



# 2018 ANNUAL REPORT



NOVA SCOTIA  
BARRISTERS' SOCIETY

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# TRANSFORMING REGULATION

## ENHANCING ETHICAL INFRASTRUCTURE FOR LEGAL PRACTICE

Legal services regulation in Nova Scotia has made the leap from concept into reality.

After several years of intense research, planning and consultation, the Society's [new model of regulation](#) reached a major milestone on November 17, 2017: Council approved regulatory amendments that shifted the traditional regulatory focus from individual lawyers to law firms, where appropriate.

The new regulations came into force on January 2, 2018. All new law firms, including sole practitioners, are now required to [register with the Society](#) before delivering legal services to the public. This means we're engaging with new practices right from the start, to ensure they understand their regulatory obligations and know they can turn to us for guidance, tools and support.

Core to the new framework is the requirement that all firms have effective [management systems for ethical legal practice](#) in place. The Society is prescribing ten key elements for an ethical infrastructure – everything from file management to improving diversity, inclusion and equality – but not how these elements will be uniquely reflected at a particular firm.

We'll begin rolling out an online self-assessment process later this year, asking firms to reflect on these elements and how they might improve upon client service and minimize risk. Wherever they find areas for improvement, the Society will provide support, education and resources in addressing those gaps.

### LEGAL SERVICES SUPPORT

This Legal Services Support approach is infusing all areas of NSBS operations, as we regulate in a manner that is proactive, principled and proportionate. Internal restructuring and the hiring of new skill sets has set the foundation for a new way of supporting lawyers as they do their best to serve the public.

In the professional responsibility aspect of our work, more restorative approaches to addressing expressions of concern about a lawyer are already resulting in earlier resolution and greater satisfaction from both parties.

Our new [Trust Assurance Program](#) is more supportive and educational in focus, with all new practices receiving audits in their first year so we can provide guidance early on.

To help senior lawyers begin winding down their practices, we'll provide checklists and other resources to assist with the new mandatory [succession planning requirement](#).

### MANAGEMENT SYSTEMS FOR ETHICAL LEGAL PRACTICE

Law firms are required to have the following management system elements in place to ensure an effective and ethical practice infrastructure:

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

Law firms, including sole practitioners, are now required to self-assess their management systems on a triennial basis (see [regulation 4.9](#)). To assist in this process, NSBS will launch a management systems workbook over the coming months, incorporating feedback from an extensive pilot project conducted in 2017, with rollout of the self-assessment process starting in September 2018. A growing online Resource Portal houses practice resources and tools to support law firms in effecting improvements to their management systems. Learn more at [nsbs.org/management-systems-ethical-legal-practice-mselp](https://nsbs.org/management-systems-ethical-legal-practice-mselp).

Nova Scotia's new model of legal services regulation has broken new ground in Canada and attracted interest from around the world. It's designed to be responsive to a diverse and ever-changing environment and to foster innovation in the delivery of legal services. It's profoundly changing the way the Society operates and interacts. Ultimately, it's a new way of regulating to protect the public in ways that matter most.



NOVA SCOTIA BARRISTERS' SOCIETY

## 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.						
STRATEGIC DIRECTIONS	EXCELLENCE IN REGULATION AND GOVERNANCE			ADMINISTRATION OF JUSTICE			
PRIORITIES	Transform regulation in the public interest		Enhance access to legal services and the justice system		Promote equity, diversity and inclusion in the legal profession		
STRATEGIC INITIATIVES	Implement and adjust as necessary legal services regulation		Promote increased access to legal services through regulatory initiatives and monitor their impact		Engage with justice sector players and equity-seeking communities to enhance access to legal services and the justice system		
	Implement the Regulatory Objectives		Promote substantive equality and freedom from discrimination in the delivery of legal services and the justice system		Respond to the Calls to Action of the Truth and Reconciliation Commission		
	Implement a framework for enterprise risk management				Advance cultural competence and inclusiveness in the legal profession and the justice system		
FOUNDATIONAL ACTIVITY	<ul style="list-style-type: none"><li>• Evaluating outcomes across all areas of activity and consistently measuring performance</li><li>• Supporting national regulatory initiatives and adopting best practices</li><li>• Promoting and maintaining effective relationships through sincere, substantive and sustained engagement and adopting restorative approaches</li><li>• Focusing on the future and making sound, informed financial decisions</li></ul>						
VALUES	Commitment to Excellence	Fairness	Respect	Integrity	Visionary Leadership	Diversity	Accountability

*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.*



# PRESIDENT'S ANNUAL REPORT

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**This Council year can be summed up in one phrase: transition and transformation.**

In January 2018, the Past Presidents who served under Darrel Pink gathered to recognize his contribution to the Society and the wider legal community. Never one to shy away from innovation or controversy, Darrel built an international reputation in legal ethics as well as modern legal governance in the public interest. Nova Scotia is a leader in the evolution of lawyer regulation; that is part of Darrel's legacy.

After a robust selection process, [Tilly Pillay QC](#) was hired by Council to succeed Darrel. I have had the dual honour of being Darrel's 30<sup>th</sup> President and Tilly's first. Tilly was serving as Society President when Council began exploring regulatory reform. The ideals of 'proactive, principled and proportionate' regulation and the concept of management systems for ethical practice are most familiar to her. As Executive Director, Tilly is overseeing implementation of the regulatory regime she helped create.

Turning to transformation, [Council](#) has been enhanced by the addition of two more public representatives, bringing our total to five. The number and quality of applicants for the positions was truly impressive. In addition to lawyers from all parts of the province and a wide variety of background and practice areas, our governing body now includes an accountant, a doctor, a pharmacist, a social worker and a retired RCMP officer, all of whom bring a unique perspective to regulation in the public interest.

Council's Governance & Nominating Committee is examining the selection process for Council members from the legal community. Manitoba has adopted a model whereby some Council members come through an appointment process rather than an election. The challenge is to determine the model that will produce a Council best able to fulfill the mandate of regulating legal services in the public interest.

As lawyers, we realize the delivery of legal services itself is evolving. Recognizing our access to justice responsibility, should we begin licensing and regulating paralegals? And should we remove the barriers that now exist for multidisciplinary practices? As Council is exploring these questions, we welcome your input.

Equity, diversity and inclusion in the legal profession is a core component of Council's three-year [strategic plan](#). This includes determining Council's response to the Calls to Action of the Truth and Reconciliation Commission and learning to apply an equity lens to our decisions as the Society's governing body. We need to ask ourselves whose voices are not in the room; who are we impacting with our choices. It is sobering to remember that previous generations of lawyers supported and enabled laws that endorsed discrimination; laws that caused harm. Today, our position and influence also empower us as a force for positive change.

However, in order for lawyers to function as changemakers, we first have to function. While the Society continues its core functions (educating and qualifying would-be lawyers, ensuring ethical and appropriate practice), it is striving to carry out this mandate in a new way. For example, there are indications that the restorative approach now used when the Society receives expressions of concern about a lawyer is resulting in fewer matters being elevated to the level of "complaints." Our [Fitness to Practise](#) program continues to provide lawyers who have fallen off the path, for reasons such as illness or addiction, with the opportunity to address the issues at the source of their practice problems. In short, the goal is to find solutions by fixing the problem, rather than focus on punishing transgressions.

As I spoke around the province during the past year, I emphasized the Society's work on the "life cycle of a lawyer". In seeking admission to the Bar, all lawyers interact with the Society as they start their careers in this province. However, as of January 1, all new law firms must [register](#) with the Society. This is designed to ensure that new firms start out with a strong foundation of the skills required to operate successfully, which benefits the lawyers and the public in equal measure.

As lawyers continue in their practices, their firms or legal departments will now be asked to complete a triennial [self assessment in 10 areas](#) including communication, confidentiality, record-keeping, conflicts, staffing, equity and access to

justice. A key component will be accompanying resource material. While a pilot project of the assessment for lawyers in the private bar has been completed, a similar pilot for government and in-house lawyers is in the works.

Finally, all lawyers' careers must come to an end. (Though based on the number of 50-year practice certificates awarded this year, not necessarily an early end!) Many of us would prefer not to think about this eventuality but a desire to ignore the inevitable will no longer be an excuse for avoiding succession planning. At its meeting in May, Council passed a regulation requiring that all private lawyers [maintain a succession plan](#) to ensure their clients are not unduly impacted when a lawyer leaves practice.

The problem of one lawyer is the problem of all lawyers. A successful claim against one of our colleagues impacts all our insurance rates. When a receiver is appointed after a lawyer dies without a succession plan, all lawyers are at risk of higher fees. While there will always be a cost to self-regulation, a principled focus on supporting lawyers in their practices should result in fewer expensive problems down the line. At the end of the day, we're all in this together.

As I end my term as President, I want to thank the dedicated volunteers on Council, on all the Committees and those who simply take time to help out on an ad hoc basis. Equally, I want to thank the hardworking staff of the Society. It has been my honour to work with so many who share my belief in the value of our profession.

A handwritten signature in black ink, appearing to read 'Julia Cornish'.

*Julia Cornish QC*  
*President*

# EXECUTIVE DIRECTOR'S ANNUAL REPORT



**I have just completed my sixth month as the Society's new Executive Director and as I reflect on this "half year mark",** I am struck by the changes I have observed since my time as President in 2014-2015. This is demonstrated in the language we use (legal services support), in the approaches we have adopted (proactive, restorative) and the lens we seek to apply to all our decisions (equity). The Society and Council continue to do the work they have always done, but how they do it is changing.

## WHAT'S NEW IN LEGAL SERVICES SUPPORT?

Legal services support is a main focus of our work at the Society these days and its role continues to expand as we see different ways we can assist law firms to enhance their delivery of legal services. Last year saw the introduction of the self-assessment tool called the Management System for Ethical Legal Practice ([MSELP](#)). This self assessment is conducted by the law firm to measure how they are doing in having the ten elements in place that ensure they have the infrastructure for ethical legal practice. If law firms see areas in which they can improve, they can reach out to the Society for help in addressing those gaps. This is part of the work that falls under our new legal services support team.

Our new regulatory scheme requires all law firms to undertake a self-assessment of their practices every three years. The Society has not yet begun the rollout of this triennial program, as we are working on making the technology improvements to ensure the appropriate infrastructure is in place to allow completion of the self-assessment online, as well as developing the tools and resources to support the program. This will be in place later this year and we will provide more information closer to the rollout date.

As the next phase in our legal services support work, Council approved new regulations that came into force in January 2018 requiring all new law firms, including sole practices, to register with the Society before delivering legal services to the public. The [new firm registration process](#) means that the firm's Designated Lawyer must engage with the Society on various issues relating to the practice of law such as business structure, self assessment of their management systems and ethical practices (MSELP), regulatory obligations (trust accounts, client ID regulations, annual filing requirements) and other matters that may arise depending on the nature of the firm.

This means the Society begins a conversation with the new firm at the outset to support the firm to have an effective management system for ethical legal practice in place, to offer advice, guidance, tools and resources before they practise law. In addition, we invite the new firm to contact us when they encounter any obstacles or need advice, so we can provide ongoing support to ensure they deliver legal services in a competent and ethical manner. This is one way the Society promotes and protects the public interest in the delivery of legal services.

More recently, Council adopted a regulatory amendment that will require lawyers and law firms to maintain [written succession plans](#). The Society has experienced increasing costs over the past several years assisting lawyers who do not have arrangements for the transition of their practices because of disability, incapacity or death. The costs associated with appointing receivers or custodians in these types of situations is borne by the membership as a whole.

## 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.

- In effect since March 2016; learn more at [nsbs.org/nsbs-regulatory-objectives](https://nsbs.org/nsbs-regulatory-objectives)



Council identified the lack of succession planning as a significant regulatory risk for the Society and appointed a Succession Planning Working Group to help address this issue. This Working Group's report recommended that the Society should, as part of its legal services support work, develop, maintain and promote resources to assist lawyers and law firms in preparing for succession or windup of their practices at the end of their careers. They also recommended Council consider requiring all law firms delivering legal services to the public to have a succession plan and to advise the Executive Director of its location.

The Society, with the assistance of the Law Office Management Standards Committee, will be preparing guidance materials for law firms to assist with preparing plans that are appropriate to their specific practice.

