



NOVA SCOTIA
BARRISTERS' SOCIETY



2017 ANNUAL REPORT

VISIT THE SOCIETY'S WEBSITE FOR ANNUAL REPORT 2017

To promote environmental and fiscal responsibility, the Society has produced this short summary as a snapshot of the past year. Our complete Annual Report 2017 is available on the website. For detailed reports from President R. Daren Baxter QC, TEP, Committees and Society staff, please visit nsbs.org/annual-reports

TRANSFORMING REGULATION

FINDING ANSWERS TO THE QUESTIONS THAT MATTER MOST

What proof do we have that we are protecting the public and making a difference? A seemingly simple question, asked several years ago by Executive Director Darrel Pink.

The answer to that fundamental question 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 of regulation the best model for regulating the legal profession in Nova Scotia today?

The answer: We can do better.

CREATING THE INFRASTRUCTURE FOR ETHICAL LEGAL PRACTICE

Over the past three years, the Society has explored how regulation could 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.

This new environment requires a new approach. It must be more responsive to a

NSBS 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 in the justice system.
6. Regulate in a manner that is proactive, principled and proportionate.

– *Approved by Council in March 2016; learn more at nsbs.org/nsbs-regulatory-objectives*

TRANSFORMING REGULATION

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.

diverse and profoundly changing environment, encourage and support continued ethical legal practice, and foster innovation in the delivery of 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 Daren Baxter 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.

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

TRANSFORMING REGULATION

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 the result of 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 improving the lawyer's practice benefits everyone. If efforts to resolve practice issues should fail, further disciplinary action can be undertaken. *Risk is mitigated.*

NEW SELF-ASSESSMENT PROCESS

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

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 the feedback. Most notably: Lawyers recognize and embrace the 10 elements as the foundations of an ethical and competent practice. A self-assessment process 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.

*“For the Society, the new way of doing business can be summed up in four words: **risk-focused, proactive, principled and proportionate.**”*

TRANSFORMING REGULATION



#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.

EQUITY, DIVERSITY AND INCLUSION

One of the 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 various workshops exploring worldview and unconscious bias. Internal guidelines for the use of gender-inclusive language are also being prepared.

PROGRESS ON PUBLIC ENGAGEMENT

As the Society pursues its work to improve the administration of justice, it is reaching out into the community in ways not done before. The Society launched #TalkJustice in 2015. Now it has grown to become an initiative of the Access to Justice Coordinating Committee, which also includes the Chief Justice, the Justice Minister, Nova Scotia Legal Aid, CBA-NS, the Schulich School of Law and a public representative.

This year, efforts to hear real stories about Nova Scotians' experiences with the justice system included conversations at town halls in local communities and online engagement via virtual communities. A unique #TalkJustice questionnaire developed with SenseMaker® software is helping us gain greater insight into how people experience legal services and the justice system.

This dialogue 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 and ultimately, a new way of working to protect the public in ways that matter most.

PRESIDENT'S REPORT

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



R. DAREN BAXTER QC, TEP
President 2016-2017

PRESIDENT'S REPORT

*“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.”*

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

PRESIDENT'S REPORT

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**



Mr. Baxter with Marc Njoh, recipient of the 2016 NSBS Presidents' Leadership Award, and Gail Rudderham Chernin QC, recipient of the Society's 2016 Distinguished Service Award.

HIGHLIGHTS



At the **26th Annual F.B. Wickwire Memorial Lecture in Professional Responsibility and Legal Ethics**, held December 1 at the Schulich School of Law. Left to right:

Professors Richard Devlin, Jamie Baxter and Elaine Craig, President Baxter, Dean Camille Cameron and Professor Jocelyn Downie.

NSBS MEMBERSHIP DATA

AS AT APRIL 30

	2015	2016	2017
Practising Lawyers	1,934	1,946	1,989
Non-practising, Life & Retired	908	926	928

FOR THE 12 MONTHS ENDING APRIL 30

	2015	2016	2017
CREDENTIALING			
Admitted	111	91	120
Commenced articles	69	78	79
Transferred to Nova Scotia	36	29	49
Changed from Practising to NP	94	91	104
Changed from NP to Practising	36	61	55
Lawyers who retired	39	46	48
Lawyers who resigned	35	34	34

PROFESSIONAL RESPONSIBILITY

Intake calls received	419	522	460
Written complaints received	153	130	145
Written complaint files closed			
• Staff resolution and dismissal	108	123	98
• CIC disposition	23	7	34
Average time to process complaints assessed for dismissal	49 days	91 days	46 days
Ethics inquiries from members	104	88	76
Matters referred to hearing			
• Carried over	0	1	1
• New matters	2	0	0
Referrals to Fitness to Practise Program	2	3	1
Trust Audits conducted	35	38	23

