# COUNCIL MEETING AGENDA

**HALIFAX NORTH MEMORIAL PUBLIC LIBRARY**

**Date** Friday, November 22, 2019  
**Time** 9:00 a.m. – 3 p.m.  
**Chair** Carrie Ricker, President

<table>
<thead>
<tr>
<th>ITEM</th>
<th>TOPIC</th>
<th>TIME ALLOTTED</th>
<th>SPEAKER</th>
<th>MATERIALS (Pg #)</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. CALL TO ORDER</strong></td>
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<tr>
<td>1.1</td>
<td>Approval of the Agenda</td>
<td>5</td>
<td>C. Ricker</td>
<td>1</td>
<td>Approval</td>
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<tr>
<td><strong>2. IN CAMERA</strong></td>
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<tr>
<td>2.1</td>
<td>Executive Director Report</td>
<td>30</td>
<td>T. Pillay</td>
<td></td>
<td>Discussion</td>
</tr>
<tr>
<td><strong>3. DISCUSSION OF BIG ISSUE</strong></td>
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<tr>
<td>3.1</td>
<td>Strategic Plan and Activity Plan Year 1</td>
<td>45</td>
<td>C. Ricker</td>
<td>3</td>
<td>Discussion</td>
</tr>
<tr>
<td><em>Council will discuss a draft of the 2019-2020 Activity Plan</em></td>
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<td><strong>4. POLICIES/PROCESSES (TIME ALLOTTED FOR ALL MATTERS: 9:45AM-11AM)</strong></td>
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<tr>
<td>4.1</td>
<td>Multidisciplinary Practices: Communications and Engagement Plan</td>
<td>10</td>
<td>V. Rees</td>
<td>15</td>
<td>Discussion</td>
</tr>
<tr>
<td><em>Victoria Rees, Director of Professional Responsibility will present a draft communications and engagement plan concerning MDPs</em></td>
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<tr>
<td>4.2</td>
<td>Annual Firm Report</td>
<td>15</td>
<td>K. Shewan</td>
<td>23</td>
<td>Update</td>
</tr>
<tr>
<td><em>Kate Shewan, Director of Finance and Administration, will update Council on changes to the AFR format.</em></td>
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<tr>
<td>4.3</td>
<td>Annual Lawyer Report Update</td>
<td>15</td>
<td>K. Shewan</td>
<td>31</td>
<td>Update</td>
</tr>
<tr>
<td><em>Kate Shewan will present a memo describing results from the most recent LFR.</em></td>
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<td><strong>5. APPROVALS</strong></td>
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<td>5.1</td>
<td>Criminal Standard: Withdrawal of Guilty Plea</td>
<td>10</td>
<td>P. Young</td>
<td>47</td>
<td>Approval</td>
</tr>
<tr>
<td><em>Council will consider and, if appropriate, approve this standard</em></td>
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<tr>
<td>5.2</td>
<td>GNC recommendation and ToRs to split GNC into two committees</td>
<td>10</td>
<td>C. Ricker</td>
<td>63</td>
<td>Approval</td>
</tr>
<tr>
<td><em>Council will consider and, if appropriate, approve the recommendation to split the Governance and Nominating Committees into two separate</em></td>
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</table>
committees, and approve their terms of reference.

6. **CONSENT AGENDA**
The Consent Agenda matters are proposed to be dealt with by unanimous consent and without debate. Council members may seek clarification or ask questions without removing a matter from the consent agenda. Any Member may request that a consent agenda item be moved to the regular agenda by notifying the President or the Governance, Planning & Policy Advisor (Jane Willwerth) prior to the meeting.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1</td>
<td>Minutes of September 27, 2019, meeting</td>
</tr>
<tr>
<td>6.2</td>
<td>Resignations – Christian Girouard-Leclerc; Leanne Wanda MacMillan (effective January 1, 2020)</td>
</tr>
<tr>
<td>6.3</td>
<td>PRPPC memo regarding CIC meeting options</td>
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<td>6.4</td>
<td>Appointment of Paula Minnikin to the Governance and Nominating Committee</td>
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<tr>
<td>6.5</td>
<td>Appointments to LIANS Board</td>
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</tbody>
</table>

6.1 Minutes of September 27, 2019, meeting

6.2 Resignations – Christian Girouard-Leclerc; Leanne Wanda MacMillan (effective January 1, 2020)

6.3 PRPPC memo regarding CIC meeting options

6.4 Appointment of Paula Minnikin to the Governance and Nominating Committee

6.5 Appointments to LIANS Board

7. **INTRODUCTORY REMARKS AND WORKSHOP**

There will be a working lunch with members of the community. Following the workshop there will be an opportunity to debrief and reflect on discussions (30 minutes).

8. **IN CAMERA**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>8.1</td>
<td>LFCC Claims</td>
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</tbody>
</table>

8.1 LFCC Claims

9. **FOR INFORMATION**

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<tr>
<th>Item</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>9.1</td>
<td>2019-2020 Council Calendar</td>
</tr>
<tr>
<td>9.2</td>
<td>2019-2020 Engagement Calendar</td>
</tr>
<tr>
<td>9.3</td>
<td>President’s Report</td>
</tr>
<tr>
<td>9.4</td>
<td>Executive Director’s Report</td>
</tr>
<tr>
<td>9.5</td>
<td>Financial Update</td>
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<tr>
<td>9.6</td>
<td>Lawyers’ Fund for Client Compensation Committee Policy on Assessment of Claims</td>
</tr>
</tbody>
</table>

9.1 2019-2020 Council Calendar

9.2 2019-2020 Engagement Calendar

9.3 President’s Report

9.4 Executive Director’s Report

9.5 Financial Update

9.6 Lawyers’ Fund for Client Compensation Committee Policy on Assessment of Claims

10. **WRAP UP**

11. **The 2 Minute Evaluation**

Council members are asked to complete the evaluation.

12. **MEETINGS**

- January 24, 2020, at 9:00 a.m.
- March 27, 2020, at 9:00 a.m.
- April 24, 2020, at 9:00 a.m.
- May 22, 2020, at 9:00 a.m.
- June 12, 2020 (Council Session), at 1:00 p.m.
- June 13, 2020 (Annual Meeting), at 8:30 a.m.
- July 24, 2020, at 9:00 a.m.
- September 25, 2020, at 9:00 a.m.
- November 27, 2020, at 9:00 a.m.
MEMORANDUM

From: Jane Willwerth, Governance, Policy and Planning Advisor
To: Council
Date: November 12, 2019
Subject: 2019-2020 Activity Plan

Introduction

This is a preliminary draft of Council’s 2019-2020 activity plan. The activity plan lists the major tasks Council will complete before the end of this Council year.

Creating the activity plan

I was asked to create this draft following approval of Council’s new strategic planning documents. My goals with the design of this plan are twofold:

- Show how the broad goals of our strategic plan live in the day-to-day work of Council; and
- Provide Council with a way to measure its success in completing the strategic plan.

I have done my best to strike a balance between how things are formatted in the strategic plan and how functions are organized in our operations. Because of this, there are some differences in how objectives are listed in the strategic plan and the activity plan. These differences include:

- Some objectives are listed under one goal and mentioned in another. For example, the item about succession planning support sits in strategic goal #2, but is also referred to under ‘see also’ in strategic goal #1 as it applies to the ‘support members at every stage of their careers’ objective. I have not yet completed this mapping process, so I encourage you to note where other overlaps occur.

- Some items that are called “objectives” in the strategic plan are “outcomes” in the activity plan. This is because of the difference in complexity between some of the objectives (for example, the objective “support members at every stage of their careers” remains as an objective in the activity plan, while the objective “explore, and where appropriate, support the viability of
innovative models of legal services delivery, including multidisciplinary practices” is described as an outcome).

You will likely notice that not everything mentioned in the strategic plan is on this year’s activity plan. This is due to time and resource constraints. As you have your discussions, we will have a ‘parking lot’ where new or unaddressed activities can be captured for inclusion on future activity plans. I would encourage you to think about strategic goal #2 in particular for this.

I also encourage you to spend particular time thinking about the “council tasks” column, as this is where you will identify your specific roles in this work and how to measure your success at the end of the year. It is important that it reflect what you want.

This draft incorporates feedback from the Executive Committee, but is still incomplete. We encourage you to think about how you would fill in the gaps found throughout, and how to improve existing content.

The Executive has asked that I share this draft Activity Plan with you ahead of the posting of the Council materials so that you have time to think about this in advance of our November 22 meeting. If you have any questions, please do not hesitate to reach out to me.
## NOVA SCOTIA BARRISTERS’ SOCIETY
### 2019-2020 ACTIVITY PLAN

**STRATEGIC GOAL #1: The Society regulates the legal profession in the public interest in a proactive, principled and proportionate manner**

**OBJECTIVE: Support members at every stage of their careers**

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
<th>Indicators</th>
<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
</table>
| Complete MSEL P rollout to full implementation of the 3-year cycle | All firms are on a three-year cycle  
1st “batch” firms have a “Confidential Planner”  
MSEL P regularly updated to reflect user feedback | July 2019 | Monitor progress through Executive Director’s updates  
Ensure regular receipt of reports |
| Council uses data, stories and insights from LSS work in its decision-making | Membership has access to and is using LSS team  
Process for measuring usage is established  
Council reviews and considers data and anecdotes from LSS team in relation to its activities | January 2019: LSS update for Council | Monitor progress through Executive Director’s updates  
Review LSS data and anecdotes and apply to decisions at Council |
Council regularly shares data and anecdotes with the membership and the public

<table>
<thead>
<tr>
<th>Explore ways to support members in their use of technology</th>
<th>Consider technology competency standard following approval to changes in the FLSC Model Code</th>
<th>TBD</th>
<th>Getting updates from LOMSC and ED</th>
</tr>
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<tbody>
<tr>
<td></td>
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<td>Consider and, if appropriate approve changes to Model Code as recommended by CPCC after applying lenses</td>
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</table>

**OBJECTIVE: Identify and remove regulatory barriers to support innovation in the delivery of legal services**

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
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<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Empower Council to make decisions about regulatory risk</td>
<td>Education sessions and risk assessment workshop delivered to council</td>
<td>January 2020: First education session</td>
<td>Attend education sessions</td>
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<td></td>
<td>Council demonstrates comfort with incorporating risk into its discussions</td>
<td>May 2020: Second education section</td>
<td>Have conversations about risk at Council</td>
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<td>Use a risk lens in Council decisions</td>
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<td></td>
<td>Discuss how to promote the incorporation of risk into committee decisions next year</td>
</tr>
</tbody>
</table>
**Explore, and where appropriate, support the viability of innovative models of legal services delivery, including multidisciplinary practices (MDPs)**

- Code of Professional Conduct Committee and Professional Responsibility Polices & Procedures Committee deliver recommendations to Council.
- Council decides whether to adopt rules permitting MDPs and if so, adopts regulatory changes.
- September 2019: Report on additional research and consultation with stakeholders.
- March 2020: Recommendations to Council from CPCC.
- May 2020: Council makes decision.
- Ensure CPCC and PRPPC deliver recommendations.
- Decide whether to adopt recommendations following discussion using triple-P, risk and equity lenses.

**Assess the feasibility of an “innovation sandbox” model for use in Nova Scotia**

- Council gives staff and relevant committees clear direction on this issue for next year’s work plans.
- TBD: education session.
- Discuss feasibility of “innovation sandboxes” using triple-P, risk, and equity lenses.

**OBJECTIVE: Review and replace the Bar admission course**

<table>
<thead>
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<th>Council tasks</th>
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</thead>
<tbody>
<tr>
<td>Determine future role of CPLED at the Society</td>
<td>Council adopts a policy about CPLED’s role in the provision of the Skills Course</td>
<td>September 2019: Policy decision discussion</td>
<td>Adopt policy following triple-P, risk, and equity lens analysis.</td>
</tr>
<tr>
<td>Council determines future funding model for Skills Course</td>
<td>Council adopts funding model following recommendation from the CPLED Subcommittee</td>
<td>March 2020: Funding model decision</td>
<td>Create CPLED Subcommittee</td>
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</table>
OBJECTIVE: Investigate and implement, if appropriate, differential membership fee models

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
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<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council assesses the feasibility of a differential fee model for use in Nova Scotia</td>
<td>Council receives a report from the Finance Committee that provides a risk assessment regarding options</td>
<td>January 2020</td>
<td>Request Finance Committee undertake to deliver report as part of its Work Plan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>May 2020</td>
<td>Determine next steps following application of triple-P, risk, and equity lenses</td>
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OBJECTIVE: Communicate and engage with members

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
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<th>Council tasks</th>
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</thead>
</table>
| Council and the Society establish ongoing presence in Nova Scotia’s various legal communities | Society launches new website  
Council meetings in community expand the Society’s contacts among lawyers in those communities | Ongoing | Council members attend legal community and public events, in their capacity as Council members |
<table>
<thead>
<tr>
<th>Task</th>
<th>Council members learn about concerns among members through meetings or events</th>
<th>Council members report on activities done in between meetings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assess current mentorship programs supported by the Society, and explore new models</strong></td>
<td>Council and staff can identify what a “triple-P” mentorship model would look like</td>
<td>TBD</td>
</tr>
<tr>
<td><strong>Research and develop a new mentorship approach that is “Triple-P”</strong></td>
<td>Council understands spectrum of mentorship “options” and has ideas for how the Society can support existing systems that are working</td>
<td>TBD</td>
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</table>

See also:

- Provide guidance and advice on having appropriate succession planning in place (Strategic goal #2)
## STRATEGIC GOAL #2: More Nova Scotians will have access to ethical and competent legal services

### OBJECTIVE: Promote access to legal services

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Council improves their understanding of how to support sole practitioners and small firms</td>
<td>Council establishes a committee that is dedicated to the support of sole practitioners and small firms</td>
<td>TBD</td>
<td>Establish committee and define its scope of work</td>
</tr>
<tr>
<td>Identify and provide supports to address the challenges and needs of rural members</td>
<td>Work with newly established committee to determine work plan to address this outcome</td>
<td>TBD</td>
<td>Approve committee work plan</td>
</tr>
<tr>
<td>Provide guidance and advice on having appropriate succession planning in place</td>
<td>Relevant resources, templates and education are in place to assist lawyers in creating and implanting succession plans</td>
<td>May 2020: Updates from LSS, LOMSC</td>
<td>Ensure deliverables by ED and LOMSC are received by Council</td>
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<tr>
<td></td>
<td>Law Office Management Standards Committee creates Checklists and guidelines for file retention and destruction and distributes to the membership</td>
<td></td>
<td>Promote the use of these tools among the profession</td>
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See also:
- Provide guidance and advice on having appropriate succession planning in place (Strategic goal #1)
- Assess current mentorship programs supported by the Society, and explore new models (Strategic goal #1)
### STRATEGIC GOAL #3: Nova Scotians will be served by a legal profession that is diverse, inclusive and culturally proficient

**OBJECTIVE:** Promotion of Substantive Equality and Freedom from Discrimination in Delivery of Legal Services and the Justice System

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Issues of equity and discrimination are given due consideration in all aspects of the Society’s work</td>
<td>Equity lens tool, when complete, is in regular use by Council members</td>
<td>December 2019</td>
<td>Council attends equity lens toolkit training</td>
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<td></td>
<td></td>
<td>Ongoing</td>
<td>Use some or all aspects of the equity lens tool during Council discussions</td>
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<td>Provide staff with feedback on how the tool can be improved</td>
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<tr>
<td>Standards reviewed for appropriate references to lawyer cultural competence in the deliver of legal services</td>
<td>Council receives updates from all relevant standards committees on this matter</td>
<td>Ongoing</td>
<td>Flag issues for standards committees as they arise</td>
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<td>Ensure standards committees deliver reviews</td>
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<td>Assess effectiveness of the new equity consultation policy, once adopted, using these reviews as a case study</td>
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## OBJECTIVE: Promotion of Equity, Diversity and Inclusion in the Legal Profession

<table>
<thead>
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<tbody>
<tr>
<td>Council continues to develop and leverage its education, experiences and networks to promote equity, diversity and inclusion in the legal profession</td>
<td>Council members regularly share successes and challenges they have had in this area</td>
<td>Ongoing</td>
<td>Take opportunities to speak with the membership about the discussions happening at Council, and the tools and supports the Society provides</td>
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<td></td>
<td>Council members share news about educational opportunities</td>
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<td>Come to meetings prepared to report on these discussions</td>
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<td></td>
<td>Council meetings in community expand the Society’s contacts among attendees from in those communities</td>
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<td>Bring to Council’s attention issues or concerns raised by the membership during these discussions</td>
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</tbody>
</table>

## OBJECTIVE: Implementing meaningful responses to the TRC Calls to Action and MMIWG inquiry Call to Justice #10

<table>
<thead>
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<tbody>
<tr>
<td>Council supports the TRC Working Group</td>
<td>Council and committees demonstrate familiarity with the work of the TRC working group, and what Council’s role is in supporting and promoting its work</td>
<td>September 2019: TRC Working Group update</td>
<td>Determine the types of support the working group needs from Council, and provide as needed</td>
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<td></td>
<td></td>
<td>Ongoing</td>
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<tr>
<td>Council enhances its knowledge of Indigenous issues and the legal system</td>
<td>Council members demonstrate familiarity with the history of colonization, the legacy of residential schools, and Nova Scotia’s treaty environment</td>
<td>October 24: TRC Working Group education session</td>
<td>Promote the work of the working group among the membership and encourage qualified members to get involved</td>
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<tr>
<td>Ensuring provision of education plan as recommended by TRCWG</td>
<td>Multiple sessions available to council/committees/membership</td>
<td>January: education session</td>
<td>Attend education sessions</td>
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<td></td>
<td>Education sessions add to knowledge/understanding of cultural humility and justice issues as identified in calls to action/justice</td>
<td>April: education session</td>
<td>Apply knowledge to discussions at Council as appropriate</td>
</tr>
<tr>
<td><strong>OBJECTIVE:</strong> Develop mechanisms to hold members accountable for the delivery of culturally proficient legal services</td>
<td><strong>2019-2020 outcomes</strong></td>
<td><strong>Indicators</strong></td>
<td><strong>Important dates</strong></td>
</tr>
<tr>
<td>Conduct triple-P, equity and risk assessments for options for mechanisms to hold</td>
<td>TBD</td>
<td>TBD</td>
<td>Conduct these assessments or delegate to committees as appropriate</td>
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<tr>
<td>lawyers accountable for the delivery of culturally competent legal services</td>
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<tr>
<td><strong>OBJECTIVE:</strong> Addressing barriers to entry to the legal profession</td>
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<tr>
<td>Facilitate and encourage entry into the legal profession of members of equity seeking groups by partnering with community organizations to educate community members about the role of the lawyer and the role of the regulator</td>
<td>TBD</td>
<td>TBD</td>
<td>Council promotes the practice of law in various communities</td>
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| **OBJECTIVE:** Ongoing engagement with Nova Scotia’s diverse communities |

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<tbody>
<tr>
<td>TBD: Implementation of Council communication and engagement plan</td>
<td>TBD</td>
<td>TBD</td>
<td>TBD</td>
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</table>
The MDP Project Charter requires effective communications and engagement with all stakeholders throughout the development and implementation phases. This will allow us in particular to identify risks and opportunities, and to help support understanding and buy-in by members and those potentially interested in providing services through the model of an MDP.

The attached MDP Communications & Engagement Plan, developed in collaboration with Collette Deschenes, Officer, Communications, and the Code of Professional Conduct Committee, sets out the proposed goals, objectives, strategies and timeline for this plan. You will note that it specifically references the need for members of the Executive Committee and Council to champion this initiative, and to be prepared to engage with members and others about MDPs. For this purpose, Council was provided with the attached Key Messages document at the September meeting.

I am asking that the Executive Committee assist with this plan by including discussion of MDPs during upcoming stakeholder meetings including those with County Bars, Managing Partners, CBA and others. I also request that you provide any feedback you receive to me so that we can track this information.

I’m happy to respond to any questions.