## **HOW DOES LEGAL SERVICES SUPPORT IMPACT OTHER AREAS OF THE SOCIETY'S WORK?**

As our thinking has matured, we have come to realize at the Society that legal services support is not confined to one group of activities. It is a way of engaging with the membership (and the public) that is informed by our Triple P approach. We ask ourselves, are we addressing this particular issue or situation in a manner that is proactive, principled and proportionate? In the professional responsibility aspect of our work, this has translated into the creation of an Officer of Early Resolution, a lawyer who fields intake calls from the public, mediates concerns about lawyer conduct and employs restorative approaches.

When the Society becomes aware of a concern, we are trying to be responsive and to resolve the concern at the intake level, instead of embarking upon an adversarial process. For example, we heard from members of the public that they had concerns about a lawyer's conduct. Instead of forwarding the concerns to the lawyer and asking for a written response, as we have done in the past, we picked up the phone and invited the lawyer to come and have a chat with us. Through our discussions, the lawyer came to understand why the conduct caused concern and how to avoid behaving in that manner in the future. The members of the public were satisfied that their concerns had been heard by both the Society and the lawyer and that action was taken.

We are updating our technology so we can capture the data from these intake calls to be able to demonstrate our successes. Anecdotally, we can say that with our focus on early resolution, we have had much more success mediating resolutions at the intake stage to the satisfaction of both the member of the public and the lawyer.

## **EQUITY AND ACCESS**

I am delighted to advise that the Society has hired a new Equity and Access Manager, Angela Simmonds. Many of you will know Angela as a tireless advocate for the African Nova Scotian community implementing strategic initiatives that involve addressing barriers and systematic discrimination and enhancing inclusion, equity and access. One such initiative is the Preston Land Titles project, where Angela is recognized as an expert and leader in community engagement. With her considerable skills, background and experience, Angela will be a great support for the Society, Council, and its

Committees as we continue our work to promote diversity, equity and inclusion in the profession and access to legal services for all. This is a high priority for Council and continues to be the focus of our attention.

Council recently participated in a workshop led by Patti Doyle-Bedwell on the impact of Residential schools and the implications of that experience for survivors and their families. We talked about unconscious biases, about how we all have them, and we need to be aware as to how they "show up" in our conversations and interactions with others. Council is committed to addressing the Truth and Reconciliation Commission's Calls to Action as they relate to law societies and the legal profession. Each of us has a role to play in addressing these issues that have long been ignored. There is much work to be done in gaining greater cultural competence, knowledge and skills to achieve this. And it is clear we cannot do this alone. Collaboration with the courts, the Department of Justice, the law school, community organizations and communities is essential for any success.

Council is also developing a plan to work more closely with the Gender Equity and Racial Equity Committees, so their expertise can help Council apply "an equity lens" to all decisions and policies. This will be our challenge in the months and years ahead, as we cannot lose sight of this critical objective.

## FISCAL RESPONSIBILITY AND BUILDING IN-HOUSE EXPERTISE

The Society has been fortunate over the years to be able to call on the expertise of outside professionals (auditors, lawyers, etc.) to help us fulfil our various regulatory functions. As the Society's needs continue to grow and vary, we have been thinking of ways to control costs and build our in house expertise. Last year we hired a chartered accountant to assume responsibility for the Society's trust audits, provide internal expertise with respect to trust accounts risk management and response, as well as provide education where appropriate.

The next phase will be the hiring of a General Counsel and paralegal to handle many of the legal matters that have previously been handled by external counsel. The Society must develop the skills and resources internally to enable us to meet our regulatory obligations in as cost effective and as efficient a manner as possible.

## WHAT'S ON THE HORIZON?

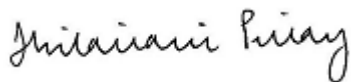
While we stay focused on our strategic objectives here in Nova Scotia, we are also keeping an eye on the many changes occurring in the legal profession in Canada and abroad – the increasing use of artificial intelligence to deliver legal services, how to respond to government's anti-money laundering initiatives, how best to protect our clients' data and ensuring our law graduates have the training and support they need to succeed in a constantly evolving legal world.

## A WORD OF THANKS

I must conclude my report by offering thanks to so many people who help the Society do its very important work, day in and day out. Firstly, let me acknowledge the visionary leadership of Darrel Pink. It is his vision that has put us on this transformative journey to better regulation and, therefore, better outcomes in the public interest.

There are many members of the profession and the public who serve on our Council and Committees. They work hard, make tough decisions, and keep us focused on our objectives. Thanks to all of you for your commitment and support of the Society's work.

And to all my colleagues at the Society, please know how grateful I am and what a privilege it is for me to be working with such a talented group of individuals. You serve the members and the public well.



*Tilly Pillay QC*  
*Executive Director*

# EDUCATION & CREDENTIALING



Between May 1, 2017 and April 30, 2018 staff made 1,554 rulings. This is compared to the 2017 fiscal year when staff made 1,525 rulings and the 2016 year when staff made 1,467 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 members changing to non-practising status. It appears that members are changing to non-practising before making the leap to retired. Additionally, we saw a decrease in registration of law corporations, likely due to a change in tax laws. The request for certificates of standing have continued to increase, likely as a result of the increasing number of RFPs (Requests for Proposals) required by potential clients.

## CREDENTIALING RULINGS

	FISCAL YEAR								
	2010	2011	2012	2013	2014	2015	2016	2017	2018
Temporary Practice Permit	24	21	13	19	29	17	34	42	41
Temporary Practice Permits (NMA)								15	9
Change of Category (up)	45	51	58	53	52	36	61	55	60
Change of Category (down)				94	87	95	91	104	112
Domestic transfers	24	30	13	26	33	32	25	49	42
Foreign transfers		7	4	4	2	2	4	8	11
Foreign Legal Consultants	2	1	0	0	3	0	3	3	4
Temporary mobility from outside Canada		6	5	0	1	3	2	3	0
Readmission following resignation		1	0	0	1	3	1	2	0
Resignations				22	30	35	34	34	45
Retirements				19	21	39	46	48	41
Certificates of Standing				77	80	67	125	90	120
Notary Public applications						79	90	123	123
Application for law corporation						42	28	25	17
Application for LLP						3	1	4	2
Renewal of law corporation						462	490	450	418
Renewal of LLP						4	7	8	12
Opening trust account						18	17	13	18
New firm registrations									14

*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.

TYPE OF RULING	FISCAL YEAR								
	2010	2011	2012	2013	2014	2015	2016	2017	2018
<b>Articled clerk applications</b>	59	67	55	65	70	69	71	79	78
<b>Articling plans</b>		57	48	62	68	69	66	79	86
<b>Education plans</b>	11	20	15	61	68	62	75	70	57
<b>Principal applications</b>	6	11	12	39	23	49	57	52	61
<b>Change in supervising lawyer/principal</b>		3	2	2	1	7	0	8	0
<b>Extension of articles</b>		?	29	16	22	23	26	25	24
<b>Applications for admission</b>	88	99	81	81	96	111	90	120	131
<b>Termination of articles</b>					1	2	0	0	0
<b>Secondment of articles</b>				0	3	17	16	17	18
<b>Application to work outside articles</b>		1	1	0	2	1	2	1	0
<b>Abridgement of articles</b>						7	5	8	5
<b>Leaves of absence</b>									5

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 58 articled clerks, who started on June 1 and 5 who started between January 1, 2018 and May 30, 2018 or are starting after June 1. There are 10 months remaining 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. Two of the June admittees have foreign law degrees and of the admittees between October 2017 and April 2018, six 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 articled 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:

<b>Fiscal year</b>	<b>Number of firms / lawyers with clerks</b>
2015	40
2016	48
2017	53
2018	47

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 year, however to date we have 66 students registered. Starting this year, we will no longer have the PEI articulated clerks taking our Skills Course as the Law Society of PEI has created its own course. The numbers over the last eight years look like this:

<b>Fiscal year</b>	<b>NS students</b>	<b>PEI students</b>	<b>Total students</b>
2017	75	14	89
2016	65	8	73
2015	68	6	74
2014	71	11	82
2013	64	8	72
2012	54	8	62
2011	65	9	74
2010	57	4	61

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 last fiscal year, we introduced an online client management module and assessment. Overall students have been doing well in the assessments.



## BAR EXAMINATION

We are in our 22nd year with the current Bar Examination. We continue to have good results with the examination, however the Society is looking at changing the exam as a result of the impending retirement of our exam consultant. We are currently in discussion with the Canadian Centre for Professional Legal Education (CPLED) about how we might work together to create a uniform assessment.

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

Exam sitting	Applicants writing	Number of repeaters	Passes (first time)	Failures (first time)	Total failures	Failure rate
2018-01	19 first time	13	15	4	7	21.00%
2017-07	64 first time	8	52	12	15	19.00%
2017-01	25 first time	15	18	7	8	28.00%
2016-07	64 first time	4	54	14	16	22.00%
2016-01	14 first time	2	12	2	3	14.28%
2015-07	51 first time	10	51	2	2	3.9%
2015-01	21 first time	9	15	6	7	28.57%
2014-07	49 first time	5	40	9	12	22.5%
2014-01	26		21	5		19.23%
2013-07	62		53	9		14.5%
2013-01	30		26	24		13.33%
2012-07	55		39	16		29.09%
2012-01	16		15	1		6.25%
2011-07	44		42	2		1.5%
2011-01	23		18	5		17.4%
2010-07	56		53	3		5.35%

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, 131 lawyers were called to the Bar. This is up by 11 from the previous fiscal year. The calls looked like this:

Month of call	Total number called	Articled clerks	Transfers	Readmission following resignation
June 2012	49	46	3	
July 2012	4	1	2	
September 2012	5	2	3	
October 2012	7	1	6	
December 2012	6	1	5	
February 2013	4		4	
March 2013	1		1	
April 2013	5	2	3	
June 2013	58	54	4	
October 2013	18	3	15	
January 2014	13	3	10	
April 2014	7	1	6	
June 2014	62	56	6	
October 2014	18	5	11	2
January 2015	15	5	10	
April 2015	16	7	9	
June 5, 2015	52	50	2	
November 6, 2015	23	10	13	
January 15, 2016	10	4	5	1
April 22, 2016	5	0	5	
June 10, 2016	57	51	5	1
October 14, 2016	28	8	20	0
January 13, 2017	20	3	16	1
April 21, 2017	15	7	8	0
June 9, 2017	74	65	9	0
October 13, 2017	33	12	21	0
January 12, 2018	15	3	12	0
April 20, 2018	9	1	8	0

This was our fourth 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 91% of the current clerks called have positions.

# Clerks called June	# Clerks with jobs	# Clerks looking
June 2018 – 62	52	5
June 2017 – 66	54	12
June 2016 – 51	42	9
June 2015 – 50	38	12
June 2014 – 57	37	20
June 2013 – 54	36	16



*Jacqueline Mullenger*  
*Director, Education & Credentials*

# EQUITY & ACCESS OFFICE

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**  
The 2016-2019 framework places renewed 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. The Equity & Access Office work this year reflects these priorities.
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 and it has increased our capacity to anticipate community interests and building 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.

## MAJOR ACTIVITIES

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

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

While these remain the primary types of activities the office undertakes, they are now organized in terms of the goal they

### INTRODUCING OUR NEW EQUITY & ACCESS MANAGER: ANGELA SIMMONDS



Angela Simmonds, a dedicated advocate for social justice in the province, joined the Society on June 11, 2018 as our new Equity & Access Manager. Throughout her career and education, she has worked to address barriers and systemic discrimination, and to enhance inclusion, equity and access for racialized people and marginalized communities.

Angela is recognized as a leader in community engagement, most recently from her work on the Land Titles Clarification Initiative, which now includes funding for five African Nova Scotian communities. For her continuing efforts on this project and her "commitment to human rights", the Nova Scotia Human Rights Commission honoured her in 2017 with its Dr. Burnley Allan "Rocky" Jones Award.

Raised in Cherry Brook, Angela currently resides in North Preston with her husband of 19 years and their three children. Her talent for combining legal knowledge with community connection is a solid foundation for Angela's work ahead on the NSBS priorities to enhance access to legal services and the justice system, and to promote equity, diversity and inclusion in the legal profession. This will include strategic initiatives to advance cultural competence and respond to the Truth and Reconciliation Commission's Calls to Action, among other projects. *Read more at [nsbs.org/news](https://nsbs.org/news).*

work towards achieving. This year has seen the Equity & Access Office work to achieve the following goals:

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

The remainder of this section describes these goals in detail and lists the activities done in service of them.

