# COUNCIL MEETING AGENDA

**Date** Friday, January 24, 2020  
**Time** 9:00 a.m. – 4:30 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>
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<tbody>
<tr>
<td><strong>1. INTRODUCTORY MATTERS/CALL TO ORDER</strong></td>
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<tr>
<td>1.1</td>
<td>Introductory Remarks</td>
<td>10</td>
<td>C. Ricker</td>
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<td><strong>2. DISCUSSION OF BIG ISSUE (EDI)</strong></td>
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| 2.1 | TRCWG Update  
Angelina Amaral will present an oral update from the Society’s Truth and Reconciliation Commission Working Group | 30 | A. Amaral | | Update; Discussion |
| 2.2 | Equity & Access Office Update  
Equity & Access Manager, Angela Simmonds, will provide Council an update on activities undertaken by the Equity & Access Office. | 30 | A. Simmonds | 5 | Update; Discussion |
| 2.3 | Debrief from Council in the Community  
Council will briefly discuss lessons learned from November’s Council in the Community session, in preparation for a larger discussion in March | 15 | C. Ricker | 18 | Discussion |
| **3. POLICIES/PROCESSES** | | | | | |
| 3.1 | Committee Chair updates  
Committee chairs provide updates to Council on work plan progress. A recommendation to amend the Finance Committee terms of reference will also be presented during this time. | 90 | C. Ricker | 20 | Discussion |
| 3.2 | Activity Plan  
Council will discuss changes to the 2019-2020 Activity Plan | 20 | C. Ricker | 81 | Discussion; Decision |
| 3.3 | CPLED Update  
Kara Mitchelmore, CEO of CPLED, will present and answer questions | 30 | K. Mitchelmore | | Discussion |
| 3.4 | LSS Update  
The Society’s Legal Services Support Team will provide and update on their work and present the new succession planning toolkit | 20 | J. Pink, R. McCleave | 98 | Discussion |
### 3.5 High Level Overview of Budget
Kate Shewan, Director of Finance & Administration, will provide an introduction to the upcoming budget

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### 3.6 Funding for PREP program
Cheryl Canning, Chair of the Credentials Committee, will present a recommendation to Council for funding PREP tuition

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<tr>
<td>20</td>
<td>J. Mullenger, C. Canning</td>
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### 3.7 Council Communications Plan
C. Ricker will introduce the new Council Communications Plan

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### 3.7 LAP Report
Lawrence Rubin, Director of LIANS, will introduce a report describing usage of the Lawyers’ Assistance Program

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<td>L. Rubin</td>
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### 4. IN CAMERA

### 5. APPROVALS

#### 5.1 TARWG Accounting Certificate
The Trust Account Regulations Working Group seeks approval for proposed amendments to Regulation 4.10.3 “Requirements for opening a trust account”

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#### 5.2 CPCC recommendation re: technology competence standard
The Code of Professional Conduct Committee seeks approval for proposed amendments re: Technological Competence, and Chapter 3.4 Housekeeping

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<td>V. Rees</td>
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#### 5.2 Creation of Solo and Small Firms Working Group
T. Pillay QC, Executive Director, seeks approval to establish a group that is dedicated to supporting sole practitioners and small firms

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<td>T. Pillay</td>
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#### 5.3 Merger of EAC and CPCC
V. Rees seeks approval for the proposed merger of the Code of Professional Conduct Committee with the Ethics Advisory Committee

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### 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 Officer (Jane Willwerth) prior to the meeting.

#### 6.1 Minutes of November 22, 2019, meeting

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#### 6.2 Regulatory amendments to support splitting GNC into two committees

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<tr>
<td>6.3</td>
<td>Amendments to Regulation 4.6 regarding the definition of “sole practitioner”</td>
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<td>LFCC Policy on Assessment of Claims</td>
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<td>6.5</td>
<td>Real Estate Standard 3.4 Discharge of Mortgages</td>
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Appointments:
- Governance Committee: Bryan Darrell (Chair), Andy Nickerson QC, Jim Rossiter QC, Josh Santimaw, Patrick Young, Michelle Higgins, Rebecca Hiltz LeBlanc
- Nominating Committee: Michelle Awad QC, Ann Levangie, Tuma Young, Sheree Conlon QC, Alonzo Wright QC, Alisha Brown-Fagan, Phil Star QC
- Supreme Court Liaison Committee: Bob Carter (Chair), Bryna Hatt, David Hutt
- Law Office Management Committee: Anna Manley and John Boddie,
- Real Estate Standards Committee: Lola doucet and Raffi Balmanoukian

6.7 | Resignation of Nancy Rubin QC from the Supreme Court Liaison Committee |
6.8 | Resignations: Jennifer Elaine Barnes Standen, Lauren Elizabeth Degabriele, Conor Patrick Doyle, Pamela Kristen Earle, John H. Cuthbertson QC |

### 7. FOR INFORMATION

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<tr>
<td>7.1</td>
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<td>2019-2020 Engagement Calendar</td>
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<td>7.3</td>
<td>President’s Report</td>
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<td>7.4</td>
<td>Executive Director’s Report</td>
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<td>7.5</td>
<td>Standards for introduction: Standard 2.4 Plans and Surveys, Standard 2.5 Encroachments, Standard 3.9 Trustee’s Deeds, Standard 3.10 Estates, Standard 3.17 Options and Rights of First Refusal</td>
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*Updated August 28, 2019*
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<tr>
<th>Standard 5.1 Zoning and Occupancy Permits</th>
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<td>7.6 Report from the Federation of Law Societies of Canada</td>
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<td>7.7 Globe &amp; Mail: Everyone turns to lawyers for #MeToo advice, but the legal community needs its own reckoning</td>
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8. **WRAP UP**