Respectfully submitted by:

Victoria Rees
Multidisciplinary Practices Communications and Engagement Plan
Draft v. 3 2019-10-08

Executive Summary

Nova Scotia lawyers should have the freedom to work within a wide range of businesses and legal service delivery models and remain bound by the same competence and professional responsibility rules and regulations.

The Society wants to remove outdated and unnecessary restrictions, while maintaining core individual requirements on lawyers to provide ethical and competent legal services.

MDPs are an innovative legal services delivery model in conjunction with complimentary services from other professionals (e.g., financial and estate management).

There are many advantages to law firms and lawyers, and the public, by delivering legal services through a MDP:

For lawyers and firms:

- sharing of fees between professionals within the MDP (currently not permitted under the Code);
- sharing of office space and resources in cases where a sole practitioner cannot feasibly operate an office on their own;
- offering holistic problem-solving solutions to clients, thereby attracting new clients; and
- enhanced practice management systems through innovation and sharing systems and standards for client service.

For the public and clients:

- MDPs support clients who seek a holistic solution to a problem or need in situations where a legal solution is only one component of the overall approach (e.g., small family business start-up).
- Clients with life, personal and/or business problems can work with a MDPs to have them avoided, managed or resolved under one roof. Imagine a MDP which offers under one roof child care, counselling, family law, and financial management.
- We want to create innovative opportunities for Nova Scotia lawyers and law firms, while supporting competent and ethical practice in the public interest.

Objective 3.9 of the MDP Project Plan states:

Throughout this project, we will engage in timely stakeholder communications and consultations, including engaging with other professional regulators whose members may foreseeably have an interest in providing services in conjunction with lawyers in an MDP model. We will engage with existing MDPs in Canada and elsewhere who may have an interest in expansion into NS.
Process

To date, the Code of Professional Conduct Committee has engaged Council in numerous discussions about this initiative to ensure there is support and buy-in from the Society’s leadership.

Members of Council and the Executive have engaged informally with members about this initiative as part of the engagement toward development of the new Strategic Plan. Certain committee have background information, including the PRPPC.

1. **Stakeholder Analysis and mapping** - identify key stakeholders; define stakeholders’ interests and concerns; assess their level of interest, engagement and concerns
2. **Develop Communications Plan** – review methods to inform different groups including timing and frequency; use plan to create regular dialogue with all stakeholders; obtain feedback and involvement
3. **Implement Plan** – techniques to involve stakeholders in the design and implementation
4. **Evaluate Communication Activities and Results** – clarification of roles and responsibilities; validate and evaluate communications processes

This intentional and strategic communications and engagement plan will guide the next phase of this work.

Goals

- Cooperation with other professional regulators
- Liaison with stakeholders including those likely interested in forming MDPs to identify and minimize regulatory and other barriers, and maximize success
- Encourage law firms to consider opportunities for pursuing innovations in delivery of legal services, including MDPs
- Engage with other members to inform them about the benefits of innovation in legal services delivery, including MDPs
- Engage with the public to educate and inform them about the benefits of innovation in legal services delivery, including MDPs

Objectives

- Creation of on-line MDP information and FAQs for access by members and the public by December 1, 2019
- Engagement with and feedback from CP&SNS, ICANS, NSREC and the regulators for social workers, architects, land surveyors, mortgage brokers, wealth managers by phone or in-person by December 20, 2019; followed by completion of an on-line survey by these stakeholders by January 6, 2020.
- 50 MDP survey responses from other members of the Society by January 6, 2020.
- Engagement with existing MDPs in BC, Ontario, Quebec and the UK by February 1, 2020
• 250 tracked clicks to MDP resources on the Society’s website by March 1, 2020.

**Strategies**

• Utilize existing NSBS communications channels (blog/website, survey tools, and email distribution platform) to engage with audiences.

• Create informative, engaging resources to promote advantages of MDP (FAQ/backgrounder with insight, advantages of MDPs & the Society’s direction etc.)

• Collect feedback from members through targeted communications – maintain an ongoing feedback loop (follow up with summary of feedback, changes, how it will/is implemented)

• Connect with stakeholders (other regulators in NS & law societies) directly to build relationships & seek their direct feedback

**Tactics & Timeline**

<table>
<thead>
<tr>
<th>Audience (who)</th>
<th>Message (what)</th>
<th>Tactics (how)</th>
<th>Timeline (when)</th>
<th>Responsible</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Members:</strong> Solos/smalls Law firms Boutiques</td>
<td>What is an MDP? Any interest, questions/concerns? What innovative ideas do you have?</td>
<td>Create online resources &amp; backgrounder Distribute email with resources &amp; link to feedback survey</td>
<td>2020-01-06</td>
<td>Victoria &amp; CPCC to draft resources &amp; write survey questions, Collette to edit, distribute &amp; collect feedback</td>
</tr>
<tr>
<td><strong>Council &amp; Committees:</strong> LOM Standards PRPPC CPCC</td>
<td>What is an MDP? What role may you have in development? Help us identify opportunities, risks, and resources.</td>
<td>Face-to-face meetings Create &amp; provide Council members with MDP key messaging</td>
<td>2020-03-31 2019-09-27</td>
<td>Victoria, Elaine, Management Team Collette Officers?</td>
</tr>
<tr>
<td><strong>Staff:</strong> LSS E&amp;C Communications F&amp;A Management Team</td>
<td>What is an MDP? What do we need from you to develop? Help us identify opportunities, risks and resources</td>
<td>Face-to-face meetings – provide with resources, FAQs &amp; key messaging Working Groups</td>
<td>2019-09 to 2020-12</td>
<td>Victoria, Elaine, Management Team Collette</td>
</tr>
<tr>
<td><strong>Other regulators:</strong> Accountants CP&amp;S</td>
<td>What is an MDP?</td>
<td>Phone call/email &amp; in-person</td>
<td>2019-09 to 2020-08</td>
<td>Victoria and Elaine, ED</td>
</tr>
<tr>
<td>Financial Planners</td>
<td>Do your professionals have any interest?</td>
<td>meetings w/ VR &amp; EC. VR &amp; EC to collect feedback in Excel file or survey tool</td>
<td>Officers?</td>
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<td>Land Surveyors</td>
<td>Are there any regulatory barriers?</td>
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<td>Real estate brokers</td>
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<td>Social workers</td>
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<tr>
<th><strong>Existing MDPs:</strong></th>
<th>How does your MDP work in practical terms?</th>
<th>Preliminary online survey</th>
<th>2019-10 to 2019-12</th>
</tr>
</thead>
<tbody>
<tr>
<td>BC</td>
<td></td>
<td>Phone call/email to MDPs from VR.</td>
<td>Victoria Collette</td>
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<tr>
<td>Ontario</td>
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<td>VR to collect feedback in Excel file or survey tool</td>
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<td>Quebec</td>
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<td>USA</td>
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<tr>
<th><strong>Businesses:</strong></th>
<th>What is an MDP?</th>
<th>Preliminary online survey</th>
<th>2019-11 to 2020-03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Developers</td>
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<td>Phone call/email to MDPs from VR.</td>
<td>Victoria Collette</td>
</tr>
<tr>
<td>Legal document producers</td>
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<td>VR to collect feedback in Excel file or survey tool</td>
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<td>Legal outsourcing</td>
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<td>Online legal services</td>
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**Measurement**

- Anecdotal feedback tracked in Excel
- Survey feedback and engagement
- Engagement with online resources
Multidisciplinary Practices (MDPs)

Key Messages

- Nova Scotia lawyers should have the freedom to work within a wide range of businesses and legal service delivery models and remain bound by the same competence and professional responsibility rules and regulations.

- We want to remove outdated and unnecessary restrictions, while maintaining core individual requirements on lawyers to provide ethical and competent legal services.

- MDPs are an innovative legal services delivery model in conjunction with complimentary services from other professionals (e.g. financial and estate management).

- There are many advantages to law firms and lawyers delivering legal services through a MDP:
  - sharing of fees between professionals within the MDP (currently not permitted under the Code);
  - sharing of office space and resources in cases where a sole practitioner cannot feasibly operate an office on their own;
  - offering holistic problem-solving solutions to clients, thereby attracting new clients; and
  - enhanced practice management systems through innovation and sharing systems and standards for client service.

Background

Regulatory Approach & Strategic Priorities

- We’ve changed our regulatory approach over the last six years and have adopted a Triple P (proactive, principled and proportionate) and risk-focused approach to regulation. This change led to the development and implementation of the Management System for Ethical Legal Practice (MSELP) and the self-assessment tool (SAT).

- We (Society & Council) have focused on our strategic priority of supporting equity, diversity and access in the legal profession, as well as access to justice and to affordable legal services.

- Our new 2019-2022 Strategic Plan reaffirms our commitment to supporting both these goals, in part through supporting innovation in new models of delivery of legal services.

- To achieve our goal of regulating in a “Triple P” manner, we will identify and remove regulatory barriers to support innovation in the delivery of legal services; and explore, and
where appropriate, support the viability of innovative models of legal services delivery including multidisciplinary practices (MDPs).

- We will continue to evolve our regulatory approach and remain relevant to the legal services market, and the wider environment in which lawyers operate.

- It’s essential that new models for delivery of legal services fully support lawyers in providing competent and ethical services to clients. This is a key goal of our MSELn.

- The Society focuses on public protection and Triple P principles as priorities when assessing whether to authorize and implement a new delivery of legal services model.

Other Advantages of MDPs

- MDPs support clients who seek a holistic solution to a problem or need in situations where a legal solution is only one component of the overall approach (e.g. small family business start-up).

- Clients with life, personal and/or business problems can work with MDPs to have them avoided, managed or resolved under one roof. Imagine a MDP which offers under one roof child care, counselling, family law, and financial management.

- We want to create innovative opportunities for Nova Scotia lawyers and law firms, while supporting competent and ethical practice in the public interest.

- Currently, the Law Societies of BC, Quebec and Ontario permit MDPs and there has been take-up with no evidence of increased risk. Other law societies are now expressing an interest in MDPs.

Responses to Concerns with MDPs

i. **Concern:** Some fear that combining legal services with other professional services may erode lawyer professionalism and create inherent conflicts; e.g. that the business may be more focused on the ‘bottom line’ than on competent and ethical client service.

   **Response:** Lawyers in MDPs will be required to adhere to the same ethical and competency standards as all other lawyers, and to ensure that the business model supports these standards.

ii. **Concern:** Some worry that combining different professional services may increase risk to lawyers and clients.

   **Response:** This hasn’t proven to be the case from studies of existing MDPs around the world in terms of claims or complaints. In fact, some insurers believe MDPs are lower risk than law firms.

iii. **Concern:** Some question why permitting such business models makes sense where there has been relatively low take-up in other provinces.
Response: We are committed to supporting innovation in the delivery of legal services, and this simply opens up such an option.

Feedback

- Over the next couple of months, we’re seeking feedback from NS lawyers (and other stakeholders) to find out who might be interested in considering offering legal services in conjunction with other professionals, and in what areas.

- Your feedback will help us design a regulatory and policy framework that is relevant and appropriate.

- **Questions, thoughts & comments?** Please send us your thoughts and questions through Frank DeMont QC, Chair of the Code of Professional Conduct Committee, or Victoria Rees, Director of Professional Responsibility at vrees@nsbs.org.
MEMORANDUM TO COUNCIL

From: Kate Shewan, Director of Finance & Administration
Date: November 1, 2019
Subject: Amendments to the Annual Firm Report

For: Introduction □ Information □ Approval x

Recommendation/Motion:

It is recommended that Council approve the attached revised Annual Firm Report ("AFR") as presented.

Rationale:

There are two areas of change from the 2018 AFR:
1. Revisions to the sections on Succession Planning and Records Retention
2. Recognizing that the AFR is being decoupled from the Trust Account Report ("TAR").

The Society’s Law Office Management Standards Committee and Legal Services Support team, under the direction of Council, are working to develop a toolkit and educational resources to help lawyers and firms plan effectively for practice succession, and to retain client files appropriately while minimizing the cost and burden of file retention.

The Legal Services Support team have recommended revamping the sections of the A.F.R. related to Succession Planning and Records Retention. It is recognised that these are areas where the Society is seeing members facing particular challenges and risks, and where many firms are struggling to address these issues. The intent of the changes is to highlight areas of concern, ensuring firms are thinking about the issues involved, while also providing information to be used by the Legal Services Support team in developing tools to better support membership.

In 2018 the AFR and TAR were sent to firms in one package. Feedback received indicated that the AFR and the TAR were often completed by different people, and that firms would benefit from additional time to complete the TAR. Council recently approved the change of filing date of the Trust Account Report to March 31st, while the AFR remains due on January 31st. As a result, the AFR is being de-coupled from the TAR. The wording on the front of the AFR makes this change clear.
ANNUAL FIRM REPORT – DECEMBER 31, 2019

To: Firm / Member #:

[Reg. 4.11.1] - This Annual Firm Report (AFR) is being sent to all firms and all sole practitioners. The Society is working to reduce the number of filings by firms and lawyers and we will collect information once when it applies to the firm or individual lawyer.

This Annual Firm Report (AFR) and Trust Account Report (TAR), if applicable, are due by March 31, 2020. In recognition that the AFR and TAR are often completed by different people these have been sent as separate reports.

1. GENERAL INFORMATION

Name of firm:

Trust account reporting period: January 1 - December 31, 2019

Fiscal year-end:

2. OTHER INFORMATION

Designated lawyer (Reg. 4.7):

Managing partner:

Administrative contact (Reg. 4.7.7):

3. EMPLOYEE INFORMATION

Please indicate any changes during 2019 in the information we hold about the lawyers and articled clerks associated with your firm, and the nature of their association (i.e., articled clerk, associate, counsel, employed lawyer, partner, sole practitioner, other). This would include anyone who joined or departed the firm.

If the space provided is insufficient, please include a separate sheet.

<table>
<thead>
<tr>
<th>Lawyer name</th>
<th>Nature of association</th>
<th>Join date (if applicable)</th>
<th>Departure date (if applicable)</th>
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</table>
Please provide details of any staff member who **joined** or **departed** the firm during 2019 who are **not lawyers** and assist in the delivery of legal services through the firm, and identify the nature of the legal services they provide.

**Note:** This question relates to the business model you have developed for delivering legal services to your clients. The NSBS seeks this information as it prepares for anticipated amendments to the Legal Profession Act that will allow more staff in firms to deliver legal services. This is not intended to capture staff who have only incidental or non-file related interactions with clients. Please ONLY identify staff who execute file related documentation or have file related client interactions – they might typically be referred to as a paralegal or senior corporate assistant. For example, their duties might include:

- independently preparing client matter documentation (e.g. statement of claim, demand letter);
- producing and maintaining corporate records;
- dealing with estate agents, preparing documents for closing; and/or
- accessing the land registration system.

<table>
<thead>
<tr>
<th>Name of Staff Member</th>
<th>Position / nature of legal services provided</th>
<th>Join date (if applicable)</th>
<th>Departure date (if applicable)</th>
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4. INTERJURISDICTIONAL FIRM

Is this firm an interjurisdictional firm, as defined by regulation 7.1.1(e)?

Yes ☐ No ☐

7.1.1(e) “interjurisdictional law firm” means a law firm

(i) that maintains an office in the province together with an office in a foreign jurisdiction, and
(ii) in which not all the partners, or in the case of a professional law corporation, not all the voting
shareholders, are qualified to practise law in the province;

If yes, please provide the address(es) of the firm’s office(s) and the name of the regulating body (law society) for
that address (attach a separate sheet if necessary).

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<thead>
<tr>
<th>Address</th>
<th>Regulating body (law society)</th>
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5. OPERATING BANK ACCOUNTS

Changes in Operating Bank Accounts - During the reporting period, the firm opened or closed the following
operating bank accounts (non-trust bank accounts) (attach additional sheet if necessary).

<table>
<thead>
<tr>
<th>Financial institution #</th>
<th>Transit #</th>
<th>Account #</th>
<th>Opened – date</th>
<th>Closed – date</th>
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</table>
6. RECORDS RETENTION

The Society’s Law Office Management Standards Committee and Legal Services Support team, under the direction of Council, are working to develop a toolkit and educational resources to help lawyers and firms plan effectively for practice succession and to retain client files appropriately while minimizing the cost and burden of file retention.

The information we learn from the answers in this section and the following section on Succession Planning will be used to develop resources to help you.

Does your firm have a written client file retention and destruction policy?

- [ ] Yes
- [ ] No
- [ ] N/A

If yes, do your firm follow your policy consistently and destroy files when their retention period is complete?

- [ ] Yes
- [ ] No
- [ ] Unsure

Does your firm keep original wills?

- [ ] Yes
- [ ] No
- [ ] Unsure

If your firm practices real estate, do you keep old paper-based property files created before the Land Registration Act?

- [ ] Yes
- [ ] No
- [ ] Unsure

If your firm practices real estate, approximately the following percentage of the firm’s Land Registration foundation documents (ie, AFR Bundles) are stored electronically: _______

Could your firm benefit from the following resources being developed by the Society?

- [ ] Targeted paper reduction guide
- [ ] File retention / destruction policy template and Guidelines

7. SUCCESSION PLANNING

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Unsure</th>
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<tr>
<td>Does your firm (including sole practices) maintain a current succession plan for the practice including all lawyers in the firm?</td>
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<tr>
<td>Is your plan documented and does someone know how to find it?</td>
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<tr>
<td>Does your plan address the unique arrangements that will be necessary in the event of the cessation of the lawyer’s / firm’s practice for any reason, including temporary and long term disability, and death?</td>
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</table>
Have you created documents (e.g. partnership clauses, will, power of attorney, written authorizations) to allow your succession plan to be implemented when necessary?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Unsure</th>
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Does your firm ensure that passwords, keys, and documents to implement your succession plan can be accessed by someone, confidentially and securely, when necessary?  

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<tr>
<th>Yes</th>
<th>No</th>
<th>Unsure</th>
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*If you answered ‘No’ or ‘Unsure’ to any of the questions above, please explain the barriers to you doing so? Note that we are working to address existing barriers and this information will help us in our efforts.*

### FOR SOLE PRACTITIONERS:

If you are a sole practitioner, has a practising lawyer agreed to distribute or supervise the distribution of your open files if succession is suddenly required?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Unsure</th>
<th>N/A</th>
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If Yes, please provide the name of the practising lawyer who has agreed to this:

If you are a sole practitioner, have you set up your trust account(s) so that your practice successor can take control in a timely way and confirmed that arrangement with your successor and financial institution(s)?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Unsure</th>
<th>N/A</th>
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If you are a sole practitioner AND a back up to another firm or sole practitioner, has a practising lawyer agreed to take on your responsibilities as a back up?  

<table>
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<tr>
<th>Yes</th>
<th>No</th>
<th>Unsure</th>
<th>N/A</th>
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If Yes, please provide the name of the practising lawyer who has agreed to this:

*If you answered ‘No’ or ‘Unsure’ to any of the questions above, please explain the barriers to you doing so? Note that we are working to address existing barriers and this information will help us in our efforts.*

Could your firm benefit from the following resources being developed by the Society?

- Guide to Succession Planning (and checklist)
- Succession Plan template
8. CYBER SECURITY/INSURANCE

The CLIA coverage for lawyers in the province includes cyber insurance coverage. Please note that, in addition to standard risk management practices, the cyber insurance coverage provided by CLIA excludes coverage for any claim that arises out of, is based upon or is attributable to the failure of any insured to (i) install, activate and maintain internet firewalls or endpoint protection or (ii) maintain weekly data backups or client data.

Please confirm if you (firm or sole practitioner) have taken the steps required by the cyber insurance group program.

<table>
<thead>
<tr>
<th>Conducts weekly data backups of all firm and client data.</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stores backup data off-site</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Has installed, activated and maintains up-to-date internet firewalls</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Has installed, activated and maintains up-to-date anti-virus and malware endpoint protection</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>

(Note: Other terms and conditions of the insurance policy may apply to exclude coverage for a particular claim. We are only asking these three questions because in our opinion, prudence dictates that all lawyers and law firms take these steps, at a minimum, to protect their data.)