STRATEGIC FRAMEWORK PROGRESS

EXCELLENCE IN REGULATION AND GOVERNANCE

- Council adopted the Strategic Framework to guide the Society's activities for 2016-2019. See nsbs.org/strategic-framework.
 - The Regulatory Objectives are now driving all operations and activities, to regulate in a manner that is risk-focused, proactive, principled and proportionate (Triple P).
 - Legal Services Support, a new approach to regulation, is being implemented following extensive consultation and research, with a launch expected in early 2018.
 - The Legal Services Support Pilot Project tested a proposed self-assessment process for the Management System for Ethical Legal Practice elements; consultations are now underway with government and in-house lawyers.
 - The Society has requested legislative amendments to the *Legal Profession Act* to enable a new legal services regulation model.
 - The risk management protocol continues to evolve, with Triple-P risk indicators that allow the Society to 'educate towards compliance' and resolve many matters earlier without a formal regulatory response.
 - 460 callers used the Society's informative telephone complaints intake process (down 12.6% from the previous year).
 - The majority of complaints are allegations of delay, poor communications and client dissatisfaction.
 - Our work is changing the conversation with complainants and lawyers at the earliest intake call stage by encouraging informal dispute resolution, expanding tools and resources to help educate both parties, and incorporating restorative justice concepts.
 - The Succession Planning Task Force is examining all aspects of this issue and will report to Council in the summer.
 - A new three-year budgeting process aligns with the Society's overall planning cycles. Calendars and timelines are changing to better reflect the requirements of implementation of the Strategic Framework.
- Online resource improvements:
 1. An enhanced *Code of Professional Conduct* launched in May 2017, with contextual links to ethics advice, decision digests and other added value materials.
 2. A new Online Lawyers' Reading Room provides lawyers and articled clerks with access to licensed ebook collections from Irwin Law and Emond Publishing.
 3. The website has a new section with checklists and guidelines for opening a new practice. Guides for new lawyers, articled clerks, principals and international transfers were also added.
 - New professional standards for law office management and criminal law practice continue to be developed; a number of new and revised real estate and family law standards were introduced.

STRATEGIC FRAMEWORK PROGRESS

IMPROVING THE ADMINISTRATION OF JUSTICE

- Community engagement and stakeholder collaboration drive the Society's access to justice work through local and national A2J networks such as partnering with United Way Halifax and participation in CBA-NS Law Day, Access to Justice Week and a roundtable hosted by the Action Committee on Access to Civil and Family Justice.
- The Society's #TalkJustice approach to public engagement was adopted for broader application by the Access to Justice Coordinating Committee. The project asks Nova Scotians to help improve delivery of justice and legal services by sharing their stories and experiences via an online tool at talkjustice.ca. A number of community workshops also took place through the year.
- A collaboration among justice sector stakeholders continues to improve criminal justice services in Nova Scotia. It launched an early resolution pilot in February, promoting initial sentencing positions in some cases. The use of video conferencing is also on the rise in efforts to reduce court delays, increase safety and improve access – it was used in almost 690 hearings and to address 3,500 charges in 2015-2016.
- The Society and a group of *pro bono* lawyers are key partners in the North Preston Land Recovery Initiative to resolve long-standing land title issues in African Nova Scotian communities.
- A formal three-year implementation plan is under development to respond to the Truth and Reconciliation Commission's Calls to Action.
- Council approved a plan to add two new Public Representatives to Council.
- A new Equity and Diversity Standard was developed and added to the Professional Standards in Law Office Management.
- The Society continues to promote cultural competence. The Skills Course provides this education to all articulated clerks; the Society provides workshops to staff, Council, committee chairs and targeted committees on cultural competence, mitigating unconscious bias, worldview intelligence and more.
- The online Equity Portal continues to grow, assisting legal entities in building cultural competence and equity strategies with training videos, toolkits, model policies, a reference library and more.
- The Society is developing gender-inclusive language guidelines.
- The Society supports new Mi'kmaq clerks through the Ku'TawTinu: Shared Articling Initiative with the Schulich School of Law; a similar offering is in development for African Nova Scotian clerks.

