creative solutions** - Staff and the Complaints Investigative Committee (CIC) are moving beyond traditional responses to ethical violations and risk: lawyer and law firm education is more effective than a counsel or caution letter; in-person interviews and meetings with the CIC are much more effective in getting to the bottom of the causes for repetitive ethical violations; all components of the PR system are even more focused on changing behaviour rather than ‘punishment’. This has included increased use of mentors and practice supervisors; increased s. 36(2) meetings of the CIC with members; longer term monitoring to achieve success; and working with firms rather than just individual lawyers to enhance ethical decision making.

- **Finding a place for restorative justice concepts** – Training staff and the CIC to facilitate dialogue and help create solutions that respect, foster and hopefully maintain healthy relationships, and new ways of thinking about ‘harm’ and reparation, is an ongoing process. For the first time this year, a mediation process was attempted following commencement of a hearing – while unsuccessful in the end, it was clear that the process had value and is worth pursuing in future.

- **Engaging PR committees** – All Professional Responsibility committees are now fully engaged in considering and implementing Triple P approaches in their work (see reports that follow), whether it be at the level of policy and procedure development, regulatory decision making or in an advisory capacity.

ACCESS TO JUSTICE AND PROFESSIONAL RESPONSIBILITY

Council has two equally important strategic directions: excellence in the governance and regulation of lawyers; and enhancing access to justice. Further, Council has determined that in pursuing each of these strategic directions, these efforts should in most respects be intertwined, with the pursuit of one supporting the pursuit of the other.

The Professional Responsibility process supports Council’s goals in enhancing access to legal services and justice in a number of ways, including by:

- having a simple and accessible means for the public to raise concerns and/or file complaints about their lawyers’ conduct;
- making it a priority that concerns from the public are acknowledged and responded to in a timely manner;
- training Intake Officers and all PR staff to be culturally competent and aware of the importance of considering the cultural location of the public and lawyers we come into contact with as we do our work;
- assisting those who are unable to follow the standard complaints process, including the use of interpreters or accepting complaints in non-traditional ways;
• enhancing the diversity of all our committee volunteers, and engaging in regular cultural competence training;

• having a broad range of Triple P tools to meaningfully respond to concerns about lawyers’ conduct at the staff and committee level, including the use of practice mentors, wellness and other consultants, and supervisors to provide meaningful guidance and advice;

• training staff and regulatory committees in concepts of restorative justice and encouraging their application in decision making;

• enhancing the transparency of the PR process, including online access to decisions, precedents, advice and other tools;

• providing detailed, clear, plain language, written reasons for all regulatory decisions by staff and committees;

• having an independent process for review of staff decisions to dismiss complaints, chaired by a public representative;

• having public representatives involved in all regulatory committees and hearing panels;

• offering ethics advice to lawyers to assist them in making sound ethical decisions in the best interests of their clients and/or the public, which includes, where appropriate, reference to their own duties to be culturally competent and to promote access to justice;

• providing a diversionary process for lawyers suffering from an incapacity, which promotes a more dignified and supportive way to assist them in these challenging situations; and

• having legislation, regulations, education, policies and procedures that support a fair, transparent, competent and accountable hearing process.

BUDGET AND FINANCIAL PICTURE

For three of the past five years, the Professional Responsibility budget decreased in each year. Those were the good years. Last year and this year, however, saw an increase in the budget almost exclusively as the result of hearing costs, and again this year, those associated costs were unfortunately even higher than projected, as is clear from the data below.

**Total expenses in 2016/2017 were 26% higher than budgeted.** While most expense areas, including operational, investigation, trust audit and Fitness to Practise were all kept well under or within budget, prosecution and hearing expenses were over budget by 35%.

The following chart compares the last four years’ costs in key categories, noting the percentage (%) of total budget or actual costs the expense line represents, from 2014/15 forward.

<table>
<thead>
<tr>
<th>BUDGET BREAKDOWN</th>
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<tr>
<td><strong>Budget</strong></td>
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<td><strong>TOTAL</strong></td>
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<tr>
<td>Investigations</td>
</tr>
<tr>
<td>Hearing (prosecutions)</td>
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<tr>
<td>Custodian/Receiver</td>
</tr>
<tr>
<td>Trust Audit Program</td>
</tr>
<tr>
<td>External Legal Services</td>
</tr>
</tbody>
</table>
The majority of expenses in the past year related to the Lyle Howe hearing, which has, to date, required 65 days of hearing spanning 17 months. For the coming year, anticipated hearing expenses remain high based on the matters in which we are already engaged. The budget plans for as many reasonably foreseeable hearing-related expenses as possible.

This year’s budget also includes a more informed estimate for the costs we are increasingly incurring when assisting lawyers in winding up their practices at the end of their career. This work is an example of our Triple P efforts to work with lawyers to wind up their practices in an organized manner that protects the public, thus avoiding the need to appoint Custodians when lawyers are unable to do so themselves and cease being able to practice. With our aging demographics, this type of work has become increasingly important and necessary. Hopefully, however, with enhanced succession planning strategies and the self-assessment results, we may see a decrease in this work down the road.

[NOTE: External Legal Services includes investigation (at staff and CIC levels), practice reviews, prosecution, Receiver/Custodian and wind-up costs.]

COMPLAINTS OVERVIEW AND TRENDS

“We cannot direct the wind, but we can adjust our sails.”

Every year in professional responsibility is different than the last, and brings unique new challenges. This year was no different. The number of intake calls decreased by nearly 13%, and the number of written complaints has remained essentially the same for three years in a row. However, the complexity of complaints continues to increase, leading to an increase in the average number of days it takes us to close them.

A problematic trend that began two years ago and continued this year is the ‘vexatious litigant’, or individuals who attempt to use the complaints resolution process to address very personal and long-standing concerns with the outcome of a matter and/or with the administration of justice in general. This remains a serious problem nationally. What it translates into at the Society is a litany of calls, emails, correspondence, complaints, challenges, requests for review, and judicial review applications. These challenges take up an enormous amount of time and money. However, a national discussion is underway about how to implement measures to prevent such complaints from going very far. And this year, the Complaints Investigation Committee obtained legal advice and implemented a new process that permits it to essentially deem a complainant to be vexatious and from whom no new complaints will be accepted, and current complaints closed. Through this process, we were able to more quickly close over two dozen complaints.

The statistics show that while we continue to receive the highest number of complaints against lawyers who have been practising the longest (35+ years), there was a jump this year of almost 58% in complaints against lawyers 20 - 25 years at the Bar, and a 53% increase in complaints against lawyers only 15 – 20 years at the Bar. In addition, over 60% of complaints related to lawyers practising in small firms (between two and ten lawyers).

The majority of complaints continue to involve allegations of delay, poor communications and client dissatisfaction. It is hoped that through implementation of the Management System for Ethical Legal Practice and self-assessment process, some of the causes for these complaints will be addressed proactively. We will watch these statistics closely next year for this purpose.

The greatest challenge this year was trying to carry on with all of our routine work in a timely and thorough manner, while managing the significant disruption caused by the Howe hearing. In addition to taking the Director, and occasionally the Executive Director and PR Counsel out of the office to attend (and/or testify at) the hearing for over 65 days (as well as numerous proceedings management meetings and pre-hearing motions), it involved many days and nights developing legal strategies and preparing responses to motions and evidence. The work of our counsel was simply outstanding, but the hearing was extremely disruptive and taxing. It is anticipated that prosecutions and hearings will again this year entail significant time and challenges.
Despite all this, the Nova Scotia Barristers’ Society remains the jurisdiction that has achieved the highest level of adherence to the National Discipline Standards in the past year. The Professional Responsibility team, both staff and committees, are to be commended for all their efforts in helping make this so.

On another positive note, we are seeing very positive results from our Triple P and risk-focused approach to managing trust account regulation violations. With fewer letters, more personal engagement with lawyers, and learning to more clearly identify and prioritize matters of actual risk (such as multiple stale balances), we are finding lawyers far more engaged in improving their procedures and trust account management, and for the first time taking time to correct long-standing problems in an effective way.

**COMPLAINT INTAKE CALLS**

Officers spend an average of 19.6 minutes on each first complaint call. This has remained fairly unchanged over previous years. This number does, not, however, take into account the number of followup calls and time involved, which can be significant. Callers with mental health concerns will often call numerous times over a period of months or even years.

Our Intake Officers play an important role in providing an informative and empathetic ear to those who face significant challenges with access to justice. They devote time to trying to resolve concerns where appropriate, and this can involve multiple interactions with both parties. An effective intake process reduces written complaints, as we find that a majority of complaint callers do not follow through with a written complaint, and a large number of written complaints are filed by those who have not spoken to an officer. This is because the majority of complaint matters brought to our office are not those that our complaints process has authority or the ability to resolve.