9. CLIENT IDENTIFICATION

The firm’s lawyers and staff who assist in legal services delivery know of and have complied with the firm’s obligations regarding client identification, under regulation 4.13.

- Yes
- No
- Uncertain

If “No” or “Uncertain” please explain:

10. CONTINUING PROFESSIONAL DEVELOPMENT

Each practising lawyer in the firm has prepared and is implementing a continuing professional development plan for the current CPD reporting period, pursuant to subregulation 8.3.8.

- Yes
- No
- Uncertain

If “No” or “Uncertain” please explain:
11. TRUST ACCOUNT REPORT (Reg 4.11.2)

Please select one of the two options below. If your firm operates a trust account(s), you must complete the Trust Account Report section.

I confirm that our firm operates a trust account(s) and must complete the Trust Account Report.

☑ Yes ☐ No

12. CERTIFICATION

I confirm that I have made reasonable efforts to ensure that the information in this report is accurate and complete.

________________________________________________ ___________________________
Signature of Designated Lawyer (Reg 4.7.3) Date
MEMORANDUM TO COUNCIL

From: Kate Shewan, Director, Finance & Administration

Date: October 31, 2019

Subject: Annual Lawyer Report – 2019 Analysis

For:  Approval ☐  Introduction ☐  Information X

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

Executive Summary:

The Annual Lawyer Report (ALR) was sent to all lawyers with a practicing status in May 2019, with filing required by June 30th.

The ALR covers questions related to demographics, employment type / type of practice, area of law, equity and diversity within the profession, access to justice issues and compliance related questions. There is also an opportunity for respondents to provide comments on any issues they wish to address.

As background, when the first Annual Lawyer (Member) Reports were filed in 2006, respondents were split among four, roughly equal sized, quartiles to facilitate analysis. The breaks were based on years since the respondents call to the Bar; 0-7 years, 8-16 years, 17-26 years, and 27+ years. Those four quartiles continue to be used for analysis and time based trending.

This years analysis is based on the 2,040 Annual Lawyer Reports (ALR) filed for June 30, 2018 (1,986 Annual Lawyer Reports were filed for 2018).

This increase of 47 respondents represents a 2.4% increase over the past year. Over the last three years the number of practicing lawyers has increased by 124. The recent trend of higher numbers of new lawyers called to the bar has been the key driver of this growth, with. Over the last 4 years the numbers of newer lawyers (0-7 years since their call) has increased by 100 people, and this group is now 27.5% of total respondents, up from 24.2% in 2016. Over the same period the two most experienced quartiles have dropped from 53.2% of the total to 48.7% of the total.

The 27+ year group, while making up 29% of the total respondents, accounted for 54% of Sole Practitioners, highlighting the concerns around succession planning.

While acknowledging that the work is ongoing, we see a significant difference in the diversity measures in the newest quartile (0-7 years) versus the most experienced group (27+ year). In the newer respondents, there are more female identified respondents than male, and significantly higher levels of those identifying as part of marginalized communities, while the more experienced group is predominantly male identified with far lower levels of members of marginalized groups.

Our access to justice questions, (Pro-bono and unbundled services) have this year been summarized by type of practice. 33% of respondents reported providing some pro-bono services, but this jumped to 60% for Sole practitioners and 49% for Partners/owners of firms.
The compliance questions reported extremely high levels of compliance with regulations, which may not be supported by other data, such as trust assurance monitoring. However there may be benefit in just forcing respondents to think about various regulatory issues.
Analysis:

Membership growth:

Over the last ten years the number of practicing lawyers has increased from 1,838 to 2,038, an increase of 200 or 11% The majority of the growth has been in the last three years, with an increase of 122 lawyers since 2016.

Age/Experience levels of the Membership since 2006:

The 2006 data is our baseline when the numbers of lawyers were divided into four roughly equal quartiles based on number of years since the call. We have continued to track numbers based on those levels of experience.

The growth over the last three years has primarily been from new lawyers joining the profession. This is reflected in a rapid increase in the number of newer lawyers (0 to 7 years since their call to the Bar). This group now comprises almost as many lawyers as the oldest demographic.

The older demographic (27+ years experience) has been the largest group for the last ten years, but has stabilized in recent years after seeing large growth from 2006 to 2014, indicative of some older lawyers working longer, possibly impacted by the 2008 stock market drop, which may have delayed some retirements. This is not the case in the 17-26 year range, which has declined indicating that some lawyers may have left the profession, as well as the “echo” of the 2009 drop in the 8-16 range. Over the last 4 years the two most experienced groups combined (17+ years experience) have declined from 53.2% of the total to 48.7% of the total. Interestingly the decline has been in the 17-26 year group rather than the 27+ year group.

While the growth in number of new lawyers is encouraging for the overall stability of the profession, we do anticipate growing numbers of retirements in the coming years as 305 practising lawyers were born in 1955 or earlier. This may see the overall number of lawyers stabilize, or potentially even decline. The anticipated retirements will prove challenging for succession planning, particularly in rural communities.

Location of Lawyers

<table>
<thead>
<tr>
<th>Province</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>NS</td>
<td>1,932</td>
</tr>
<tr>
<td>ON</td>
<td>60</td>
</tr>
<tr>
<td>NB</td>
<td>11</td>
</tr>
<tr>
<td>PE</td>
<td>6</td>
</tr>
<tr>
<td>QC</td>
<td>5</td>
</tr>
<tr>
<td>Other</td>
<td>10</td>
</tr>
<tr>
<td>Overseas</td>
<td>16</td>
</tr>
<tr>
<td>Total</td>
<td>2,040</td>
</tr>
</tbody>
</table>

Location of Lawyers

<table>
<thead>
<tr>
<th>County</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>HRM</td>
<td>1,407</td>
<td>73%</td>
</tr>
<tr>
<td>Cape Breton</td>
<td>117</td>
<td>6%</td>
</tr>
<tr>
<td>Kings</td>
<td>73</td>
<td>4%</td>
</tr>
<tr>
<td>Colchester</td>
<td>70</td>
<td>4%</td>
</tr>
<tr>
<td>Lunenburg</td>
<td>56</td>
<td>3%</td>
</tr>
<tr>
<td>Pictou</td>
<td>47</td>
<td>2%</td>
</tr>
<tr>
<td>Other</td>
<td>162</td>
<td>8%</td>
</tr>
<tr>
<td>Total</td>
<td>1,932</td>
<td>100%</td>
</tr>
</tbody>
</table>
Of the 1,932 in Nova Scotia, 1,407 (73%) identified as being in HRM.

Of those with 27+ years of experience, 66% are located in HRM, with other quartiles being in the 74% to 76% range.

Of 224 sole practitioners, 114 (51%) are located in HRM.

**Equity and Diversity**

There is a clear trend of the profession becoming both more gender balanced and more diverse, which is highlighted by the differences in results for those called to the bar in the last 7 years, compared to the 27+ year category.

**Gender equity:**

Lawyers were asked how they identify their gender. Options were provided for male / female / an identity outside the m/f binary (with an option to describe), or an option not to answer.

While 77% of the 27+ year lawyers who answered identified as male, in the 0-7 year category 55% of those who answered identified as female. Note: Research indicates that 85% of those choosing not to answer are likely male identified, which may skew the overall totals.

Six people responded as an identity outside the male/female binary. Related comments indicate that two of those appear to have selected this category in order to protest to its inclusion. This was offset by positive comments thanking the Society for the inclusive categories.

**Equity challenged communities:**

Respondents were given the opportunity to self identify as a member of one or more communities which have suffered from marginalization. Results are outlined in the table below:

<table>
<thead>
<tr>
<th></th>
<th>Acadian</th>
<th>African N.S.</th>
<th>Black</th>
<th>Indigenous</th>
<th>Mi'kmaq</th>
<th>Racialized</th>
<th>2SLGBTQ+</th>
<th>Person with a disability</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-7 years</td>
<td>27</td>
<td>21</td>
<td>18</td>
<td>10</td>
<td>10</td>
<td>25</td>
<td>37</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>8-16 years</td>
<td>19</td>
<td>10</td>
<td>6</td>
<td>9</td>
<td>12</td>
<td>12</td>
<td>24</td>
<td>14</td>
<td>17</td>
</tr>
<tr>
<td>17-26 years</td>
<td>12</td>
<td>8</td>
<td>9</td>
<td>8</td>
<td>14</td>
<td>8</td>
<td>11</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>27 + years</td>
<td>17</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>6</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>75</td>
<td>41</td>
<td>35</td>
<td>28</td>
<td>38</td>
<td>46</td>
<td>78</td>
<td>56</td>
<td>52</td>
</tr>
</tbody>
</table>

Note:
Within those who identified themselves as either African Nova Scotian or Black, 12 people identified as both, while the remainder identified themselves as one or other of these categories.
Within those who identified as either Indigenous or Mi’kmaq, 11 people identified as both while the remainder identified as one or other of these categories.
Within those who identified as racialized, 12 also identified as either, African Nova Scotian, Black, Indigenous or Mi’kmaq, with the remaining 34 not identifying within these communities.
The “Other” category included a large variety of responses. Some of the more common were people from Asian and Middle Eastern countries, Metis and new Canadians. In addition many people indicated their country of origin, which may or may not have resulted in additional challenges. Selecting other and leaving a comment was also used to protest the inclusion of the equity tracking question.

**Languages Spoken**

In addition to English, respondents identified 25 other languages spoken. The most common are shown in the table. Statistics Canada report that after English and French the next most common “mother tongues” in Nova Scotia are Arabic and Mi’qmaw. There is minimal ability within the profession to provide services in these languages.

<table>
<thead>
<tr>
<th>Languages</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>French</td>
<td>155</td>
</tr>
<tr>
<td>German</td>
<td>13</td>
</tr>
<tr>
<td>Spanish</td>
<td>7</td>
</tr>
<tr>
<td>Mi’qmaw</td>
<td>4</td>
</tr>
<tr>
<td>Hindi</td>
<td>4</td>
</tr>
<tr>
<td>Mandarin</td>
<td>3</td>
</tr>
<tr>
<td>Punjabi</td>
<td>3</td>
</tr>
<tr>
<td>Arabic</td>
<td>2</td>
</tr>
<tr>
<td>Italian</td>
<td>2</td>
</tr>
<tr>
<td>Korean</td>
<td>2</td>
</tr>
<tr>
<td>Russian</td>
<td>2</td>
</tr>
<tr>
<td>Urdu</td>
<td>2</td>
</tr>
</tbody>
</table>
Employment Type:

Overall, 543 (27%) of respondents identified that they were a partner, 509 (25%) reported as being employed by the government or Legal Aid, 364 (19%) reported as being an associate, 231 (11%) reported as being a sole practitioner and 230 (11.3%) reported being employed as In-House Counsel (various sub-categories). The remaining 147 (7%) of lawyers either work in other areas, are otherwise associated with a law firm or are not currently practicing. The percentage split is virtually unchanged from last year.

Sole Practitioners:

231 respondents reported they were Sole Practitioners in 2019, compared with 230 last year. Comparison with data from years before 2018 was impacted by a clarification in definition of Sole Practitioner that occurred in 2018.

54% of those in sole practice are lawyers who have practiced for more than 27 years. This is the highest percentage we have seen since we began tracking. This is a concern from a risk perspective including practice wind-up and succession planning.

49% of sole practitioners are in the HRM, and 51% outside of HRM. This has been a fairly consistent ratio over the last 10 years.
**Area of Law:**

The most common practice areas continue to be Civil Litigation at 14.8% (up from 14.2% in 2018), Criminal 13.9% (up from 13.7% in 2018), Corporate / Commercial 11.3% (down from 11.7% in 2018), Family 11.0% (unchanged from 2018), and Real Estate 9.9% (up from 9.8% in 2018).

If we look at the longer term trends, since 2008 we have seen significant declines in the areas of Real Estate and Civil Litigation, and growth in Family Law. While we only have 3 years of data on Government/Crown, we have seen significant growth in this area over the last two years.
Access to Legal Services and the Justice System.

As part of the Society’s continued focus on Equity and Access to Justice, in the 2017 ALR we asked lawyers to provide information around whether they provide Pro-Bono and or “unbundled” legal services. Results this year are broken down by employment type for more meaningful analysis.

The first question was:

“I have or plan to provide this type of “Pro-Bono” legal services to my clients”,

and included as an explanation

“These types of service include providing legal services to clients at reduced fees/rates in order to provide services to clients who otherwise might not be able to afford to hire a lawyer and his or her regular billing rate.”

As might be expected, the responses vary greatly by type of practice. 60% of Sole practitioners responded yes, with Partners of firms at 49%, Associates 44% and those otherwise associated with a firm at 44%. The percentages responding “Yes” dropped off significantly for categories outside of public practice, with the large majority of respondents from other categories responding “Does not apply”

<table>
<thead>
<tr>
<th>Category</th>
<th>Yes</th>
<th>No</th>
<th>Does not apply</th>
<th>Choose not to answer</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Practitioner Firm</td>
<td>138</td>
<td>25</td>
<td>25</td>
<td>43</td>
<td>231</td>
</tr>
<tr>
<td>Firm - Partner, principal, owner of law firm</td>
<td>267</td>
<td>80</td>
<td>36</td>
<td>160</td>
<td>543</td>
</tr>
<tr>
<td>Firm - Associate in law firm</td>
<td>178</td>
<td>57</td>
<td>33</td>
<td>112</td>
<td>380</td>
</tr>
<tr>
<td>Firm - Otherwise Associated within law firm (including Counsel)</td>
<td>44</td>
<td>18</td>
<td>14</td>
<td>23</td>
<td>99</td>
</tr>
<tr>
<td>Legal Aid</td>
<td>11</td>
<td>4</td>
<td>68</td>
<td>11</td>
<td>94</td>
</tr>
<tr>
<td>Federal Government</td>
<td>1</td>
<td>16</td>
<td>95</td>
<td>8</td>
<td>120</td>
</tr>
<tr>
<td>Provincial Government</td>
<td>8</td>
<td>38</td>
<td>215</td>
<td>34</td>
<td>295</td>
</tr>
<tr>
<td>In-House Counsel</td>
<td>19</td>
<td>37</td>
<td>138</td>
<td>36</td>
<td>230</td>
</tr>
<tr>
<td>Hold practis. cert. but not practising law (boards, educators, etc.)</td>
<td>3</td>
<td>7</td>
<td>27</td>
<td>8</td>
<td>43</td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>5</td>
</tr>
</tbody>
</table>

The overall percentage at 33% is consistent with the two previous years when this question was asked.

The second question was:

“The following question deals with “unbundled” legal services in support of self-represented litigants or other clients. This type of service includes situations where a person only pays for specific services or receives coaching from a lawyer while still remaining in charge of their case as a self-represented litigant.

I do or plan to provide this type of unbundled legal services to my clients.”
The table of responses shows that 389 (19% of respondents, also 19% in 2018) provide some level of "unbundled" legal services.

For those involved in Public Practice firms in some way, “Yes” responses ranged from 25% to 34% Those in Legal Aid responded yes 19% of the time, while the large majority of those in other categories responded “Does not apply”

The types of services provided in the comments in the report revolved around providing coaching, advice or services to clients such as affidavits, contract reviews, financial (tax and estate planning), will preparation, divorce matters, etc. and help with small claims court cases for self-represented litigants, tenancy proceedings, etc.

**Compliance Related Questions:**

There are a number of questions in the ALR relating to compliance with the Society’s Regulations, the Legal Profession Act and the Code of Professional Conduct. They ask whether lawyers are familiar with and, to the best of their knowledge, in compliance with their obligations around various aspects of the Code of Professional Conduct and Regulations.

There were very few negative responses, and in most cases the comment related to the negative response indicated not applicable rather than non-compliance. The separate results of the trust review process questions around Client I.D. indicated that while respondents may claim to be aware and in compliance, this does not always reflect practices.

The number of negative responses for the past five years are presented here.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Does not apply</th>
<th>Choose not to answer</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Practitioner Firm</td>
<td>79</td>
<td>34%</td>
<td>43</td>
<td>19%</td>
<td>231</td>
</tr>
<tr>
<td>Firm - Partner, principal, owner of law firm</td>
<td>134</td>
<td>25%</td>
<td>78</td>
<td>14%</td>
<td>543</td>
</tr>
<tr>
<td>Firm - Associate in law firm</td>
<td>119</td>
<td>31%</td>
<td>63</td>
<td>17%</td>
<td>380</td>
</tr>
<tr>
<td>Firm - Otherwise Associated within law firm (including Counsel)</td>
<td>26</td>
<td>26%</td>
<td>18</td>
<td>18%</td>
<td>99</td>
</tr>
<tr>
<td>Legal Aid</td>
<td>18</td>
<td>19%</td>
<td>63</td>
<td>67%</td>
<td>94</td>
</tr>
<tr>
<td>Federal Government</td>
<td>0</td>
<td>0%</td>
<td>105</td>
<td>88%</td>
<td>120</td>
</tr>
<tr>
<td>Provincial Government</td>
<td>6</td>
<td>2%</td>
<td>227</td>
<td>77%</td>
<td>295</td>
</tr>
<tr>
<td>In-House Counsel</td>
<td>4</td>
<td>2%</td>
<td>169</td>
<td>73%</td>
<td>230</td>
</tr>
<tr>
<td>Hold practs. cert. but not practising law (boards, educators, etc.)</td>
<td>3</td>
<td>7%</td>
<td>30</td>
<td>70%</td>
<td>43</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>0%</td>
<td>3</td>
<td>60%</td>
<td>5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Choose not to answer</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
<td>335</td>
</tr>
</tbody>
</table>

The table of responses shows that 389 (19% of respondents, also 19% in 2018) provide some level of "unbundled" legal services.

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The types of services provided in the comments in the report revolved around providing coaching, advice or services to clients such as affidavits, contract reviews, financial (tax and estate planning), will preparation, divorce matters, etc. and help with small claims court cases for self-represented litigants, tenancy proceedings, etc.

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The number of negative responses for the past five years are presented here.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Society’s Regulations 8.2.1 - 8.2.10 and Real Estate Professional Standards regarding the maintenance of Foundation Documents.</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>The Code of Professional Conduct</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Rule 3.4-31 and -34 of the Code of Professional Conduct respecting borrowing from and lending to clients;</td>
<td>6*</td>
<td>1</td>
<td>4</td>
<td>10</td>
<td>1</td>
<td>6 respondents said “No” however their comments all indicated Not applicable</td>
</tr>
<tr>
<td>Section 38(1) of the Legal Profession Act and Regulation 4.4.1 respecting the requirement to report charges and convictions;</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>4</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>
Password Compliance Related:

The ALR includes questions related to the Code of Professional Conduct and passwords. The questions and responses were as follows:

**I am in compliance with the following provisions of the Code of Professional Conduct regarding passwords (rules 6.1-5 and 6.1-6).**

A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not:

(a) permit others, including a non-lawyer employee, to use such access; or

(b) disclose their password or access phrase or number to others.

**I have met the requirements listed in (a) and (b) above.**

<table>
<thead>
<tr>
<th></th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>1,793</td>
<td>6</td>
<td>241</td>
</tr>
<tr>
<td>2018</td>
<td>1,692</td>
<td>8</td>
<td>266</td>
</tr>
</tbody>
</table>

Access to my computer / network is restricted to only people associated with my law firm.

If no, I have a signed confidentiality agreement to protect my clients’ information.

<table>
<thead>
<tr>
<th></th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>1,858</td>
<td>60</td>
<td>122</td>
</tr>
<tr>
<td>2018</td>
<td>1,732</td>
<td>65</td>
<td>189</td>
</tr>
</tbody>
</table>

No’s

<table>
<thead>
<tr>
<th></th>
<th>YES</th>
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<th>N/A</th>
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<tbody>
<tr>
<td>2019</td>
<td>55</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>2018</td>
<td>61</td>
<td>4</td>
<td></td>
</tr>
</tbody>
</table>

Of the 60 lawyers who allow access to individuals outside of the law firm, 55 report signed confidentiality agreements in place. Those without reported that they were within Government or in-house and access was controlled by their I.T. Group, who also had access to the network.
Professional Development Plans:

The ALR contains two separate questions that ask whether lawyers have prepared and made a record of their professional development plan for 2019-2020 and another question as to whether they implemented and followed their plan for the previous year (new question in 2018), pursuant to Regulation 8.3.5 – 8.3-10. The responses are presented below with comparatives to prior years.