***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.

- ***Cultural competence instruction***

The Equity & Access Office provides a range of cultural competence education offerings on request to firms, government departments, the public and the law school. The Office also collaborates with the Education & Credentials department to provide a full day of cultural competence instruction for all sections of the Skills Course for articulated clerks.

- ***Pride events***

This year's Pride Reception was held on July 20, 2017 at the Delta Halifax Hotel. The keynote speaker was Judge Kael McKenzie from Manitoba, the first self-identified transgender person ever appointed a judge in Canada. The annual Pride workshop was facilitated by The Youth Project, which provided Council members, lawyers and Society staff with education on supporting trans\* and gender-variant clients and colleagues. Additionally, the Equity & Access Office worked with CBA-NS to organize a delegation of lawyers to march in the 2017 Pride Parade in Halifax.

- ***The launch of Guidelines for Lawyers: Supporting trans\* & gender-variant clients, colleagues & employees***

This year saw the release of these guidelines, which provide lawyers with a baseline understanding of how to support trans\* and gender-variant clients, colleagues and employees. The guidelines are designed to allay the fear and discomfort many feel when they first consider these issues. They define basic terms, explain the principles of trans\* and gender-variant inclusion and provide further resources.

- ***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, provides the opportunity for lawyers to come together to discuss women's leadership in the legal profession. This year's event on June 6, 2018 featured a candid conversation with three guest speakers from the Judiciary: Justice Cindy Bourgeois of the Nova Scotia Court of Appeal; Justice Christa Brothers of the Supreme Court of Nova Scotia; and Judge Ronda van der Hoek of the Provincial Court of Nova Scotia.

- ***TRC education modules:***

We are working collaboratively with the other Atlantic provinces to share resources and information pertaining to concrete ways that law societies can begin to address 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 articulated clerks and lawyers on residential schools, cultural competency, Indigenous law and the realities of racism and discrimination. Currently we are researching what education is occurring across the country and hosting conference calls every two months to



share information and advice on how to move forward.

- ***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 cultural competency in the *Model Code*; 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; and 4) Review of the *Code* for gender inclusive language (on hold currently, as the Network will wait until we have produced guidelines on the topic).

***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.

- ***Maintenance of the Equity Portal***

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

Included on the portal is the Equity & Access Office's growing cultural competence video series. The Office has received 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").

The Equity Portal has a growing role to play in the Society's new model of 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 Call to Action 27 of the Truth and Reconciliation Commission.

- ***The Gender Equity Committee & 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:

- working in collaboration with REC representatives to create a proposal for a Council subcommittee for implementing Calls to Action;
- advising Council on the development of professional standards;
- advising Council on gender equity issues in professional standards, particular criminal and family law;
- advising Council on gender equity issues in MSELP education materials and training;
- providing Council with policy recommendations regarding retention and advancement of women in profession;
- partnering with the Schulich School of Law recruitment office on refining and distributing a discrimination and harassment survey following the articling recruitment process; and
- hosting *Strength in Leadership: Remembering Dara Gordon QC*.

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 implementation of the TRC Calls to Action;
- Advising Council on racial equity issues in professional standards, particularly for criminal and family law;
- 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; and
- Working with community organizations to address legal gaps affecting racialized and Indigenous communities.

- ***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 2017 prize was won by Rosalea Thompson, for "*Remembering as Solidarity with the Past: Legal Mechanisms for Protecting African Nova Scotian Sacred Places.*" Read the paper at [nsbs.org/race-and-law-essay-prize](https://nsbs.org/race-and-law-essay-prize).

- ***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, Immigrant Services Association of Nova Scotia (ISANS) and other members of the working group identified a number of challenges and barriers for ITLs who were making their way through the pathway to licensure in Canada. For example, it was discovered that little opportunity existed elsewhere 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 Nova Scotia Barristers' Society. The project was conceived in order to address the above-mentioned challenges that internationally trained lawyers face, using an observership model. This model pairs an ITL with a Supervising Lawyer and is designed to expose ITLs to all facets of legal practice in Nova Scotia, thus facilitating their entry into the legal profession. ITLs were invited to participate in a variety of activities including attending client meetings, visiting the courts and observing day-to-day procedures in a variety of legal workplaces.

- ***The Ku'TawTinu: Shared Articling Initiative***

Currently the number of Mi'kmaq and Indigenous lawyers practising within the province of Nova Scotia is low. Through the *Ku'TawTinu: Shared Articling Initiative*, we hope to create meaningful articling opportunities that will prepare Mi'kmaq and Indigenous 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. The purpose of the initiative is to provide Mi'kmaq and Indigenous law students an opportunity to substantively engage in the process and practice of Aboriginal Law specifically related to legal research and litigation within Indigenous communities.

One articling clerk is scheduled to begin the program in 2018-2019.

- ***Legal Services Regulation and Management Systems for Ethical Legal Practice (MSELP)***

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 MSELP self-assessment process. Our work ensures that promotion of diversity, inclusion, substantive equality and freedom from discrimination is embedded throughout the self-

assessment tool.

***Toward a more restorative and accessible justice system:*** Activities in this domain are identified through community feedback; the Equity Committees; authorities such as 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.

- ***#TalkJustice***

#TalkJustice is a platform for members of the public, particularly from equity-seeking and economically disadvantaged communities, to share the barriers and challenges they face when trying to access the justice system.

The 2017-2018 year saw the continued promotion of the #TalkJustice SenseMaker® questionnaire. SenseMaker® is 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. Critically, it is a system that “puts the public first”: participants tell stories in their own words, and the software provides them with the tools necessary to explain their story’s meaning. This removes the chance that a researcher’s unconscious biases could change the context of a participant’s story. SenseMaker®’s output is statistical data. This means it is able to take stories, a highly qualitative research method, and from them create the quantitative data that is often required to begin systems-level change. Over 230 stories have been submitted to the project to date. Preliminary results were shared with the Access to Justice Coordinating Committee in November.

In 2018-2019, the #TalkJustice team will continue to gather and share stories using SenseMaker® while partnering with a newly created access to justice institute to be housed in the Schulich School of Law at Dalhousie University. Planning is currently underway; details will be announced on a refreshed #TalkJustice website to be launched this fall.

- ***Prestons land issues***

In 2014, Society staff and members of the Racial Equity Committee met with community members in North Preston, East Preston and Cherry Brook 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 was required to determine how best to resolve the issue. That summer, the Equity & Access Office hired Angela Simmonds, a Dalhousie law student from Cherry Brook, to carry out a research and engagement initiative on the issue. 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. It 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; it began to identify lawyers who were willing to undertake some of these files *pro bono*; it collaborated with DNR to hold a professional development session for lawyers on the land titles legislation and application process; and collaborated with the Schulich School of Law through Professor Jamie Baxter, who provided support through information and education on community landownership and land preservation. The Society also 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 of 2016, NSCC journalism students launched the online series *Untitled*, which documented the experiences of residents in North Preston as they tried to gain legal title of their land. The film series resulted in significant 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 *pro bono* lawyers on select files to try 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. As a result, in the summer of 2016 the Society identified six pilot files and six *pro bono* lawyers for a very small project.

The most significant development in this area last year was an announcement by the provincial government of a \$2.7 million initiative to assist residents who live in the land title clarification areas of North Preston, East Preston and Cherry Brook in Halifax Regional Municipality, and Lincolnville and Sunnyville in Guysborough County. The Society's role in this project going forward will be determined by the structure of this initiative.

- ***Substantive legal education in underserved areas***

As Equity & Access Office staff carry out their work in the community, they regularly encounter 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 Society is shifting toward 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 towards 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: Over the past year, the Office hosted a two full-day training sessions for lawyers entering the Nova Scotia Department of Justice's Independent Legal Advice program, which offers sexual assault survivors two two-hour sessions with a lawyer.

## EXTERNAL LIAISON WORK

- ***External Committees***

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

- **The Nova Scotia Access to Justice Coordinating Committee** (see above)
- **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 Free Legal Clinic 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. It is hosted each Thursday at the Halifax Law Courts.
- **Indigenous Blacks & Mi'kmaq Initiative (IB&M)**: IB&M, an initiative of the Schulich School of Law, 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 (see above).
- **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 the vulnerable Children and Youth in Eastern Africa, through stakeholder collaboration, institutional development and capacity building and enhancement through sharing of ideas amongst the 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

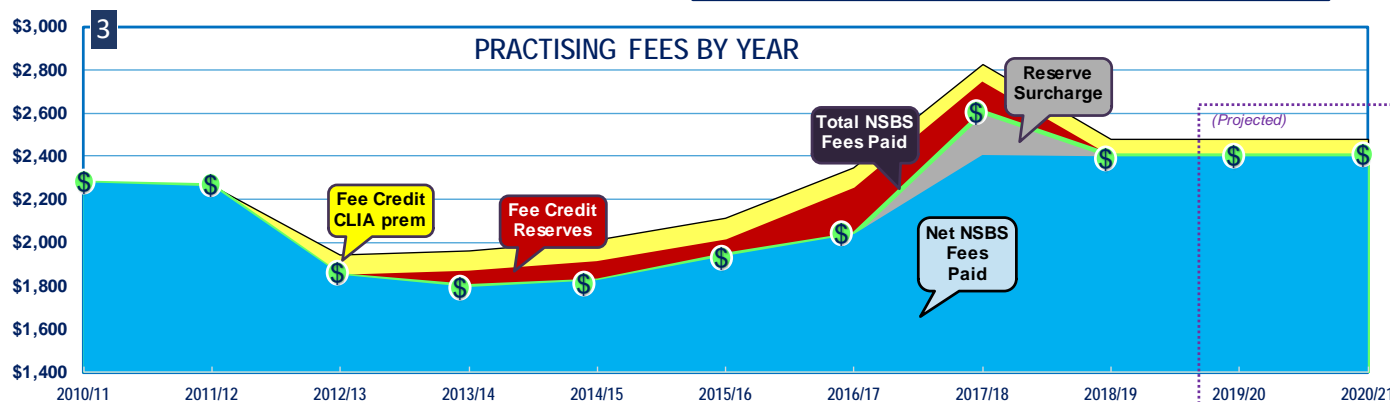
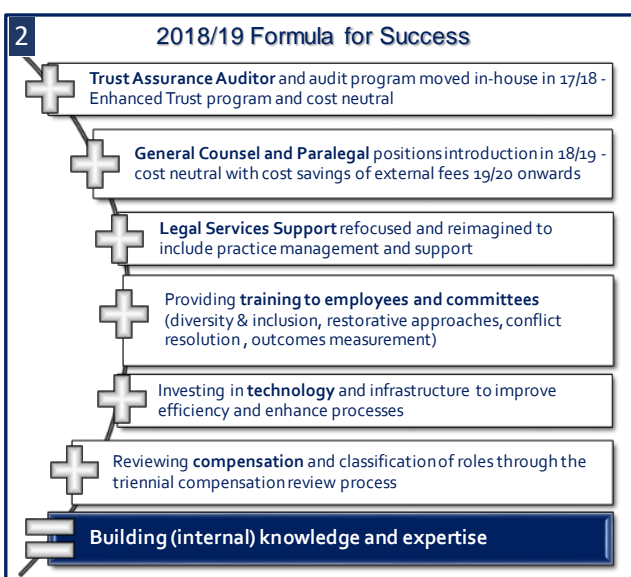
- **National Legal Strategy Coalition on Violence against Indigenous Women:** A nationwide ad hoc coalition of groups and individuals formed in 2014 following the murder of Inuit university student Loretta Saunders, to marshal resources that address violence against Indigenous women.
  - **Community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



## Budget highlights

- 1 The budget for 2018/2019 reflects the organizational remodelling recently undertaken. Budgeted expenses have remained consistent while the budget for revenues has decreased about 2% as an additional fee surcharge is not required for 18/19 (17/18 \$200).
- 2 The Society has a "Formula for Success" for 2018/19 comprised of investing in technology, people and resources needed to build the knowledge and expertise to be successful now and into the future.
- 3 The Society's financial reserves are currently adequately funded, therefore, another fee credit of \$77 (17/18 - \$82) from the Lawyers' Fund for Client Compensation has been provided for 18/19.
- 4 Council has continued with a multi-year approach to budgeting and is proposing a "flat practising fee" of \$2,400 (plus LIANS levy and HST) over the next three fiscal years.