**BREAKDOWN OF CALLS BY MONTH OVER TWO YEAR PERIOD**

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<th>MONTH</th>
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<td>April</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>522</strong></td>
<td><strong>460</strong></td>
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12.6% decrease between 2015-16 and 2016-17
The areas that form the most frequent basis for intake call complaints:

**ISSUES OF PHONE COMPLAINTS**
(May 1, 2016 to April 30, 2017)

- Quality of service
- Conflicts
- Confidentiality

The number of lawyers the subject of complaints cross-referenced with the year admitted to the Bar:

**COMPLAINTS BY YEARS SINCE CALLED TO THE BAR**

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<tr>
<td>20-25</td>
<td>10</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>15-20</td>
<td>9</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>10-15</td>
<td>16</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>5-10</td>
<td>21</td>
<td>19</td>
<td></td>
</tr>
<tr>
<td>&gt;5</td>
<td>16</td>
<td>11</td>
<td></td>
</tr>
</tbody>
</table>

35-40 YEARS

29

Highest number of complaints by years since called to the Bar

DECREASED BY 3.38% FROM LAST YEAR TO THIS YEAR

20-25 YEARS

24

58% increase in complaints against lawyers in this group

**COMPLAINTS BY EMPLOYMENT TYPE**

<table>
<thead>
<tr>
<th>LAW FIRMS</th>
<th>93</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small firm lawyers received highest number of complaints</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EMPLOYMENT TYPE</th>
<th># OF COMPLAINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Firm</td>
<td>93</td>
</tr>
<tr>
<td>Solo Practitioner</td>
<td>24</td>
</tr>
<tr>
<td>NS Legal Aid</td>
<td>6</td>
</tr>
<tr>
<td>Provincial Government</td>
<td>5</td>
</tr>
<tr>
<td>Federal Government</td>
<td>3</td>
</tr>
<tr>
<td>Corporate</td>
<td>3</td>
</tr>
<tr>
<td>Retired</td>
<td>1</td>
</tr>
<tr>
<td>Non-practising</td>
<td>8</td>
</tr>
<tr>
<td>Resigned</td>
<td>2</td>
</tr>
</tbody>
</table>
## COMPLAINTS OPEN AND CLOSED BY STAFF

<table>
<thead>
<tr>
<th>Date range</th>
<th>Number of complaints</th>
<th>Average # of days</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1, 2016 - April 30, 2017</td>
<td>97</td>
<td>47</td>
</tr>
<tr>
<td>May 1, 2015 - April 30, 2016</td>
<td>87</td>
<td>45</td>
</tr>
<tr>
<td>May 1, 2014 - April 30, 2015</td>
<td>82</td>
<td>45</td>
</tr>
</tbody>
</table>

### Written complaints dismissal dispositions

<table>
<thead>
<tr>
<th>Regulation</th>
<th>May 1, 2016 – April 30, 2017</th>
<th>May 1, 2015 – April 30, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>No jurisdiction - fees</td>
<td>16 (36)</td>
<td>27 (29)</td>
</tr>
<tr>
<td>Frivolous, vexatious, abuse of process</td>
<td>10 (55)</td>
<td>9 (22)</td>
</tr>
<tr>
<td>Facts if proven</td>
<td>5 (9)</td>
<td>12 (56)</td>
</tr>
<tr>
<td>Evidence does not support (one lawyer response)</td>
<td>17 (25)</td>
<td>32 (87)</td>
</tr>
<tr>
<td>Evidence does not support (full document exchange)</td>
<td>19 (39)</td>
<td>10 (172)</td>
</tr>
<tr>
<td>Letter of Advice (after one response)</td>
<td>7 (21)</td>
<td>4 (28)</td>
</tr>
<tr>
<td>Letter of Advice (after two responses)</td>
<td>4 (119)</td>
<td>3 (53)</td>
</tr>
</tbody>
</table>

### Disposition of written complaints closed during the reporting periods

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Resolved/other</td>
<td>28 (18%)</td>
<td>17 (13%)</td>
<td>13 (10%)</td>
<td>20 (15%)</td>
</tr>
<tr>
<td>Staff dismissals</td>
<td>92 (60%)</td>
<td>84 (63%)</td>
<td>93 (71%)</td>
<td>67 (51%)</td>
</tr>
<tr>
<td>Staff LOA</td>
<td>13 (8%)</td>
<td>7 (5%)</td>
<td>17 (13%)</td>
<td>11 (8%)</td>
</tr>
<tr>
<td>CIC</td>
<td>8 (5%)</td>
<td>23 (17%)</td>
<td>7 (5%)</td>
<td>34 (26%)</td>
</tr>
<tr>
<td>FH</td>
<td>2 (1%)</td>
<td>1 (1%)</td>
<td>1 (1%)</td>
<td>0 (0%)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>143</strong></td>
<td><strong>132</strong></td>
<td><strong>131</strong></td>
<td><strong>132</strong></td>
</tr>
</tbody>
</table>
The three areas that form the most frequent basis for allegations in written complaints, and that are ultimately dismissed by staff with or without Letters of Advice:

### AREAS/ISSUES OF WRITTEN COMPLAINTS
(May 1, 2016 – April 30, 2017)

<table>
<thead>
<tr>
<th>COMPLAINT ISSUE</th>
<th># OF COMPLAINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delay</td>
<td>26</td>
</tr>
<tr>
<td>Unhappy with outcome</td>
<td>20</td>
</tr>
<tr>
<td>Poor communications</td>
<td>17</td>
</tr>
</tbody>
</table>

### AREAS/ISSUES OF WRITTEN COMPLAINTS
(May 1, 2015 to April 30, 2016)

<table>
<thead>
<tr>
<th>COMPLAINT ISSUE</th>
<th># OF COMPLAINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delay</td>
<td>25</td>
</tr>
<tr>
<td>Unhappy with outcome</td>
<td>20</td>
</tr>
<tr>
<td>Lawyer’s attitude</td>
<td>17</td>
</tr>
</tbody>
</table>

### AREAS/ISSUES OF WRITTEN COMPLAINTS
(May 1, 2014 to April 30, 2015)

<table>
<thead>
<tr>
<th>COMPLAINT ISSUE</th>
<th># OF COMPLAINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delay</td>
<td>32</td>
</tr>
<tr>
<td>Unhappy with outcome</td>
<td>24</td>
</tr>
<tr>
<td>Poor communications</td>
<td>12</td>
</tr>
</tbody>
</table>
COMPLAINTS REVIEW COMMITTEE (CRC)

Core function

An independent Complaints Review Committee was established in June 2013 to replace the Review Subcommittee. The CRC carries out its work in accordance with regulation 9.3. The role of CRC is to review the Executive Director’s decisions (delegated to the Director of Professional Responsibility) to dismiss complaints on the request of a complainant. The standard for review is correctness. The CRC has authority to either uphold the dismissal, or refer the matter back to PR to commence or complete an investigation. In the latter cases, the matters are then referred to the CIC for final decision.

The process is designed to ensure that the review process is perceived by the public to be fair and independent of the Society.

The CRC directly supports Council’s two strategic directions of excellence in regulation and access to justice by having a timely and accessible process for review of decisions by staff to dismiss complaints, and providing clear, written reasons for their decisions.

Year 2016/2017

- The CRC is comprised of a public representative Chair, and at least four lawyer members, none of whom may be serving on Council or have any current involvement in the Professional Responsibility process and related committees. This year, the Hon. Justice Pamela MacKeigan was appointed to the Bench and was not replaced during the year.

- The CRC role is to determine whether the decision by the Executive Director to dismiss a complaint was correct, based on the regulatory authority and the evidence on the file. The Chair or a designate will prepare a decision letter setting out the reasons for either confirming the dismissal of the complaint as correct, or returning the complaint to the Executive Director to commence or complete the investigation.

- The CRC met 9 times by way of teleconference (compared with 10 last year) and:
  - reviewed 24 files (compared with 32 last year);
  - upheld the decision of staff to dismiss in 21 matters (87%) (compared with 28 or 86% last year); and
  - returned 3 matters for commencement or completion of investigations (1 was dismissed by CIC, 1 led to a full investigation and a caution and counsel, and 1 remains with staff for further investigation).
COMPLAINTS INVESTIGATION COMMITTEE (CIC)

Core Function

The Complaints Investigation Committee carries out the functions assigned to it under Part III of the Act and Part 9 of the Regulations. It carries out its responsibilities in accordance with the objects of the professional responsibility process, and in a manner which is proactive (where possible), principled, proportionate and risk-focused. Its primary function is to consider and authorize appropriate action in response to reports of complaints and concerns with member conduct, in order to protect the public interest.

The CIC supports both of Council’s strategic directions of excellence in regulation and access to justice. The CIC relies on clear legislative authority, as well as documented policies and procedures to ensure its decisions are within their authority, consistent, fair, well-documented and explained, and transparent. Precedents are relied upon where appropriate. The CIC strives to improve its policies and procedures on a regular basis, staying informed of developments in administrative law, working closely with the PRPPC, and engaging in regular professional development. The needs and wishes of complainants are front of mind. Understanding what drives lawyer conduct and how to improve ethical decision making has led to greater creativity and innovation in decision making, and efforts to work with the lawyer to change behaviour rather than punish. Working with law firms, rather than just individual lawyers, has also become a new reality.

Year 2016/2017

- Nine regular and 14 special meetings/hearings (including email/teleconference decisions) were held during the year (more than twice as many special meetings/hearings as last year).
- 51 matters relating to 36 lawyers were reviewed by the CIC: of these 51 matters, 19 related to two vexatious complainants and were dismissed by the CIC (these 19 matters have been excluded from the review below)
- 50% of matters before the CIC were reviewed over more than two meetings; 35% were reviewed over three or more meetings
- 24% related to sole practitioners (a significant decrease from 58% last year)
- 52% were lawyers in small firms (2-10 lawyers)
- 47% involved competence or quality of service issues (up from 29% last year)
- 18% involved issues relating to conflict of interest
- 32% involved members acting in criminal matters
- 0 new referrals to Fitness to Practise Program were made by the CIC, and two previous referrals were monitored
- Five matters involving one lawyer were referred to formal hearing.
- Four section 36(2) meetings were held with lawyers who have a significant discipline history.
- Two section 37(1) suspension/restriction hearings were held respecting the same lawyer: one led to additional practice restrictions/conditions being imposed; the other led to the lawyer being suspended and referred to hearing.
- One section 37(4) meeting was requested by a lawyer: this led to the lawyer’s suspension being lifted with conditions.
- Three practice reviews were ordered by the CIC.
- Seven cautions were issued relating to conflict of interest; quality of service; competence; trust account issues; integrity; withdrawal from representation.
• Two counsels were issued relating to conflict of interest; quality of service.
• Five complaints against two lawyers of the same firm remain held in abeyance pending completion of firm practice management mentorship.
• Discipline of one lawyer resulted in appointment of a mentor; conditions imposed on one lawyer included supervision by a Practice Supervisor.
• Two staff dismissals were sent back from the Complaints Review Committee for further investigation and referred to the CIC: one resulted in a CIC dismissal, and one resulted in a caution and counsel.
• One matter remains in abeyance pending completion of certain conditions and requirements.
• Each year, the CIC engages in specific professional development training. This year, this included a cultural competence workshop in July 2016 held in conjunction with the Fitness to Practise Committee, and members of the CIC also participated in cultural competence training offered to Council, committees and staff in January 2016.
PROFESSIONAL RESPONSIBILITY POLICIES AND PROCEDURES COMMITTEE

Core function

This committee supports Council in its governance of the Society by recommending changes to the *Legal Profession Act* (“the Act”), Regulations and policies, and by developing procedures for the professional responsibility (PR) process.