Question relating to the next year:
"I have prepared and made a record of my professional development plan for the period of June 1, 2019 to May 31, 2020 (i.e., next year):"

<table>
<thead>
<tr>
<th>Years of Call</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>0 - 7 Years</td>
<td>544</td>
<td>17</td>
</tr>
<tr>
<td>8 - 16 Years</td>
<td>478</td>
<td>7</td>
</tr>
<tr>
<td>17 - 26 Years</td>
<td>403</td>
<td>6</td>
</tr>
<tr>
<td>27+ Years</td>
<td>552</td>
<td>30</td>
</tr>
<tr>
<td>Totals</td>
<td>1,977</td>
<td>60</td>
</tr>
</tbody>
</table>

The chart illustrates that overall there has been a slight improvement with 2.9% of respondents reporting not having prepared a written professional development plan for the next year. Compared to 3.2% last year. The 27+ years group was the least likely to have prepared a plan (5.2%) although this group showed the biggest improvement from last year. The increase in the respondents in the 0-7 years group without a plan is of concern.

Question relating to the previous year:
"I am familiar with and to the best of my knowledge am in compliance with my obligations regarding continuing professional development, including that I implemented a written plan for continuing professional development and made a record of my plan for the period of June 1, 2017 to May 31, 2018 (i.e., last year)."

<table>
<thead>
<tr>
<th>Years of Call</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>0 - 7 Years</td>
<td>556</td>
<td>5</td>
</tr>
<tr>
<td>8 - 16 Years</td>
<td>483</td>
<td>2</td>
</tr>
<tr>
<td>17 - 26 Years</td>
<td>409</td>
<td>0</td>
</tr>
<tr>
<td>27+ Years</td>
<td>573</td>
<td>9</td>
</tr>
<tr>
<td>Totals</td>
<td>2,021</td>
<td>16</td>
</tr>
</tbody>
</table>

The follow-up question reporting on the prior year showed less than 1% of respondents reported not being in compliance with professional development obligations. This is consistent with the results from last year.

Action Plan:

Using the Triple P approach, a list of the lawyers who answered "No" to the Professional Development Plan question has been provided to the Education & Credentials team who will contact or have contacted each of the lawyers without a plan to ask if they require assistance or support in developing a plan.
Appendix 1. General Comments

<table>
<thead>
<tr>
<th>I believe the NSBS should be reducing the costs and time-consuming NSBS regulatory - response work required of lawyers in sole private practice. We sole practitioners do not have the resources of small, medium, nor large law firms, but are expected to pay the same annual costs of the Bar Society/negligence insurer/accountant for annual trust reporting and are also required to file the same amount of paper-work with the regulator. There is no recognition within the Bar of the extraordinary work and services required of a sole practitioner to provide the level of client legal services required today. Those failures by the regulator lead to an adversarial feeling by we sole practitioners.</th>
</tr>
</thead>
<tbody>
<tr>
<td>I am concerned about succession planning, particularly with respect to rural practitioners. I have spoken with at least 10 small rural firms with this concern (in western Nova Scotia). There is a rapidly growing crisis and I see no Bar society movement to assist. I know helping lawyers is not the mandate of the NSBS but it will be too late to act when whole areas of the province are seriously underserved affecting access to justice.</td>
</tr>
<tr>
<td>I decline to respond to any questions pertaining to ancestry or gender, failing to see how such is relevant to my competence to practise law.</td>
</tr>
<tr>
<td>I am proud to be a member of the NSBS and I am very pleased with the appointment of our new Executive Director.</td>
</tr>
<tr>
<td>I understood this report was under review as it is redundant and only causes more work to an already busy work day. If the society was truly concerned about its membership perhaps it might start to advocate on behalf of its membership. The important role lawyers play in our judicial system and the unique skill set we bring to solving complex issues is hardly recognized in our current environment. In my humble view access to Justice has become a pass to engaging in sloppy and lazy behaviour. This situation is causing our most vulnerable to walk away from fundamental entitlements as they need good lawyers to assist them but rather than help them find qualified lawyers we only focus on how much the lawyer charges to deliver their competent advice. The paternalistic approach we have embraced with respect to high conflict family cases is not working. Telling people to get along is not working and only serves to usurp the role of lawyers, judges and other trained professionals. The message is that we are not worth the money we charge although the cost to be in practice increases yearly leaving us to work longer hours for less profit. Private practice lawyers, particularly family law lawyers, provide excellent service to our clients. If we, however, do not settle out of hand, even in the face of the most egregious behaviour, we are often criticized for adding to the conflict. My job as a lawyer and as an advocate is not to make the judge's job easier. It is to put my client in the best possible situation in a reasoned and logical manner working within the rules of court and relying on appropriate evidence. It is therefore acceptable and necessary to have lawyers who take on high conflict because the alternative is to allow the unreasonable and demanding opposing party to carry the day. If we continue to focus on settlement, no matter the situation or the history of the family, then we may be able to say we have settled all the cases but have we really made the lives of those individuals who have suffered family violence, have given up work opportunities to support their spouse only to have no real prospects at 40 and no spousal support of significance, who will refuse pension division because they are frightened of losing family connections because their former spouse has threatened them and on it goes....settlement is always a goal but not when it means one party gives up all their rights to achieve an &quot;agreement&quot;.</td>
</tr>
<tr>
<td>Fees and insurance should be calculated according to gross sales. Not doing so results in gender bias.</td>
</tr>
</tbody>
</table>
Within the family law context, the process has expanded to include several pre-hearing appearances which many litigants cannot afford. The memo that is expected of counsel prior to appearing at a pre-trial increases legal fees and does not necessarily advance the clients’ interests. Family lawyers need to meet the demands of the court, which means charging more than some legal services ought to cost. Getting off of the record is very difficult in family law matters, resulting in unbilled time and significant disbursements to personally serve the litigant and other parties. This has resulted in my choice to not go on record for a number of clients, though they are willing to pay a reasonable fee for legal services. Unbundling legal services protects the lawyer in these cases but may not meet the clients’ needs.

As previously stated, it has become increasingly hard to be removed as solicitor of record once the Court has a lawyer's name in relation to a file.

Unless the client agrees, the lawyer must make application, but even this does not always result in removal; it depends on whether the judge will agree to release the lawyer, even if the matter will not be in court again for some months and there is no prejudice to the client.

The process for Removal as Solicitor of Record needs to be less cumbersome so the lawyer is more assured of the result.

Thanks for another year. I have concerns the bar society may not be aware of how many young criminal lawyers attend court not having learned the non written rules of decorum in how to address the court, having your matter called, how to speak with a client in custody etc.

While I’m of these things is negligent. It reflects badly on our bar and the public watching us.

I keep hoping the Society will revise the fee structure such that folks in my position (practising status, but no traditional client work) do not pay the same insurance fees as folks who practice traditionally (and therefore bring risk to Society). Thanks

Given my role as a professor, I don't have as much of active practice as in the past. I currently carry about 3-4 files with my firm. One suggestion I have for the Society is to consider creating a different practising status for professors, who don't practice all the time, but have cause to given advice and even represent parties from time to time. I believe Ontario has such a status for law professors. I believe this would further access to justice as we are frequently called upon for assistance and those without status will frequently decline even providing legal information for fear of crossing the line between information and advice.

I think the last question about limited scope retainers is very progressive. It would be helpful to see guidance from the regulators in our profession about how to best arrange limited scope engagements for clients.

Without my day job, the cost of NSBS fees and insurance would prevent me from serving the populations I do. Most of the clients I serve privately are non-profit or charity organizations with limited funding seeking to serve the community, or middle class individuals that would not qualify for legal aid or any other form of financial assistance, but cannot afford to shell out $150-$500 per hour for a lawyer to help them with what are relatively simplistic legal matters. I used to work at ###########. Between my day job and my private practice I think I work almost as many hours now as I did at the big firm, but for a fraction of the income. I do it because I did not go into law to make the rich richer - I went into law to help real people who need it.

I would strongly urge the Barristers Society to reconsider its flat fee structure for fees and insurance. If more due diligence or reporting is required of smaller firms or sole practitioners to achieve this, fine. But as it stands - I am in the minority in my willingness to share my knowledge and expertise at a cost real people can actually afford.
and I do think the relatively high fees the Barristers Society requires from sole practitioners and small firms play a part in the unwillingness of lawyers to either go out on their own, or serve populations that fall between legal aid clientele and big business.

Please consider establishing a part-time practice membership and insurance scheme. Also, please consider a graduated insurance arrangement as some types of practices are more likely to result in claims than others. The NSBS fees last year were about 1/5 of my gross income. I find myself wondering if it is worth paying the fees because I am limited to working no more than 45 hours a month by Social Security.

I assume that this may be a major issue for the society as I assume that the demographics of the membership mirrors NS demographics in terms of age. As people retire, there may be very good reasons to continue to practice; but the structure of the Barristers' Society and LIANS fees don't make it fiscally reasonable.

When I was actively looking for part time and contract work, some headhunters told me that they had placed other “retired lawyers” as advisors, although they were doing general counsel work such as contract review and negotiation and that it was not necessary to be a member of the NSBS. Headhunters may not be aware of what constitutes the practice of law, but they certainly are aware of the work histories of the people they place and whether or not the resumes include a reference to NSBS. If these contract and part time positions are filled by lawyers who have retired from firm practice and who are no longer paying bar and insurance fees, it puts other lawyers who are paying to be a member at a disadvantage.

There are some difficulties in providing pro bono and unbundled legal services as a Government lawyer due to both our insurance and the potential ethical conflicts. I would like to, but so far we have not worked out a system for doing so.

I pay for my own NSBS fees and it is difficult financially to pay $400+ a month on top of also making payments on my six figure student debt. I often wondered if NSBS ever considered setting the fees based on years of practice (i.e. a new associate's fees would be less than those of a partner who has been practicing for several decades).

It might be helpful for the society to track how many years of practice lawyers have - some of these questions were difficult to answer as a new call. A simple choice of "first year of practice / 2-5 years / 6-10 years / 11-20 years / 20+ years" might be helpful information for assessing future needs of the public and the profession. For example, if 45% of the profession is set to retire within 5 years, or if the majority are below the years of practice required to train articled clerks, it may impact the level and content of services the NSBS provides. Similarly, it may be helpful to track the size of the firms lawyers are employed by; small/medium/large and whether the firm operates outside of Nova Scotia could yield interesting results as the regulations seem to encourage the development of mega-firms through mergers and takeovers. Otherwise, I just want to say that I greatly appreciate the online NSBS reading room and would love to see that service expanded, perhaps even to include case summaries or papers by NS lawyers and legal professionals or on topics relevant to Nova Scotia. Finally, I question whether it's appropriate to list Twitter as the primary example of an "authoritative online source" to keep current in the law on the NSBS website (https://nsbs.org/keeping-current), as it is a foreign, for-profit website. I'm not saying it shouldn't be there, but maybe not as the first place to go for updates to the law.

Go Raptors!

In addition, there were a number of comments related to the ALR form and/or process. These are not included here, but have been reviewed for consideration for future years.
MEMORANDUM TO COUNCIL

From: Professional Standards (Criminal) Committee
Date: November 1, 2019
Subject: Professional Standards (Criminal) Committee
Standard No. 4: Withdrawal of Guilty Plea

FOR: INFORMATION INTRODUCTION APPROVAL X

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<th>Date</th>
<th>Body</th>
<th>Action</th>
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<td>Council</td>
<td>Introduction</td>
</tr>
<tr>
<td>May – August, 2017</td>
<td>Membership</td>
<td>Review and Consultation</td>
</tr>
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<td>October 29, 2018</td>
<td>Racial Equity Committee</td>
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<td></td>
<td>Council</td>
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Recommendation/Motion:

This is a new Standard No. 4 – Withdrawal of Guilty Plea

Executive Summary:

- September 23, 2016 – Mark Scott QC presented Withdrawal of a Guilty Plea standard to Council for introduction. The next step was to circulate to Membership for feedback.
- May, 2017 – August, 2017 – the standard was circulated to the Membership for comment. Member comments are attached.

- September 2017 – the Committee revised the Standard according to comments from the Membership after discussion at the September meeting and subsequent meetings that Fall. They also worked to ensure the standard was proactive, principled, and proportionate (in line with the Society’s Triple-P Approach) and culturally competent.

- Committee revised the standard according to comments from Membership. In particular: grammatical errors were fixed and footnotes were added.

- December 2017 - May, 2018 – Committee had waited on R v Wong decision to add to the standard, at this time (May 2018) the decision came out and the standard was revised accordingly.

- October 29, 2018 – Sent standard to the Equity committees for consultation.

- January 11, 2019 – Withdrawal of a Guilty Plea Standard was returned with no comments from the Equity Committees.

- February 2019 – The Committee chose to recirculate Withdrawal of a Guilty Plea to the membership. One comment was received and is attached. The Committee discussed the comment and incorporated footnotes as was suggested.

The draft (attached) is in the usual three-column format, but as a new standard, the first column is blank.

Exhibit:

Membership Comments 2017 – (pg. 3-4)
Membership Comments 2019 – (pg. 5)
Standard 4 - Withdrawal of Guilty Plea with rationale (pg. 6-15)

Comments from Membership:

May – August 2017
• Page two: Section one, paragraph two, last sentence “Exceptional circumstances may also ...” (add ‘al’ to Exception)
• Page three: First full sentence “There is no need for the accused to have ...” (add the word ‘the’)
• Page three: Second sentence needs clarification “… consistent with the assertions of innocence”. Does this mean that the wrong person was accused, or does this relate to innocence until being proven guilty?
• Page three: Third sentence “Pressure to plead guilty from deals made on the Courthouse steps ...” (add the word ‘the’)
• Page three: Subsection three, paragraph two, sentence two “An accused person has to be able to follow the proceedings and understand what they are pleading guilty to ...” (should be consistent with the other instances in the rest of the document, and read ‘he or she’ or ‘s/he’)
• Page three: Subsection three, sub-subsection (b), first sentence “Where, even with counsel, the accused did not have a sufficient understanding of English to follow the proceedings.” (add the word ‘the’)
• Page three: Subsection three, sub-subsection (b), second sentence “The applicant provided the Court ...” (consider replacing the word ‘applicant’ with ‘accused’)
• Page four: Paragraph two, first sentence “Again, the experience of counsel and the accused ...” (add the word ‘the’)
• Page four: Paragraph two, second sentence “The greater counsel’s experience, the greater the inference counsel discharged his/her duties thoroughly and professionally; and, that the accused ...” (semi-colon should be removed – perhaps replaced with a comma)
• Page four: Subsection four – title needs clarification “The Interests of Justice are Otherwise Such”
• Page five: Subsection two, sentence two “If counsel acted, and had fulfilled the requirements as set out in the standard for ‘Guilty Pleas’ ...” (title should be consistent with its Standard ‘Guilty Plea’)
• Page five: Subsection two, sentence three “There would have to be critical factor ...” (should read ‘be a critical factor’; or be pluralized to read ‘be critical factors’; or read ‘be one or more critical factors’)
• Page six: Section four, subsection two, sentence two “That is, all of the requirements regarding the launching criminal appeals ...” (add the word ‘of’ to read ‘launching of criminal’

- Phil Star

Thank you for the opportunity to offer comment on this proposed practice standard. There is a typo at page 2, para #1, " Exception ", should read " Exceptional ". 
Overall the proposed standard is very good in terms of assisting counsel by identifying specific practice situations and then providing direction on the appropriate course of action. As noted above, there is a reference to exceptional circumstances that might arise but nothing further said in the standard as to what they or it might be. One answer might be that the circumstance(s) is so exceptional that it has yet to be discerned or encountered, therefore providing direction at this time is not possible.

Perhaps the following might fall into the exceptional category referenced in the proposed standard. Circa 2002 guilty pleas were entered by accused persons in relation to drug offences and then circa 2007, in the Supreme Court of Nova Scotia Appeal Division, those guilty pleas were struck by The Honourable Chief Justice Michael MacDonald on the motion of the Federal Crown. The alleged offences were said to have occurred in Halifax County; involved multiple accused; the accused entered guilty pleas on the advice of their respective counsel; counsel's advice to their clients was premised on critical assertions put forward in the disclosure sourced from one RCMP officer; and that officer's collection and reporting of evidence was, some years after the guilty pleas had been entered, seen by the Federal Crown as being suspect to the point of being unreliable and an affront to the administration of Justice. The RCMP officer was convicted on various charges related to drug trafficking offences and theft of evidence.

Chief Justice MacDonald, upon being apprised of the circumstances that tainted the decision made by the accused to enter guilty pleas upon the advice of counsel, voided the convictions, in effect overturning the guilty pleas on the basis that the accused had been denied their right to counsel by virtue of a fraud having been perpetrated upon their counsel. That fraud was seen as a grievous failure in the proper administration of Justice.

Sadly this scenario will crop up again at some point in time. Whereas in the specific case noted above, the Federal Crown took the initiative to undo the wrongdoing of the police officer, it would be helpful I think, in the framework of this practice standard, to give direction to defence counsel who might in future be looking to withdraw a guilty plea in this type of circumstance. At the time there was some degree of uncertainty as to how and upon whose motion the corrective action should move forward.

- Walter Yeadon

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February 2019

Under the Civil Procedure Rules, and appellant alleging as grounds of appeal, ineffective assistance of counsel, must provide a copy of the notice of appeal to the former counsel and there are procedures whereby that counsel can intervene.

In the case of a motion for a withdrawal of a guilty plea, most commonly made in Provincial Court, there should at least be an ethical duty of the new counsel to serve notice of the motion on the
former counsel. It is difficult to imagine due diligence occurring without some interaction with the former defense counsel.

- Jim O’Neil
<table>
<thead>
<tr>
<th>EXISTING STANDARD</th>
<th>PROPOSED STANDARD</th>
<th>RATIONALE</th>
</tr>
</thead>
<tbody>
<tr>
<td>NEW</td>
<td><strong>STANDARD:</strong> (including commentary and resources)</td>
<td>This new standard is designed to address the circumstances when a party wishes to withdraw a guilty plea and the steps that counsel, acting for that party, must take and the issues to be considered.</td>
</tr>
</tbody>
</table>

A lawyer who accepts instructions to bring a motion to withdraw a guilty plea must be satisfied following independent investigation\(^1\) that there is a sufficient basis to conclude that the plea was either involuntary, equivocal or uninformed, or that the interests of justice are otherwise such\(^2\) that it would be unjust to maintain the plea\(^3\).

**NOTES**

Counsel should be fearless in seeking to undo unjust or wrong guilty pleas. They occur. But, with the procedural safeguards afforded to all accused persons, the standard for withdrawing a guilty plea is intentionally high. Reputations of former counsel may be at stake. Your client’s reasons for seeking to withdraw the plea will be viewed with skepticism. There are procedural requirements to consider, such as waiver of solicitor-client privilege, filing proper documents in the proper court, and potentially marshalling expert evidence.

Anecdotally, there is no single, uniform practice at present, and the Civil Procedure Rules and Provincial Court Rules provide no guidelines. Some courts and counsel have incorrectly assumed the matter to be pro forma. The required motion, however, carefully balances the proper functioning of the system and maintaining respect for the administration of justice with the overall need to prevent miscarriages of justice. It is, therefore, extremely important to consider the ethical, procedural, legal and practical factors when advising your client on whether to make the motion, advising of chances of success, and litigating.