Department/Area	2017/18 Budget	2018/19 Budget	% of Total
Professional Responsibility	\$ 1,629,000	\$ 1,218,000	20.5%
Education & Credentials	932,000	1,077,000	18.2%
Finance & Human Resources	834,000	970,000	16.4%
Executive Director's Office	431,000	683,000	11.5%
Library & Communications	799,000	641,000	10.8%
Equity & Access	259,000	343,000	5.8%
Governance and Committees	239,000	265,000	4.5%
Information Technology	185,000	246,000	4.1%
Contingency & Depreciation	185,000	190,000	3.2%
Trust Assurance	167,000	177,000	3.0%
Lawyers' Assistance/LRA Audit	222,000	120,000	2.0%
<b>Total Expenses</b>	<b>5,882,000</b>	<b>5,930,000</b>	<b>100%</b>
Annual Fees	5,363,000	5,055,000	85.2%
Other Revenue	684,000	875,000	14.8%
<b>Total Revenue</b>	<b>6,047,000</b>	<b>5,930,000</b>	<b>100%</b>
<b>Net Surplus</b>	<b>\$ 165,000</b>	<b>\$ -</b>	



	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	4 Projected	2019/20	2020/21
Fee Credit CLIA prem	-	-	\$ 95	\$ 95	\$ 95	\$ 95	\$ 95	\$ 82	\$ 77	\$ 77	\$ 77	\$ 77
Fee Credit Reserves	-	-	-	\$ 74	\$ 91	\$ 77	\$ 214	\$ 138	-	-	-	-
Net NSBS Fees Paid	\$ 2,277	\$ 2,264	\$ 1,850	\$ 1,795	\$ 1,824	\$ 1,940	\$ 2,040	\$ 2,407	\$ 2,400	\$ 2,400	\$ 2,400	\$ 2,400
Reserve Surcharge								\$ 200				
<b>Total NSBS Fees Paid</b>	<b>\$ 2,277</b>	<b>\$ 2,264</b>	<b>\$ 1,850</b>	<b>\$ 1,795</b>	<b>\$ 1,824</b>	<b>\$ 1,940</b>	<b>\$ 2,040</b>	<b>\$ 2,607</b>	<b>\$ 2,400</b>	<b>\$ 2,400</b>	<b>\$ 2,400</b>	<b>\$ 2,400</b>
LIANS (Net) Levy Paid	\$ 975	\$ 1,152	\$ 1,319	\$ 1,460	\$ 1,623	\$ 1,900	\$ 1,974	\$ 1,875	\$ 1,995	TBD	TBD	TBD
<b>TOTAL FEES PAID</b>	<b>\$ 3,252</b>	<b>\$ 3,416</b>	<b>\$ 3,169</b>	<b>\$ 3,255</b>	<b>\$ 3,447</b>	<b>\$ 3,840</b>	<b>\$ 4,014</b>	<b>\$ 4,482</b>	<b>\$ 4,395</b>	-	-	-

(\*before HST)

See the NSBS website for Financial Reports

See Schedule A for a breakdown of payment due dates

# PROFESSIONAL RESPONSIBILITY

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## SUMMARY



In this Professional Responsibility Report for 2017-18, you will see a fresh new format. It's important that Council, members and the public understand the nature of this work, and we want to present the information in a way that makes it easier and more interesting to read. We have included more stories to illustrate processes, changes and the impact of our work. *Note: This report covers the period May 1, 2017 to April 30, 2018.*

This report will tell you:

- Who is PR?
- How do we do our work?
- What does it cost?
- What's changing?

The report is divided into six main sections, and now includes reference to the committees that support the work of PR within each relevant section:

- i. Introduction and costs
- ii. Early resolution
- iii. Investigation and adjudication
- iv. Legal services support, regulation and risk
- v. Other business

## INTRODUCTION AND COSTS

### Who are we?

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.

### What do we do?

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

- i. Complaints intake, early resolution, dismissal and Letters of Advice;
- ii. Complaints investigation;
- iii. Prosecutions and hearings;
- iv. The Fitness to Practise Program;
- v. Unauthorized practice concerns;
- vi. Ethics education, advice and legal services support;
- vii. Regulatory risk management;

- viii. Custodians, Receivers and windup assistance; and
- ix. The Lawyers' Fund for Client Compensation.

The Society's Regulatory Objectives and values of excellence, fairness, respect, integrity, visionary leadership, diversity and accountability guide all PR work. Our role is to proactively enhance the competence of lawyers and assist them in adhering to the rules of professional conduct and practice standards. A foundational principle 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.

## **How do we do it and what's changing?**

### **Excellence in Regulation**

The PR department now consists of five staff, including four lawyers who bring a high level of professionalism and consistency to this important work. Earlier this year, two full-time staff positions were moved out of PR and into the Finance & Administration (F&A) group. The result is that all trust assurance work is now fully housed in F&A, with our new internal Auditor, Trust Assurance, as the vast majority of this work requires more education than intervention to achieve compliance.

As a small team, we continually seek to develop new ways to integrate risk focus and the Triple P approach – proactive, principled and proportionate – into our processes. Like all other law societies, we strive to adhere to every aspect of the Federation of Law Societies' [National Discipline Standards](#): for the third year running, we have achieved or exceeded all standards, with the exception of not having sufficient staff resources to answer all complaint intake calls within two business days. This will be cured by adding resources to the intake responses.

Below are some current examples of things we are changing in order to achieve an even higher level of excellence:

### **Changing the conversation with complainants and lawyers from the beginning**

We have been expanding our tools and resources to help educate lawyers and the public, encouraging informal dispute resolution at every appropriate stage, and seeking to achieve more reasonable expectations of our processes. This year, we redesigned the Compliance Officer position to become a new Officer, Early Resolution. This Officer handles the large majority of complaint intake calls and quickly engages with callers to identify concerns, discern issues within our authority, and work with callers and lawyers to resolve problems earlier, without need of a written complaint. While this can take multiple hours and phone calls, the rate of success in achieving early resolution is continuing to rise, leaving both parties more satisfied at the end of the experience. (See section below.)

Another important change is our plan to move away from the language of 'complaints' as a starting point, to 'inquiries' and 'responses to requests for information'. In the near future, those with concerns about a number of things including lawyer conduct, will complete an information request form. These requests will be reviewed with a legal services support focus, and allow the Society to determine whether an inquiry should be treated as a request for information, rather than a 'complaint' from the outset. In addition to the goal of reducing complaints which do not require a 'PR' response or investigation, this should help create efficiencies in response time, enhanced risk response through non—disciplinary means, and hopefully increase satisfaction by members and the public with the outcomes.

This process is closely tied to our legal services support goals to engage in dialogue with lawyers and firms to improve client, file and practice management systems without need for a formal escalated response. Our move away from 'disciplinary' language will be further supported by proposed amendments to the *Legal Profession Act* to replace "Charge" with "Citation", and eliminate language that originated in criminal law, where appropriate.

### **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 regular multi-department Rounds meetings to engage in more holistic and accurate

risk assessment and response. The responsibility for regulatory risk managerial leadership has now been assigned to PR, to support risk regulation in all departments.

## **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) and other less formal 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. (See section below.)

## **Applying a restorative lens to problem solving**

Council’s Activity Plan for this year included Item 1.4: “Revise the Professional Responsibility process to establish an early resolution and assessment system founded on a restorative approach to complaints handling.” The desired outcome is that the public and members are better served by an intake process that is resolution-oriented, Triple P and risk-focused, and that facilitates early identification of matters appropriate for resolution or investigation.

Significant progress has been made on this front (refer to the section below on Early Resolution). A Restorative Approach Working Group began its work last fall, and includes both staff and subject-area experts from outside the Society. In recent months it was decided that the goal should be expanded to include adoption of a restorative approach (RA) or lens to all regulatory decision-making across the organization, as well as in dealing with operational and HR matters, and in relation to governance. Staff training has begun, and a 12-month work plan is being developed. The NSBS will be the first law society in North America to adopt such an approach to regulatory decision making, and this reflects our commitment to achieve lasting change and improvement in competent and ethical behaviour by our members. Council and committees will receive RA training in the coming year.

## **Access to justice**

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 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 a early resolution-focused and restorative approach 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.

## How much does it cost?

The costs of PR this past year were significantly lower than the previous year, and more in line with the average costs for the past five years.

**Total expenses in 2017/2018 were 31% lower than budgeted.** Cost reductions were achieved this year in all categories of external legal services, although some have been deferred to the new fiscal year due to the timing of one hearing.

The following chart compares the last three years' costs in key categories, noting the percentage (%) of total budget or actual costs the expense line represents, from 2015/16 forward.

## Budget Breakdown

	2015-2016				2016-2017				2017-2018			
	Budget	%	Actual	%	Budget	%	Actual	%	Budget	%	Actual	%
<b>TOTAL</b>	<b>1,461,202</b>		<b>1,519,647</b>		<b>1,474,745</b>		<b>1,998,738</b>		<b>1,850,769</b>		<b>1,175,426</b>	
<b>Investigations</b>	143,400	10	212,189	14	213,298	14	225,805	11	209,500	11	89,838	7.6
<b>Hearing (prosecutions)</b>	95,600	6	193,339	13	123,516	8	715,488	36	452,800	25	155,522	13
<b>Custodian / Receiver</b>	116,800	8	121,937	8	139,810	9	164,301	8	125,000	7	89,031	7.5
<b>External Legal Services</b>	221,300	15	355,588	23	346,610	23	1,006,052	50	780,300	42	334,391	28.4

[NOTE: 2017-18 Actual costs are based on March 31, 2018; External Legal Services includes investigation (at staff and CIC levels), practice reviews, prosecution, Receiver/Custodian and windup costs.]

The comparison above shows a reduction of over 50% in hearing costs and external legal services overall, as compared with the previous year, which represented an unprecedented level of such costs as a result of the Lyle Howe proceedings. As compared with 2015-16, this year saw a reduction in investigation costs by about 50%, hearing and Custodian/Receiver costs meeting the average, and external legal services overall just above average.

## Future plans to control and further reduce costs

During the past year, the Society moved the Trust Audit Program in house by hiring a chartered accountant to assume responsibility for the Society's trust audits, and provide internal expertise with trust accounts risk management and response, as well as education and investigations assistance where appropriate. As a result, the work associated with trust accounts monitoring and reporting moved out of PR and into Finance & Administration, which included a reduction in PR staff by two FTEs.

The next phase of enhancing our internal expertise and resources will be the filling of two new positions: General Counsel and Paralegal. With these resources, the Society will move in-house many of the legal services for which we have

traditionally had to retain external counsel, in particular with regard to regulatory proceedings, and our Custodian/Receiver/Practice windup work. Our cost-benefit analysis estimates that this may result in slightly higher costs than average in this coming year of transition and training, with lower costs in 2019/20 and beyond. We are one of the last law societies to create such in-house positions. While the Society has been exceptionally well served by all external counsel in the past who have provided the highest quality of service in all areas, it is time to develop the internal skills, experience and resources to enable us to carry out much of this work internally, in an efficient and cost-effective manner.

The work of these new positions will be supported by existing counsel positions in PR, to further help manage costs of regulatory proceedings and other areas of legal services, and increase our capacity.

## Technology

An essential way to create capacity is to make best use of technology, and to streamline or re-engineer processes to increase efficiency and reduce costs or time. This year we will be developing the technical platform to permit electronic filing of complaints through online fillable forms permitting attachment of electronic documents in support of complaints and investigations.

Secondly, we are developing a new case management system that will be designed to facilitate the efficient and timely tracking of all matters in PR, combine databases that currently require duplicate data entry, replace our overwhelmed complaint intake database, and control deadlines and action items. This will result in time savings on a number of levels.

## EARLY RESOLUTION

### Overview

This year we created the new position of Officer of Early Resolution, filled by a lawyer, to help field intake calls, to mediate complaints and to help employ our new restorative approach to intake calls and complaints.