9. **The 2 Minute Evaluation**  
   *Council members are asked to complete the evaluation*

10. **MEETINGS**

   - 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: Angela Simmonds, Manager, Equity & Access
Date: January 3, 2020
Subject: Update from Equity and Access Office

Date—January 8, 2020
Executive Committee
N/A

Date—January 24, 2020
Council
For Information

This memo describes initiatives undertaken by the Equity & Access Office following two Council meetings in the Community: at Millbrook First Nation in September 2018, and at Cherry Brook in May 2019. Council and staff received feedback from the Bar, stakeholders and community members at both of these meetings, and the activities described below represent our initial efforts to incorporate this feedback into our work.

**Community Engagements**

**Engaging Youth**
We heard from community members, particularly at Cherry Brook, that young people did not aspire to become lawyers because they rarely see role models in the profession that look like them. Since learning this, I have contacted the SchoolsPlus coordinator and have been able to visit local High Schools. I have been to Auburn High School, Dartmouth, Astral Drive Junior High and Nelson Whynder. Over the next few months, we will continue to collaborate.

I was also asked to participate in the Co-op program for high school students who had a particular interest in becoming a lawyer. Two students from Auburn High School and C.P Allen worked with me over the course of 3 days.

I was able to participate in “Take your Kids to Work,” a project started by the Nova Scotia Judiciary. This initiative enables grade 9 students to spend the day at Supreme Court. In the morning, we
were in court and had a tour of the building. In the afternoon, I spoke with them about the IB&M initiative, law school and the journey to law school and different jobs within the legal profession.

This month, our office will be supervising a Dalhousie University practicum placement student in their 4th year of undergraduate study in Gender Studies and Law, Justice and Society. This student will focus on research and provide a project to support the work of the office and Society. The subject and scope of this research is to be determined.

Lastly, I participated in an event for youth and undergraduate students at the Mi'kmaw Friendship Centre to discuss law school and provide tips for when someone is ready to apply to law school.

Engaging Law Students
During a Council in Community meeting, we heard from two law students about wanting more support from the Society during law school rather than just at the end. From this, the REC and GEC committees have reached out to the Law Student Societies and will be taking part in Law Hour. Law Hour is an opportunity to have members of the profession come in to share their experience as a lawyer in their area of practice over a noon hour. Typically, this takes place once a month and is open to all students. Committee members also plan to meet with the Presidents of the Student Societies to see if there are ways we can further support students.

The office continues to work closely with the Director of the IB&M Initiative, Prof. Michelle Williams, with the mentoring program, career panels, and student workshops. I have also been invited to be a guest lecturer for the African Nova Scotians and the Law course offered to 2nd and 3rd year students.

Lastly, we have collaborated with the Career Services Office at the Law School and will be providing education sessions for the Law+ Program. Where students are given an opportunity to develop a series of skill development workshops. Some topics we will cover are cultural competency, equity and biases.

Next Areas of Focus

*Sexual Harassment and discrimination:* We have a working group within the Society who is focusing on an internal process to deal with harassment and discrimination claims from clients or lawyers, articling students and law students.

I have joined the CBA Sexual Harassment Working Group. With this partnership, I will also be able to facilitate the Bystander Intervention Training to people working within the legal profession.

*Equity Lens Toolkit rollout:* The Equity Lens Toolkit is now publicly available following the launch of our new website. This was accompanied by a webinar and in-person session I delivered earlier this month introducing the toolkit. The toolkit has garnered a lot of interest, and we expect to receive more requests for in-person training about its use.

*Supporting Committees and the Strategic Plan:* My office will be assisting committees to identify and prioritize action items, and incorporate them into their work plans for the next 16 months.
Responding to the surveys sent out to the membership by the GEC and the TRC working group:
There were two surveys put out to the membership this year regarding equity initiatives. There will need to be follow up with action items to support the gaps identified through the surveys. Specifically, for GEC’s sexual harassment survey, it will be important to share with the membership what will be done with the responses received.

Education of the membership: Cultural competence continues to be a priority as indicated in the Strategic Plan. Committees, with the support of the Equity & Access Office, might research and analyze what mechanisms could be in place to ensure members are accountable for delivery of culturally competent legal services, and that we are able to support them in that. During the roll out of MSLEP, it will be important to continue to work with LSS, specifically sections 9 and 10 of the MSLEP, which has to do with equity and diversity.

The draft of the Prison Handbook is to be completed.

Work stemming from Council in the Community with reachAbility: The Office has begun developing an action plan from information received during Council in the community with reachAbility in November.
MEMORANDUM TO COUNCIL

From: Angela Simmonds, Manager, Equity & Access

Date: October 30, 2018

Subject: Themes, Ideas and Next Steps from the Millbrook Council Meeting

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From the discussion with members of Nova Scotia Indigenous Bar and community members at the September meeting in Millbrook, the Equity and Access Office has been drafting immediate next steps to restore the Society’s relationship with the Indigenous community. With an improved relationship with the Indigenous Bar, we will create a better dialogue with an intentional focus on our response to the Calls to Action of the Truth and Reconciliation Commission.