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2. The “interests of justice” aspect is not part of the strict test to withdraw a guilty plea. But, rare instances have occurred where newly discovered exculpatory evidence, long after the plea was taken, militate in favour of withdrawing the guilty plea. See, for example, *R. v. Hanemaayer*, 2008 ONCA 580; *R. v. Barton*, 2011 NSCA 12; *R. v. Kumar*, 2011 ONCA 120.
The importance of your ethical obligations cannot be stressed enough when you are considering a motion to withdraw the guilty plea of a client who was represented by counsel at the time. The admonition in *R. v. Elliott* bears special attention:

“I consider it most unfortunate that any counsel, carried away by his enthusiastic support of his client's cause, should permit himself, by reason of his client's instructions, to make allegations inferring unjust conduct on the part of the Court, or unprofessional conduct on the part of brother solicitors without first satisfying himself by personal investigations or inquiries that some foundation, apart from his client's instructions, existed for making such allegations. His duty to his client does not absolve a solicitor from heeding his duty to the Court and to his fellow solicitors.”

1. The Test

The accused bears the “heavy burden” of demonstrating that the guilty plea should be set aside. It may be misleading or unhelpful to use terms such as “balance of probabilities”, or other traditional standards, in assessing the burden on the client here. Some courts have said that there must be “convincing evidence” that the plea was invalid. There will be a strong presumption of a valid plea when it is taken in open court, particularly where the trial judge undertakes the s.606(1.1) Code inquiry. When your client was represented by counsel when the pleas were accepted, withdrawal of the guilty plea will be “almost insurmountable”.

The decision to allow that the plea be withdrawn is discretionary, and will only follow where a Court concludes that there is "valid reason" to do so such that it would be unjust to maintain the plea. Therefore, generally, the accused must show that the guilty plea was either involuntary, equivocal and/or uninformed. Exceptional circumstances may also merit setting aside the plea, even where the general test cannot be met.

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4 At para. 7.
5 *R. v. Miller*, 2011 NBCA 52, at paras. 6-8.
8 See subheading (iv), and footnotes 27 and 28 for examples.
(i) **Involuntary**

A voluntary plea involves a conscious, volitional choice, for reasons that the accused regards as appropriate at the time. A plea entered in open court will be presumed to be voluntary.\(^9\)

Several factors may affect this: undue pressure (external); abusive plea bargaining; being under the influence of alcohol and/or drug at the time of the plea; mental health issues.\(^10\) Rarely will internal pressure or anxiety suffice to invalidate the plea.\(^11\)

When alleging alcohol, drugs or mental health issues as invalidating the plea, medical evidence will be required. Either influence must remove the ability to make the volitional choice. In the case of questions regarding cognitive capacity, the test for a valid plea is the same as fitness to stand trial – limited cognitive capacity. There is no need for the accused to have the capacity to make a wise choice.\(^12\)

Pressure to plead guilty must be of such a magnitude that it overrode the choice of the accused, and that overridden choice was consistent with assertions of innocence.\(^13\)

Pressure to plead guilty from deals made on the Courthouse steps is common and generally insufficient to invalidate the plea.\(^14\)

(ii) **Equivocal**

The accused must plead guilty free from uncertainty, qualification, or confusion. Alcoholic blackout of the facts surrounding the offence will generally not suffice to render the plea equivocal.\(^15\) The plea in open court, especially when represented by (experienced) counsel, with an agreement to the facts and chance to speak to the matter, all favour the conclusion that a plea was unequivocal.\(^16\)

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\(^9\) *T. (R.)*, at paras. 14, 16.


\(^15\) *T. (R.)*, at paras. 21-23.

\(^16\) *Ibid.*
Experience of both counsel and the accused will factor into this part of the inquiry.¹⁷ A disagreement with facts other than the essential elements will not render the plea involuntary or equivocal.¹⁸

(iii) Uninformed

An accused must have a sufficient understanding of the nature of the charges, the facts alleged, whether those facts give rise to a valid defence, the effect of the plea, and the consequences of the plea.¹⁹ Consequences can include the effect of the sentence on immigration status,²⁰ or on one’s driving suspension under provincial legislation.²¹

In circumstances where an accused is unaware of “legally relevant collateral consequences”²² of conviction and sentence -- one which bears on sufficiently serious legal issues for the accused²³ -- the plea will be uninformed. If such a claim is accepted as credible, an accused must then establish that they would have either: (1) opted for a trial and pleaded not guilty, or (2) pleaded guilty, but with different conditions.²⁴ A court will assess the veracity of this subjective assertion by looking to objective, contemporaneous evidence.²⁵ There will be no requirement that the accused demonstrate an arguable defence; nor, a requirement to establish ineffective assistance of counsel -- it is the misinformation, and not its source, that drives the prejudice inquiry.²⁶

Language difficulties arise from time to time. An accused person has to be able to follow the proceedings and understand what s/he is pleading guilty to, as well as the legal

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¹⁷ Nevin, at para. 20.
¹⁹ Moser, at para. 34; Nevin, at para. 20.
²¹ R. v. Quick, 2016 ONCA 95.
²³ Ibid.
²⁴ Ibid., at para. 6.
²⁵ Ibid.
²⁶ Ibid., at paras. 23-24.
consequences. Cases which have resulted in successful motions due to language problems include:

(a) Where it was later discovered that an interpreter provided an incorrect translation of the law of being a party to a crime (by presence at the scene) and the accused would have otherwise pleaded not guilty;  
(b) Where, even with counsel, the accused did not have a sufficient understanding of English to follow the proceedings. The applicant provided the Court with an independent language proficiency test to substantiate his claim. The Court concluded that the accused’s s.14 Charter right to an interpreter was violated and ordered a withdrawal of the guilty plea as a remedy.

Be aware, though, that such claims will generally require credibility assessments, and may involve contradictory evidence from counsel who represented the accused at the guilty plea.

Again, the experience of counsel and the accused with criminal law will factor into this aspect. The greater counsel’s experience, the greater the inference counsel discharged his/her duties thoroughly and professionally; and, that the accused was aware of the charges, facts, effect and consequences of the plea. The accused need not know the exact sentence s/he will receive, or course -- just the risk of various available sentences, due to the nature of the charges and the plea.

The fact that an accused feels s/he has a defence, but pleads guilty with full knowledge of this, will not invalidate the plea. The guilty plea relieves the Crown of its burden and removes certain procedural rights of the accused.

29 See, for example, R. v. L. (F.), 2011 NSPC 8; aff’d, 2011 NSCA 91.  
30 Moser, at para. 38.  
(iv) **The Interests of Justice Otherwise Merit Withdrawal of the Guilty Plea**

In rare and exceptional circumstances, the requisites for a valid plea are undisturbed, but the interests of justice require that the plea be set aside. This contemplates situations where the factual innocence can be established, sometimes from new disclosure, often revealed years later. Such instances include:

(a) where unrelated investigations, DNA, etc. lead to the conclusion that another person committed the offence(s)\(^32\);
(b) where commissioned inquiries lead to the conclusion of systemic, fatal blunders in forensic investigations\(^33\);
(c) where police have falsified or fabricated evidence in the course of their investigations\(^34\); or,
(d) where the person is factually innocent, but the “false guilty plea” is prompted by “purely pragmatic reasons, such as the offer of a deep discount on penalty, the prospect of release from custody, the inability to pay a lawyer for a trial, or other factors unrelated to guilt.”\(^35\)

2. **Preliminary considerations**

(i) **Waiver of solicitor-client privilege**

Before discussing the test to which you should direct your evidence and brief, special discussion of waiver is required. Waiver of solicitor-client privilege is often assumed when these motions proceed. This is not the case, and a number of consequences flow from how this issue is handled.

First, waiver allows you to speak with former counsel. This is part of your ethical duty to the Court and to other counsel to not advance any allegations which may negatively

\(^32\) Hanemaayer — the accused pleaded guilty to what the police concluded years later was committed by the Scarborough Rapist, Paul Bernardo; Barton — the young accused pleaded guilty to sexual assault in order to avoid jail, and years later the victim’s recantation and DNA analysis warranted setting aside the guilty plea.

\(^33\) Kumar – one of many convictions which were overturned following the Goudge Inquiry into the practices of forensic pathologist, Dr. Charles Smith.

\(^34\) *R. v. Andhelm-White*, 2008 NSCA 86.

\(^35\) *R. v. McIlvride-Lister*, 2019 ONSC 1869, paras. 3-4.
affect counsel’s reputation without independent inquiry, apart from the allegations of your client.  

Second, the waiver allows you to tender the affidavit of former counsel as part of your motion. A refusal to waive solicitor-client privilege does not insulate your client from former counsel’s evidence being heard. Crown counsel can seek to have the Court deem waiver so as to equip the Court with a full picture of how the guilty plea came about. Former counsel also have the right to defend his/her reputation.

Equally, a refusal to waive solicitor-client privilege, and/or failure to obtain an affidavit from former counsel, give(s) rise to a permissive (and likely inevitable) adverse inference against the accused – former counsel’s evidence would contradict, or at least not support the accused, even if former counsel is called by the Crown.

Either way, former counsel have a right to be informed of the pending motion, and must be given sufficient time to prepare an affidavit and contact LIANS. Then a decision may be made on whether to seek to intervene.

There is, therefore, no upside to refusal to waive privilege, and counsel taking on the motion should be very clear with their client about this. Some comfort can be taken from the fact that the Court and counsel have a duty to only pierce privilege to the extent as is necessary to have the issues before the Court fully developed. There is no right to a free roam through former counsel’s file, or to stray into irrelevant areas.

(ii) Look at the involvement of counsel

It will be important, based on the preceding point, to look at the involvement of counsel leading up to and including the entry of the guilty plea and sentencing. If counsel acted, and had fulfilled the requirements as set out in the standard for a “Guilty Plea”, it will be very difficult to have the plea set aside. There would have to be a critical factor, unknown

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36 Elliott, at paras. 6-7; see, also R. v. Dunbar, 2003 BCCA 667, at paras. 335-337.
38 Ibid.
to counsel at the time, that would materially affect an aspect of the test to warrant bringing the motion.

Take, for example, receipt of late disclosure. The plea may be set aside where there is a reasonable possibility that the information would have influenced the decision to plead guilty had the information been available prior to the plea.39

(iii) Consult Senior Counsel

This area can be very tricky. It involves a difficult test that may also confront the competence of previous counsel. A lawyer’s obligations to the client must be balanced against the lawyer’s obligations to the profession and the interests of justice. Since credibility will generally be very much alive, a thorough examination of the circumstances and a healthy measure of sound judgement will be required. It is advised that less experienced counsel consult senior members of the bar for guidance.

3. Jurisdiction

This is a relatively simple aspect. The trial court where the plea was entered is where the motion should be held, unless sentence has already been ordered. If the latter is so, you must appeal to the appropriate appellate court. In the trial court, if the judge who recorded the guilty plea heard the facts in support of the guilty plea, s/he is seized and must hear the motion to withdraw40. If the same judge hears the motion to withdraw, this does not relieve the moving party from providing a transcript of the appearance at which the plea was taken, or any other relevant appearances.

4. Procedure

(i) Before Sentencing

The accused bears the burden to satisfy the Court to exercise its discretion in favour of permitting withdrawal of a guilty plea. S/he must, therefore give proper notice to the Court and the Crown. The Civil Procedure Rules govern for Supreme Court (Rule 29). The

Provincial Court Rules do not really deal with it. Ultimately, the Crown (and, where applicable, counsel who represented the accused for the plea) will need sufficient notice and time to respond.

Counsel who represented the accused when the plea was taken must consider whether they can represent the accused at the motion to withdraw. This is generally prohibited where:

(i) the reasons for seeking to withdraw the plea require counsel to withdraw, or are such that counsel should seek to withdraw, per the Standard on Withdrawal as Counsel; or,

(ii) the Crown has indicated that it will not consent to the motion.

At a motion to invalidate the guilty plea, counsel’s competence and/or reputation will be at least indirectly in the cross-hairs of the inquiry. They will become a witness, whether providing evidence in support of, or contrary to, the accused.41

Notice documents should include:

(i) Notice of Motion;
(ii) Affidavit of Accused;
(iii) Transcript(s) of relevant proceedings;
(iv) Brief of law;
(v) Where necessary, an affidavit from a medical or other expert;
(vi) A waiver of solicitor-client privilege;
(vii) An affidavit of former counsel who represented the accused when the plea was taken.

The Crown will have the right to cross-examine your client and former counsel, as well as any other affiants.

(ii) After Sentencing

Where the motion to withdraw is brought for the first time on appeal, the Civil Procedure Rules and s. 683 of the Criminal Code apply regarding the need to make a motion to

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41 Code of Professional Conduct, Rule 5.2-1
adduce fresh evidence. That is, all of the requirements regarding the of launching criminal appeals apply\textsuperscript{42}, as well as the requirement to make a motion to adduce fresh evidence.

Where the appellant was represented by counsel at the time the plea was entered, you should obtain a waiver of solicitor-client privilege and follow your ethical obligations to independently satisfy yourself that there is substance to the allegations (below).\textsuperscript{43}

The fresh evidence materials must include the Notice of Motion and necessary affidavits from all witnesses upon whom you rely to substantiate the allegations. A modified version of the “\textit{Palmer}” test\textsuperscript{44} must be satisfied for the fresh evidence to be admitted.\textsuperscript{45} To add, the evidence must be filed in a manner that is admissible in substance and form, as if it were being tendered at trial. Hearsay, for example, is inadmissible.\textsuperscript{46}

\textbf{Practical considerations}

Practical factors will include whether the plea was made with full/adequate disclosure; the number of appearances, the time between appearances, comments made by counsel and/or the accused on record, whether counsel have represented the accused before, etc.

Special emphasis should be made regarding the timing of the motion. Once sentence has already been ordered, the Court and procedure may become more stringent for following rules. The required documents will increase in volume, at a greater cost to your client. As a logical consideration, the Court of Appeal will be more skeptical of the effort to set aside the plea, particularly where a fair bit of time has passed between the plea and sentence.

\textsuperscript{42} See Rule 91 of the \textit{Civil Procedure Rules}.
\textsuperscript{43} \textit{Elliott}, per note 1, applies here. As well, the NSCA “\textit{Protocol for Appeal Proceedings Involving Allegations of Ineffective Trial Counsel}” will likely also apply.
\textsuperscript{45} \textit{Nevin}, at para. 4; \textit{R. v. Pivonka}, 2007 ONCA 572.
\textsuperscript{46} \textit{R. v. Laffin}, 2009 NSCA 19, at paras. 27-34.
Finally, the judge(s)\(^\text{47}\) hearing the motion will not countenance any efforts to manipulate or frustrate the system by bringing the motion. To allow the motion in such circumstances would severely undermine the principle of finality and the repute of the administration of justice.\(^\text{48}\)

\(^{47}\) A panel of at least three judges will hear the motion as part of the appeal in the Nova Scotia Court of Appeal. A single judge will hear the motion at the trial and Summary Conviction Appeal levels.

\(^{48}\) Moser, at para. 42; Raynor; Marriott.
MEMORANDUM

From: Frank E. DeMont QC, Chair, Governance and Nominating Committee

To: Council

Date: November 12, 2019

Subject: Terms of Reference for the Governance Committee and the Nominating Committee

For: Approval X Introduction Information

On September 27, 2019, Council approved a motion to accept our committee’s recommendation that the Governance and Nominating Committee be split into a Governance Committee and a Nominating Committee. GNC struck a sub-committee to craft Terms of Reference for the two new committees. The draft Terms of Reference are attached for review and if appropriate, for approval by Council.

The GNC sub-committee and GNC undertook the following process steps:

1. The subcommittee separated out of the existing TORs those elements that were clearly either Governance or Nominating and included those in the relevant new TORs.

2. After a first iteration was prepared, the subcommittee reviewed the draft on a telephone conference call. Proposed additions, deletions, and changes were considered.

3. After the second iteration was completed, we forwarded them, with a brief note, to Angela Simmonds in the Society’s Equity and Access Office for circulation to the Gender Equity Committee and the Racial Equity Committee for comment.

4. Pending comments from GEC and REC, we completed a final review before recommending to the GNC.

5. As there were no concerns expressed by GEC or REC, the subcommittee sent the draft for consideration by GNC, and if appropriate for recommendation to Council.

6. GNC considered and made minor modifications at its November 7, 2019 meeting.

7. GNC now recommends the attached to Council for consideration and if appropriate approval for implementation immediately after the Council Meeting on January 24th. The current GNC will carryover long enough to recommend a 2nd Vice President nominee in January.

Attached are the Terms of Reference for your discussion, consideration and if appropriate approval at your November 22, 2019 meeting.
Terms of Reference for the Governance Committee

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

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<th>Governance Committee - Terms of Reference</th>
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| **Composition**                           | • Appointments shall be made by Council |
|                                          | • The Committee shall include, but not be limited to |
|                                          |   o at least one officer |
|                                          |   o at least two additional members of Council |
|                                          |   o at least one person who is not a member of the Society |
|                                          |   o at least four additional practicing members of the Society who are not members of Council |
| Committee Chair                                                                 | • A Member of Council or Past President shall serve as the Committee Chair  
|                                                                              | • The Committee Chair is responsible for annually reviewing with the Committee: Council Policy 16, these Terms of Reference, and the Society’s Strategic and Annual Plans  

| Procedures and Work Product                                                   | • The Committee shall operate in accordance with Council Policy 16  
|                                                                              | • The Committee shall annually review these Terms of Reference and may recommend changes to Council  
|                                                                              | • The Committee shall maintain minutes of its meetings  

| Reporting to Council                                                          | • The Committee is advisory to Council, and may make recommendations for policy changes to Council  
|                                                                              | • The Committee shall provide a work plan and updates to Council as requested by Council.  

| Staff support                                                                 | • Executive Director (and Governance Officer)  

**Terms of Reference for the Nominating Committee**

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

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Committee, who is not required to be a member of the Racial Equity Committee

| Committee Chair       | • A Member of Council shall serve as the Committee Chair  
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<th>• The Committee Chair is responsible for annually reviewing with the Committee: Council Policy 16, these Terms of Reference, and the Society’s Strategic and Annual Plans</th>
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</table>
| Procedures and Work   | • The Committee shall operate in accordance with Council Policy 16  
| Product               | • The Committee shall annually review these Terms of Reference and may recommend changes to Council  
|                       | • The Committee shall maintain minutes of its meetings                                              |
| Reporting to Council  | • The Committee shall provide a work plan and updates to Council as requested by Council.            |
| Staff support         | • Executive Director or Designate                                                                  |
1. INTRODUCTORY MATTERS/CALL TO ORDER

1.1 Introductory Remarks

President Carrie Ricker called the meeting to order. She acknowledged that the Council meeting was taking place on traditional Mi’kmaq territory and indicated that treaties are based on peace and friendship. She noted that the acknowledgement is hollow if not accompanied by action and that the guests today would help us with that direction. She welcomed Jane Willwerth, the Society’s new interim Governance, Policy and Planning Advisor.

President Ricker introduced the agenda. Council accepted the agenda as presented.

2. DISCUSSION OF BIG ISSUE (EDI & TRC)

2.1 TRCWG Report
Angelina Amaral, Chair of the Truth & Reconciliation Commission (TRC) Working Group, provided Council with an update on the TRCWG’s activities. Over the summer months, the TRCWG hired Alex Tomer, an Indigenous law student, to be their Community Liaison worker. Their main focus was to begin introducing the TRCWG to the legal and Indigenous committees. In partnership with the Mi’kmaw’Ki Provincial Network, a one-day community gathering was held as well as presentations and meetings with stakeholders. They also began activities for the Environmental Scan, which will include a survey of all members of the Society. The information from the survey, scan and consultations will be used to inform the TRC Action Plan. Additional community meetings will take place this year as well as three education sessions (October, January and April).

A sub-committee consisting of Tuma Young, Mary Jane Abram and Diane Rowe is organizing a gathering of Indigenous lawyers and law students in Nova Scotia. Darryl Tracey, a Mi’kmaq Court Worker, has joined the TRCWG and the Working Group is seeking a representative from the South Shore.

President Carrie Ricker thanked Angelina for the great work and asked that she convey her appreciation to the TRCWG.