The PRPPC supports both of Council’s strategic directions of excellence in regulation and access to justice. The focus of this committee’s work is to enhance the legislation, policies and procedures which support all work in Professional Responsibility. In so doing, the PRPPC looks to the Society’s Regulatory Objectives, values, strategic directions and Council’s Annual Plan.

The PRPPC liaises closely with the CRC, CIC, Hearing Committee and Professional Responsibility staff to provide some measure of quality assurance, training, and support as well as guidance.

YEAR 2016/2017

- The Committee met four times in this Committee year. The focus of its work has been largely on reviewing the nature of the work of the Complaints Investigation Committee (CIC), and its role in the Professional Responsibility process generally, in light of the Society’s move towards legal services regulation and our Triple P approach. In the coming months, the Committee will continue to review the role (investigation v. citation authorization) and composition of the CIC.

- Another priority for the Committee this year has been a review of the CIC’s process and procedure when proceeding pursuant to section 37 of the *Legal Profession Act*. This work is being conducted jointly with the CIC in an effort to ensure that the regulations, policies and procedures that guide the Committee are current, fair and accurately reflect current administrative law. It is anticipated that regulatory changes and policy redevelopment will result from this work.

- The proceedings management process of the Hearing Committee is currently under review following its implementation two years ago, with a view to making that process as efficient and constructive as possible. The current regulatory structure for managing hearings was developed a few years ago as a result of some significant delays that had been experienced in setting matters down for hearing. The regulations include a process to address timeliness, which is based on a review of various court and tribunal processes. One of the main goals of the changes was to ensure that any procedural and administrative issues are clarified early in the process. With the benefit of the experience from the past two years, the Committee has been asked to revisit the regulations.

- During this Committee year, the PRPPC developed a protocol for the reporting of concerns about lawyer conduct by the Judiciary, which has now been adopted by the Courts. This provides a means by which concerns can be shared without the need of filing a formal complaint.

- Time was devoted to reviewing the Complaints Review Committee and its processes, particularly in light of the rise of the self-represented litigants, and the unique challenges presented by those who are “zealous litigants”. The Committee is considering whether changes to the complaints review process need to be implemented, as there have been two complainants who have sought judicial review of the decisions made by the Complaints Review Committee. This raises some challenging procedural questions regarding fairness and transparency, balanced with the significant costs associated with proceeding through the courts.

- The PRPPC continues to monitor the PR department’s compliance with the National Discipline Standards. Nova Scotia has remained a leader in meeting these standards and expects to remain so even as new or revised standards are considered at the national level. We continue to work towards the development of an electronic complaint filing process, which we hope to have in place by year end.
FITNESS TO PRACTISE (FTP)

Core function

The Fitness to Practise Program is a consensual, diversionary program designed to deal more effectively with lawyers suffering from a physical, mental or emotional incapacity who are engaged in the professional responsibility process. “Capacity” means a lawyer’s ability to practise law with reasonable skill and judgment that is not substantially impaired by a physical, mental or emotional condition, disorder or addiction (s.2(ga) LPA). The goal in each matter is to try to find positive or more proactive ways to address a lawyer’s incapacity, while ensuring that the public is protected. This can often take months or even years to achieve.

The work of the FPTC supports both Council’s strategic directions of excellence in regulation and access to justice. This committee’s work is ‘reactively proactive’, in that while it responds to conduct concerns, it tends to do so much earlier in the complaints process, thereby more effectively identifying and addressing the causes of lawyer conduct problems, in the interests of both the public and the lawyer. It fulfils a unique access to justice role in that the work of this committee can often help keep a lawyer with capacity problems in practice: a majority of members dealt with by the FTPC are sole practitioners, both rural and urban. The Committee plays a role in reducing the stigma associated with lawyers practising while suffering from mental health issues.

Given the sensitive nature of issues addressed by this committee and the need for confidentiality, there is little public or transparent about the work it does, but the impact of this work is far-reaching and important. It remains a truly unique program in North America, and a model that other jurisdictions are now trying to emulate.

Year 2016/2017

This year, the Fitness to Practise Committee met three times by teleconference. All matters referred to them in this period involved mental health-related concerns. These included age-related, ADHD, depression and anxiety, suicidal ideation, personality disorders and other complex diagnoses.

- In some cases, the FTP Committee requires that a lawyer withdraw from practice for a period of time. Closure of a law practice can bring many challenges, and the Society will step in with a Custodian in appropriate circumstances. This happened on one occasion this year.

- The Committee continues to monitor the compliance of two lawyers and compliance with the terms of their Remedial Agreements. Both of these files have been open for approximately two years.

- One file remains open at the Interim Agreement stage, but now that the lawyer has retired from practice, the Committee is considering closing the file.

- The Committee closed two files this year after determining that the lawyers had successfully complied with the terms of their Remedial Agreements and that no further monitoring was required.

- Referrals to the Program can come through self-referral, as well as through referrals from the Executive Director or the Complaints Investigation Committee. During the past year, the Committee received one new referral from the Executive Director.

- Members of the FTPC participated in the half-day cultural competence training provided to the CIC in July 2016.
ETHICS ADVISORY COMMITTEE

Core function

The Ethics Advisory Committee is advisory to the Executive Director, and is responsible for assisting staff in considering and responding to ethical inquiries from lawyers. Its role primarily supports Council’s strategic direction of excellence in regulation, by proactively assisting lawyers in making sound ethical decisions.

Year 2016/2017

- Calls or emails are received from lawyers, articled clerks, professors and law students seeking guidance with regard to ethical dilemmas they have encountered, and in many cases the input of the Committee as a whole is sought and relayed to the lawyer.

- Ethics inquiry numbers:
  - 76 in 2016/17
  - 88 in 2015/16
  - 104 in 2014/15
  - 77 in 2013/14

- The focus of inquiries this year:
  - conflicts of interest between clients;
  - duties of confidentiality including the future harm exception;
  - competence;
  - optional withdrawal;
  - duties as advocate (courtesy);
  - the preservation of client property; and
  - difficult and sensitive issues.

- The most common areas of law relating to these inquiries:
  - family law;
  - criminal defence;
  - civil litigation;
  - real estate;
  - child protection; and
  - dealing both with other counsel and with self-represented parties.

- A collaborative project with Library & Information Services launched in May 2017. It collates themes of ethics advice provided and makes these available online in a searchable format through the newly enhanced Code of Professional Conduct.
CODE OF PROFESSIONAL CONDUCT COMMITTEE

Core function

The Code of Professional Conduct Committee is an advisory committee to Council that is tasked with reviewing the Code of Professional Conduct and any amendments that may be proposed by the Federation of Law Societies of Canada. The Committee primarily supports Council’s strategic direction of excellence in regulation. In carrying out its work, the CPCC considers the Society’s values and Regulatory Objectives.

Year 2016/2017

- During this Committee year, the CPCC has been considering a number of amendments that have been proposed by the Federation’s Standing Committee on the Code of Professional Conduct. These amendments are part of an omnibus amendments package prepared in November 2016 and adopted by the Federation at its meeting in March 2017. An additional package of proposed amendments has been proposed by the FLSC’s Standing Committee, received in January 2017.

- Amendments in the two packages above include changes to:
  - Commentary [8] to rule 3.1-2 regarding competence and the provision of legal opinions;
  - rule 3.2-7 regarding a lawyer’s duty not to participate in dishonesty or fraud by a client (and now others) though the inclusion of language to capture third parties;
  - rule 3.7-7 and a new 3.7-7A regarding a lawyer leaving a law firm setting out the obligations on both the departing lawyer and the law firm;
  - rule 5.1-2A regarding physical evidence of a crime, taking into account the concerns that were raised by our committee last year when these rules were originally adopted; And
  - Section 7.7 regarding retired judges returning to practice.

- The CPCC reviewed all of these amendments again at its May 2017 meeting with a view to approving the November 2016 omnibus package for adoption by our Council and providing feedback on the January 2017 package to the Standing Committee by their deadline in May.

- Members of the CPCC provided content and practice updates for the “Cracking the Code” cover feature section of The Society Record magazine, Vol. 35 No.2, Fall 2016 edition.

- Over the course of the last several months, the Committee has been reviewing the framework related to Legal Services Regulation, and analyzing how the Code applies to law firms. Part of this work includes consideration of the Regulatory Objectives, MSELp elements and the Rules to ensure consistency. The Committee will continue to consider the implication of these regulatory changes to the application of the Code and remains engaged in this analysis as Legal Services Regulation evolves. Specific to this work, the Committee is awaiting receipt of the discussion paper from the Standing Committee regarding possible amendments to the rule prohibiting fee sharing, which we believe will allow for greater creativity and innovation in the provision of legal services in future.
LAWYERS’ FUND FOR CLIENT COMPENSATION (LFCC)

Core function

The Lawyers’ Fund for Client Compensation (the “Fund”) was established under Part IV of the Legal Profession Act to provide compensation to persons who have sustained pecuniary losses due to misappropriation or wrongful conversion of the claimants’ money or property by a member of the Society or by a law corporation.