Below you will see the key themes and ideas that emerged from the conversations in the lunchtime discussions in Millbrook.

1. INCREASING SUBSTANTIVE KNOWLEDGE AMONG LAWYERS AND COUNCIL MEMBERS

- The law: Differences between Indigenous and Aboriginal Law; Treaty Law; Gladue processes; how do Aboriginal/Indigenous law affect your practice?
- Cultural competence: themes include: trauma, privilege, contemporary issues in Indigenous communities, awareness of ‘the work’ (i.e. what other organizations/groups are doing to address issues relevant to Indigenous communities), poverty, intersectionality, blanket exercise, systemic discrimination, diversity within Indigenous communities, Indigenous culture pre-colonialism and what changed after the arrival of Europeans.
2. IMPROVING REPRESENTATION, RETENTION AND ENGAGEMENT

- **Representation** begets participation: if people see others in the room that look like them, they are more likely to speak, run for Council, etc. So encourage this with retention strategies.

- **Retention**: Understand factors that lead women/Indigenous folks to leave practice: firm culture, micro-aggressions, poor interactions with NSBS staff; factors normalized in broader society that are reflected in their firm
  - Which firms are doing good equity work? What are they doing? Learn from them

3. ARTICULATING PERSONAL AND ORGANIZATIONAL RESPONSIBILITY

- **Action**: Don’t rush reconciliation! Always reflect on what we’re doing and what the meaning of our action is. Do more than just apologize for the past.

- **Recognize** that the system we work in is colonial by design. Remember that lawyers themselves play an important role in bringing about systemic change outside of regulation/MSELP, such as addressing over-incarceration, for example, or increasing the use of Elders in court proceedings. Lawyers should feel a collective sense of responsibility for tackling collective/complex problems like system-generated offenses, or the lack of Indigenous judges (one example: most Mi’kmaq lawyers work for Indigenous organizations but most judges come from private practice. How do we change that?).

4. IDEAS FROM THE COMMUNITY

- Many lawyers only use their robes once or twice a year and would be happy to have them available for loan the rest of the time through the Barristers’ Library. This would help other lawyers who don’t need robes often and can’t reasonably afford to buy their own

- Help Indigenous communities as they seek to establish self-governance

- Have a specific seat on Council for an Indigenous lawyer, and one for a 0-5 year lawyer

- Invite people to attend Council meetings – most don’t know that they are open to the public

- Increase opportunities for interaction between students and lawyers (e.g. facilitated networking event after the Wickwire lecture)

- Establish joint projects for the GEC and REC

- Run a trust fund to help those in non-traditional practices

- Establish joint work between GEC and Council (in light of GEC’s expressed desire for a stronger relationship)

**MOVING FORWARD**

The purpose of the lunchtime discussions with members of the community and the NS Indigenous Bar was to have a better understanding of how Council, the Society and members of the bar can support and apply the Principles of TRC. In order to be intentional in our commitment to engage members of the NS Indigenous Bar and the Indigenous community,
Council should focus on creating a renewed relationship that is rooted in recognition, respect, information sharing and responsibility.

In reviewing the themes from the discussions, there is a clear emphasis on providing further educational opportunities for both Members of Council and lawyers in general. Council may wish to consider the following: providing education sessions to lawyers and Council on Treaty Law; building more educational components into the Council agenda; and establishing cultural competence standards within LAP, as well as criminal and family standards in order to provide cultural and trauma-informed supports to Indigenous lawyers.

Some of the ideas emerging from the lunchtime discussions also propose that Council consider working with REC on ways to ensure Indigenous people/lawyers do not bear the burden of providing education to the entire profession. Indigenous participants of the Bar Skills Course reported that they often find themselves in situations where, as students, they are asked by instructors to share personal experiences of discrimination or trauma, or to explain cultural competence concepts to their fellow learners.

Also stemming from the discussions are suggestions for Council to work with GEC and REC to implement better support mechanisms for women in the profession. Examples of projects might involve providing better support to women in private practice/sole practice as they prepare for maternity leave, which would ultimately help improve representation, retention and engagement of women lawyers as they try to re-enter the profession.

**IMMEDIATE NEXT STEPS**

Members of Council should regularly engage in self-reflection as they carry out the Society’s TRC work; this can include talking amongst each other about how they are incorporating what they have learned into their everyday work, both around the Council table and at their firms and offices.

As Council has approved the TRC Working Group, members of REC have discussed the group’s make-up. Angelina Amaral, an Indigenous lawyer who works with Kwilmu’kw Maw-klusuaqn Mi’kmaq Rights Initiative, has been asked to chair this group with the support of Heather McNeill QC (REC). The following individuals were also invited to join the group: Tuma Young (REC, Council), Naiomi Metallic (past member of REC and Council), John Eddy (a lawyer with Atlantica Law Group and ally) and Ella Paul (Millbrook Community Elder).

Before they can begin their work, Council will need to clarify the Working Group’s mandate, term length, and powers in November. Following that, the Group must then determine the following:

- **The Work Plan:** The Working Group will need to identify its goals and projects both for 2019 and both for its overall work, and for what it will complete in 2019.
- **Recruiting Working Group Participants:** Once the draft work plan is ready, the Group should consider who else is best able to help execute it, and recruit them to join (e.g. Members of Council, members of Society committees and members of relevant groups and agencies).
- **Establish roles among the Group’s members.**
• Communicate to the rest of the Society about the Group’s existence, and what this means for others’ work.