2.2 Equity Lens Toolkit

Angela Simmonds, Equity and Access Manager, presented her memo to Council on the Concepts of Cultural Competence and Humility for the Legal Profession and provided Council with an overview of the first iteration of the Equity Lens Toolkit. She stressed the importance for us to think about how people identify and how we respond. The toolkit is a guide for members – not a check box.

Council indicated its support for the Toolkit and education session. The Racial Equity Committee and the Gender Equity Committee will be given an opportunity to provide feedback on the Toolkit prior to it being rolled out to the profession in December 2019.

Robert Wright, Social Worker and Sociologist, joined Council and spoke about the definition of cultural competence and the language we should be using to ensure a more just and inclusive society. He discussed the need for cultural humility, and to start with gaining an understanding of the cultural history. He noted that cultural competence and proficiency are largely the same and both are aspirational, it is a continuous learning process with no finite end. He also noted that the language we use is less important than the activities we engage in under that umbrella.

Council also viewed a video about how to apologize when a mistake is made.

Following Robert Wright’s comments, there was discussion regarding psychological safety and trauma informed lawyering and the need to ensure these concepts are incorporated into the Society’s ongoing work and strategic objectives. It was also noted that cultural awareness and understanding in one community does not equate to understanding in another community and that competency and proficiency require attention and learning about each community.
3. POLICIES/PROCESSES

3.1 CPLED Proposal

Jackie Mullenger, Director Education & Credentials, presented two recommendations to Council: 1) that the Society partner with CPLED in the PREP course and move forward with the necessary steps to begin offering the PREP course in September 2020; and 2) that Council appoint a subcommittee of Council members to study the options for financing the PREP course.

**UPON MOTION BY Jillian Barrington and seconded by Natalie Borden that the Society partner with CPLED in the PREP course and move forward with the necessary steps to begin offering the PREP course in September 2020. MOTION CARRIED**

**UPON MOTION BY Tuma Young and seconded by Cheryl Canning QC that Council appoint a subcommittee of Council members to study the options for financing the PREP course. MOTION CARRIED**

President Carrie Ricker will send an email to Council members seeking volunteers for the CPLED Sub-Committee and will reach out to the Chairs of the Finance, Racial and Gender Equity and Credentials Committees for appointments.

3.2 Strategic Goals & Objectives Rollout

The 2019-2022 Strategic Goals & Objectives and the Activity Plan will be the focus of the Society’s new website and will be the big issue for discussion at the November Council meeting. The revamped 2019-2022 Activity Plan will go to Executive in October prior to Council.

From a rollout perspective, the County Bar meetings will continue and President Ricker will touch on some of the highlights in her *InForum* blog. Once Council approves the Strategic Goals infographic, a copy will be shared with stakeholders who engaged with us so they know we have heard them.

Council had no concerns with the infographic or background document.

3.3 Report from GNC on Court Liaison Task Force / Proposed Regulatory Amendments

The GNC recommended that the Court Liaison Committees remain as committees advisory to the Executive Director without having to follow the requirements of a Council committee and that Council Policy 18 and the regulations relating to committees be amended to give effect to these recommendations.

**UPON MOTION BY Sheree Conlon QC and seconded by Patrick Young that the proposed regulatory amendments to reg. 2.9.2 and the proposed amendment to Council Policy 18 be approved. MOTION CARRIED**

3.4 Regulatory Risk Project Plan Update
Victoria Rees, Director Professional Responsibility, provided Council with an update on the Society’s Regulatory Risk Project Plan and an overview of the regulatory risk work taking place, mainly at the management level. She highlighted the twelve risk themes identified and advised that Council will receive a more substantial update at its January meeting.

Discussion took place regarding social media risk, i.e. MeToo, etc. and what the response would be to mitigate risk.

3.5 LIANS Report to Council

Lawrence Rubin, Director LIANS, presented the LIANS semi-annual report to Council and provided a summary of the LIANS activities for the period January 1, 2019, through June 30, 2019.

There was discussion regarding members’ use of the Lawyers Assistance Program (LAP) and the need for an awareness campaign on what the program provides. Mr. Rubin noted that a report regarding the LAP user services would be provided to Council in January and that LAP brochures are available from LIANS for firms.

3.6 Public Website Redevelopment Project

Collette Deschenes, Communications Advisor, provided Council with an update on the components of the NSBS website redesign. Kyle MacKay, a coop student from Mount Saint Vincent University, is assisting with the redevelopment project. Website content will continue to be refined over the next few months and a preliminary test site will be shared with Council in November. Council members Cheryl Canning QC, Andy Nickerson and Dr. Rod Wilson agreed to be the “pioneers” for testing the website, and all Council members will be invited to review and provide feedback as well. The new website will be ready for launch in January 2020.

3.7 Communications to Committee Chairs

Tilly Pillay QC, Executive Director, presented Council with proposed changes to processes and reporting requirements for Council committees. Council agreed that committees would submit their two-year work plans to Council for approval early in their term and then provide an interim update at the end of their first year and a final report at the end of the their two-year term. Council also agreed that Committee Chairs would be invited to join Council on an annual basis to provide an overview of their work plans and to provide interim updates.

3.8 Executive Director’s Performance Goals Update

Held in camera.

4. APPROVALS

4.1 Client ID Rules

Elaine Cumming, Professional Responsibility Counsel, presented her memo to Council
recommending that the amendments to Regulations 4.12, 4.13, and 10.2, as drafted by the Federation of Law Societies’ Anti-money Laundering and Terrorist Financing Working Group, be approved.

The issue of lawyers accepting cash when acting as Auctioneers and the risk of the foreclosure process being used as a tool to launder money via large cash transactions has been raised directly with the Bench. Further consideration by the Court is expected over the coming weeks. A legal opinion has been provided by the Society that the activity of acting as an auctioneer does not constitute the provision of legal services and is therefore not captured by the proposed regulatory changes. Elaine Cumming will draft a notice to the profession regarding the regulation changes.

UPON MOTION BY Jim Rossiter QC and seconded by Ellen Burke that the regulatory amendments to Regulations 4.12, 4.13 and 10.2 as drafted be approved with an effective date of January 1, 2020. MOTION CARRIED

4.2 Memo from GNC – Splitting Committee

President Carrie Ricker introduced a memo to Council prepared by Frank E. DeMont QC, Chair of the Governance and Nominating Committee. In his memo, Mr. DeMont QC outlined that the GNC endorsed the recommendation of its sub-committee that the GNC be split into two separate committees – a Governance Committee and a Nominations Committee. The GNC recommends that Council approve the winding up of the GNC and the creation of the two new committees; and that Council direct the GNC to consider and develop Terms of Reference for each of the two committees.

President Ricker noted that the current structure of the GNC would be in place through the Second Vice-President selection process.

UPON MOTION BY Patrick Young and seconded by Ellen Burke that the GNC be split into two committees and that the sub-committee develop Terms of Reference for each of the two committees. MOTION CARRIED

4.3 Trust Accounts – Dual Authorization

Kate Shewan, Director Finance, introduced her memo to Council with the recommendation that Council approve the amendments to sub regulations 10.6.3 and 10.6.3.1 regarding the requirement for a dual authorization on trust cheques. The amendments would delete the requirement for a second signature for all withdrawals and help alleviate an administrative burden on small firms. She noted that the only other province that requires dual authorization for trust withdrawals is PEI. It was the finding of the Trust Account Review Working Group that the second signature is not effective in offering increased fraud and theft protection, and creates a significant burden for small firms and confusion for solo practitioners.

Some Council members expressed concern regarding decreased diligence and the timing of the proposed amendments.
UPON MOTION BY Natalie Borden that the motion be amended to include a communications strategy to address the rationale around the changes. MOTION CARRIED

UPON MOTION BY Jim Rossiter QC and seconded by Melanie Petrunia that the amendments to sub regulations 10.6.3 and 10.6.3.1 be approved effective January 1, 2020, and that a communication strategy be created to address the rationale around the amendments. MOTION CARRIED

5. CONSENT AGENDA

5.1 Minutes of July 19, 2019, meeting
5.2 Distinguished Service Award – revisions to the DSA Administrative Policy and Procedure and the DSA Nomination Criteria
5.3 National Discipline Standards – amendments effective January 1, 2020
5.4 Reappointment of Robert MacKeigan QC as Chair of Board of Law Foundation of Nova Scotia; and Reappointment of Douglas Ruck QC as member of Board -- both for two years from January 1, 2020, to December 31, 2021
5.5 Appointment of Darryl Tracey to the TRCWG
5.6 Resignation of Paul Marquis from the LFCCC; Resignation of Heather McNeill QC from the REC; Resignation of Theresa Graham from the Professional Standards (Real Estate) Committee; Resignation of Kym Sweeny from the GEC; and Resignation of Kathryn Dumke QC from LOMC
5.7 Resignation of Sunil Sharma

UPON MOTION BY Dr. Rod Wilson and seconded by Tuma Young that the Consent Agenda be approved as presented. MOTION CARRIED

6. FOR INFORMATION

6.1 2019-2020 Council Calendar
6.2 2019 Activity Plan
6.3 2019-2020 Engagement Calendar
6.4 President’s Report
6.5 Executive Director’s Report
6.6 MDP Update
6.7 Posthumous Calls to the Bar
6.8 Report and Recommendation from the Utah Work Group on Regulatory Reform
7. WRAP UP

President Carrie Ricker noted that the lengthy discussion around the Equity Lens Toolkit and the language used was a great reminder of the various lenses we have to apply from a public perspective. She reminded Council of the following upcoming events:

- October 24 – Treaty Rights Education Session – Hotel Halifax
- November 8 – Posthumous Calls to the Bar – The Law Courts
- November 22 – Council Meeting which will be a meeting in the community in partnership with reachAbility

8. MEETINGS

- November 22, 2019, at 9:00 a.m.
- January 24, 2020, at 9:00 a.m.
- March 27, 2020, at 9:00 a.m.
- April 24, 2020, at 9:00 a.m.
- May 22, 2020, at 9:00 a.m.
- June 12, 2020 (Council Session), at 1:00 p.m.
- June 13, 2020 (Annual Meeting), at 8:30 a.m.
- July 24, 2020, at 9:00 a.m.
- September 25, 2020, at 9:00 a.m.
- November 27, 2020, at 9:00 a.m.
MEMORANDUM TO COUNCIL

From: Professional Responsibility Policies and Procedures Committee

Date: October 23, 2019

Subject: Amendments to Part 9 of the Regulations

For: Approval X Introduction □ Information □

Recommendation/Motion:

That Council approves the amendment to Regulation 9.4, and in particular the proposed new subregulation 9.4.2.1.

Executive Summary:

The Complaints Investigation Committee is often required to review complaint files on short notice and to make decisions quickly when it is in the public interest to do so. It is important for this Committee to have the regulatory authority to convene in a manner that is efficient and facilitates the participation of the maximum number of Committee members.

The Regulations currently allow the Committee to determine its own process for the investigation of complaints, but do not provide specific authority for the Committee to determine the manner in which meetings will be held. The attached draft Regulatory amendments will make clear that the Committee has authority to conduct its business via in person meetings, telephone conferences or by electronic communication, which includes email and video conferences. The Committee will still be expected to exercise its discretion regarding the record that is made of the meeting which can include email strings, voice recordings, minutes or other memorandum that will document the decision of the Committee as is necessary in the circumstances.

Exhibits/Appendices:

Appendix A - Draft regulatory amendments
### Appendix A

**NOVA SCOTIA BARRISTERS' SOCIETY**

**REGULATION AMENDMENTS**

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<th>Existing Regulation</th>
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<td><strong>9.4 Referral to Complaints Investigation Committee</strong></td>
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<td><strong>Rationale</strong></td>
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<td>9.4.1 At any time after a complaint is received, the Complaints Investigation Committee may (a) require i) the member, or ii) any member of a law firm to attend before it for purposes of assisting with the investigation or for any other purpose consistent with the objects of the professional responsibility process; (b) require information to be provided by any person on the record and under oath or affirmation, to the Committee or to the Executive Director; (c) order i) the member, or ii) any member of the firm to appear before the Committee or the Executive Director for the purpose of providing information under oath or affirmation; (d) provide direction with regard to the investigation; (e) assume responsibility for the investigation, in which event a member of the Committee</td>
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<td>appointed by the Committee or such other person appointed by the Executive Director will act as an investigator; or (f) exercise any of the powers conferred upon it by Sections 36, 37, and 38 of the Act; (g) direct that an investigation be held in abeyance in accordance with an applicable policy; (h) refer a matter to the Fitness to Practise Committee if it determines that it is in the public interest to do so.</td>
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<td><strong>Committee Determines Process</strong>&lt;br&gt;9.4.2 Notwithstanding anything contained in this Regulation, and where the objects of the professional responsibility process require, the investigation of a complaint by the Executive Director and the Complaints Investigation Committee may be conducted in such manner as the Committee determines.</td>
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<td>9.4.2.1 The Committee may conduct its meetings in person, by telephone or by electronic communications including email and videoconference, as determined by the Chair of the Complaints Investigation Committee.</td>
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<td><strong>Notice</strong>&lt;br&gt;9.4.2.1 The Committee may exercise its powers under Section 37 without notice to the practising lawyer when it is in the public interest to do so.</td>
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MEMORANDUM TO COUNCIL

From: Tilly Pillay, QC
Date: November 22, 2019
Subject: Recommendation of GNC – Paula Minnikin

The GNC recommends the appointment of Paula Minnikin to the GNC Committee.

Ms. Minnikin applied to be a public representative on Council last spring and the GNC were so impressed with her that they sought to see if she would be interested in serving on a Society committee. Given her governance background, the GNC recommends that she be appointed to the GNC. Attached you will find a copy of Ms. Minnikin’s application and supporting documents.

Attachments
MEMORANDUM TO COUNCIL

From: Tilly Pillay, QC
Date: November 22, 2019
Subject: LIANS Board Appointments

The GNC was asked to recommend new appointments to the LIANS Board. The attached memo and supporting documents from Lawrence Rubin, Director of Insurance, provide the details for those proposed appointments. The GNC recommends that Robyn Elliott be appointed as Chair, Charles Thompson as Vice-Chair and that Sarah Almon and Raffi Balmanoukian be appointed as new members of the LIANS Board.

Attachments
This memorandum comes to the GNC pursuant to:

(i) Section 61 (2) of the Legal Profession Act (“LPA”) which provides, in relevant part, that LIANS shall be managed by a board of directors consisting of persons from time to time appointed by the Council;

(ii) Regulation 12.4.2 enacted pursuant to the LPA which provides that Council shall designate one of LIANS’ Board Members as chair of the Board; and

(iii) Regulation 12.4.3 enacted pursuant to the LPA, which provides that Council may designate one of LIANS Board Members as vice-chair of the Board.

At the end of this year, two members of LIANS Board will be stepping down having reached their term limit of service, these being David Reid, Chair and Tara Miller QC. In addition, given Mr. Reid’s retirement, LIANS requires a new Board Chair. The current Board Vice-Chair is Robyn Elliott QC.

LIANS’ Board has met and passed resolutions of its recommendations to Council to fill these Board vacancies and the positions of Board Chair and Vice-Chair commencing January 2020. Prior to providing these recommendations, a brief comment on LIANS and the Board’s process and considerations.

In late spring, LIANS posted on its website, in LIANSwers and in InForum its request for applications for the two Board vacancies. Both the Executive Director and the Manager, Equity and Access provided assistance in drafting the notice. The posting closed September 3, 2019. In addition, members of the Board and myself reached out to members for interest. The posting read as follows:

With retirements, LIANS is seeking expressions of interest to fill two vacancies on its Board of Directors commencing January 2020.

Interested Members practicing anywhere in the province are welcome to apply. Members are also welcomed, and encouraged, to forward this request to anyone they believe would be interested in becoming a member of the Board. LIANS is committed to equity and diversity and we especially encourage Members from historically underrepresented groups to apply.

For the information of members practicing outside HRM, the Board currently does not have representation from the following areas of the province: Bridgewater / Lunenburg, Wolfville / Kentville, Amherst and Pictou / New Glasgow.
Part of your expression of interest will include completion of a skills matrix. Though individual Board members need not have all of the skills being sought, it is hoped that the Board and its committees will, as a collective, have them all. We value the varied opinions, perspectives and experiences all our Board members bring.

LIANS offers the opportunity to participate in the management of the not-for-profit association that provides the mandatory professional liability coverage for Nova Scotia lawyers. With Board membership also comes the opportunity to sit on one (or more) of LIANS’ standing committees: audit, investment, governance, claims and the lawyers’ assistance program.

Those interested are asked to submit a cover letter, resume and the completed skills matrix to LIANS’ Governance Committee c/o LIANS Director of Insurance, Lawrence Rubin. Applications are welcome until Sept 3, 2019.

The applications received were referred to LIANS’ Governance Committee for consideration. At that same committee meeting, the Governance Committee considered the current Board members for the positions of Chair and Vice-Chair. The Governance Committee then provided its recommendations to the LIANS Board of Directors at the October 22, 2019 Board meeting which were accepted. At all levels of this process, diversity of race, gender, geographic area, type of practice and experience received consideration.

After consideration, the LIANS Board of Directors has resolved to make the following recommendations to the GNC and ultimately to Council for appointment to positions as set out:

1. That Sarah Almon be appointed to LIANS’ Board of Directors effective January 1, 2020;
2. That Raffi Balmanoukian be appointed to LIANS’ Board of Directors effective January 1, 2020;
3. That Robyn Elliott QC, the current Vice-Chair of LIANS Board of Directors, be appointed Chair of LIANS’ Board of Directors effective January 1, 2020; and
4. That current LIANS Board member Charles Thompson be appointed Vice-Chair of LIANS’ Board of Directors effective January 1, 2020.

Thank you.