NSBS FINANCIAL STATEMENTS *(excerpt from)*

Statement of Financial Position for the year ending April 30

	2017 Unrestricted General Fund	2017 Lawyers' Fund for Client Compensation	Total 2017	Total 2016
Assets				
Current assets:				
Cash and cash equivalents	\$ 1,033,862	\$ 48,929	\$ 1,082,791	\$ 407,734
Accounts receivable	88,776	2,679	91,454	96,145
Prepaid expenses	209,638	19,284	229,122	86,783
Due from LFCC	-	-	-	241,240
Due from LIANS	-	-	-	-
	1,332,476	70,892	1,403,368	931,902
Investments	733,356	1,719,371	2,452,727	3,353,606
Investment in CLIA surplus	-	357,000	357,000	357,000
Capital assets and intangibles	155,337	-	155,337	184,281
	\$ 2,221,169	\$ 2,147,263	\$ 4,368,432	\$ 4,826,789
Liabilities and Reserves				
Current liabilities:				
Accounts payable and accruals	\$ 298,685	\$ -	\$ 298,685	\$ 115,943
Employee entitlements	27,380	-	27,380	26,884
Due to General Fund	-	-	-	241,240
Due to LIANS	192,845	-	192,845	172,355
Unearned miscellaneous revenue	54,471	-	54,471	22,427
Deferred membership fees	703,085	-	703,085	664,018
	1,276,466	-	1,276,466	1,242,867
Reserves:				
Unrestricted Reserves	789,366	-	789,366	1,055,921
Reserves to fund capital assets	155,337	-	155,337	184,281
	944,703	-	944,703	1,240,202
Lawyers' Fund for Client Compensation	-	2,147,263	2,147,263	2,343,720
	944,703	2,147,263	3,091,966	3,583,922
	\$ 2,221,169	\$ 2,147,263	\$ 4,368,432	\$ 4,826,789

Statement of Revenue and Expenditure for the year ended April 30

	2017 Unrestricted General Fund	2017 Lawyers' Fund for Client Compensation	Total 2017	Total 2016
Revenue:				
Fees	\$ 4,265,169	\$ -	\$ 4,265,169	\$ 3,995,467
Education and Credentials	522,900	-	522,900	366,350
Library	142,265	-	142,265	136,734
Other	166,066	-	166,066	200,883
Investment income	111,474	148,852	260,326	36,677
	5,207,874	148,852	5,356,726	4,736,111
Expenditure:				
Administrative	1,230,124	15,225	1,245,349	1,263,265
Amortization	78,135	-	78,135	84,984
Communications and publications	188,027	-	188,027	176,860
Education and Credentials	712,050	-	712,050	708,197
Equity and Access program	242,478	-	242,478	214,366
Governance and programs	725,001	3,012	728,013	834,442
Library	568,527	-	568,527	553,509
Professional Responsibility	1,998,738	-	1,998,738	1,567,598
Premiums and claims	-	109,044	109,044	79,944
	5,743,080	127,281	5,870,361	5,483,165
Deficiency before other income and expenses	(535,206)	21,571	(513,635)	(747,054)
Discipline repayments	21,679	-	21,679	53,668
Deficiency of revenue over expenditures	\$(513,527)	\$ 21,571	\$(491,956)	\$(693,386)

The oversight and financial stewardship of our financial resources is as important to the Society as any other initiative or program, we take care in our fiscal responsibility to ensure the sustainability of our organization. This year was the third year in a row with a sizable deficit and we continue to work to achieve financial results that focus on our Strategic Priorities and Regulatory Objectives.

* A complete set of Audited Financial Statements and the auditor's report on those statements, along with supporting schedules, as reported on by the Society's external auditors, Grant Thornton, are available on our website nsbs.org. The statements above are summarized versions of the complete statements found in the Audited Financial Statements.

COUNCIL MEMBERS



R. Daren Baxter QC TEP
President



Julia Cornish QC
First Vice-President



Frank E. DeMont QC
Second Vice-President



Darrel I. Pink
Executive Director



Jillian MacNeil
Cape Breton District



Diane L. McGrath QC
Cape Breton District



Ellen R. Burke
Central District



Kelly R. Mittelstadt
Central District



Nancy F. Barteaux QC
Halifax District



John Bodurtha
Halifax District



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Halifax District



Alonzo Wright
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Andrew S. Nickerson QC
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Michael Joseph Baker
Public Representative



Natalie Borden
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Dean Camille Cameron
Schulich School of Law



Gavin Giles QC
Member At Large



Loretta Manning QC
Member At Large



Tuma Young
Member At Large



Karen Fitzner
Representative of the
Attorney General



NOVA SCOTIA
BARRISTERS' SOCIETY

FOLLOW THE SOCIETY'S UPDATES THROUGHOUT THE YEAR



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Tumblr at talkjustice.ca



Instagram at [talkjustice_ns](https://www.instagram.com/talkjustice_ns)



YouTube at NS BarristersSociety