We are eager to receive direction from Council and to provide all support necessary as you begin this exciting work.
MEMORANDUM

From: Jane Willwerth
To: Angela Simmonds
Date: June 7, 2019
Subject: May Council – table conversation summaries

For: Approval □ Introduction □ Information X

On May 17, Council held its meeting at the Black Cultural Centre for Nova Scotia in Cherry Brook. The day concluded with Council members having an opportunity to speak with attendees about the Society, answer questions, and learn how the work of Council and the Society can best improve access to legal services to African Nova Scotian communities.

A summary of the conversations at each table is provided below. Where provided, summaries are written by the Council member assigned to report back what was shared. Some have been edited for length and clarity. If summaries were not provided, I have created a summary from my own notes.

Summaries:

TABLE ONE – JILL PERRY

- We should clarify the role of NSBS: the general public does not know about us, so we should promote ourselves more.
- NSBS should provide information explaining what clients should expect/accept from their lawyers
- Question: What are the rights and responsibilities of both lawyers and clients?
- Dissatisfaction with NSLA lawyers as they are very difficult to get ahold of. There is a common belief that you are “screwed over” without a certificate
- How does NSBS treat discipline? There is a perception of a big difference in how the Rhyno and Howe matters were handled.
- Cultural competence is important, but concerns were raised that a mandatory scheme must avoid “box ticking” impetus
TABLE TWO – SHANE RUSSELL

- “If it feels comfortable it’s not reconciliation” This quote was attributable to Chief Justice MacDonald.

- Accused persons often have a sense of “intimidation” heading into Judicial proceedings. They very often feel uninformed as to the details of the proceedings and what is occurring around them. The physical appearance/layout of Court increases these feelings.

- There is a general fear that they (accused) have no recourse against the Crown Attorney who they feel may have acted inappropriately. There is also a fear that should they complain there will be retaliation.

- Stressing the importance of cultural assessments – delays due to lack of resources creates impression that they should only be sought for “big cases” when they should be sought for “little cases” as well.

TABLE THREE – CARRIE RICKER

(Note: Carrie’s notes were detailed, and are appended in full below)

- We discipline lawyers for the protection of the public, but the public doesn’t understand the written decision. How do we communicate to communities? We should share more information about processes, especially our alternative resolution processes, and how/why cases are resolved privately.

- How do we ensure community understanding of how we assess risk – what is community’s sense of risk with lawyers? How is it similar or different to ours?

- How do our regulations promote lawyers doing social justice work? Some lawyers fear being seen as a social justice advocate because it could do harm to their careers.

- A lot of concern re: access to justice for new immigrants: lack of cultural knowledge and understanding, lack of culturally appropriate homes for child placement. How can the Society support parent-side lawyers to be advocates for the specific needs of immigrant parents in the child protection system?

- Emphasis on the importance of cultural assessments in the family law system, especially with regard to child protection matters.

- Need for a clear and valid complaint process for when clients experience a lack of cultural competence by lawyers. This requires a description of core competence that distinguishes between cultural relevance, competency and humility. This competence should focus on lived experience rather than external validation. Training should be mandatory.

- Bias in jury selection was raised as a concern.
• The community would be receptive to legal clinics or pro bono services being brought in, but lawyers would need appropriate skills, the clinic should be held in a comfortable community space, and participants would have to overcome community skepticism.

TABLE FOUR – JIM ROSSITER

• When African Nova Scotians meet with their lawyers there is a sense they’re walking into “pre-conceived notions,” the lawyers’ minds are already made up.

• There is a sense the lawyers are not truly listening to their African Nova Scotian clients. Taking notes, yes. Listening, no.

• African Nova Scotians would like their lawyers to take the time to understand them, their backgrounds, their realities.

• Many African Nova Scotian clients bring supporters to meetings with counsel, either professional support workers, or family, or friends. There is a sense the lawyers are not as open and willing to discuss client cases when supporters are in attendance.

• It’s hard for African Nova Scotian youth to aspire to become lawyers when they don’t see lawyer role models from their communities.

TABLE FIVE – CHERYL CANNING

• This table echoed table four’s comments about bringing support workers

• Legal aid access – better communications from beginning required. Could NSLA create a handbook similar to the one El described in her presentation?

• Diversity in the legal profession leads to increasing diversity on the bench – this goes back to childhood/school system and steering black children into professions. An Afro-centric school could have an important role to play in this.

• It is important for members of the bench to come into community – both to teach and to learn.

• Cheryl noted that when she asked the table if they feel heard/respected by the justice system, the most common reply was “not yet”

• Concerns about the LTCA process: what happens once claims stop being heard? The program needs more help since only two NSLA lawyers working on it

• Cheryl introduced a statistic from the ABA – noted 50% of women of colour leave practice within seven years.
APPENDIX: Notes from table discussions at May 17th council meeting - C. Ricker

Discipline - How does the Barristers Society communicate its disciplinary decisions back to affected communities? Is there a way that we could explain the levels of disciplines in decisions? Decisions should be presented in accessible language so that they can be understood by the public.

The African Nova Scotia community perceives there is a disproportionate number of its lawyers being disciplined. Community lacks the context of our process and volume, lack the context of understanding our disciplinary processes and how other cases might be resolved without it becoming public. This makes it challenging for the community to assess whether or not discipline is truly disproportionate. Community would like a better understanding of the overall context.