Lawrence Rubin
Director of Insurance
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<th>JULY</th>
<th>AUGUST</th>
<th>SEPTEMBER</th>
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</table>
| **Council Meeting – July 19**  
**Big Issue: Strategic Plan**  
- Credentials Monitoring Report  
- TA Update and TARWG Update  
- DSA Recipient Announced  
  
**Other Activities**  
- CBA SOGIC Panel - July 16  
  (Halifax Public Library)  
- Pride Parade – July 20  
- Pride Reception - July 25 | **No Council meeting**  
- Strategic Plan via OnBoard for approval | **Council Meeting in the Community (?) – September 27**  
**Big Issue: EDI & TRC**  
- LIANS Report to Council  
- MDP Update (info)  
- Report from GNC on Court Liaison Task Force and Consideration of splitting GNC  
- Client ID Rules  
- DSA Policy amendments (Consent agenda)  
- CPLED  
- TARWG Report  
- Comms Update - Website  
- Communications to Committee Chairs  
- Posthumous Calls to the Bar  
- Strategic Plan Rollout  
  
**Other Activities**  
- Wickwire Lecture – Schulich School of Law – September 26 at 4:30 or 5:00 pm | **No Council Meeting**  
  
**Other Activities**  
- Notice re 2nd VP out to membership  
- FLSC Conference – St. John’s, NL, October 16-20  
- Call to the Bar – October 11 @ 10:30am  
- TRC Education Session – October 24 at 10:00 am (Hotel Halifax) |

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| **Council Meeting – November 22**  
**Big Issue: Strategic Plan & Activity Plan**  
**Council in the Community, reachAbility**  
- Introduction of 2020 Activity Plan  
- AFR update  
- LFCC claims and policy | **No Council Meeting**  
- Equity Lens training | **Council Meeting – January 24**  
**Big Issue: Review of Strategic Plan**  
- Approval of 2020 Activity Plan  
- Report from GNC re 2nd VP nominee  
- Interim reports and updated workplans from Committees  
- TARWG Report  
- Sole Practitioner Working Group  
- LSS update | **No Council Meeting**  
- Possible Council education session– second TRC presentation  
  
**Other Activities**  
- Nominations for 2nd VP close – February 14 |
**Council Year: July 2019 – June 2020**

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<th>MARCH</th>
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</table>
| Council Meeting – March 27  
Big Issue: Budget introduction/debate/primary approval  
- LIANS Report to Council  
- Equity & Access Monitoring Report  
- PR Monitoring Report  
- MDP decision  
Other Activities  
- 2nd VP Election – if required  
- Dara Gordon Event – Date TBD (or April?) | Council Meeting – April 24  
Big Issue: Fee/Budget approval/LIANS Levy  
Other Activities  
- Call to the Bar – April 17 @ 10:30am  
- Review ED Performance Evaluation Process and Participation | Council Meeting – May 22 –  
Council in the Community – Pictou Landing First Nation  
Big Issue: Review of Strategic Plan  
- Draft Annual Lawyer Report presented  
- PR Monitoring Report  
Other Activities  
- Complete Council Evaluation and ED Performance Evaluation Surveys | Council Session – June 12 @ 1:00pm  
Other Activities  
- Main Call to the Bar – June 5 @ Pier 21 10:00am  
- REC Event Honouring Articled Clerks from Racialized & Indigenous Communities – Date TBD  
- Council Dinner – June 12  
- Annual Meeting – June 13 @ Schulich School of Law  
- Annual Lawyer Report filings due – June 30  
- All Fees due – June 30 |

**To be slotted in:**
- Report on 2019 Annual Lawyer Report
- CBA Bench/Bar Reception & Dinner – November 21 (Convention Centre)  
Other Activities  
- Recognition Reception – November 22  
- Posthumous Calls to the Bar – November 7 @ 3:00 pm
- Introduction to budget (high level)  
- Regulatory Risk (update)  
- Communications plan  
- MDP update  
Other Activities  
- GNC interviews for 2nd VP (early January)  
- Call to the Bar – January 17 @ 10:30am  
- Minister’s Reception Honouring IB&M Law Students – Date TBD
- GNC interviews for 2nd VP (early January)  
- Call to the Bar – January 17 @ 10:30am  
- Minister’s Reception Honouring IB&M Law Students – Date TBD
# Engagement Calendar 2019-2020

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<tr>
<td>• July 10, 4:30pm: Kings County Bar visit</td>
<td>• September 20, 10 am: Antigonish-Guysborough County Bar visit, Nova Scotia Legal Aid Office</td>
<td>• September 21: Western County Bar visit (at the Western County Bar AGM – The Villages of Mountain Gap Resort)</td>
<td>• October 10, 12:00pm: Cumberland County Bar visit, Savoie Kitchen, Amherst</td>
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<td>• September 26, 4:30pm: Wickwire Memorial Lecture - Room 105, Weldon Law Building</td>
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<td>• October 23, 12:00pm: Pictou County Bar visit, New Glasgow Swiss Chalet</td>
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<td>• October 24, 10:00am: Treaty rights education session – Hotel Halifax</td>
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<td>• November 8, 3pm: Posthumous Calls to the Bar</td>
<td>• December 6: Executive meeting with CBA Executive</td>
<td>• January 17, Noon: Officers’ meeting at BoyneClarke</td>
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<td>• November 20: President attending 3rd Child Welfare Symposium at Membertou</td>
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<td>• November 22, 4:00pm: Recognition Reception, Bluenose Room, Hotel Halifax</td>
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Engagement Calendar 2019-2020

*To be added: other County Bar visits, Law Firm visits, Posthumous Bar call, other Society events
MEMORANDUM TO COUNCIL

From: Carrie Ricker, President
Date: November 22, 2019
Subject: President’s Report

It has been a busy fall since the September Council Meeting!

Continuing the importance of member engagement, I attended meetings with the Antigonish, Cumberland, Pictou and Western County bars to present the new strategic plan. I was accompanied by Jennifer Pink and Angela Simmonds for most of these discussions. Generally, members appeared to be positive about the direction of the Society and appreciated the focus on providing practical tools, including the equity lens toolkit and the succession planning materials. We also received positive feedback about the role of the Society in providing education in areas of competence and ethics, including cultural competence. We were encouraged, however, to look for a means of providing this education online and through shorter, interactive methods.

In October, Jim Rossiter, Elaine Cummings, Tilly Pillay, Jill Perry and I attended the Federation of Law Societies annual meetings and conference in St. John’s, Newfoundland. The conference focused on an issue of importance to all of us, lawyer wellness. Increasing attention and data collection about wellness in the legal community has clarified the alarming rates of mental health issues facing lawyers, particularly newer calls. As regulators, we must begin to take a leadership role in reducing stigma, increasing education about available resources and ensuring that our colleagues are supported to seek assistance early and when difficulties arise. Jill, Tilly and I also attended the Federation’s Strategic Planning session to provide feedback on future direction, including improving data collection and information sharing between societies across Canada. Our NS FLSC representative, Jill Perry, will also provide a report with further information about the FLSC Council meeting and strategic initiatives.

Following the FLSC meetings, the Officers, Angela Simmonds and guests shared a table with the NS Human Rights Commission at the Canadian Association of Black Lawyers (“CABL”)’s Gala celebration. It was an inspiring evening, which included celebrations of the 30-year anniversary of the Schulich School of Law, Indigenous Blacks & Mi’kmaq Initiative (IB&M) and awards being presented to NSBS members to recognize their immense contributions to our legal and African Nova Scotian and Black communities. I congratulate CABL on an outstanding annual conference, held for the
first time in Halifax, and to say thank you to all of our local members who volunteered their time and did an amazing job of bringing this important event to Nova Scotia.

Last month, the NSBS Executive also met with the Board of LIANS to discuss areas of potential collaboration, including lawyer wellness. As a next step, we hope to meet collaboratively with the Lawyer Assistance Program Directors to look at how the Society, LIANS and LAP can work together to better promote and educate members about LAP’s confidential services.

In November, LIANS and NSBS jointly hosted the 2019 Solo and Small Firm Conference. The conference was very well attended with over 100 members present from around the province. A full day, the conference presented practical tips and information on issues critical to members, including cyber security, insurance, succession planning, and assessing client capacity. Updates were also provided on key NSBS activities, including updates from each of the standards committees, information on new client ID regulations and upcoming trust account changes (both approved at Council’s September meeting), the equity lens toolkit and the Gender Equity Committee’s upcoming postcard campaign. Again, many thanks to all of the LIANS and NSBS staff and volunteers who presented and organized this event and for ensuring it offered great member value.

The Treaty Education and Culture Responsiveness session held by the Society on October 24th was outstanding. The presenter was outstanding, providing education and perspective about not only the history of treaties and treaty relations in Nova Scotia, but also the impact and implications of the breaches and misunderstandings of those treaties for our Indigenous communities. The session ended with an engaging and meaningful dialogue about how to begin the long-term journey toward reconciliation. The feedback from participants was overwhelmingly positive and I look forward to future sessions.

Engagement with the law school has continued. As President, I had the privilege of acting as a member of the bench, with the Hon. Justice M. Jill Hamilton and the Hon. Justice John Bodurtha. Each of the four students, Marc Lewis, Tawni Proctor, Raylene Langor and Maryn Marsland, did an outstanding job. I was also very honoured to attend on behalf of the Society at the ceremony for the unveiling of the portrait for former Chief Justice the Hon. Michael MacDonald last month.

One of the most moving events I have had the privilege to be a part of as President was the posthumous Bar Call Ceremony on November 8th for 11 soldiers who were killed in World War I prior to completing their articles. Having the opportunity to meet the families and be inspired by the stories of these soldiers’ bravery was very special. I would like to thank the Courts, and particularly the Hon. Chief Justice Smith, for the support and facilitation of this event. Thank you as well to the NSBS staff and most especially to Rebecca Hiltz-Leblanc and Patrick Shea for their research, dedication and immense time contribution to making this event happen.
At our October Bar Call Ceremony, I also welcomed 20 new and diverse members to the Society. Our next ceremony will be January 17, 2020.

Later this month, at the invitation of the TRC Working Group, I will be attending the Mi’kmaw Law for Mi’kmaw Children Symposium in Membertou to discuss infrastructure and support needs for the establishment of a Mi’kmaw. The Bench Bar Dinner and the NSBS Recognition Reception on November 22nd are also coming up in November. The Officers and Executive Director will also shortly begin meeting with several law firms in the province to continue our efforts to engage on issues of importance to the membership.

As always, if anyone has any questions, concerns or ideas, please reach out!
MEMORANDUM TO COUNCIL

From: Tilly Pillay QC, Executive Director  
Date: November 22, 2019 
Subject: Executive Director’s Report 

We have been busy these past couple of months moving ahead on the priorities that have been identified by Council (CPLED, MDPs, education sessions to promote cultural competency and supporting members). Here are some highlights from that work.

**CPLED**

After Council’s decision in September to join CPLED, we have been busy starting to communicate with firms, principals, law schools etc. about the upcoming changes. I have also started attending CPLED board meetings to ensure that our Society’s viewpoint is taken into account as policies and procedures are being developed. Transitioning our bar admission course to the new PREP model will be the focus of our Education and Credentials team over the next 6 months, all while continuing to deliver the existing program. I have attached to this report a copy of the materials that were prepared to share information about the new program (they are also available on our website). Come January, Kara Mitchelmore, CEO of CPLED and Jackie Mullenger will be meeting with law firms and the law school to share more information and answer questions. Kara will also be at our January Council meeting to provide an update.

**Federation of Law Societies Conference on Wellness**

This year, the Federation’s conference in October focused on wellness in the legal profession. There were a series of excellent speakers who spoke about the issue from various perspectives and reminded us not just to support lawyers’ wellness but to think about how we can support law students as well. There are concrete steps that law societies can take to address the issue, such as promotion of the availability of LAP, reduce the stigma around mental health issues by having colleagues share their stories, look at our internal processes and regulatory functions with this particular lens and promote wellness programs in legal spaces. This is a topic that is very much in our sights and we will be looking for opportunities to partner with others who can support us in this work.
**Educations sessions**

Thanks to the good work of the TRC Working Group, we held our treaty education session on October 24 and it was extremely well received. We got positive feedback from those who attended and were encouraged to keep on providing these types of education opportunities. We used the format of a hotel venue to see how that would work and how many people would attend. While that had some advantages (someone else took care of the catering and the logistics), the disadvantage is that it was too costly to record the session to make it available to those who were not able to attend.

We believe we can accommodate the number of people who would like to attend these sessions in person in our classroom so, in future, that is the venue we will use. It will also give us the option to use a webinar format, thereby allowing others to join remotely. The training on the Equity Lens Toolkit is now set for December 5 and it will be in the classroom and available via webinar. I will report back to you on how that works.

**Website**

Our new public website will be ready by the end of this year to go live. We are holding staff training sessions so that everyone feels comfortable uploading and updating materials in the new format. We look forward to receiving feedback on whether this new version is more user friendly and helpful.

*Attachment*
October 23, 2019

Dear Principal/Supervising Lawyer,

**Changes in the Society’s Bar Admission Program**

I wanted to let you know about some exciting changes in the Society’s Bar Admission Program. This change will begin with the new cohort of clerks starting articles in June 2020 as well as those who begin articles after November 1, 2019.

In the coming months, I will be arranging to meet with firms and law associations throughout the Province together with the CEO of the Canadian Centre for Professional Legal Education (“CPLED”), Kara Mitchelmore, to provide information on our new program. In the meantime, I thought I would answer some questions you may have.

**Why the change?**

For the last four years, the Society has been examining the current course and after our review determined that, for a variety of reasons, the *status quo* is not sustainable. In September, Council passed a resolution to move forward with a new Bar Admission Program.

**What is the new Bar Admission Program?**

CPLED created the new Bar Admission Program with the involvement of staff from all the participating law societies including our own. The program is called PREP (Practice Readiness Education Program) and will be very different from the current Bar Admission Program.

**How will PREP be different from the current course?**

The current Bar Admission Course is made up of 3 weeks of in-person class time, 10 weeks of online assessment and a Bar Examination.

PREP will have clerks:

1. Work through the program at the same time;
2. Be away from the office for only 2 weeks (one in November and one in April);
3. Work through a client file from beginning to end; and
4. Demonstrate competency at the end of the Program instead of at points throughout the year.

There will no longer be a Bar Examination.
What will the new Bar Admission Program look like?

For clerks that commence their articles in June they will begin with a one day orientation early in July. They will then complete 12 Foundation Modules online between July and October. Following that, in November the clerks will attend a one week in-person Foundation Workshop where they will practice the skills they have learned about in the Foundation Modules. After a short break in December, clerks will return to working online for three rotations in a Virtual Firm where they will work through files from beginning to end. Finally, in April they will attend a one week in-person Capstone Assessment that will determine if they have demonstrated sufficient competence to begin the practice of law.

What will this cost?

The actual cost of the new program is on par with the current course. At present students/firms pay $3,750 for the course. The Society subsidizes the rest of the cost, which is $2,250 per student. The cost of the new program is $6,100 per student. The Society is now examining whether the existing subsidy will continue.

I have attached some other anticipated questions; however, should you have any questions or concerns, I would be happy to meet with you or to speak on the telephone, whichever is easier for you.

I hope this gives you some information to begin to plan with your clerks for the upcoming year. We are working on changing regulations and policies, so please stay tuned for more information. If you would like to chat, give me a call at 902-422-1491 or email me at jmullenger@nsbs.org.

I look forward to working with you in the coming months.

Sincerely,

Jacqueline L. Mullenger
Director, Education & Credentials
**What is CPLED?**

CPLED is an organization originally formed by the three Prairie Provinces to offer their current Bar Admission course. We have been partnering with CPLED for all of our online components for many years now.

**How did we select the new Bar Admission Program?**

Recently CPLED conducted a thorough review of their program and determined that a new program was needed. As we have been partnering with them all along (they have provided us with online courses in our current program), they contacted the Society to discuss the creation of the new program. As part of the discussion, we have been involved in a regional working group looking at the creation of the new program and its content. We also sought feedback from principals and recently admitted lawyers in focus groups last December.

Our involvement in these discussions has allowed us to see the benefits of the new program for clerks and firms. As well, joining as a partner in CPLED will assist the Society in sharing resources, increasing efficiency and aid in the harmonization of admission programs across the country.

To review the various reports that went to Council on the new program, please contact [Jacqueline Mullenger](#), Director, Education & Credentials.

**Will clerks still be tested in the law?**

Yes, they will be expected to know the law for the purposes of completing their assignments and assessments. Although the focus is on the skills, they cannot demonstrate competency if they do not know the applicable law. There will no longer be a Bar Examination.

**Will this affect articling start dates or end dates?**

No, the students can still begin June 1st or at other times. The only students who will be affected for the first year are those that are starting between November 2019 and June 2020 as they will be in the first cohort in 2020 and therefore will take a little longer to complete all their requirements.

**Will my current clerk be affected by this?**

If your clerk waited to write the January 2020 examination or failed the July examination, they will be given an opportunity to write again in July 2020 rather than taking the new course.
Will there still be a call in June?

Yes, there will still be a call in June; however, it will be later in the month in order to provide sufficient time to complete the marking necessary for the Capstone Assessment.

Can the clerk work while they are completing the online materials?

Yes, the expectation is that the clerk is still working while doing the online course. However, you will need to give them sufficient time to complete their assignments. Remember that they will no longer need time to study for and attend the Bar Examination and they will not be gone for a full three weeks for the course. There should be ample time to permit them to do their assignments.

If I have more than one clerk, will they all be away from the office at the same time?

The answer is no. Although clerks will be working through the program at the same time, it will not be possible to have them all attend the in-person sessions at the same time. In order to keep groups small, for the best learning experience, there will be three, one week in-person sessions in both November and April. We will be able to space out your clerks so they are not all away from the office at the same time.

If I take a clerk after June 2020, what course do they take?

The course will run twice each year provided there is high enough enrolment. All clerks who start prior to October 15th will be entered in the PREP program. The first cohort will start in July and the second in January. Therefore, if your clerk starts after July, they will be placed in the cohort that begins in January, unless enrolment is under 12 clerks. If that happens, the clerk will be enrolled in the following July cohort.
MEMORANDUM

From: Kate Shewan, Director, Finance and Administration

To: Council

Date: November 22, 2019

Subject: Director, Finance & Administration Memo to Council

For: Approval □ Introduction □ Information X

   The Society’s internal Financial Statement package, for the five months ended September 30, 2019, including detailed financial reports and variance analysis was presented to, reviewed in detail, and approved by the Finance Committee on November 8th. A one page Council Summary is attached.

2. Results
   2.1.1. General Fund
   For the five months year to date there was a surplus in the General fund of $427,695 against a budget of $882. A positive variance against budget of $426,813. The variance to budget was a combination of revenues above budget by $91,000 and expenses $338,000 below budget.

   On the revenue side, fee revenue is $37,000 higher than budget due to a larger than budgeted number of practicing lawyers. Tuition fees within the Education group are $21,000 higher than budget with 80 paying students enrolled, compared to the budgeted 72. LRA course fees are $8,000 above budget. Interest and investment income are also ahead of plan.

   Expenses in the Professional responsibility department are $120,875 below budget, which accounts for the largest portion of the expense variance. This was driven by lower levels of activity in investigations, prosecutions and hearings. Salary and benefit costs were $35,000 below budget across various departments due to staff vacancies, and the unallocated contingency funds account for another $41,000 of the variance.

   2.1.2. Lawyers Fund for Client Compensation
   For the five months to date, LFCC expenditures exceed revenues by ($497,000), compared to a budgeted deficit of ($484,000) for a variance of ($13,000)

   The deficit is a result of the large claims paid out, which had been anticipated and budgeted. In addition there have been unbudgeted legal costs, related to multiple claim settlements, of $20,425. There have been over $900,000 in claims paid out with $15,000 recorded last year and $485,000 recorded as an expense in the current year. The remainder is offset by insurance claims receivable, and an interim claim has been submitted to the insurer.
2.2 Forecasts
As we are now reporting on five months of the year (and with some visibility into the sixth month), we are able to be more confident in forecasting the full year results. As with any forecast there remains significant uncertainty and potential for unanticipated events, particularly within the Professional Responsibility area where some events are difficult to predict.

We are forecasting that in the General fund there will be a surplus of $358,000, against a budget of $0 (breakeven budget). While in the LFCC we anticipate expenditures to exceed revenue by ($477,000) against a budget of ($450,000). Consolidated, the forecast deficit is ($119,000) against a budgeted deficit of ($450,000), a positive variance of $331,000. So in essence, the unplanned surplus in the General Fund is expected to cover the majority of the expected deficit in the LFCC.

On the revenue side, the forecast is 107,000 above budget. There are currently 2,045 practising lawyers, compared to our budget based on 2,010 lawyers. As a result, we have increased our full year forecast for fees by $63,000. The additional enrollments in the skills course are anticipated to provide an additional $35,000 in revenue, while investment gains already recognized account for another $9,000.

Expenses are forecast to be $253,000 below budget for the full year. We are anticipating savings compared to budget of $130,000 within Professional Responsibility, primarily in Prosecution and Hearing costs, with only one short hearing scheduled at this point. Salaries and benefits are anticipated to be $97,000 below budget for the year across all departments, from current and upcoming vacancies, although one vacancy is anticipated to be offset with $30,000 in contracting costs. The contingency fund has not been allocated to projects at this point, and we have forecast that $40,000 will be unallocated for the full year.

2.3 Prior year comparison.
For the first five months, in comparison with last fiscal year, in the General Fund revenues are up by $62,000 primarily through the higher fee and tuition revenues. Expenses are up by $150,000 as the result of higher salaries, most notably for the new General Counsel and Paralegal positions. Our analysis indicates that these positions are paying for themselves in savings of costs that would otherwise be incurred through external counsel.