The Fund is one of ‘first resort,’ and the payments are made on an ex gratia basis. The Compensation Fund Committee has authority under the Regulations to approve claims less than $5,000, and Council receives Committee recommendations respecting payment or denial of claims over $5,000.

This Committee supports both of Council’s strategic directions of excellence in regulation and access to justice. The LFCCC fulfills a critical role in maintaining public confidence in the regulation of lawyers, by having an accessible and efficient means for the filing, investigation and payment of claims where all criteria are met. Unlike other jurisdictions, claimants do not need to exhaust all possible avenues for recovery or await final discipline of the lawyer before claims will be considered. Additionally, with the benefit of a properly sourced Fund and catastrophic claims coverage of up to $10 million from CLIA, the Society has ensured that funds will be available to satisfy most if not all claims in future. The Committee’s policies and procedures are well documented and transparent, and these together with relevant precedents support consistency and fairness in decision making. The Committee takes seriously its role in public protection, and its exercise of discretion to pay or deny, or recommend payment or denial of a claim.

Trends

- In the period 1993-1999, we experienced moderate claims losses under $500,000, stemming from lawyer thefts from estate funds, personal injury settlements and other fraudulent activities.
- In the period 2000-2005, we experienced significant claims losses nearing $2 million. The claims stemmed primarily from lawyers engaged in investment activities, and theft of personal injury and other settlements.
- Since 2006, we experienced low claims losses, primarily relating to “negligent misappropriation” by lawyers suffering from dementia or other forms of incapacity. Also, the Trust Audit Program has been in place since 2003-2004, and numerous risk-based regulations and measures have been adopted since inception.

A review of Fund activity over the past three years shows as follows:

- In 2016/17, we received one new claim relating to Scott Lytle. This claim was approved in part and closed, resulting in payment to the claimant in the amount of $1,150.00. We also processed a claim from the previous year relating to Clara Gray. This claim was also approved in part and closed, resulting in payment to the claimant in the amount of $1,161.75.
LAWYERS’ FUND FOR CLIENT COMPENSATION (CONTINUED)

<table>
<thead>
<tr>
<th>2015/16</th>
<th>2014/15</th>
<th>2013/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims total:</td>
<td>Claim total:</td>
<td>Claims total:</td>
</tr>
<tr>
<td>$130,602.00</td>
<td>$112,314.60</td>
<td>$146,434.95</td>
</tr>
<tr>
<td># of claims:</td>
<td># of claims:</td>
<td># of claims:</td>
</tr>
<tr>
<td>5 (3 lawyers)</td>
<td>17 (2 lawyers)</td>
<td>6 (2 lawyers)</td>
</tr>
<tr>
<td># denied: 1</td>
<td># denied: 2</td>
<td># denied: 2</td>
</tr>
<tr>
<td>Amount paid:</td>
<td>Amount paid:</td>
<td>Amount paid:</td>
</tr>
<tr>
<td>$1,659.63</td>
<td>$65,987.80</td>
<td>$69,534.95</td>
</tr>
</tbody>
</table>

LRA Compensation Fund

The Act and Regulation 11.2.2 establish a *Land Registration Act* (LRA) Compensation Fund for the purpose of reimbursement in the event the Minister of Finance is required to pay compensation pursuant to the LRA for claims arising out of dishonesty, fraud or criminal acts in the certifying of title by a practising lawyer.

No claims have been filed against this Fund in this or previous reporting years since inception of the Fund.
HEARING COMMITTEE

Core function

The Hearing Committee is a fully independent committee of the Society, which carries out responsibilities assigned to it under Sections 41 to 48 of the Legal Profession Act and Part 9 of the Regulations made pursuant to the Act. The Committee and any hearing panel thereof have all the powers conferred by the Act and the Regulations as well as the powers, privileges and immunities of a commissioner under the Public Inquiries Act.

This committee plays a critical role in supporting Council’s strategic directions of excellence in regulation and access to justice. Through a process that is open, transparent, competent, fair and accountable, the Hearing Committee plays an important role in instilling public confidence in the regulation of lawyers. Doing so requires a high level of training and professional development, together with commitment to public protection. This has never been more so as the matters coming to hearing increase in complexity, and require a high level of competency in administrative law. Our Hearing Committee has been key to the Society meeting or exceeding the National Discipline Standards, and serving as a model for a truly independent process.

Results:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of hearings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016/17</td>
<td>1 (54 days – continued from previous year )</td>
</tr>
<tr>
<td>2015/16</td>
<td>1 (11 days; 10 more days booked)</td>
</tr>
<tr>
<td>2014/15</td>
<td>2</td>
</tr>
<tr>
<td>2013/14</td>
<td>2</td>
</tr>
<tr>
<td>2012/13</td>
<td>6</td>
</tr>
<tr>
<td>2011/12</td>
<td>0</td>
</tr>
<tr>
<td>2010/11</td>
<td>5 (one carried over)</td>
</tr>
</tbody>
</table>

- A commitment in 2015/16 to enhance diversity among Hearing Committee members led to appointments over the past year of four experienced leaders in the legal profession from Black and Aboriginal Nova Scotian communities – during the year, a number were elevated to the Bench and new appointments have been proposed.
- The Hearing Committee is a national leader in meeting or exceeding all Federation of Law Societies National Discipline Standards relating to the conduct of hearings, including standards for timeliness and transparency.
- A Hearing Committee professional development program was held on November 10, 2016.
- The Hearing Committee Chair participated in a cultural competency program in January 2016.
- A joint NS/NB/PEI two-day professional development program is scheduled for November 9 and 10, 2017 in Halifax.
CUSTODIANSHIPS AND RECEIVERSHIPS

In accordance with the Society’s mandate to protect the public, whenever a lawyer in active practice involuntarily ceases practice with little or no notice (due to ill health, death, or as a result of suspension or disbarment), if no plans have been made for transfer of the lawyer’s practice to another lawyer or firm, or for a planned wind-down of the practice, then the Society will appoint a Receiver (by the CIC) or a Custodian (by the Court) to protect client interests and manage or wind down the practice. The authority for this is found in Sections 51 and 53 of the Act. In each case, an external lawyer is retained to serve as Receiver or Custodian, and these lawyers are provided professional and administrative support, as needed, by PR Counsel and the Director of Professional Responsibility.

The costs in relation to this work have been steadily increasing over the last several years, due in part to the aging of the profession. The budget for 2015/16 was $116,800, but actual costs were $200,000. For the 2016/17 year, the budget was set at $128,400 and actual costs were $166,354. One of our cost management strategies has been the use of an experienced team at Burchell MacDougall consisting of senior counsel John Rafferty QC, a junior partner and a legal assistant, and by arranging for storage of as many files held by the Society as possible in one secure location, as well as inventorying and culling of these files.

During the 2016/17 year, there were 16 open receiverships and 16 open custodianships. These numbers include two new receivership files and three new custodianship files. There remains one “informal” custodianship that was opened in 2013 and is ongoing. One of the new receivership files was closed in early 2017 following the lawyer’s reinstatement to practice. Many of these custodian and receiver files are now dormant and date back as far as 2003. The process of formally closing files has started, which in most cases will require an application to the Court to seek approval for disbursal of funds remaining in trust and destruction of files. One Receivership file and one Custodianship file were closed by Court Order in 2016, resulting in the Society recovering $4,432.15 and $13,215.75 respectively.

A new budget item has been added this year to track our costs in proactively helping lawyers wind down their practices in circumstances where they are unable to do so themselves. This ends up reducing Receivership or Custodianship costs in the longer term.

UNAUTHORIZED PRACTICE OF LAW

Unauthorized practice (UAP) means practising law without being permitted to do so by the Legal Profession Act. UAP is monitored by the Nova Scotia Barristers’ Society, as we have the responsibility to protect the public by taking action against non-lawyers who illegally offer legal services or misrepresent themselves as lawyers. On receipt of the information suggesting the unauthorized practice of law, staff will gather appropriate information and begin to investigate the allegations. With the expansion of non-lawyers providing legal services/information, and changing attitudes toward this as a result of our Triple P and risk focus, UAP work continues to decrease.

The powers of the Society with respect to the unauthorized practice of law are found in Sections 17 and 18 of the Legal Profession Act, and include the ability to seek injunctions and to prosecute those who violate the Act. If there is some evidence that the person is engaged in unauthorized practice of a minor nature or if the specifics are not clear, staff will seek an undertaking from the person whereby he/she will provide a written commitment not to engage in unauthorized practice.

In the 2016/17 reporting year, five reports of UAP were received and followed up on by PR Counsel. While the Society monitored the progress of one matter as it made its way through the Courts, the others required no formal action. In the 2015/16 reporting year, three reports of UAP were received and followed up on by PR Counsel. In each of the 2014/15 and 2013/14 reporting years, four reports of UAP were received and followed up on by PR Counsel. Most of those contacted in relation to UAP allegations sign an undertaking to cease and desist offering legal services and the initiation of an injunction or other legal recourse has not been necessary.
UNDISTRIBUTED TRUST FUND APPLICATIONS

The Society provides a means one or more times each year for members and firms to dispose of undistributed trust funds, through application to the Court, and payment of these funds to the Public Trustee. Members must have made reasonable efforts to identify the source of funds and to return the funds to those entitled, and have held the funds for at least two years.

The requirements for information to be included in a lawyer’s affidavit to be included in the application are set out on the Society’s website. It is specifically noted that lawyers must not include privileged or confidential information and that copies of trust ledgers and the like should not be attached as exhibits.