We have historically made a distinction between intake callers and written complainants. Written complaints trigger a fairly prescriptive regulatory regime and require certain processes to be followed, whereas intake calls are able to be handled without triggering those processes. We are currently modifying our process so that both intake calls and written complaints will instead be viewed as “inquiries” or “requests for information”. This approach is outcome focused. It will enable us to be responsive, without unnecessarily triggering a process that can be more adversarial by its nature; e.g., requiring written responses.

### Intake calls

#### Introduction

The intake line is a phone line available for members of the public to call when they have concerns about a lawyer’s conduct. It is one of the Society’s most direct connections with the public. Callers have the benefit of speaking with one of our lawyers who is familiar with lawyers’ obligations under the *Nova Scotia Barristers’ Society Code of Professional Conduct*, the *Legal Profession Act* and Regulations, and the various Practice Standards.

We identify which issues can be resolved quickly and easily without the need for a written complaint. Our goal is to deal with intake calls using our Triple P approach: one that is principled, proactive and proportionate, yet also risk-focused: sometimes callers are concerned about one thing but we learn information that presents risks even the client doesn’t appreciate.

#### Who calls us?

The number of intake calls we receive has steadily increased and this year was no exception. **Call volume increased by 20% from last year.**



By and large, the main reason people call us is because of lack of communication: they can't reach their lawyer, opposing counsel won't respond to their lawyer, their lawyer hasn't adequately managed expectations as to how long the court process may take, etc. These are considered quality of service calls. While not high risk, these are the kinds of lawyer behaviours that generate dissatisfaction, mistrust and complaints.

We work hard to help our callers understand the ethical obligations of our membership. We take the time to explain, for example, how being an advocate doesn't always mean agreeing with your client, or that the rules prohibit lawyers from engaging in sharp practice even where a client may want them to. We help manage clients' expectations of their lawyers so that our membership can focus on doing the legal work and we can spend more time on the complaints that give rise to serious ethical concerns and risks.

### **TREND: High-conflict personalities – you might know them as “vexatious litigants”**

We have noticed two major trends with respect to the intake line this year:

- an increase in the number of calls we receive; and
- an increase in the number of high-conflict personalities calling our intake line.

The first, we've already talked about. The second is just as pressing. A person with a “high-conflict personality” (“HCP”) is a person for whom minor problems become major disputes. A person with an HCP will persist in the dispute long after other parties have let go. There is an urgency and drama to their daily lives and they always have someone to blame. In fact, studies show they often have a preoccupation with blame that drives them constantly from one dispute into another. Often people with HCPs become vexatious litigants. They are attracted to adversarial processes because of their preoccupation with assigning blame.

With a view to changing our processes to be more restorative and less adversarial, we are also asking:

- How can we work to address harm while also ensuring we aren't indulging frivolous complaints or complaints made for a corollary purpose?
- What do you do when an intake caller or a complainant will not accept the limits of your jurisdiction?

It appears our adversarial process has been attractive to people with HCPs. We want to spend less time indulging frivolous complaints by people with HCPs and more time looking into areas where risk has been identified.

***Example:** We have a caller who phones frequently about opposing counsel in his family law matter. He has filed a number of complaints against opposing counsel. He is not deterred by explanation as to why opposing counsel has not breached her obligations under the Code, about her limited obligations to him under the Code, nor is he deterred by explanations of the adversarial process or our limited jurisdiction. He phones and files complaints frequently, in spite of the fact that his complaints have always been dismissed. He is preoccupied with blaming opposing counsel for what he views as an unfair custody arrangement.*

We need to change our process to ensure that we still hear allegations like his in context – it's important he be heard and that we take the time to deduce whether there has been a breach of the *Code* – but we also need the ability to refuse to consider complaints that are not supported by the facts or are clearly made for a corollary purpose. We also hear from many individuals with mental health problems: these voices also need to be heard and options discussed, even though we are often not in a position to help them

### **Breaking down silos to transform regulation in the public interest**

The intake line also provides us with a unique opportunity to identify where enhanced access to legal services might be needed. We are reshaping our intake database and with it, the information we capture and track, so that we can start to see larger trends. We know that part of our role in regulating the profession means ensuring that our membership has the ability to meet their obligations under the *Code* and are not constrained in doing so.

As we continue to work towards our priorities set out in our Strategic Framework, we have begun to recognize our role in helping to enhance access to legal services and the justice system. We will be working closely with the Equity & Access Office to discuss broader systemic issues.

## Continuing to overhaul our complaint process

We are moving away from the somewhat adversarial process of exchanging positions and responses to a more restorative approach to complaints. We don't want our membership bogged down responding to written complaints that could be dealt with in a simple phone call and we don't want members of the public waiting months for us to process a complaint that could have been easily resolved. Like our intake calls, the vast majority of our written complaints arise from concerns over quality of service, including poor communications, and delay in or failure to move matters forward.

We are currently overhauling our complaint process. It is important we hear from members of the public when they have concerns about the conduct of our members. It is also important that we spend less time processing complaints that we have no jurisdiction to deal with or that were made for a corollary purpose. Nearly 20% of our complaints during this reporting period were made because the complainant was unhappy with the outcome of their matter.

## Disposition of written complaints closed during the reporting period

	2014/2015	2015/2016	2016/2017	2017/2018
Resolved/other	17 (13%)	13 (10%)	20 (15%)	9 (10%)
Staff dismissals	84(63%)	93 (71%)	67 (51%)	56 (64%)
Staff LOA	7 (5%)	17 (13%)	11 (8%)	3 (3%)
CIC	23(17%)	7 (5%)	34 (26%)	13 (15%)
FH	1 (1%)	1 (1%)	0 (0%)	6 (7%)
<b>Total</b>	<b>132</b>	<b>131</b>	<b>132</b>	<b>3 (3%)</b>

## Dismissals

This year, over 64% of written complaints were dismissed at the staff level. Of those complaints dismissed at the staff level, over 77% were because the facts did not support a finding that the member breached the *Code* or because the evidence did not support the allegations set out in the complaint. The other 23% were dismissed because the subject matter of the complaint was outside of the jurisdiction of the Society.

## Reasons complaints have been dismissed at the staff level

	May 1, 2016 – April 30, 2017	May 1, 2017 – April 30, 2018
Reason	# of Complaints	# of Complaints
No jurisdiction – complaint is about fees	16	2
Frivolous, vexatious, abuse of process	10	2
Facts if proven do not support a finding of a breach of the <i>Code</i>	5	27
Lawyer is asked for their response to complaint and evidence does not support the allegations	17	12
Evidence does not support the allegations (both lawyer and complainant have been asked for further documentation)	19	1

We are engaging with people earlier by picking up the phone and calling them when a concern has arisen. We are giving lawyers a chance to directly respond to their clients' concerns and to help us find resolutions where possible. Our goal is to resolve as many complaints as possible. One hurdle in accomplishing that is the trend of high conflict personalities participating in our process.

## Resolutions

The number of written complaints that we were able to successfully resolve remained steady over the last few years. We anticipate as we move forward with our restorative approach, we will be able to successfully resolve a greater number of complaints.

Additionally, what is not captured by the data above is the number of complaints we have avoided by successfully resolving concerns at the intake call stage. Even with an increase in intake calls by 20%, we have still managed to reduce the number of written complaints we received this year by 20%. This is lowest number of written complaints in many years.

Date range	Number of complaints
May 1, 2016 – April 30, 2017	140
May 1, 2017 – April 30, 2018	111

We are currently upgrading our intake call database and will be able to capture this type of data going forward.

Anecdotally, we can say that with our focus on early resolution, we have had a much higher number of successful mediations at the intake stage that have resolved the concerns of the caller.

Resolutions, as part of a restorative approach, more meaningfully address the harm done to the complainant and often result in a genuine reflection and change in behavior on the part of the lawyer.

*Example: One of our complainants felt bullied and intimidated by a firm that “dropped” him as a client. The complainant was concerned about how to move his matter forward, but more than anything he wanted the firm to understand how it made him feel when they determined they could no longer represent him. Our Early Resolution Officer spoke with both the complainant and the managing lawyer of the firm about these concerns. The managing lawyer expressed sincere regret with how the retainer was terminated and provided an apology to the complainant. The complainant felt heard and agreed that our department satisfactorily resolved his complaint. The managing lawyer reported that our engagement with him helped him to understand how he made the complainant feel and that he would rethink how he might be more sensitive to his clients in the future.*

We view examples such as the one above as success stories. We have found that it is most often more effective to discuss the harm the client has suffered and to engage lawyers on how they might do better going forward, than it is to send them a letter of advice, reminding them of their obligations under the *Code*.

## Complaints Review Committee

As discussed, most complaints are dismissed at the staff level under the delegated authority of the Executive Director to the Director of Professional Responsibility.

### Core function

The Complaints Review Committee (“CRC”) acts as a true appeal body from a complaint that is dismissed by the Director. The CRC is independent from the Society. The CRC is comprised of a public representative Chair and four lawyer members, none of whom may be serving on Council or have any current involvement in the Professional Responsibility process and related committees. A quorum for the CRC is three members.

The CRC cannot review new evidence. The standard of review is correctness. The CRC has the authority to either uphold the dismissal or refer the matter back to the Professional Responsibility department to commence or complete an investigation. In the latter cases, the matters are then referred to the Complaints Investigation Committee for final decision.

The Professional Responsibility Policies & Procedures Committee, with the assistance of staff, recently looked into CRC policies and procedures and created a “Request for Review” form, which has already begun aiding complainants in streamlining their appeal. The Request for Review form helps complainants understand that the CRC will only be reviewing what information was before the Director of Professional Responsibility when she made the decision to dismiss

the complaint. It has effectively preempted complainants from filing voluminous additional documentary evidence that the CRC did not have the authority to consider as an appeal body.

The CRC reviewed 21 files this year (compared with 24 last year). It referred three files back for commencement or completion of investigation. In each case, the matters are then referred to the CIC. For these three matters, one resulted in the CIC issuing a caution relating to the lawyer's unprofessional tone and communications with another lawyer (staff had negotiated an apology but this was not accepted by the complainant); and two dismissals were upheld.

## **INVESTIGATION AND ADJUDICATION**

### **Investigations**

#### **Values and principles**

We conduct almost all investigations of complaints at the staff level, often with the assistance of a member of the Complaints Investigation Committee who has experience in the area of law relevant to the complaint. The core values and principles we strive to bring to every investigation are fairness, respect transparency, empathy and cultural competence.

#### **New approach**

For over two years, we have been approaching our investigations in a more principled, proportionate and proactive manner and have started to embed restorative approaches into how we conduct our investigations. This has manifested primarily in a reduction of requests for written responses and an increase in meetings and telephone conversations with lawyers to explain some of the concerns we may have with the way they approached a particular matter: we discuss some alternative approaches and any issues or difficulties the lawyer may be facing in her life or practice. These meetings and discussions are intended to be more conversational in nature (part of changing the dialogue) and are a departure from our traditional investigative interviews with lawyers involving mostly close-ended questions.

The hope is that through this new approach, lawyers will feel more comfortable openly discussing issues they may be facing in their practices or in dealing with a particular client or file, and we will have a better understanding of the context in which the lawyers acted and the challenges they may be facing in their practices. We also hope that by using a more educational and less "disciplinary" approach, we will better affect long-lasting behavioural changes in lawyers.

While we are still very much at the early stages of implementing this new approach and it is always challenging to assess the success of a change in process, we have seen a decrease in complaints against certain lawyers who had a significant discipline history, following their meeting with staff or members of the CIC. A number of lawyers mentioned that a meeting and discussion with staff or CIC members was much more impactful and concerns raised resonated more clearly with them than any disposition letters they may have received in the past from staff or the CIC. The main challenge will continue to be trying to create a relationship of trust with lawyers that will make it so that lawyers feel comfortable sharing issues and concerns with us and being honest, candid and forthright with us.

### **Complaints Investigation Committee**

#### **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.

## **Matters before the CIC**

The CIC reviewed 29 matters involving 17 lawyers during the course of the past year. The trend appears to be that the CIC is reviewing fewer matters, but the matters referred to the CIC are often more complex and the allegations of a more serious nature. The complaints reviewed by the CIC included issues surrounding **competence and quality of service, conflict of interest, honesty and candour, integrity, professional tone and demeanour, and duties to the court** (such as misleading the court, misstating evidence to the court, etc.).