In the LFCC, revenues are up by $50,000 compared to last year, with the allocation of fees from the end of the $80 fee holiday this billing year. While expenses are up by $504,000 from the claim payouts and legal fees.
### NOVA SCOTIA BARRISTERS’ SOCIETY - GENERAL FUND
#### Operating Group Budget Comparison Statement
FOR THE PERIOD ENDING 2019-09-30

<table>
<thead>
<tr>
<th>Revenue</th>
<th>Full Year</th>
<th>Full Year</th>
<th>Forecast vs O/U/N</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees Revenue</td>
<td>2,161,875</td>
<td>2,199,047</td>
<td>37,172</td>
<td>1.7%</td>
</tr>
<tr>
<td>Education &amp; Credentials</td>
<td>172,175</td>
<td>204,197</td>
<td>32,022</td>
<td>18.6%</td>
</tr>
<tr>
<td>Law Stamps</td>
<td>58,335</td>
<td>60,800</td>
<td>2,465</td>
<td>4.2%</td>
</tr>
<tr>
<td>Library Revenue</td>
<td>1,335</td>
<td>466</td>
<td>(869)</td>
<td>(65.1%)</td>
</tr>
<tr>
<td>Interest/Investment</td>
<td>30,300</td>
<td>49,335</td>
<td>19,035</td>
<td>62.8%</td>
</tr>
<tr>
<td>Management Fees</td>
<td>62,500</td>
<td>64,915</td>
<td>2,415</td>
<td>3.9%</td>
</tr>
<tr>
<td>Other</td>
<td>3,750</td>
<td>303</td>
<td>(3,447)</td>
<td>(91.9%)</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td>2,400,270</td>
<td>2,579,953</td>
<td>88,783</td>
<td>3.6%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Expenses</th>
<th>Full Year</th>
<th>Full Year</th>
<th>Forecast vs O/U/N</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Responsibility</td>
<td>528,666</td>
<td>407,791</td>
<td>120,875</td>
<td>22.9%</td>
</tr>
<tr>
<td>Education &amp; Credentials</td>
<td>332,166</td>
<td>306,698</td>
<td>25,468</td>
<td>7.7%</td>
</tr>
<tr>
<td>Legal Services Support</td>
<td>121,596</td>
<td>112,194</td>
<td>9,392</td>
<td>7.7%</td>
</tr>
<tr>
<td>Executive Director’s Office</td>
<td>304,232</td>
<td>296,881</td>
<td>7,351</td>
<td>2.4%</td>
</tr>
<tr>
<td>Equity and Access to Justice</td>
<td>129,575</td>
<td>113,009</td>
<td>16,566</td>
<td>12.8%</td>
</tr>
<tr>
<td>Governance &amp; Committees</td>
<td>136,855</td>
<td>114,081</td>
<td>22,774</td>
<td>16.7%</td>
</tr>
<tr>
<td>Finance &amp; Administration</td>
<td>572,083</td>
<td>487,482</td>
<td>84,601</td>
<td>14.8%</td>
</tr>
<tr>
<td>Library</td>
<td>184,555</td>
<td>149,360</td>
<td>35,195</td>
<td>19.1%</td>
</tr>
<tr>
<td>HR &amp; Communications</td>
<td>138,005</td>
<td>134,913</td>
<td>3,092</td>
<td>2.2%</td>
</tr>
<tr>
<td>Member/Lawyer Services</td>
<td>41,665</td>
<td>28,980</td>
<td>12,685</td>
<td>30.4%</td>
</tr>
<tr>
<td><strong>Total Expenses</strong></td>
<td>2,489,388</td>
<td>2,191,369</td>
<td>338,020</td>
<td>13.6%</td>
</tr>
</tbody>
</table>

| Net Contribution to Surplus                | 882       | 427,695   | 426,813            | -    |

### NOVA SCOTIA BARRISTERS’ SOCIETY - LAWYERS’ FUND FOR CLIENT COMPENSATION (LFCC)
#### Budget Comparison Statement
FOR THE PERIOD ENDING 2019-09-30

<table>
<thead>
<tr>
<th>LFCC Revenue</th>
<th>Full Year</th>
<th>Full Year</th>
<th>Forecast vs O/U/N</th>
<th>Note</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees Revenue</td>
<td>72,112</td>
<td>69,965</td>
<td>(2,147)</td>
<td>(3.0%)</td>
</tr>
<tr>
<td>Education &amp; Credentials</td>
<td>556,215</td>
<td>567,194</td>
<td>(10,979)</td>
<td>-2.0%</td>
</tr>
<tr>
<td><strong>Net Contribution to Surplus (Deficit)</strong></td>
<td>(484,103)</td>
<td>(497,229)</td>
<td>(13,126)</td>
<td>-2.7%</td>
</tr>
</tbody>
</table>

### Notes:
1. There are currently 2045 practising lawyers, 35 more than budgeted.
2. There are 8 more registrants for the skills course than was anticipated in the budget.
3. Prosecution and hearing costs are low, and only one future hearing has been scheduled, so the full year forecast has been adjusted to reflect this. Practice administration costs are anticipated to drop going forward with most of the Boudrot costs behind us.
4. Y.T.D. variance is from timing of professional services for exams and skills course expenditures. For the full year we anticipate savings in salaries from an upcoming employee departure.
5. No consulting fees paid in year to date and we anticipate savings in consulting for the full year.
6. Positive variance against budget in Salaries as a result of a staff vacancy. The cost increase from last year is due to the hiring of General Counsel and Paralegal, which occurred part way through last year.
7. Our analysis indicates that the cost savings from not outsourcing legal work have justified these positions.
8. Federation of Law Societies costs were low due to reimbursement of travel expenses from last year not received or accrued until this year. Forecasting in line with budget for the full year.
9. Contingency ($41K) not yet allocated, professional services/consulting cost not yet incurred as projects are just getting underway. Forecasting that $40K of contingency will remain unallocated for the full year.
10. Staff vacancy, and timing of expenditures on books/subscriptions. Full year forecast adjusted for salaries savings.
11. The market value of the investment portfolio decreased over the two months, resulting in negative unearned investment income in the period. Budget included a transfer from General Fund of $33K
12. Boudrot claims have now hit maximum of $500K. Insurance premium will be $24K under budget in the year.
MEMORANDUM TO COUNCIL

From: Victoria Rees
Date: October 24, 2019
Subject: Lawyers’ Fund for Client Compensation - Policy

<table>
<thead>
<tr>
<th>Date –</th>
<th>Executive Committee</th>
<th>Approved for submission to Council</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date –</td>
<td>Council</td>
<td></td>
</tr>
</tbody>
</table>

Recommendation/Motion:

This new policy is provided to Council for your information. It has been reviewed and approved by the Lawyers’ Fund for Client Compensation Committee (the Committee).

Executive Summary:

s. 57(1) of the Legal Profession Act provides that in its sole and absolute discretion, Council may pay compensation out of the Lawyers’ Fund for Client Compensation (“the Fund”) to a claimant if it is satisfied that:

(a) Money or other property was entrusted to or received by a member of the Society in the member’s capacity as a lawyer;
(b) The member of the Society misappropriated or wrongfully converted the money or other property; and
(c) The claimant sustained a pecuniary loss as a result of that misappropriation or wrongful conversion.

Council has delegated to the Committee authority to approve claims in whole or in part, or deny claims which are made in an amount less than $5,000. Otherwise, the Committee makes recommendations to Council for payment in whole or in part, or denial.

When any claims are approved for payment, Regulation 11.6.1 requires that claimants execute assignments and releases of claim which then entitle the Society to take action, and claim on its own behalf to recover payments out of the Fund. Claims payments are therefore sent to claimants’ lawyers or counsel retained by the Society, with
instructions to hold the payments in escrow pending execution by claimants of the Assignments and Releases. This ensures that the meaning of the documents are fully explained to claimants.

**Policy**

The purpose of this new comprehensive policy is to articulate a framework for the Committee to follow when analyzing a claim made to the Fund. There are a number of factors to consider, and steps for the Committee to work through in order to determine whether a claim is appropriate for the Fund. Most of the sections in this policy simply articulate the policies that have been followed and factors that have been considered for some years, but have not been documented. In many cases, the factors listed for consideration reflect those analyzed with past claims and therefore reflect relevant precedents, as well as the application of administrative law principles including fairness and public interest. Where required, such as with regard to evaluation of tax implications, expert advice was obtained from an accountant.

The first issue is determining the purpose for which the funds were held. Wrongfully converted funds must have been entrusted to a member of the Society in that member’s capacity as a lawyer. The policy sets out a number of factors to be considered by the Committee to determine whether the claim is within the scope of the criteria set out in the Act and regulations.

Claims made to the Fund must be filed within six months of a claimant becoming aware of the loss. The Committee can extend this time limit to 24 months, and the new policy sets out factors to consider in determining whether an extension is appropriate in the circumstances.

In the event that the funds claimed were paid as legal fees, this policy provides the Committee with a process to determine whether some of the funds were actually earned by the lawyer and how to calculate an appropriate hourly rate, the value of the work completed and any tax implications. If the funds paid to the lawyer were not for legal fees, the Committee must then determine the nature of the relationship between the claimant and the lawyer, whether the claimant is sophisticated or vulnerable, whether the claimant was reliant on the involvement of the lawyer in an investment scheme, whether the claimant may have been contributorily negligent etc. These claims can involve complicated legal matters that may involve third parties, further complicating the determination of the lawyer’s responsibility for any loss the claimant may have suffered.

The purpose of this guidance is to assist the Committee in undertaking thorough analyses, and making fully informed and consistent decisions on increasingly complex claims for reimbursement. This is extremely important for purposes of transparency and as part of a risk based process, in the public interest. It is also useful as a training and orientation tool for new committee members.

**Exhibits/Appendices:**

1. Lawyers’ Fund for Client Compensation Committee Policy
### Professional Responsibility Policy

<table>
<thead>
<tr>
<th>NAME OF POLICY</th>
<th>Lawyers’ Fund for Client Compensation Committee Policy on Assessment of Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>APPLICABLE SECTIONS OF THE LEGAL PROFESSION ACT AND REGULATIONS</td>
<td>Part IV of the <em>Legal Profession Act</em> and Part 11 of the Regulations made thereunder</td>
</tr>
<tr>
<td>Approved by LFCCC</td>
<td>Effective 2019-09-12</td>
</tr>
</tbody>
</table>

The purpose of the Lawyers’ Fund for Client Compensation (LFCC) is set out in section 55 of the *Legal Profession Act*:

55(2) The purpose of the Fund is to compensate claimants who have sustained pecuniary losses because of misappropriation or wrongful conversion of the claimants' money or property by a member of the Society or by a law corporation.

and the Regulations made thereunder:

11.2 Purpose of Fund
11.2.1 The Fund established under Part IV of the Act is to compensate claimants who have sustained pecuniary losses because of misappropriation or wrongful conversion of the claimant’s money or property by a member of the Society or a Law Corporation.

Part IV of the *Legal Profession Act* and Part 11 of the Regulations made thereunder, provide Council’s and the Committee’s authority in respect of payment of claims.

**Council may pay compensation to claimants**

s. 57(1) provides that “In its sole and absolute discretion, the Council may pay compensation out of the Fund to a claimant if it is satisfied that

(a) Money or other property was entrusted to or received by a member of the Society in the member’s capacity as a lawyer;
(b) The member of the Society misappropriated or wrongfully converted the money or other property; and
(c) The claimant sustained a pecuniary loss as a result of that misappropriation or wrongful conversion.
Council has delegated to the Committee authority to approve a claim in whole or in part, or deny a claim, if the claim is made for less than $5,000. Claims in the amount of $5,000 or above are referred to Council by the Committee with a recommendation respecting payment.

The LFCC is a fund of first resort, and a claimant may, therefore, not be required to take all other steps available to mitigate their loss before filing a claim with the Fund.

1. Purpose for which funds were held

1.1 The Fund is considered a fund of first resort, so a claimant is not required to demonstrate that they have taken civil action or otherwise exhausted any other route to recover the funds in question.

1.2 On review of a claim, the LFCC Committee must consider the reason that a claimant or third party placed funds in the trust of a lawyer, and may wish to consider whether the funds were:

- a retainer for legal services to be rendered;
- pre-payment of a lump sum fee for legal services;
- proceeds of a property sale;
- funds to pay a debt or otherwise satisfy an obligation whether potential or realized;
- assets to be divided on settlement of a dispute;
- investment purposes

1.3 If a claimant has paid funds to a lawyer that were intended to be applied to legal fees, then it is appropriate for the LFCC Committee to make sufficient inquiries to determine:

1.3.1 how much the claimant had agreed to pay the lawyer per hour for the services (or in the absence of direct evidence on that point, what a reasonable hourly rate for the lawyer in question to charge);
1.3.2 the value of the work completed by the lawyer.

2. Factors for consideration:

2.1 The primary factors to assess whether claims fall within the scope of the Lawyers’ Fund for Client Compensation are those set out in section 57 of the Act:

2.1.1 Was the claimant’s money or other property entrusted to or received by a member in the member’s capacity as a lawyer?
2.1.2 Did the member misappropriate or wrongfully convert the money or other property?
2.1.3 Did the claimant sustain a pecuniary loss (ie, loss of money or something that can be valued monetarily) as a result of that misappropriation or wrongful conversion?
2.1.4 Has the claimant met the requirement of providing notice of a claim within six months of becoming aware of the loss?

2.2 If the notice of claim is not provided within six months as required by section 57 of the Act, the Committee may extend the time frame for making a claim to a maximum of 24 months, where it is in the public interest to do so. When assessing the public interest in this context, the Committee may wish to consider:

2.2.1 Was the claimant a minor or operating under an illness or disability prior to filing the notice of claim?
2.2.2 Are there discoverability issues (e.g. claimant’s absence from jurisdiction) that can reasonably be believed?

2.2.3 Did the claimant misunderstand the reporting process due to the involvement of a Custodian or other agent of the Society?

2.2.4 Was the claimant involved in concurrent proceedings with the lawyer that delayed the reporting (e.g. mediation, taxation or other civil litigation)?

2.3 If the questions in paragraph 2.1 are answered in the affirmative, the Committee may determine that some or all of the amount claimed should be reimbursed from the Fund. Relevant factors the Committee may wish to consider at this stage of the review would include:

- 2.3.1 Were the funds received as a retainer for future legal work to be completed?
- 2.3.2 Were the funds received as payment in full on a flat-fee arrangement?
- 2.3.3 Were the funds paid in satisfaction of invoices received from the lawyer?

2.4 If any of the above conditions are met, then the Committee may wish to consider:

- 2.4.1 What was the hourly rate the claimant agreed to pay the lawyer? Was there a written retainer agreement?
- 2.4.2 If the hourly rate is not known or is not reasonable, then what is a reasonable hourly rate for a similarly situated lawyer?
- 2.4.3 How much legal work of value did the lawyer complete?
- 2.4.4 How many hours would that work reasonably have taken for a competent lawyer to complete?

2.5 Once the Committee is satisfied with the number of hours needed to complete the legal work of value that the lawyer did in fact perform for the claimant, then the Committee can calculate the appropriate amount to be reimbursed:

\[
\text{Amount actually paid by client} - (\#\text{hours of legal work of value} \times \text{reasonable hourly rate} + \text{HST}) = \text{reimbursement}
\]

2.6 If the funds paid by or on behalf of the claimant to the lawyer were not legal fees, then the Committee may wish to consider:

- 2.6.1 Is the nature of the relationship between the claimant and the lawyer relevant to the assessment of the claim?
- 2.6.2 Is the claimant vulnerable or inexperienced with lawyers?
- 2.6.3 Is the claimant sophisticated or experienced with lawyers; if so, did they take reasonable steps or exercise appropriate due diligence with regard to the safety of their funds or property held in trust by a lawyer?
- 2.6.4 Whether the claimant is vulnerable or sophisticated, might they be contributorily negligent?

2.7 If the funds entrusted to the lawyer were to be invested, then the Committee may wish to consider:

- 2.7.1 What was the lawyer’s level of involvement?
- 2.7.2 What was the role of the lawyer in legitimizing the scheme, and the claimant’s reliance on the lawyer’s involvement?
2.7.3 Was there any involvement of the lawyer in the preparation of documents for the investment transaction or any direct contact of the lawyer with the claimant?
2.7.4 Should the claimant be found contributorily negligent by their failure to conduct their own due diligence regarding the investment? If so, by what percentage should the claim be reduced to reflect that responsibility?
2.7.5 Did the lawyer actively induce the claimant to invest money, and if so, did the lawyer know or ought the lawyer to have known that the investment may not be secure or otherwise as presented to the claimant?
2.7.6 Did the lawyer suggest the claimant obtain independent legal advice regarding the investment agreement?
2.7.7 Did the lawyer perform any legal services of value which should serve to reduce any portion of this claim?

2.8 If the funds were a loan or left in trust with the lawyer for a specific purpose, then the Committee may wish to consider:

2.8.1 What amount is fully supported by the evidence?
2.8.2 What amount is partially supported by the evidence and is it possible to obtain further supporting evidence?
2.8.3 What amount is not supported by the evidence, but is consistent with similar fact evidence and patterns of theft by the lawyer observed in other circumstances, if other claims involving this lawyer have been approved?
2.8.4 What is the claimant’s level of sophistication and trust of the lawyer that may have contributed to the loss?
2.8.5 What steps would or should a reasonable person under the same circumstances have taken to mitigate the loss?
2.8.6 Was the claimant contributorily negligent in a way that justifies a reduction in the amount of the claim in whole or in part? If so, by what percentage should the claim be reduced to reflect that responsibility?
2.8.7 Did the lawyer perform any legal services of value which should serve to reduce any portion of this claim?

3. **Samples for calculation of HST**

3.1 If the lawyer should be paid $200/hour (rate determined by retainer agreement or community standard) and the Committee finds evidence to demonstrate that the lawyer completed 4 hours of work on the claimant’s file, then the total amount the lawyer should have been paid from the claimant’s retainer would total $200 x 4 hours + hst ($800 + $120hst = $920).

3.2 If the claimant demonstrates that the lawyer received $5000 in trust and that total has been entirely, and inappropriately, exhausted by the lawyer, then the claimant would be entitled to receive reimbursement from the fund totaling $4080 ($5000- ($200x4 = $800 + $120hst) = $920).

3.3 Similarly, where the claimant has received, and paid, invoices from the lawyer that purport to demonstrate the work completed on the file and it is later demonstrated that the claimant was overbilled, the claimant will be entitled to reimbursement of the funds paid that exceed the work actually done, minus the HST.
Example
For example, an Estate was billed, and paid to the lawyer, $35,000 in total. If on review by the Committee it is determined that the lawyer only did work totaling $15,000 (assuming $200/hour x 75 hours, or $15,000 x 15% = $17,500), the client may then qualify for reimbursement of $17,500 ($35,000-$17,500). This would be the case regardless of whether the lawyer actually remitted HST on the $35,000 billed to the Estate or not.

*It should be noted that in many cases where fees have been pre-taken or a file has been overbilled, resulting in a loss to the claimant, it is often the case that the HST was not remitted by the lawyer.

3.4 If the lawyer is ordered to reimburse the Fund through a hearing order or other civil judgment, the lawyer will only be required to pay the actual amount the claimant received from the Fund.

3.5 Because payments made from the Fund are treated as *ex gratia* payments they do not subject the Society to any HST liability.

4. Other funds held by lawyer

4.1 Not all claims involve funds paid to a lawyer for legal fees. For example, funds may be received by a lawyer that are intended to be directed into an investment fund. Sometimes these funds may then be directed by the lawyer to other individuals and/or companies and thereby misappropriated. HST would not be calculated on these claims, if approved.

4.2 Other claims could be related to loans that a lawyer requests from clients. The funds to make the loans may come from settlements of legal matters (ie, equalization payments on divorce; insurance proceeds, etc). In such cases, HST will not be calculated.

5. Assignment and Release of Claim

5.1 If a claim for compensation is approved in whole or in part, Regulation 11.6.1 requires that payment be provided to the claimant’s counsel, or counsel appointed by the Society for his purpose, in escrow, pending execution by the claimant of an Assignment entitling the Society to claim on its own behalf to recover payments made out of the Fund, and a Release from any future claim which the claimant may have against the Society and the Fund.

5.2 As part of the claims application process, and prior to receiving payment, a claimant must also consent to release of the complainant’s name and claim information to law enforcement authorities, unless Council consents to the withholding of such information, in accordance with Regulation 11.6.2.