There was an application made in December 2016 on behalf of 10 lawyers and law firms with respect to funds totalling $19,928.57.

In 2015/16, two applications were made: The first was heard in June 2015 and included affidavits from 21 lawyers and law firms and paid out funds totalling $45,745.85; the second application was made in March 2016 on behalf of 17 lawyers and law firms and included funds totalling $41,556.76.

TRUST ACCOUNTS ACTIVITY – RISK MANAGEMENT

Lawyers and law firms are required to file annual Trust Account Reports (TARs) and Accountants’ Reports on Trust Account Reports (ARTARs) within three months of their fiscal year end. All reports are reviewed to identify any violations to the trust accounts regulations contained in Part 10 of the Regulations, or negative responses to various risk questions contained in the reports. This information is reviewed with a view to assessing various risk factors:

- any history of the same or similar trust account regulation violations;
- whether advice or warnings resulting from previous years’ violations remain unheeded;
- the nature and number of violations;
- a lack of any or any substantive response to the cause of the violations and the steps taken to correct them;
- reporting of violations in the ARTAR and no reporting of violations by the lawyer or firm in the TAR;
- any relevant history of complaints;
- any current or historical bankruptcies or judgments; and
- results of prior or recent trust audits through the Trust Audit Program.

Where the specific and general risks are assessed to be reasonably low, the Society’s responses range from a letter of acknowledgment, to a phone call and/or a request to confirm the errors or systems have been rectified.

Where risks are assessed to be moderate, responses can include requests for independent confirmation of rectification of the errors or systems, active monitoring such as the filing of monthly trust reconciliations, or the filing of quarterly TARs/ARTARs at the lawyers’ or firms’ cost. Firms in this category are often added to the list of firms to be audited by the Society in the coming year, particularly where a pattern of regulation violations is observed.

Where risks are assessed to be high, responses can include a direction for an immediate trust audit or an order for a full forensic audit by the Complaints Investigation Committee, the commencement of an investigation through the complaints process, and/or required attendance before the CIC under a s. 36(2) meeting or s. 37(1) hearing.
Where possible, the trust accounts management process strives to be proactive and proportional in our response to violations. The vast majority are due to inattention, ineffective systems, bank errors and lack of familiarity with the regulations and how to apply them. These situations benefit from identification of the sources of errors, education and followup. In some cases, our auditor has spent hours instructing a lawyer in the application of the regulations.

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<tbody>
<tr>
<td>Regulation violations</td>
<td>41%</td>
<td>33%</td>
<td>32%</td>
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<tr>
<td></td>
<td>5</td>
<td>7</td>
<td>14</td>
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<tr>
<td></td>
<td>(1 open filing monthly)</td>
<td>(4 closed)</td>
<td>(9 closed)</td>
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Top 10 regulation violations

- 10.6.1 – failure to maintain sufficient funds on deposit – no overdrafts permitted
- 10.2.7 – mixing of personal and client funds in the trust account (aka ‘floats’)
- 10.6.3 – failure to report and explain reason for overdrafts to Executive Director
- 10.3.6 – failure to adhere to the two-signature rule (one signature permitted for sole practitioner only)
- 10.2.3 – failure to deposit trust funds without delay – late deposit of trust funds
- 10.2.4 (a) – failure to properly name the trust account (trust account must be designated as a trust account)
- 10.6.2 – failure to correct errors in a timely manner
- 10.2.6 – failure to deposit the correct funds in the trust account
- 10.2.4 (c) – a trust account must bear interest which is computed and payable in accordance with Section 30 of the Act (to the Law Foundation).
- 10.3.5 (d) – withdrawal of funds from a trust account must not be released or effected until the lawyer or law firm is in possession of sufficient funds for the credit of the client on whose behalf the withdrawal is made
TRUST AUDIT PROGRAM

The Trust Audit Program is an important risk management tool for the Society and assists with our mandate to protect the public and enhance the competence of members. As noted in the Annual Scope of Audit Report, copy attached as Appendix A, the vast majority of lawyers and firms are receptive to the audits and responsive to recommendations for improvement of their trust account management systems. The audit results inform future education programs, and the continued development of our new online trust account education tools and resources for lawyers.

Graham Dennis, CA’s Annual Scope of Audits Report summarizes his general findings from audits performed May 1, 2016 to April 30, 2017.

It is noteworthy that in 100% of audits, the auditor uncovers regulation violations that were not reported on a lawyer’s or firm’s TAR/ARTAR. The vast majority of lawyers and firms respond very positively to audits, and find them to be a valuable learning experience. Those audited are selected each year on the basis of an evolving set of risk criteria that can include the following:

- sole practitioner or firm who has NEVER been audited since 2003 (a new criterion added last year);
- new firms in the past 12 months;
- anyone who has contacted us about Consumer Proposal or Bankruptcy;
- anyone who has indicated they have plans to retire but haven’t filed an application to do so;
- any firm where the partnership / corporate structure is unclear;
- Firms of more than one lawyer where each lawyer has his or her own trust account (and who has NOT been audited in the past two years);
- Firms and lawyers over the past two to 10 years who have continued to file exceptions each year AFTER having been previously audited;
- Any lawyers or firms who have answered affirmatively to our risk-based questions on the AMR in the past two years; and
- lawyers who have been administratively suspended over the past two years.

This year, in an effort to reduce costs, the number of audits conducted was reduced by 33%.

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<tbody>
<tr>
<td>Number of audits</td>
<td>23</td>
<td>38</td>
<td>35</td>
</tr>
<tr>
<td>Number of firms</td>
<td>9</td>
<td>37</td>
<td>34</td>
</tr>
<tr>
<td>Number followup audits</td>
<td>0</td>
<td>6</td>
<td>5</td>
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<tr>
<td>Number in HRM</td>
<td>11</td>
<td>15</td>
<td>20</td>
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<tr>
<td>Number outside HRM</td>
<td>12</td>
<td>21</td>
<td>14</td>
</tr>
<tr>
<td>Number of sole practitioners</td>
<td>14</td>
<td>22</td>
<td>12</td>
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FOCUSING ON RISK

As we become more risk-focused in respect of how lawyers and firms handle client trust monies, we are embarking on a full-scale review of the trust account program, from annual reporting requirements to tools for assisting lawyers and firms with compliance, to the audit process. As part of the Triple P approach to
regulation, we are taking steps to review every aspect of our regulatory structure and tools for keeping trust monies safe with lawyers.

During the year, we participated with CLIA in the development and conduct of a Trust Account Benchmark Project. The purpose of this project was to prepare a report discussing the results of a benchmarking survey, with recommendations on best practice approaches used to regulate lawyers’ activities associated with trust funds and trust accounting. The report, finalized on April 3, 2017, also highlights recommended actions to improve the overall efficiency and effectiveness of trust accounting risk management practices among law societies. The key recommendations now under consideration fall into 10 main categories:

1. Identifying and verifying clients (i.e., enhancing client ID processes)
2. Best practices for opening a trust account
3. Best practices when operating a trust account
4. Managing all current forms of trust transactions and risks, including cyber fraud
5. Retaining records and avoiding crises from natural disasters and physical safety breaches
6. Best practices in retiring trust accounts
7. Best practices with audits and trust account reviews
8. Tools for managing special circumstances, such as falsification of records and complex financial data
9. Matters to report to the Law Society
10. Relevant practice management concepts

The Director of Professional Responsibility and Director, Finance & Administration have been tasked with developing an action plan to prioritize this work, with an additional view to streamlining the resources needed for trust accounts oversight, and hopefully resulting cost reduction or rationalization both for the organization and for law firms. This supports the Society’s goal of reducing the burden of regulation for lawyers and firms where appropriate, and moving away from a ‘one-size-fits-all’ model of regulation.

BANKRUPTCIES AND JUDGMENTS

As part of the Professional Responsibility department’s role to protect the public, the department also monitors other risk-based matters including lawyers’ bankruptcies and judgments. Pursuant to regulations 4.2.8 through 4.2.12, if a member or a law corporation is served with a petition in bankruptcy, makes an assignment of property for the benefit of creditors, presents a proposal in bankruptcy to creditors, or learns of a judgment order against him or her, he or she is required to report immediately to the Executive Director of the Society. As noted above, a lawyers’ bankruptcy or judgement may be considered a risk factor, and may result in additional monitoring or the conduct of a risk-based trust audit.

This year, we experienced an influx in reported bankruptcies by fairly junior members of the Bar between March and April, related in large part to CRA and high student loan debt.

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<tbody>
<tr>
<td>Bankruptcies</td>
<td>9</td>
<td>10*</td>
<td>10</td>
</tr>
<tr>
<td>Judgments</td>
<td>8</td>
<td>10 (incl. 6 CRA)</td>
<td>10 (incl. 6 CRA)</td>
</tr>
</tbody>
</table>

*3 consumer proposals
Note: One judgment in the amount of $3,000,000.00
CONCLUSION

The Professional Responsibility department and processes continue to be in the midst of transformation. The foundational principles for our work are the Regulatory Objectives, adopting a Triple P and risk-focused approach to regulation, and striving to identify and achieve new and measurable regulatory outcomes, in addition to those established by the National Discipline Standards. We hope to further transform our work in the public interest through adoption of restorative justice concepts in our complaints resolution processes. This transformation must not, however, result in any negative impact on the efficiency, fairness and transparency with which we must continue to do our work. In the coming year, we will work with other departments to create the foundation for support for Legal Services Regulation.