*Example: A typical matter before the CIC involves a sole practitioner moving toward the end of his 40+ year career as a general practitioner in a small town. This lawyer has no succession plan, has been unable to sell his practice, and has no savings that would permit him to retire when he would prefer to. This means the lawyer has been handling his client files, trust accounts and all other management of the firm on his own. And in recent years, has not been doing it very well. Complaints come in from clients and lawyers saying the lawyer is hard to reach, won't return calls and doesn't respond to letters. Annual trust account reports reveal many regulation violations. The lawyer fails to respond to complaints on time. PR staff work hard over a period of months to try and engage the lawyer in addressing the problems in his practice, but with no luck.*

*The CIC is asked for direction. Rather than immediately escalating the situation with a practice review or new complaint, the CIC often requests that the lawyer attend a meeting with a few CIC members and a staff person. CIC members from the lawyer's area or areas of practice usually participate. A conversation is had with the lawyer that both recognizes the lawyer's contributions to the profession but clearly points out where things are going astray. An agreement is reached with the lawyer that he will retire within 12 months, and the CIC will arrange to have a senior member of the Bar meet with the lawyer to supervise the steps that need to be taken to wind down the practice. Regular reports will be reviewed, and only if necessary will the CIC escalate the tools it has to enforce the practice closure, yet still seeking to help the lawyer maintain his dignity. In some cases, during meetings with members like this, it becomes clear that a referral to the Fitness to Practise Program is in order, and such referrals are made quickly and in a way that protects clients while preserving dignity.*

## **CIC approach**

The CIC has continued to hold more formal and informal meetings with lawyers, such the one described above, before making decisions about disposition of complaints. The CIC held five formal meetings with lawyers (under s. 36(2)) and one informal meeting with a lawyer in the past year. These meetings offer the lawyers a chance to provide all the information they feel the CIC should have before making a decision and it gives CIC members an opportunity to have a frank discussion about their concerns with the lawyer's conduct and provide assistance to lawyers in identifying possible areas of change to avoid similar issues occurring in the future. The CIC's focus has very much been on attempting to change lawyers' behaviours and understanding the root causes of lawyers' conduct issues or problems.

Another way the CIC has tried to effect changes in lawyers' behaviours has been to order reviews of certain lawyers' practices when the CIC has reasonable and probable grounds to believe that a lawyer is practising law in a manner contrary to the public interest. The threshold for ordering a review of a lawyer's practice is very high and therefore only three practice reviews were conducted in the past year. These practice reviews have become more educational in nature, with the reviewer providing precedents to lawyers, giving concrete recommendations for possible changes in the lawyers' practices to ensure future compliance with the rules of professional conduct, and providing advice on specific open or closed files. The CIC will often give the lawyer several months to implement the recommendations made by the practice reviewer and ask for a followup practice review to ensure that the lawyer has implemented the recommendations made to them by the practice reviewer.

## CIC dispositions and outcomes

The CIC referred three matters involving one lawyer to hearing. The CIC issued one caution letter, two letters of caution and counsel, and one letter of counsel. The CIC dismissed two complaints that had been referred back for further investigation by the Complaints Review Committee, and issued a caution in a third matter referred back based on the lawyer's unprofessional tone and failure to de-escalate interactions with another lawyer. The CIC decided to close one complaint without taking further action in light of the lawyer's declining health and inability to practise law. The CIC also decided to consider three complaints against one lawyer resolved, after this lawyer successfully completed a period of several months of mentorship, including mentorship in the areas of wellness, administrative processes and procedures, and practice management. The CIC also considered one complaint about a lawyer's competence in handling a real estate matter resolved after obtaining the lawyer's undertaking that she would no longer practise real estate law.

The CIC has started making more use of mentorship relationships and practice supervisors in order to help lawyers build trusting relationships with mentors and supervisors, and have these individuals provide ongoing advice and assistance to lawyers to ensure that they are practising in an ethical and competent manner. The use of mentors and practice supervisors can be done in lieu of a formal disposition (such as a letter of caution or counsel, a Consent to Reprimand) or in addition to a formal disposition of complaints.

*Example: The CIC often struggles with cases where the conduct complained of amounts to professional misconduct, and whether or not this should result in a suspension, practice restriction, Consent to Reprimand or referral to hearing. In some cases, a member takes sufficient mitigating steps to instead warrant a caution. The CIC adopted some years ago a detailed 'threshold test' that lists many factors to consider (established at common law) before making a final assessment of outcome. This has helped them consistently assess evidence, the weight of it, the public interest, and how to apply the Triple P, rehabilitative and risk-focused approach to decisions. As limited information is publicly available from most of these deliberations, the public and members lack information and insight into the factors considered by the CIC in balancing the appropriate response. But in the interests of the investigative process, and under s. 40 of the Act, these deliberations must remain confidential. These types of deliberations and decisions are some of the hardest situations faced by the CIC.*

## CIC and staff training

The CIC had a half-day training session that included presentations on the impact of technology and social media on conduct and investigations, and the use of restorative justice principles in our processes. Staff are receiving ongoing professional development through the Restorative Approaches Working Group, to assist in identifying how we can make better use of restorative approaches in our work. In the next year, we will be looking at our department policies and processes with a view to finding all the ways in which staff can and should use and implement restorative approaches.

A number of areas of training have been identified at the organizational level to provide staff with the tools and competencies required to allow them to perform their assigned duties and pursue the Society's mandate to uphold and protect the public interest in the practice of law. Staff received training earlier this year on managing conflict and improving communications, as well as cultural competence. PR staff benefit greatly from the annual two-day national discipline counterparts' conference, and from participation in a number of national counterparts' committees and working groups.

## Hearings

The NSBS continues to have proportionally fewer matters referred to hearing than other jurisdictions of similar and even smaller size. One of the reasons for this positive trend is the existence of our Fitness to Practise Program (see below), which diverts matters involving member incapacity away from a formal, public hearing process. Another reason is the efforts of the Complaints Investigation Committee to take steps to change a member's behaviour and use more creative solutions to solve conduct problems, rather than laying charges. While these efforts sometimes take many months, the outcomes are often more impactful than a more punitive approach.

The Hearing Committee operates with the highest level of independence in the country in respect of those jurisdictions with volunteer adjudicators. The Committee currently consists of 18 lawyers and five public representatives: 17 of 23 members are male; five of 23 committee members identify as being from diverse communities; and six are female. With



appointments over the past five years, focus has been on enhancing the diversity of committee members while maintaining the necessary skills and experience representing a broad range of practice areas and demographics. Some of the more recent appointments from diverse communities were subsequently appointed to the Bench, and representation from these communities continues to be a priority.

The Committee undertakes training in substantive and procedural areas each year, and this year did so again over two days in conjunction with adjudicators from the Law Societies of New Brunswick and Prince Edward Island.

In the past year, one new matter was referred to hearing: Duane Rhyno was served with charges in September 2017, the hearing commenced on March 12, 2018 and is scheduled to continue into July.

The first hearing in respect of Lyle Howe concluded in the summer of 2017, and the Hearing Panel decision on sanction in the Howe matter was delivered on October 20, 2017. This decision is under appeal, and the appeal is scheduled to be heard in December 2018. A Judicial Review application was withdrawn by Mr. Howe with the Society's consent. A second set of charges was filed against him in April 2017, and these are being held in abeyance by agreement of the parties and the Hearing Committee Chair, until the outcome of the appeal noted above.

There is one new matter to be referred to hearing this July, and another potential matter for hearing, the timing of which is uncertain at this point.

Once again, the types of matters referred to hearing in the past year have primarily involved **personal misconduct, lack of integrity, engaging in criminal activity, and conflict of interest**.

This year saw the retirement of Lawrence (Larry) Evans QC as Chair of the Hearing Committee. Larry has served on the Hearing Committee in one form or another for over 17 years, and has served as Chair for the past ten years. His knowledge, skill, experience and very capable leadership will be greatly missed.

## LEGAL SERVICES SUPPORT, REGULATION AND RISK

The Society receives inquiries from members of the Society and law firm staff on a variety of topics that includes trust account management, interpretation of the Act and Regulations, opening new law firms and winding down law practices/retirement, among many others. These questions can be received by a number of different staff members, and may overlap more than one staff member's area of responsibility or experience. In an effort to ensure consistent and fulsome advice to our members and to increase overall staff knowledge, the Society holds regular meetings amongst those staff members who field such calls. These meetings provide an opportunity for information sharing amongst staff, which in turn enables consistent decision making and a growth in knowledge. This growth in the knowledge base amongst staff allows for proactive regulatory decision making that is based on risk indicators. As a result of these meetings, the appropriate staff person can be assigned to follow up with the lawyer involved, and responses are consistent and timely. In the coming year, technology will be implemented to allow us to capture in one program all regulatory risk information for response and action.

The idea that many questions benefit from the review by and consideration of more than one staff person is also at the heart of the Legal Services Support (LSS) model that has recently been adopted at the Society. It is not unusual that a lawyer who is intending to set up a sole practice for the first time has questions that touch on the work of a number of staff members, as there will be issues related to the operation of a trust account, adoption of ethical frameworks (e.g., conflict of interest checklists or confidentiality agreements), or the requirements for a law corporation. The knowledge base to respond to such queries may not reside with one single staff person at the Society.

*Example: A new law firm was created that was not a "typical" firm and involved more than one lawyer sharing space and some resources, in a unique manner. The Society recognizes and encourages lawyers to deliver legal services to the public in innovative ways that enhance access to affordable legal services. Through a collaborative approach between Society staff and the inquiring lawyer, we were able to assist the lawyer to*

*structure the new practice in a way that achieved an innovative approach while adhering to applicable ethical and professional standards.*

## Ethics advice for members

PR Counsel provides advice and guidance to both the membership and Society staff regarding interpretation of our governing documents including the Act, Regulations and the *Code of Professional Conduct*, the application and purpose of the rules related to money laundering and terrorist financing, and other regulatory or ethical issues.

In the past year, PR Counsel received more than 80 calls from lawyers, articled clerks, law professors and law students seeking assistance in the interpretation and application of the *Code of Professional Conduct*. This number is higher than previous years, which is very positive, and may be a result of our increased legal services support engagement with members and firms through the self-assessment process.

As might be expected, the majority of the ethics calls received come from lawyers who practise in the Halifax region (approximately 45%). The most common areas of inquiry involve **confidentiality and conflict of interest**, followed by inquiries related to **withdrawing from representation** and the **future harm exception to the duty of confidentiality**. The areas of law involved in these calls cover a wide range of practice areas including **family law, wills/estates, criminal and immigration**. More than 25% of the calls involved family law issues while wills/estates and real estate calls each totalled approximately 10% of the calls.

*Example: It is not at all unusual to receive an urgent call from a lawyer on a Friday afternoon at 4 pm. These can typically involve a dealing with a client who has made a threat to the well-being of someone – self harm or a third party. These are rarely straightforward questions, and require a careful application of all parts of rule 3.3-3, the rule in the Code that permits an exception to the duty of confidentiality to prevent future harm.*

*The threshold set out in the rule for reporting such threats to law enforcement or others is quite high. The importance of confidentiality between a lawyer and client is paramount in our justice system. To breach that confidentiality, a lawyer must consider whether “they believe on reasonable grounds that there is an imminent risk of death or bodily harm and that disclosure is necessary to prevent the death or harm”. [emphasis added]*

*As we work through application of the rule with the lawyer, the lawyer must consider whether there is someone else who can report – was the threat made in the lobby of the court so others could overhear? Was the client’s spouse present when the threat was made? Does the lawyer know if the client has the means to carry out the threat, (for example, does the client actually own a gun?) Does the client have a history of violence? Was the client blowing off steam after a difficult step in the legal process? These questions can sometimes be answered if the lawyer asks further questions about the threat and challenges the client on their intention to follow through with the threat with a warning that such threats are inappropriate and may require the lawyer to report.*

*The next question is whether the threat is to be carried out imminently. There is a difference between a client’s threat to harm a person(s) if the outcome of the trial is negative or a threat that the client is going home right now to take their own life.*

Our role is not to tell a lawyer what to do, it is to assist lawyers in interpreting and applying the rules as set out in the *Code* to the circumstances that they face – in other words, to serve as a sounding board to help lawyers focus on their ethical duties in the face of challenging circumstances. Ultimately it is for lawyers to exercise their own professional judgement to determine the appropriate course of action in the circumstances. Only the lawyer knows the client and the file well enough to make those sorts of judgment calls.