Questions that arose:
- How does the barrister society account for nuances within community in its disciplinary processes?
- How can the community be better engaged in helping with personal wellness for lawyers?
- How do disciplinary processes better reflect cultural realities? How can the Bar Society ensure that our discipline processes are properly considering factors that elevate discipline in light of community needs and understandings?
- What does risk look like to NSBS and how is community/public’s view on risk considered in that determination?
- How is community understanding reflected in investigation?
- How do we ensure the community understanding and expectation is part of the society's consideration and determination of public risk?

It was noted that what the community expects and wants of its lawyers and how the community would balance risk to the public interest to their community may differ from what we as lawyers would expect. How can we further this dialogue and engage on this issue?

It was raised that sometimes lawyers from marginalised communities don't want to be viewed as social justice advocates because they fear a potential negative impact on their career. How can NSBS support lawyers to keep an active social justice voice while ensuring that there is not retribution for them from a career perspective?

The community members also identified significant issues existing with access to justice for new immigrants. There may be significant misunderstandings based on a lack of cultural knowledge and understanding. This is is seen particularly in child welfare. There is also an absence of culturally appropriate homes for placement which the creates cultural dissonance for children. The Society should look at supporting parent-side lawyers to be advocates asking for more case conferences, ensuring immigrants have
access to speedy translation in the justice system, promoting concurrent family work versus apprehension, raising consciousness of issues of lack of cultural competence. The Barristers Society should take a leadership role in looking at policies that need to be addressed and encouraging lawyers to adopt a more collaborative approach to family law and child apprehension issue.

Lawyers need to be trained on the value and necessity of cultural assessments. There are regional disparities as to the frequency of assessments. Lawyers should have a greater understanding of kinship as part of a community. Lawyers also need an understanding of the difference between race and cultural identity. Lawyers need to be leaders in asking in every case of removal with child protection whether or not there was an acknowledgement of racialization, ask the questions of whether or not racial and cultural issues were considered as part of the apprehension in every case. This should perhaps be established as a legal competence standard.

There needs to be a clear and valid complaint process for lack of cultural competence by lawyers. This would require a clear codified core competence in relation to cultural awareness. We need to draw a distinction between cultural relevance cultural competency and cultural humility. Each of these should be addressed as part of professional standards. This training should be part of a CPD type requirement, part of mandatory ethics requirements including certain number of hours. Society needs to ensure accountability to ensure that this occurs, it should be mandatory.

Any core competence training for lawyers should include the following:

- How to listen and truly hear from marginalised communities, acceptance and not seeking outside confirmation to believe
- Perspective from first voices and how they feel discredited
- Need to acknowledge mistrust within the system
- Teach how to ask questions in a respectful way - do you identify as African Nova Scotian to all clients - questions may feel difficult but you must ask to do your job competently
- History and impact of colonialism particular to the area where you practice - this must be community specific as it varies throughout the province
- Need to review the impact of trauma
- Conscious and unconscious bias including a reflective opportunity
- How to look for balanced and restorative assessments and ask for these in applicable cases
- The impact and history of systemic racism
- History of race of of racism and discrimination specific to the legal profession which NSBS should take a leadership role in researching and presenting

Jury selection was also raised as a concern. Currently during jury selection questions are asked in relation to bias based on the Parks case, but this does not reflect community perspective. Bias can be apprehended based on skin colour, but how do we
assess the bias in other jurors? How can we better ensure that members of community of similar communities are not eliminated unnecessarily and too frequently.

Community would be very receptive to seeing legal clinics or pro bono services being brought to the community, but the lawyers who participate need to have appropriate skills. It would need to be built over time and should be held in a community centre or church. There will be questions as to what the ulterior motive might be so need to have the appropriate expectations and relationships from the beginning.
MEMORANDUM

From: Jane Willwerth, Advisor, Governance, Policy & Planning
To: Angela Simmonds, Equity & Access Manager
Date: January 6, 2020
Subject: Feedback from November Council in the Community meeting

This memo summarizes feedback heard from workshop participants at the Council in the Community meeting held in November at the Halifax North Memorial Library. It is a summary of action items identified by the note takers for each table discussion.

Theme 1: Awareness of disability issues

- Lawyers need to understand that disabilities are not “just diseases,” and that legal problems do not happen in isolation of disability.
- Lawyers need to understand the role of a person’s support network, especially when a client brings a support person to a meeting (e.g. do not direct your comments to the support person instead of the client).
- Lawyers need to understand the impact of multiple biases on disability: race, sexual orientation and gender identity, and poverty all affect the experience of disability differently.
- NSBS should provide resources to lawyers that will help them understand the disability community.
- Lawyers need to understand the unique challenges faced by those with disabilities living in rural areas.
- Lawyers must recognize that our systems are not “set up” to accommodate disability, so it may be impossible for some clients to follow certain protocols, processes or procedures.