Goals for the PR Department in the coming year therefore include:

- working with the PRPPC to continue to identify and design new tools and processes to incorporate Triple P, risk and restorative justice concepts in the PR processes;
- implementing a process for the electronic filing of complaints and concerns;
- changing the language and approach with complaints handling to better manage expectations and reduce the adversarial approach – listening to the stories received through #TalkJustice;
- training staff in restorative justice language and concepts;
- fine-tuning the purpose and manner for sharing of risk information between departments and in support of LSS;
- working with the Code of Professional Conduct Committee to consider how the Code applies to law firms and eventually legal entities, and what regulatory amendments may be required to give effect to Council’s LSR Policy Framework;
- designing a Triple P and risk-focused trust accounts management program in collaboration with other departments, focusing on the recommendations from the CLIA Benchmarking Report;
- drafting amendments to the Regulations to support anticipated amendments to the Legal Profession Act, and the Legal Services Support work;
- working with the Complaints Investigation Committee, assist with the adoption of Triple P and risk-focused responses to ethical violations, professional misconduct, conduct unbecoming, professional incompetence and professional incapacity;
- incorporating the tools and resources embedded in the MSELP self-assessment tool into complaint intake responses, letters of advice, and CIC counsels and cautions; and
- continuing to assist the Federation of Law Societies of Canada with the development of enhanced and new national discipline standards.

Victoria Rees
Director, Professional Responsibility
COMMITTEE’S MANDATE

The Committee supports Council in the governance of the Society with respect to its primary purpose of protecting the public interest in the practice of law, by developing professional standards and a range of related best practices in criminal law in Nova Scotia.

This Committee was appointed by Council in June 2013 and commenced its work in September 2013. The Committee is comprised of privately practising lawyers, provincial Crown lawyers, federal Crown lawyers and Legal Aid lawyers from throughout Nova Scotia. It has met approximately once per month since that time.

STANDARDS DEVELOPMENT

This year, the focus of the work of the Committee was on the following areas:

- Lawyer Competence
- Withdrawal as Counsel
- A Guilty Plea
- Conflict of Interest
- Withdrawal of a Guilty Plea
- Defence Obligations Regarding Disclosure
- Interaction with Witnesses
- Sample Instructions

Standards for Guilty Plea and Withdrawal of a Guilty Plea were initially introduced to Council in September 2016. At that time they were approved for distribution to the membership for comment. Since that introduction, the Committee has spent more time on these draft standards and sent them again to the membership for comment. Review of those comments will be part of the Committee’s work plan for 2017 – 2018.

The Committee continued to discuss draft standards for Lawyer Competence, Conflict of Interest, Interaction with Witnesses and Disclosure. There are currently draft standards for Lawyer Competence and Disclosure, which the Committee is working to finalize for introduction to Council.

The Committee remains interested in developing precedents, checklists and other practice tools.

A good deal of work still faces the Committee, including research, writing, discussion and development of agreed upon language before any Standard can be presented to Council for review, followed by subsequent member consultation and ultimate approval. However, the Committee’s work is certainly on schedule, due both to the hardworking and dedicated committee members.

The work of this committee focuses on preparing Standards that are designed to offer a resource to criminal law practitioners. The Standards not only provide key advice on ethical issues, but also give practical advice and guidance to lawyers on topics relevant to every day practice.
This Committee is filled with experienced and knowledgeable criminal practitioners whose efforts are greatly appreciated in the development and pursuit of the Committee’s work. I am continually impressed with the level of their dedication and commitment to this work.

Respectfully submitted,

Brian Bailey, on behalf of the Committee
PROFESSIONAL STANDARDS COMMITTEE: FAMILY LAW

INTRODUCTION

The Committee is comprised of lawyers from throughout Nova Scotia. Members have been gathered from different areas of law, types of practice, and firm sizes. These members bring valuable knowledge to the Committee and work hard to improve Family Law Standards.

COMMITTEE’S MANDATE

The Committee supports Council in the governance of the Society by developing professional standards for the area of family law.

This year, the Committee had two main projects on its work plan:

- annual review of the Standards; and
- consideration of new areas possibly requiring a standard or best practices development.

ANNUAL REVIEW OF STANDARDS

An annual review of all Standards was conducted by the Committee in order to ensure that they remain an accurate, current and helpful resource for family law practitioners in Nova Scotia. The Committee assigns Standards to a member who reviews and reports on the Standard to the Committee. In particular, the approach to each Standard is proactive, principled and proportionate, such that each Standard as currently drafted is consistent with the Society’s “Triple P” approach, based on the known risks associated with the area of practice. In many of the Standards, the summaries of decisions were fleshed out to allow for better understanding of the cases’ significance “at a glance.” All downloads and hyperlinks were reviewed to ensure they still work. Finally, various “below the line” amendments and updates were made to each Standard as outlined below.

- **Standard #1: Conflict of Interest**
  Reference materials updated to include reference to the Federation of Law Societies conflicts rule and cases added to section “When does a client relationship begin?”

- **Standard #2: Client Competence**
  The addition of resources and tips for intake forms and interviews is suggested and will be on the Work Plan for 2017-2018.

- **Standard #3: Lawyers’ Competence**
  Reference materials updated to include a decision in the Notes section of the Standard, and the removal of one resource.

- **Standard #4: Reconciliation**
  Additional resources added to the Standard.

- **Standard #5: Dispute Resolution Options**
  Standard updated to include recent case law, specific references to the *Code of Professional Conduct* and additional articles.
• **Standard #6 – Documentation of Advice and Standards**  
  Additional resources added to the Standard.

• **Standard #7: Unrepresented Parties**  
  Additions and revisions were made to downloads, references and articles.

• **Standard #8: Domestic Contracts**  
  Additions were made to cited cases and practice tips.

• **Standard #9 – Affidavits**  
  Additional Commentary was revised and decisions were recommended to be included.

• **Standard #10: Children**  
  Reference Materials were removed when found to be dated and newer resources were added.

• **Standard #11: Scope of Representation**  
  Reference Materials were removed when found to be outdated and one resource relating to limited scope retainers was added.

• **Standard #12: Independent Legal Advice**  
  Decisions were added to Additional Commentary.

• **Standard #13: Adoption**  
  Additions and updates were made to notes, practice tips and online resources.

• **Standard #14 – Assisted Human Reproduction**  
  Reference Materials were removed when found to be outdated and new resources were added.

• **Standard #15 – Electronic Information and Social Media**  
  This new Standard was approved by Council on April 28, 2017 in its final form.

**EMERGING ISSUES**

New areas for the development of standards or best practices in family law were standing agenda items at each Committee meeting. One area that has been discussed by the Committee is the need for standards that deal with Wills, Estate and Trusts issues. The Committee is looking at Standards in the area of elder law and how those issues intersect with family law, real property law and estates. The Committee is also examining standards that relate to Withdrawal as Counsel and Self-Representation, which will be the subject of further work in the next Committee year. Current Standards, Adoption and Assisted Human Reproduction will have above-the-line changes to be completed when the Committee reconvenes. Domestic violence in the context of family law will also be the subject of further work in the upcoming year. A review of the existing Family Law checklists will be done in the upcoming year to ensure the checklists are also consistent with a proactive, principled and proportionate approach in line with the Society’s Strategic Framework. This work will continue next year.

Thank you to Bob Chipman QC and Heidi Foshay-Kimball QC for all their hard work over the last few years.

Respectfully submitted,

Jeanne Desveaux, Chair
PROFESSIONAL STANDARDS COMMITTEE: LAW OFFICE MANAGEMENT

INTRODUCTION

The Committee is pleased to have this opportunity to report to the Members on its activities over the past year. The Committee has made some real strides in the adoption of its so-called “above the line” and “below the line” Law Office Management Standards. The Committee continues to work towards a set of Law Office Management Standards that are practical, flexible and useful.

COMMITTEE’S MANDATE

The Committee supports Council in the governance of the Society with respect to its mandate of protecting the public interest in the practice of law. The Committee develops professional standards and a range of related best practices in the management of law offices and practices in Nova Scotia.

This Committee was appointed by Council in January 2012 and commenced its work in February 2012. The Committee has a robust work plan that is augmented and expanded from time to time. The Committee is comprised of privately practising lawyers from throughout Nova Scotia. Its members have been gathered from various practice types, various firm sizes and all or virtually all subjects of practice concentration.

STANDARDS DEVELOPMENT

This year, the focus of the work of the Committee continues to be in the following areas:

- Lawyer-law firm information management systems
- Employment Equity
- Unbundled Legal Services
- Advertising (including fee issues and the soliciting of prospective clients)
- Succession
- Social Media and Data Protection

The Standard with respect to Equity and Diversity was introduced to Council in March 2016. This Standard caused more discussion and after further discussion and consultation with the membership, the final form was approved by Council on July 22, 2016.

Work on the other Standards relating to Marketing and Advertising, Lawyer / Law Firm Information Management and Succession continued this year and is underway with the Marketing and Advertising Standard being introduced to Council at the April 2017 meeting.

All of the Committee’s work in drafting takes into consideration the Triple P nature of the Society’s regulation of lawyers, as well as elements of the Management System for Ethical Legal Practice.

The Committee would like to thank Raffi Balmanoukian for his years of dedicated service to the efforts of the Committee. We also note the passing of David Parker QC, who provided invaluable insight and input on all our Standards. He will be missed.
In conclusion, I would like to thank Gavin Giles QC, Kathryn Dumke QC, Bruce McLaughlin, Alan MacNeill, Matt Edmonds, Andrew Nickerson QC, Loretta Manning QC and Brian Bailey. This is a diverse, knowledgeable and highly experienced group of practitioners whose efforts have been invaluable in pursuing the Committee’s work. The Committee’s members come from large regional firms to solo practices and all sizes in between. They are also exceptionally good people who bring energy, high spirits and good humour to the discussions.

Law Office Management Standards are important factors underpinning Council’s mandate to protect the public in the practice of law. Striking the right balance is an important factor. Without the diverse committee viewpoints available, this right balance would be all but impossible to achieve.