## Ethics Advisory Committee

The ethics inquiries above can sometimes involve complex and unique fact patterns that engage both legal and ethical issues. In such situations, consideration by and feedback from the Ethics Advisory Committee can be of significant assistance to members. This Committee considers ethics inquiries that are circulated to it by PR Counsel on a de-identified

basis, usually by email, which permits prompt, thoughtful and instructive advice that is relayed back to the inquiring lawyer.

*Example: Sometimes two lawyers on opposing sides of a matter seek guidance on interpretation of rules relating to duties on withdrawal and transfer of files. The Society does not allow itself to be drawn into contractual or employment disputes between firms and lawyers, but is able to offer guidance in relation to the relevant ethical duties and ensuring that clients' interest remain paramount, for example, in assessing the duties of counsel in dealing with client files when leaving a firm.*

This past year, the Annotated *Code of Professional Conduct* was launched on our website to provide a searchable *Code* with CIC and Hearing case digests and ethics advice available at the end of each section of the Rules, where applicable. Further efforts are being made to capture and publish ethics advice to help lawyers become more self-sufficient in searching for ethics guidance.

## **Code of Professional Conduct Committee**

The Code of Professional Conduct Committee (CPCC) 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.

During the last Committee year, the CPCC considered amendments to the *Code* proposed by the Federation's Standing Committee on the Model Code regarding the duties lawyers and firms have to clients when a lawyer departs the firm. As well, they have considered the *Code's* application to law firms in light of the amendments to the *Legal Profession Act* that are currently with the Department of Justice.

The CPCC has spent considerable time on the rule regarding fee-sharing and its application to multidisciplinary practices (MDPs). Currently, the prohibition on fee sharing as it appears in the *Code* is the only obvious ethical barrier to the creation of MDPs in Nova Scotia. MDPs are permitted in British Columbia, Ontario and Quebec, and represent an innovative way to provide clients with 'one-stop shopping' for professional services. The CPCC is considering whether a rule amendment is appropriate in order to open the door to this type of practice arrangement. Council will be asked to provide policy direction this summer.

In December 2016, the Federation of Law Societies of Canada created the Anti-Money Laundering and Terrorist Financing Working Group to review the "no cash" and client identification rules that were initially adopted on a national basis in 2008. This Working Group is made up of staff members of several Canadian law societies who have responsibility for their organization's rules in this regard, including PR Counsel. The amended rules that the Working Group has prepared will be presented to the Federation's Council in June 2018. In addition, the Working Group is preparing guidance documents for lawyers to assist them in interpreting the rules, and for law societies to assist them in enforcing and monitoring compliance with the rules.

## **Professional Responsibility Policies and Procedures Committee**

The PRPPC supports Council in its governance of the Society by recommending changes to the *Legal Profession Act*, Regulations and policies, and by developing procedures for the professional responsibility (PR) process. The focus of this committee's work is to enhance the legislation, policies and procedures that support all work in Professional Responsibility.

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. Over the last Committee year, the PRPPC has been:

- Reviewing the regulations that govern the proceedings management process followed by hearing panels. This process was adopted several years ago in an effort to provide clear time frames and expectations for the parties to a hearing, to ensure hearings move forward at a reasonable pace. Some issues have been raised by the Hearing Committee and others involved in the hearing process regarding the application and practicality of some of these

regulations. As a result, the PRPPC determined that it was timely to review the regulatory structure.

- Examining the interim hearing process that the Complaints Investigation Committee has authority to conduct pursuant to section 37 of the Act. This process has become increasingly complex, formal and judicialized, and the CIC has raised some questions regarding its obligations for procedural fairness. The PRPPC presented to Council in May proposed regulation amendments to ensure best practices with this process.
- Considering issues related to self-represented litigants, particularly those who are vexatious or otherwise have difficulty with the Society's complaint process and the limits of a self-regulated profession's jurisdiction. One of the areas of concern is the complaints review process that is conducted by the Complaints Review Committee (CRC). The PRPPC reviewed that process with a view to limiting the amount of materials a complainant can submit on review. The CRC's jurisdiction has always been limited by regulation to reviewing only that material that was before the Executive Director at the time the decision to dismiss a complaint was made. A new information and review form has been developed that makes clear to the complainant that no new materials will be accepted.
- Liaising with a Working Group established to consider ways to adopt a restorative approach to PR processes (see section above)
- Considering ways to embed the Society's Triple P and risk-focused approach to all PR work.

## **Fitness to Practise Committee**

The Fitness to Practise Program (FTP) 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.

Given the sensitive nature of issues addressed by this committee and the need for confidentiality, there is little that is 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.

No two FTP files are the same – the Committee has worked with lawyers who are struggling with depression, anxiety, post-concussive syndrome, personality disorders, alcohol use/abuse and dementia. Sometimes these conditions overlap, and the beginning and end of each can be very unclear. These files can be referred to the Committee from the Executive Director or the Complaints Investigation Committee. Once the lawyer has given their written consent to the referral to FTP, staff will have a more detailed discussion with them about the next steps.

The file will then be reviewed by the Committee and an Interim Agreement is prepared, which includes conditions or restrictions on the lawyer's practice (e.g., no family law files). Absent evidence that would indicate that the lawyer is currently unfit to practise law as a result of their health, the Committee will not require that the lawyer immediately cease the practice of law. The lawyer will always be required to attend for an independent medical examination (IME). The Committee has found that meeting with the lawyer in person is helpful to both the Committee and the lawyer, to ensure that the agreement is appropriate and the lawyer understands the program and the expectations.

Following the receipt of the medical report from the IME, the Committee will reconvene to develop a Remedial Agreement. These agreements are tailored to address any recommendations made by the health professional, and could include the requirement that the lawyer enter an in-patient detox program, be assessed by another professional, withdraw from the practice of law (permanently or until the health condition improves), begin regular appointments with a psychiatrist, etc. The Committee will then monitor compliance with the agreement as well as the rehabilitation of the lawyer. In circumstances where the lawyer's condition is permanent and/or progressive (i.e., dementia), the Committee

will assist the lawyer with the windup of their law practice to enable the lawyer to retire without the stigma of suspension or other public disciplinary outcome.

In some cases, the Committee has been unable to secure the compliance of the lawyer with a treatment plan and must refer the lawyer back to the traditional professional responsibility process. In such cases, the lawyers have typically been permitted to resign, either by Council or by a hearing panel.

The FTP Committee has received no new referrals during this Committee year. It has one active file that is currently being monitored. That lawyer has changed category to non-practising and is waiting on a referral to a specialist who may be able to assist with the complex medical issues the lawyer is facing.

## **OTHER BUSINESS**

### **Custodians, Receivers and windup assistance**

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 has been 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 had been steadily increasing over the last several years, due in part to the aging of the profession. However, this year saw fewer new matters opened and more matters handled proactively through windup assistance.

The budget for 2017/18 was \$110,499, and the actual costs were \$86,232, representing a cost reduction of 22%. In 2015/16 the budget 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.

Our ongoing cost management strategies include the use of the experienced and dedicated team at Burchell MacDougall, consisting of senior counsel John Rafferty QC, partner Kelly Middlestadt and legal assistant Krista McNutt, and 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. However, as noted in the cost section above, plans are underway to move this work in house to achieve greater consistency and cost controls, as well as development of internal expertise in these matters.

During the 2017/18 year, there were 14 open receiverships and 18 open custodianships. These numbers include three new custodianship files. There remains one "informal" custodianship that was opened in 2013 and is ongoing. 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.

### **Unauthorized practice**

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.

*Example: Matters that cause concern in this area include individuals with no training advertising themselves as being able to assist as a 'friend of the court' in family and child custody matters. These individuals usually come to our attention through concerns from counsel for the government entity seeking to protect the best interests of the children. These individuals can and have caused great harm to families, children and the administration of justice, and the Society will take steps to ensure the individual ceases and desists, or becomes subject to an injunction process, in the public interest.*

In the 2017/18 reporting year, four reports of UAP were received and followed up on by PR Counsel. All were contacted with a reminder about the prohibition on engaging in the unauthorized practice of law and the Society's statutory authority in that regard; however, no formal action was taken. In the 2016/17 reporting year, five reports of UAP were received and followed up on by PR Counsel; in 2015/16 three reports of UAP and in 2014/15 there were four reports of UAP. 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 at least twice each year for lawyers 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.

An application was made in December 2017 on behalf of 22 lawyers and law firms with respect to funds totalling \$27,951.14, and an application was made in June 2017 on behalf of 19 lawyers and law firms with respect to funds totalling \$9,247.37.

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.

## **Lawyers' Fund for Client Compensation**

### **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 Lawyers' Fund for Client Compensation Committee has authority under the Regulations to approve claims for less than \$5,000, and Council receives Committee recommendations respecting payment or denial of claims over \$5,000.

Unlike in 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 through the Canadian Lawyers Insurance Association, 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.

## Recent trend

In recent years, we have seen an increase in unearned retainer or “negligent misappropriation” claims, meaning that a lawyer charged the client a fee paid in full by the client, and the lawyer was unable, for a myriad of reasons (i.e., mental health or health problems, disciplinary suspension, etc.), to complete the work for which the lawyer was retained. A number of the lawyers who have ‘negligently’ misappropriated funds from clients were struggling with significant mental health issues. We have seen very few claims arising from a large defalcation on the part of a lawyer. Our focus in recent years on risk assessment, including with the Trust Audit Program, and the implementation of risk-based regulations and measures appear to have assisted in reducing the amount of large defalcations.

## Claims in 2017/2018

We received four new claims during the last fiscal year. One claim related to a lawyer being paid a lump sum to complete a client’s divorce, with the lawyer unable to do any of the work required to complete the divorce after becoming unable to practise due to mental health issues. That claim was paid out in full by the Committee in the amount of \$3,761.80.

One claim related to a former client of a now-disbarred lawyer believing that she had not been paid a settlement from him many years ago. While there was little evidence to demonstrate that the lawyer had misappropriated the funds, due to the fact that the lawyer had been disbarred for misappropriating client funds under similar circumstances some years ago, Council approved that claim in full in the amount of \$6,797.63, determining there was a reasonable likelihood that the misappropriation had occurred.

One claim related to a now-deceased lawyer taking his executor’s fee before an estate matter completed. The Probate Court assessed the amount that should have been paid to the lawyer for his role as executor of the estate to have been significantly lower than what the lawyer had taken. With the consent of the claimant and the representative for the lawyer’s estate, we retained a lawyer to negotiate a mutually beneficial settlement between the parties. The settlement negotiations were successful and the claim was settled without the need for review by the Committee or Council.

One claim related to allegations that the lawyer had inappropriately and prematurely taken funds from a client settlement as payment under a Contingency Fee Agreement, which was later found to be invalid by the Court. The claimant had started an action against the lawyer, claiming in part misappropriation on the part of the lawyer. Due to the ongoing litigation matter and the current lack of evidence that the lawyer had misappropriated or converted the funds he had taken as payment, Council decided to hold the claim in abeyance until the conclusion of the legal proceedings.

## Previous years

2016/17	2015/16	2014/15
Claims total: \$1,923.38	Claims total: \$130,602.00	Claim total: \$112,314.60
# of claims: 1	# of claims: 5 (3 lawyers)	# of claims: 17 (2 lawyers)
# denied: 0	# denied: 1	# denied: 2
Amount paid: <b>\$2,311.75</b>	Amount paid: <b>\$1,659.63</b>	Amount paid: <b>\$65,987.80</b>

## 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 LRA Compensation Fund.

## WHAT'S AHEAD?

There is a great deal of change underway and ahead, which should in some ways revolutionize the work in PR. We may presently be the only law society in the world specifically striving to develop and apply a restorative lens to resolving, investigating and adjudicating complaints, and to address a wide range of regulatory issues. This approach fits well within our Triple P and risk-focused approach to regulation. It will take years to fully learn and embed this lens in our work, but early and important first steps are being taken.