Theme 2: Accountability

- NSBS’s discipline processes should hold people accountable and help them access the supports/training they need. A good starting point would be teaching lawyers how to approach conversations about disability and accommodation with clients.
- NSBS needs to engage the community: consult, learn, and develop connections, and be present in community spaces.
• It is critical that NSBS initiatives be community-lead. We must trust that the community will help guide our initiatives effectively. “Don’t invite us to the table to eat the meal you made for us. Invite us to make the meal with you, and then we can all eat together.”
• NSBS needs to make it easier for lawyers to collaborate with other services providers.
• NSBS and LISNS need to educate communities about their roles and about the legal system.
• Mental Health Court should have wrap-around support in place.
• People in dominant cultures (e.g. those who are white, cisgender, without disabilities, etc.) need to hold others accountable for their discrimination, rather than wait for the response of the marginalized person.

Theme 3: More accessible legal services

• Access to information includes accessible language: use more plain language.
• Lawyers should be able to contact clients in multiple ways: phone, email, in person (house calls), TTL, outside of normal work hours, etc. This is an important part of “meeting people where they are.”
• Lawyers should develop their own networks of liaisons and informed care providers who they can refer their clients to for non-legal services. Many people report being referred by lawyers to other service providers who did not provide accessible services.
• Lawyers should also have contacts who they themselves can call for information, so that their client does not have to educate them in the midst of trying to use their services.
• Ask a client about adaptations they may need, regardless of whether or not they “look” disabled.
• Consider the accessibility of your physical office: is there disability parking nearby? Is it close to a drop off point? Is it accessible via public transit?

Theme 4: Mental health

• Lawyers need to understand that many symptoms of mental illness are stigmatized and are deemed the clients “fault” in ways that symptoms of physical illnesses are not.
• Lawyers should first ask themselves “how can I be more accommodating” before expressing frustration at a client not following complex or inaccessible processes.
• Jails are not an effective place to house people with mental illness.

Theme 5: “Quick tips”

• Public libraries can serve as a temporary offices for client meetings
• Ask during intake process if a client has someone who they would like to have supporting them at meetings.
• Remember technology is not accessible to everyone, especially outside of Halifax. Do not be over-reliant on technology to solve all accessibility problems.
• Do not rely solely on formal education to learn about the community: consume media from disabled voices; attend public events.
• The best thing a person can do when starting to become more accessible is be open to feedback and not get defensive.
## Complaints Investigation Committee (CIC)

### 2019-11-21

### Committee Mandate and Responsibilities

**Mandate:** See attached terms of reference

**Responsibilities:** See attached terms of reference

**Committee Chair:** Elizabeth Wozniak  
**Vice-Chairs:** Philip Leefe; Mark Scott QC

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

### Details for each Project/Initiative

1. **Name of project:** Embedding Triple P in the CIC process, including exploration of alternate or creative means to enhance competent and ethical practice.

   **Goal/outcome of project:** Consider and adopt measures so that a Triple P approach to regulation is embedded throughout the CIC process, and explore ways to correct and support enhanced competent and ethical practice by members through creative solutions including proactive and restorative approaches.

   **Timeframe for completion:** of education – ongoing  
   **Status:** ongoing

   **Resources required:** Director, Officer of Early Resolution, Equity & Access Manager, PRPPC

2. **Name of project:** Develop an understanding of the unique aspects of sexual harassment investigations and how to ensure an investigation is fair and thorough, while minimizing the
**Goal/outcome of project:** The CIC engages in education and discussion of principles, current law and tools for the conduct of investigations involving allegations of sexual harassment, and applies these learnings to relevant matters that are referred to them, in a fair, thorough, principled, proactive, proportionate, risk-focused and restorative manner.

**Timeframe for completion:** for education, March 2019; otherwise, ongoing

**Status:**

**Resources required:** Director, Complaints & Investigations Officer, Equity & Access Manager

### 3. Name of project: Review of Investigations Process arising from Court of Appeal decision in Howe

**Goal/outcome of project:** Upon receipt of the decision of the Court of Appeal in the matter of Lyle Howe, engage with the Review Team in identifying opportunities for learning and education, and any potential policy or procedural changes which may enhance the excellence of the professional responsibility process

**Timeframe for completion:** unknown

**Status:**

**Resources required:** Director, Review Team (TBD), PRPPC, General Counsel, Council
**Committee Work Plan and Progress Report**

**2020-2022**

<table>
<thead>
<tr>
<th>Professional Responsibility Policies and Procedures Committee (PRPPC)</th>
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<td>Last update: 2019-12-04</td>
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</table>

**Committee Mandate and Responsibilities**

**Mandate:** See attached terms of reference

**Responsibilities:** See attached terms of reference

**Committee Chair:** Frank DeMont, QC

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

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

1. The Society regulates the legal professional in the public interest in a proactive, principled and proportionate manner. We will:
   - Identify and remove regulatory barriers to support innovation in the delivery of legal services;
   - Explore, and where appropriate, support the viability of innovative models of legal services delivery (e.g. MDPs, “sand boxes”)

**Details for each Project/Initiative**

1. **Name of project:** Multidisciplinary practice – development of ethical and regulatory framework to support authorization of MDPs

   **Goal/outcome of project:** see MDP Project Charter attached.

   **Timeframe for completion:** May 2021

   **Status:** Approved by Council in principal March 2019; included in 2019-2022 Strategic Plan; Project Plan approved by CPCC July 2019; Council update September 2019 including Key Messages document; MDP Communications & Engagement Plan approved by CPCC October 2019; MDP surveys underway; review by Management Team July and October 2019; key messages and update reviewed with PRPPC 2019-12-02.
**Committee Work Plan and Progress Report**