Respectfully submitted,

Bob Carter, Chair
PROFESSIONAL STANDARDS COMMITTEE: REAL ESTATE

THE COMMITTEE

The Professional Standards (Real Estate) Committee (the “Committee”) consists of 10 practising lawyers and the Society President ex officio. Eight voting members are real estate practitioners practising privately throughout rural and urban Nova Scotia, one is corporate counsel and one is with the Department of Justice (Nova Scotia). The Committee is chaired by me, Matthew J.D. Moir.

The Committee meets monthly between September and May.

COMMITTEE’S MANDATE

The Committee supports Council in the governance of the Society by developing professional standards in the area of real estate law.

The Committee:

• makes recommendations to Council with respect to identification of:
  - existing applicable professional standards of real estate law practice and emerging real estate law issues that may require the development of professional standards; and
  - changes in professional standards of real estate law practice and emerging real estate law issues that require amendments to existing NSBS Real Estate Law Professional Standards;
• annually reviews the Society’s Real Estate Law Professional Standards and advises Council with respect to potential amendments thereto, including a draft of proposed amendments;
• identifies resources and tools to assist lawyers to practise in accordance with the Standards; and
• acts as a resource on issues of professional standards for real estate law as may be requested by Council

2016-2017 ACTIVITIES

Annual Review

The Committee reviewed Council Policy 16 – Role and Expectations for Committees and Chairs and the Society’s Strategic Framework, at the first meeting of the year as usual. The Committee reviewed all of the Practice Standards and noted those which ought to be revised.

New Standards

The Committee completed drafting a new subdivision standard, having also spent part of the previous year on the standard. The new standard has been approved by Council and is now published. The standard was required because of the absence of an existing standard, and the legal nature of subdivision compliance being critical to title.

The Committee also completed a new title insurance standard, which has been submitted to Council. Title insurance is no longer a developing part of the real estate services market; rather real estate lawyers regularly advising their purchaser clients concerning title insurance and making it available to them has likely now become widespread, although not universal. In other jurisdictions, advice to clients concerning title insurance
is mandatory. The Committee was careful not to prepare a standard that would make such advice mandatory, preferring deference to the professional judgment of each lawyer.

The Committee has begun drafting a new standard on undertakings, which will be carried into the next year.

Planned new standards concerning rectifications and benefits and burdens were deferred, pending anticipated legislative changes.

**Revisions to Existing Standards**

The Committee has deliberated revisions to the following standards:

3.5 – **Judgments**

- Corporations and Other Entities
- Partnerships

The revisions to the Judgments and Partnerships standards have been presented to Council, and are in the process of membership consultation. We expect to be submitting a final draft to Council near the beginning of the next period.

The revisions to the standards on Corporations and Other Entities were expected to be submitted to Council in time for the May Council meeting.

**New Resources**

The Committee has been developing a sample letter to clients regarding title insurance, which will be added to the Practice Tools.

**CONCLUSION**

The Committee has undertaken its mandate for the 2016-2017 year, having regard to the Society’s vision and values and within its Strategic Framework, by expanding the published practice standards and developing new resources for practitioners. Maintaining and promoting the Practice Standards and Practice Tools upholds and protects the public interest in the practice of law. The public is perhaps more exposed in real estate practice than in other areas of practice, and promoting excellence in real estate practice upholds and protects the public interest significantly.

I would like to express gratitude to my fellow members of the Committee for being so generous with their time once again this year, and to the LIANS staff who manage the functioning of the Committee with their hard work.

I especially want to acknowledge the long years of service of Bernie Conway and Mark Everette, who are retiring from the Committee this year.

Respectfully submitted by:

Matthew J. D. Moir, Chair
As the regulator of the legal profession, the Nova Scotia Barristers’ Society protects the public interest in the practice of law. Council is the Society’s governing body and includes elected and appointed lawyers from across the province, as well as three public representatives. It is the responsibility of the public representatives to provide the perspective of the public and ensure that lens is applied to the work of Council and the Society. It is something that we take very seriously in our work on Council and committees, and in the other work we do on behalf of the society.

The public representatives come from a variety of backgrounds and experiences, and reflect the diversity that is a critical aspect of the Society’s strategic plan. This year we welcomed a new public member, Peggy Gates-Hammond CA, CFP, TEP, who has served on Society committees in the past.

The commitment to serve as a public member on Council is possible with the support of the others involved in Council operations. We can engage in, contribute to and influence the work of Council as the process is supported by the dedicated and professional staff of the Society, other members of Council and the current president, R. Daren Baxter QC, TEP. The work cannot be done without the collaboration, professionalism and dedication of all of those involved.

This year has concentrated on integrating the Policy Framework developed in the past, and its six Regulatory Objectives:

1. Protect those who use legal services.
2. Promote the rule of law and the public interest in the justice system.
3. Promote access to legal services and the justice system.
4. Establish required standards for professional responsibility and competence in the delivery of legal services.
5. Promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system.
6. Regulate in a manner that is proactive, principled and proportionate.

This work has been very focused and there is a strong commitment to move forward, with many challenges and opportunities. With the planning completed and the framework in place, this year we are proud of the work that has been done to start implementing those plans. While there is a significant amount of work undertaken by the Society and Council, some of the key areas are as follows:

- Adapting the regulatory framework and moving to a “Triple P” approach means significant changes for lawyers, and the Society continues to focus on member engagement as a critical step in moving forward.
- Access to justice (A2J) initiatives have expanded, with increasing numbers of the public providing input into the work of Society, and helping us better understand their legal services needs.
• A commitment to diversity in all aspects of the strategy, plans and work of the Society, from engaging with communities to Council and committee composition, educational opportunities and ongoing support for initiatives such as the Preston Lands Project.

• A commitment to enhancing oversight of the budget, in-depth financial review and changing the annual work schedule of the Society and Council to address the changes required to the Society’s operations and the financial challenges of the past year.

Change is a constant in the work that we do. We will be welcoming a new president this year, with the transition from Mr. Baxter to Julia Cornish QC. Much has been accomplished under Daren’s leadership and we look forward to Julia’s leadership and guidance. In addition, Christa Brothers QC will be joining as second vice-president, which will ensure we continue to have a capable and experienced leadership team to guide our work.

The upcoming year will continue to be one of change for the Society and the work we do. A key change will be with the executive director. The role of the executive director is to uphold the values of the Society, which are critical to the Society’s vision to act in the public interest and “provide leadership, value and support to a competent, ethical, inclusive and engaged legal profession.”

The work that Darrel Pink has done has always embodied these qualities, and he has led by example over the 27 years he has been the leader. As the search begins for a new executive director, we know that the legacy of commitment and dedication – as well as the significant contributions Darrel has made to the Society and the law profession – will not be forgotten. His contributions mean that his successor will have a solid foundation upon which to build. We thank him for his contributions, both personally and professionally.

For the upcoming year, Council has decided to add two additional public representatives. This will bring Council in line with the provincial government policy on self-regulated professions, but also demonstrates Council’s commitment to involving the public in the decisions it makes and the work it does. This move is in keeping with its role to protect the public interest in the practice of law.

The next year will continue to bring about change and new opportunities to engage with the profession and the public as we carry out the important work we do. We look forward to the future and our role in helping to shape the direction of the Society.

Respectfully submitted,

Natalie Borden
Michael Baker
Peggy Gates-Hammond CA, CFP, TEP
NEW LAWYERS

NEW MEMBERS OF THE NOVA SCOTIA BARRISTERS’ SOCIETY

The Society welcomes the following 120 new lawyers, called to the Nova Scotia Bar between May 1, 2016 and April 30, 2017:

Emma-Lee Suzanne Adlakha
Ibrahim Abdullah Badawi
Jennifer Kristine Barbour
Danika Beaulieu
Michael Emmett Berrigan
Dildeep Singh Bhatti
John Thomas Ginn Boyle
Kathleen Elizabeth MacKay Boyle
Hillary Jordan Brannen
Geoffrey Hanson Breen
Scott MacLean Brownell
Deanna Noelle Bru
Nicholas Edward Burke
Dianna Kathleen Burns
Paul Joseph Calderhead
Nicole Sarah Lynn Campbell
Andrew Christofi
Heidi Marie Collicutt
Patrick James Connors
Jillian Elizabeth D'Alessio
Shamsher Singh Dhindsa
Ashley May Donald
Vicky Gina Doucette
Maria Catherine Bethany Dugas
Kaitlin Patricia Duggan
Rachel Kathleen Embree
Sarah Jean Smith Emery
Kyle Young Ereaux
Giancarla Francis
Rosalie Marie Francis
Colin Murray Gale
Jillian Nadine Gallant
Christian Girouard-Leclerc
Luke Christopher Godin
Philip William Grassie
Robyn Shawnee Gregory
Shauna Claire Elizabeth Hall-Coates
Colleen Elizabeth Hepburn
Karen Rosanne Hollett
Gavin Thomas Johnston
Donald Vincent Keenan
Juliet Kim
Julie-Ann Marie Kirkpatrick
Kristina Lea Ann Koller
Michelle Jennifer Lang
Jeffrey Wayne Lattie
Heidi Nicole LeBlanc
Keith Davies Lehwald
Kathleen Alexandra Leighton
Aaron David Lemkow
Rhoda Jean Lempers
Michael Arthur Levin
Cassandra Elizabeth Lilley
Caroline Nadine Lirette
Katharine Alexandra Lovett
Amanda Lynn Tyne Lutz
Kimberley Anne MacEwan
Andrew Karol Maciag, QC
Margaret Ann MacInnis
Jennifer Melissa Mackay
Alexander James MacKillop
Kristy Jacqueline MacKinnon
Courtney Jane MacNeil
Nadia Monique MacPhee
Tara Danielle MacSween
Duncan John MacVicar
Meaghan Claire Mahadeo
Pawanjeet Singh Mann
Napinder Pal Singh Masaun
John Phillip Maskine
Matthew Mark MacLean McEwen
Andrew James McGarva
Blair Katherine McLlwan
Paul Douglas McLean
Mark Cameron McLeod
Robert Mroz
Ronald Bruce Muir
Shirley Nevo
Sara Dawn Nicholson
Brian Colleen O'Grady
Patrick Kevin O'Neil
Courtney Anne Palmer
Samantha Genieva Parris
Jade Marie Pictou
Michael Joseph Potter
Rohan Rajpal
David Elias Randell
Allison Jean Reid
George Reis
Anthony Douglas Rosborough
Simon Nils Ross-Siegel
Kathlina Nicole Royal-Preyra
Lawrence Robert Rubin
Nathan Robert Ryan
Catherine Leigh Sadler
William Matthew Saunders
Robyn Ashley Schleihauf
Lindsay Michelle Silliker
James Ian Simpson
Angus Thomas Smith
Tara Semone Tryphena Smith
Billy Joe Sparks
Caroline Grace Spindler
Sylvie Lynn Thériault
Robin Lynne Thompson
Brandon Marshall Trask
Kristen Elizabeth Vandenberg
Naomi Helen Veniot
Sarah Michael Walker
David John Lambe Wallace
Nicola Paige Watson
Reginald Davidson Wedlake
Guy Sebastian Wellard
Katherine Rose Willyard
Enoch John Wu
Heather Marie Wyse
Olga Kallioppi Young
IN MEMORIAM