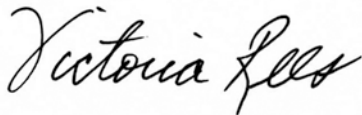
Legal services support for our members comes from all areas of the Society, and counsel in PR have an important role to play. We are learning to lower the 'walls' between our departments and collaborate on problem solving in the interests of members and the public, which creates a rich foundation on which to support members to practise more effectively. This supports a more proactive and proportionate approach to regulation, and will be a focus again in the coming year.

Significant work is underway in the area of law firm regulation, both in terms of application of the *Code of Professional Conduct*, and in anticipated development of multidisciplinary practices and other innovative means for the delivery of legal services within an appropriate ethical infrastructure.

With the addition of General Counsel and a paralegal, legal services that have historically been referred out will over the next year be transitioned into the Society and PR. It will take time to learn and develop the level of expertise we have benefitted from with our external counsel, but we will have lots of support from these counsel and from our counterparts across the country.

Key to managing this new work is streamlining of processes and procedures, and enhancing the use of new technologies, including a new case management system and accepting online complaints.

With the support of our many volunteers on committees, and Council, this is going to be a year of significant growth and positive development.

A handwritten signature in black ink, reading "Victoria Rees". The script is fluid and cursive, with the first letter of each word being capitalized and prominent.

Victoria Rees  
Director, Professional Responsibility

# TRUST ASSURANCE PROGRAM

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The Society recently moved its trust account oversight from the Professional Responsibility department to the Finance and Administration group. The newly renamed Trust Assurance Program focuses on risk-based processes to ensure lawyers are in compliance with the Trust Account Regulations that relate to lawyers' trust accounts, including those regulations related to other client property, client ID and verification rules, unclaimed trust funds, applicable Professional Standards and more.

The Trust Assurance Program strives to be more supportive and educational, with a lens on being "Triple P" (principled, proactive and proportional) in our response to violations and non compliance.

The Society has in place a Trust Assurance Administrator and recently hired an in-house Trust Assurance Auditor. The auditor will conduct risk-based audits, as we have always done using a consultant. The auditor will also engage in education, risk identification and management, and assist with complaint investigations when needed. As part of this work, the auditor will assist in developing and delivering resources and tools for new firms, or those opening new trust accounts, and in helping them apply and understand the Trust Account Regulations and best practices. As with all NSBS staff, the trust assurance group has adopted a Legal Services Support approach.

The Trust Assurance Program also supports the Society by providing research and advice in areas of potential risk and fraud including cybercrime, money laundering, trust safety, etc., as part of a national group of law societies, focusing on trust accounts.

Over the next year or so, the Society is reviewing the Trust Account Regulations to ensure that they meet the Society's Triple P objectives. We will review the Trust Account Report and Accountants' Report on trust accounts process as well.

One immediate change: Since the NSBS is now using risk as a driving factor in its regulation, some firms that have had no problems or concerns arising from their trust account reports for several years may have had the requirement for an accountant's report on the TAR waived this year. We are piloting this initiative to determine if we can reduce the cost of compliance by law firms without increasing the risks borne by the Society. Because this is a new initiative, only a few firms have benefited from it in year one.

Another significant change under the new regulations is the requirement that lawyers and law firms obtain the permission of the Executive Director before operating a trust account. Permission will be granted upon the successful completion of an assessment and demonstration that the lawyer/firm has the infrastructure in place to safely and appropriately operate a trust account. In approving these changes, Council accepted as a principle that holding other people's money in trust is a privilege and not a right for lawyers. The NSBS must ensure that lawyers/law firms have the requisite knowledge and infrastructure in place before they can exercise that privilege.

# PUBLIC REPRESENTATIVES

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The past year has seen many achievements by the NSBS Council, but has also has been a time of significant changes. Although these can make for challenging times, and force us to approach things in different ways, a significant amount of meaningful and important work has been accomplished.

We were dealing with the departure of the former Executive Director, who was an unquestionable expert in all matters related to the NSBS and law society regulation generally. The amount of experience and historical knowledge he had was exceptional, but we have the dedicated staff, Council and Executive, along with the new ED to guide our work. The national search for a new ED, and the hiring of Tilly Pillay QC, means the Society continues to be guided by a skilled and dedicated leader who understands the history, and the future direction, of the Society. We all look forward to working with her.

We continue to move forward with the strategic plan and despite the best efforts of the Society, amendments to the *Legal Profession Act* have not yet passed. Council, staff and both Executive Directors were disappointed, but we understand where there is additional work that needs to be done and we have a plan to achieve it.

There have been several educational opportunities available to Council, committee members and the Executive, and they help augment our skills to help us perform our duties. All of us felt strongly that the Blanket Ceremony, which added to our understanding of the perspective of First Nations people in Canada, was particularly enlightening and a very emotional experience.

The makeup of Council has also changed with the addition of two Public Representatives, bringing the total up to five. This better reflects the government's desire to have board positions for self-regulating professions filled by a specific percentage of lay representatives. The two new representatives bring a more diverse perspective to Council and have made positive contributions to Council already.

For the new Public Representatives, the learning curve for the “legal speak” has been challenging but our president, Julia Cornish QC, and all the Executive, Council members, staff and “veteran” Public Representatives work very well together and are committed to ensure they fully participate in their role.

There continues to be a genuine willingness from the lawyers who sit on Council and committees to hear our perspective, and there is no shortage of healthy debate at all meetings. We are all comfortable in probing, questioning and seeking clarification when needed, as collaboration at all levels continues to be a focus and is key to the success of our work. We never lose sight of the ability to make all members feel welcome. The focus is always on the business and the collective purpose of the Society and Council, which allows for challenging conversations to be had, and for them to be productive and respectful.

Although the year has been a year of change, adaptation and new structure, we are all very proud of the valuable contribution we are able to make to support the Society and Council, in the protection of the public interest.

*Respectfully submitted,*



*Natalie Borden*



*Michael Baker*



*Peggy Gates-Hammond,  
CA, CFP, TEP*



*Michelle Ward*



*Dr. Rod Wilson*

# NEW LAWYERS

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## NEW MEMBERS OF THE NOVA SCOTIA BARRISTERS' SOCIETY

The Society welcomes the following 131 new lawyers, called to the Nova Scotia Bar between May 1, 2017 and April 30, 2018:

Esther Adebola Akinkugbe  
Grace MacLeod Allen  
Sarah Marie Almon  
Kalysa Janine Archibald  
Roy Gordon Argand  
Jordan Daniel Armstrong  
Ami Karine Afi Assignon  
Michael Raymond Barrett  
Clare Frances Barry  
Thomas Patrick Blackburn  
Elizabeth Marie Brachaniec  
Sarah Josephine Briand  
Paul Edgar Broad  
Mary Huguette Brown  
Scott Bradford Burden  
Jaime (Mary) Frances Burnet  
Edgar Peter Joseph Burns  
David Alexander Burton  
Kyle Bruce Campbell  
Tristan David Carroll  
Joan Katrina Christiansen  
Nicholas Henderson Comeau  
Maria Margaret Conroy  
Jean-Philippe Pierre Luc Couture  
Erin Catherine Creighton  
Jennifer Dawn Crewe  
Logan Brian Colin Crowell  
Lindsay Theresa Marie Cuvilier  
Guilhem Pierre Gonzague De  
Roquefeuil  
Steven Michael Terrence Degen  
Julian Paul Joseph Dickinson  
Alix Vanessa Digout  
Sylvia Katarzyna Domaradzki  
Adam Ronald Downie  
Peter Guildford Duke  
John William Eddy  
Jason Sean Edwards  
Ogemdi Chijioke Egereonu  
Shahinaz Yasser El Malah  
Zeina El-Khoury  
Hilary Grace Feltham

Danielle Renee Fostey  
Aileen Claire Marie Furey  
Chloé Anne Gagnon  
Mitchell Wade Gallant  
Mario Alberto Garcia Chavez  
Jonathan Chisholm Gavel  
Melanie Brianne Gillis  
Corey Evan Goodman  
Michael Drew Hampden  
Nicole Mary-Louise Heelan  
John Barton Hillman  
Stephen Joseph Jamael  
Tyler Sutherland James  
Andrew Leonard John  
Meaghan Colleen Johnston  
Madhav Nath Kaushal  
Caroline Kenneth-Ogah  
Carbo Kwan  
Peter Gillis L'Esperance  
Sian Grace Laing  
Simon Alexander Lake  
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Brennan Andrew LeJean  
Stephen Jonathan Moyer Lichti  
Lindsay Dawne Logie  
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Ashley Joan Marie Targett  
Cassandra Pauline Taylor  
Tiffany Christine Thorne  
Katrina Anne Trask

Baljinder Singh Tung  
Erin Louise Wagner

Matthew Nicholas Wallace  
Sarah Anica Walsh

William Robert Walters  
Daniel Francis Wilband



# IN MEMORIAM

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The following lawyers and colleagues passed away between May 1, 2017 and April 30, 2018.

The Society extends condolences to their friends and families.

## 2017

- Steven G. Zatzman QC, Toronto / Dartmouth – May 1, 2017
- Greig MacLeod, Halifax – May 27, 2017
- R. Ritchie Wheeler, Dartmouth – June 22, 2017
- Barbara Ann LeGay, Halifax – June 27, 2017
- Ian Alexander (Sandy) MacKay QC, Kings Head, Pictou County – August 11, 2017
- Charles (Charlie) William MacIntosh QC, Life Member, Halifax – August 30, 2017
- Bernard Patrick O'Rourke, Fletcher's Lake – October 13, 2017
- Gwen Tate, Pictou – October 16, 2017
- David Archibald Stewart QC, Halifax – October 18, 2017
- David Nelson Muise QC, former MLA and Mayor, Cape Breton Regional Municipality, Sydney – November 2, 2017
- David A. Grant, Dartmouth – November 22, 2017
- Gerald "Gerry" Joseph Doucet QC, Halifax / Port Hawkesbury – November 23, 2017
- Richard W.P. Murphy QC, Yarmouth – November 27, 201

## 2018

- C. Mark Cleary, Halifax – January 19, 2018
- Russell W. Cushing, Dayton, Yarmouth County – January 24, 2018
- John Lauchlin MacKinnon, Vancouver – January 31, 2018
- The Hon. Roy Edward (Bud) Kimball, retired Judge of the Nova Scotia Provincial Court, Petite Riviere, Lunenburg County – January 30, 2018
- David F. Curtis QC, Honorary President (2007-08), Valley, Colchester County – March 27, 2018
- Sheila Marie Landry, Dartmouth – April 9, 2018

# SOCIETY COMMITTEES

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## **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

## **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)

## **Legal Services Regulation Working Groups**

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

## **Operational Committees**

Bar Examination Screeners  
Civil Procedure Rules Committee  
Ethics Advisory Committee  
Land Registration Act Management Committee  
Real Estate Practice Working Group  
Succession Planning Working Group

## **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](https://nsbs.org/about_us/committees).

# COUNCIL

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Frank E. DeMont QC – *First Vice-President*  
John Bodurtha – *Second Vice-President*  
Tilly Pillay QC – *Executive Director (January 19, 2018 – present)*  
Darrel I. Pink – *Executive Director (to January 19, 2018)*

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Natalie Borden  
Peggy Gates-Hammond, CPA, CA, CFP, TEP  
Michelle Ward  
Dr. Rod Wilson

# SOCIETY STAFF

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Emma Pink – *Executive Assistant*

Julia Schabas – *Governance Officer*

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### FINANCE & ACCOUNTING

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Lindsay Visser – *Program Coordinator*

Caron Ferguson-Eagan – *Officer, Education & Credentials*

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Elaine Cumming – *Professional Responsibility Counsel*  
Robyn Schleihau – *Officer, Early Resolution*  
Catherine Turcotte-Roy – *Officer, Complaints & Investigations*

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Lisa Woo Shue – *Library Technician*

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Vacant – *LIANS Counsel*  
Alex Greencorn – *Administrative Assistant*  
Patricia Neild – *Claims Counsel*  
Cynthia Nield – *Officer, Database and Information*  
Gerri O'Shea – *Claims Counsel*  
Emma Pink – *Executive Assistant*