2020-2022

<table>
<thead>
<tr>
<th>Resources required: Director, PR Counsel, PRPPC, CPCC, Council, Communications Officer</th>
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<tbody>
<tr>
<td>2. <strong>Name of Project</strong>: Amendments to the <em>Legal Profession Act</em></td>
</tr>
<tr>
<td><strong>Goal/Outcome of Project</strong>: Consider any regulatory and policy amendments that will be required to ensure consistency with the amended Act. Areas for review will include complaints investigation (language issues to ensure restorative approach); custodian/receiver/administrators; authority of CIC and Hearing Committee; and Lawyers’ Fund for Client Compensation</td>
</tr>
<tr>
<td><strong>Timeframe for Completion</strong>: TBD based on enactment of LPA amendments</td>
</tr>
<tr>
<td><strong>Status</strong>: Waiting for draft of the Act from DOJ</td>
</tr>
<tr>
<td>Resources required: ED, PR Counsel, PRPPC, Council</td>
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<tr>
<td>3. <strong>Name of Project</strong>: Embedding of Triple P in the PR process, including expansion of ADR tools and use of restorative approaches</td>
</tr>
<tr>
<td><strong>Goal/Outcome of Project</strong>: Consider and adopt measures so that a Triple P approach to regulation is embedded throughout the PR process, including expansion of ADR tools and use of restorative principles.</td>
</tr>
<tr>
<td><strong>Timeframe for Completion</strong>: ongoing</td>
</tr>
<tr>
<td><strong>Status</strong>: staff training through 2018 – 2020; presentation to Council in Millbrook September 2018; Hearing Committee presentation November 2018; cultural proficiency training for PR staff summer ‘19</td>
</tr>
<tr>
<td>Resources required: Director, PR Counsel, Equity &amp; Access office, PRPPC, CIC, Hearing Committee, Council</td>
</tr>
<tr>
<td>4. <strong>Review of Thresholds for Dismissal under regs. 9.2, 9.10 and 9.12</strong></td>
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<tr>
<td><strong>Goal/Outcome</strong>: The thresholds for dismissal under regulations 9.2, 9.10 and 9.12 are revised to reflect current best practices and plain language.</td>
</tr>
<tr>
<td><strong>Timeframe for Completion</strong>: July 2020</td>
</tr>
<tr>
<td><strong>Status</strong>: Committee member assigned to begin research with PR Counsel; counterparts survey underway December 2019</td>
</tr>
<tr>
<td>Resources: PRPPC, PR Counsel, Council</td>
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</tbody>
</table>
5. **Name of Project:** Ensuring transparency with PR Policies and Procedures

**Goal/outcome of project:** CIC and Hearing Committee policies, procedures and guidelines will be updated and collated in an accessible web format for committee and available to the public on our website.

**Timeframe for completion:** December 2019; to be ready for January 10, 2020 Hearing Ctte PD Day; CIC to be ready by March 2020

**Status:** Hearing Committee P&P document updated by General Counsel; PR department liaising with Communications Officer re web location; materials being collated and updated.

**Resources required:** PR Staff, Communications staff

6. **Name of project:** Lyle Howe case de-brief

**Goal/outcome of project:** Liaise with Team TBD to de-brief the Lyle Howe investigation, hearing and Court of Appeal decision to identify any areas for improvement in PR policies and procedures.

**Timeframe for completion:** COA decision released October 24, 2019. TBD

**Status:** awaiting next steps decision by ED

**Resources required:** Review Team, PRPPC, ED, PR Counsel

7. **Name of project:** Research and recommend measures to ensure the fair and effective handling of complaints of bullying and sexual harassment in the legal profession

**Goal/outcome of project:** on the basis of research into best practices by other Law Societies and regulators, consider whether current PR regulations, policies and procedures require amendment or refinement to effectively and fairly intake, investigate and, if necessary, prosecute complaints of this nature applying the lenses of Triple P, risk, equity & diversity. Initiatives to include:

i. exploring appropriate ways to provide support to complainants/witnesses/victims throughout the process
ii. amending regulations to permit Hearing Panel to appoint independent counsel to cross-examine witnesses when member is self-represented
iii. developing a ‘safe’ trauma-informed entry point for inquiries outside the PR process
iv. recommending education and guidelines for CIC and Hearing Ctte. on factors to consider when addressing such complaints
<table>
<thead>
<tr>
<th>Timeframe for completion: January 2022</th>
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<tbody>
<tr>
<td>Status: research ongoing; staff working group constituted; outreach to stakeholders including College of Physicians and Surgeons and CBA done; updates to CPCC and PRPPC done; committee chairs and staff training commenced 2018; PRPPC considering specific goals as of October 2019 including liaising with LIANS re expansion of LAP support for lawyer/complainants, and reg amendment to prevent direct cross-examination of alleged victim/witness by self-represented lawyer</td>
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<tr>
<td>Resources required: Staff Working Group, Communications Officer, PRPPC, CPCC (re Code amendments)</td>
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<table>
<thead>
<tr>
<th>8. Name of project: <strong>Policy on Abuse of Process re Complaints and Complainants</strong></th>
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<tbody>
<tr>
<td>Goal/outcome of project: Develop a policy for addressing and responding to complaints and complainants which/who constitute an abuse of the PR process, in an attempt to reduce the resources required to respond to these type of matters</td>
</tr>
<tr>
<td>Timeframe for completion: September 2020</td>
</tr>
<tr>
<td>Status: Ongoing; draft policy for review at next meeting</td>
</tr>
<tr>
<td>Resources required: PRPPC, Director PR, PR Counsel</td>
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<table>
<thead>
<tr>
<th>9. Name of project: <strong>Review of CRC standard of review</strong></th>
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<tbody>
<tr>
<td>Goal/outcome of project: Consider whether current standard of review (correctness – reg. 9.3.8) should be amended to ‘reasonableness’, and provide training to CRC re scope of review</td>
</tr>
<tr>
<td>Timeframe for completion: February 2020 to PRPPC; recommendation to Council May 2020</td>
</tr>
<tr>
<td>Status: Committee member assigned to consider current threshold for decisions in the regs.; possible amendments to the regulations governing the review process will be considered, following which a training session will be scheduled with the CRC to discuss the scope of their review.</td>
</tr>
<tr>
<td>Resources required: PRPPC, CRC, Director PR, PR Counsel</td>
</tr>
</tbody>
</table>
### 10. Name of project: **Review of regulation 9.2.3 investigations**