The following lawyers and colleagues passed away between May 1, 2016 and April 30, 2017.

The Society extends condolences to their friends and families.

2016

- Shaun MacMillan, Halifax – August 27, 2016
- Bernadette Christina Maxwell, Lunenburg – September 11, 2016
- Wayne Reginald Marryatt, Halifax – September 15, 2016
- Thomas B. Akin, Toronto – September 28, 2016
- Michael E. Dunphy QC, Halifax – October 11, 2016
- Allan Nicholson, Black Rock – October 12, 2016

2017

- Dianne Pothier, Professor Emerita, Schulich School of Law, Halifax – January 3, 2017
- Edwin Adlard (Ted) LeBlanc QC, Glen Haven – January 10, 2017
- Colin Hunter MacLean, Halifax – February 21, 2017
- David I. Jones QC, Life Member, Dartmouth – March 2, 2017
- David T. R. Parker QC, Truro – March 4, 2017
- The Honourable John R. Nichols, retired Judge of the Provincial Court, Digby – March 17, 2017
SOCIETY COMMITTEES

Regulatory Committees

Complaints Investigation Committee
Complaints Review Committee
Credentials Committee
Fitness to Practise Committee
Hearing Committee

Council Committees

Code of Professional Conduct Committee
Distinguished Service Award Committee
Executive Committee
Finance Committee
Gender Equity Committee
Governance and Nominating Committee
Lawyers’ Fund for Client Compensation Committee
Professional Responsibility Policies & Procedures Committee
Professional Standards (Criminal) Committee
Professional Standards (Family) Committee
Professional Standards (Law Office Management) Committee
Professional Standards (Real Estate) Committee
Racial Equity Committee

Legal Services Regulation Working Groups

Legal Services Regulation In-House and Government Lawyers Working Group
Legal Services Regulation Legislation and Regulation Working Group
Legal Services Regulation Solo & Small Firm Working Group

Liaison Committees

Court of Appeal Liaison Committee
Family Court Liaison Committee
Provincial Court Liaison Committee
Service Nova Scotia Liaison Committee
Supreme Court Liaison Committee
Supreme Court Liaison Committee (Family)

Operational Committees

Bar Examination Screeners Subcommittee
Civil Procedure Rules Committee
Ethics Advisory Committee
Land Registration Act Management Committee

Appointments to outside bodies

Advisory Committee on Judicial Appointments – Federal
Advisory Board on Judicial Appointments – Provincial
Cost and Fees Committee
Family Law Expert Advisory Panel
Federation of Law Societies of Canada Council
Indigenous Blacks and Mi’kmaq Initiative – Advisory Council
Judicial Council
Judges’ Rules Committee
Law Foundation of Nova Scotia
Law Reform Commission of Nova Scotia
Lawyers’ Insurance Association of Nova Scotia Board of Directors
Nova Scotia Legal Aid Commission
QC Appointments Advisory Committee
Small Claims Court Adjudicators Advisory Committee
Statutory Costs and Fees Committee

For a current list of committee members and terms of reference for each committee, please visit the Committees page of the Society’s website: nsbs.org/about_us/committees.
This year’s Council met eight times. The following chart lists the Officers and members for 2016-2017.

### Officers

<table>
<thead>
<tr>
<th>OFFICER</th>
<th>DISTRICT/CAPACITY</th>
<th>ATTENDANCE</th>
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<tbody>
<tr>
<td>R. Daren Baxter QC, TEP President</td>
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<tr>
<td>Julia Cornish QC, First Vice-President</td>
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<tr>
<td>Frank E. DeMont QC, Second Vice-President</td>
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### Members

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<td>Michael J. Baker</td>
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<td>Nancy F. Barteaux QC</td>
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<td>Natalie Borden</td>
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<td>John Bodurtha</td>
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<td>Dean Camille Cameron</td>
<td>Schulich School of Law</td>
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<td>Sheree L. Conlon QC</td>
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<td>Ellen R. Burke</td>
<td>Central</td>
<td>New Glasgow</td>
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<tr>
<td>Karen A. Fitzner</td>
<td>Attorney General Representative (NS)</td>
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<tr>
<td>Peggy Gates-Hammond, CPA, CA, CFP, TEP</td>
<td>Public Representative</td>
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<tr>
<td>Gavin Giles QC</td>
<td>At Large</td>
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<tr>
<td>Heidi Foshay Kimball QC</td>
<td>Southwestern</td>
<td>Wolfville</td>
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<tr>
<td>Jillian MacNeil</td>
<td>Cape Breton</td>
<td>Sydney</td>
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<tr>
<td>Diane L. McGrath QC</td>
<td>Cape Breton</td>
<td>Sydney</td>
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<tr>
<td>Loretta M. Manning QC</td>
<td>At Large</td>
<td>Halifax</td>
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<tr>
<td>Kelly R. Mittelstadt</td>
<td>Central</td>
<td>Truro/Elmsdale</td>
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<td>Andrew S. Nickerson QC</td>
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<td>Alonzo Wright</td>
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<tr>
<td>Tuma Young</td>
<td>At Large</td>
<td>Sydney</td>
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</tbody>
</table>
COUNCIL

OFFICERS

R. Daren Baxter QC TEP – President
Julia Cornish QC – First Vice-President
Frank E. DeMont QC – Second Vice-President
Darrel I. Pink – Executive Director

DISTRICT MEMBERS

Cape Breton District
Jillian MacNeil
Diane L. McGrath QC

Central District
Ellen R. Burke
Kelly R. Mittelstadt

Halifax District
Nancy F. Barteaux QC
John Bodurtha
Sheree L. Conlon QC
Alonzo Wright

Southwestern District
Heidi Foshay Kimball QC
Andrew S. Nickerson QC

AT LARGE MEMBERS

Gavin Giles QC
Loretta M. Manning QC
Tuma Young

APPOINTED MEMBERS

Dean Camille Cameron, Schulich School of Law
Karen A. Fitzner, Representative of the Attorney General

PUBLIC REPRESENTATIVES

Mike Baker
Natalie Borden
Peggy Gates-Hammond, CPA, CA, CFP, TEP
SOCIETY STAFF

EXECUTIVE DIRECTOR’S OFFICE

Darrel Pink – Executive Director
Emma Halpern – Equity & Access Officer
Shirley Shane – Executive Assistant to the Executive Director

EDUCATION & CREDENTIALS

Jacqueline Mullenger – Director, Education & Credentials
Nicole Bezanson – Executive Assistant, Education & Credentials
Caron Ferguson-Eagan – Officer, Education & Credentials
Erica Green – Officer, Education & Credentials
Alana O’Connor – Administrator, Education & Credentials
Jennifer Pink – Manager, Legal Services Support

FINANCE & ADMINISTRATION

Sean Walker – Director, Finance & Administration
Pierre Benoit – Officer, Database Administration
Sharon Cox – Officer, Human Resources
Marla Cranston – Officer, Communications
Jennifer Haimes – Library Technician
Erika Hosking – Administrator, Accounting
Cindy Mullenger – Receptionist
Lisa Neily – Administrator, Web & Publications
Darlene Trenholm – Controller
Jane Willwerth – Officer, Strategy & Engagement
Lisa Woo Shue – Library Technician
Rebecca Zhang – Administrator, Information Technology

PROFESSIONAL RESPONSIBILITY

Victoria Rees – Director, Professional Responsibility
Elaine Cumming – Professional Responsibility Counsel
Kristene Handley – Officer, Compliance
Olivia Marshall – Professional Responsibility Assistant
Mhairi McInnis – Administrator, Professional Responsibility
Catherine Turcotte-Roy – Officer, Complaints & Investigations
Joanne Walsworth – Executive Assistant
LAWYERS’ INSURANCE ASSOCIATION OF NOVA SCOTIA

Lawrence Rubin – Director of Insurance
Stacey Gerrard – LIANS Counsel
Alex Greencorn – Administrative Assistant
Patricia Neild – Claims Counsel
Cynthia Nield – Officer, Database and Information
Emma Pink – (Interim) Executive Assistant to the Director
Gerri O’Shea – Claims Counsel