**Goal/outcome of project:** Develop a policy that sets out factors to consider when assessing whether information we have received warrants the commencement of an investigation under Reg. 9.2.3.

**Timeframe for completion:** February 2020 to PRPPC; recommendation to Council May 2020

**Status:** Introduction October 2019; Ongoing

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

### 11. Name of project: **Policy on scope of investigations**

**Goal/outcome of project:** Develop a policy and procedure for determining how to handle new allegations arising during the course of investigation; e.g. when they should be treated as a new complaint, when they can properly be considered an extension of the current complaint, etc.

**Timeframe for completion:** February 2020

**Status:** Legal opinion obtained July 2019; introduction to PRPPC October 2019; policy and procedure drafted by General Counsel and presented to PRPPC 2019-12-02; to return to PRPPC February 2020

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

### 12. Name of project: **Policy on security and confidentiality of information**

**Goal/outcome of project:** Develop written policy and procedures to identify the process for dealing with any privacy (confidentiality) breaches in the PR process, particularly those in violation s. 40 of the Act.

**Timeframe for completion:** September 2020

**Status:** Introduction October 2019; Ongoing

**Resources required:** PRPPC, Director PR, PR Counsel, General Counsel
Mandate and Responsibilities

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

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

**Responsibilities:**

- Consult with members, and other stakeholders as appropriate, respecting proposed amendments to the Code
- Make recommendations to Council respecting proposed amendments to the Code.

Matters assigned by Council’s Activity Plan

1. The Society regulates the legal professional in the public interest in a proactive, principled and proportionate manner. We will:
   - Identify and remove regulatory barriers to support innovation in the delivery of legal services;
   - Explore, and where appropriate, support the viability of innovative models of legal services delivery (e.g. MDPs, “sand boxes”)

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

### Details for each Project/Initiative

<table>
<thead>
<tr>
<th></th>
<th>Name of Project: Multidisciplinary practice – development of ethical and regulatory framework to support authorization of MDPs</th>
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<tbody>
<tr>
<td></td>
<td>Goal/outcome of project: see MDP Project Charter attached</td>
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<tr>
<td></td>
<td>Timeframe for completion: May 2021</td>
</tr>
<tr>
<td></td>
<td>Resources required: CPCC; Professional Responsibility Counsel, Council</td>
</tr>
<tr>
<td></td>
<td>Status: Approved by Council in principal March 2019; included in 2019-2022 Strategic Plan; Project Plan approved by CPCC July 2019; Council update September 2019 including Key</td>
</tr>
</tbody>
</table>
### 2. Name of project:

**Consideration of Amendments to Legal Profession Act vis-à-vis the Code of Professional Conduct**

**Goal/outcome of project:**

Consideration of Code provisions that may be relevant to upcoming legislative changes and report to Council (or the appropriate committee of Council)

**Timeframe for completion:**

ongoing

**Resources required:**  CPCC; Professional Responsibility Counsel, Council

### 3. Name of project:

**Consideration of ethics issues relating to technology and the future of the practice of law**

**Goal/outcome of project:**

Identification of ethics issues that may arise as lawyers and law firms become more reliant on new technologies and consideration of possible Code amendments that may be required to ensure that it remains relevant for modern law practice.

See articles included in Committee package of January 25, 2019; final amendments from FLSC received October 2019, for Council approval

**Timeframe for completion:**

January 2020

**Resources required:**  CPCC; Professional Responsibility Counsel, Council.

### 4. Name of project:

**Consideration of other issues or suggested amendments as requested by the Federation of Law Societies’ Standing Committee**

**Goal/outcome of project:**

Review draft rules as may be suggested from time to time by the Federation of Law Societies, engage in stakeholder consultation as appropriate and provide recommendations on proposed amendments to Council. Follow up on outstanding issues or suggested amendments.
<table>
<thead>
<tr>
<th>Timeframe for completion</th>
<th>Ongoing</th>
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<tbody>
<tr>
<td>Resources required (volunteer, staff):</td>
<td>CPCC; Professional Responsibility Counsel.</td>
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</table>

5. **Name of project:** Consideration of other issues or suggested amendments as requested by members, committee or the Council of the Society

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

**Timeframe for completion:** Pending receipt of any such requests.

**Resources required** : CPCC; Professional Responsibility Counsel

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6. **Name of Project:** Amendments to Chapter 6.3 Sexual Harassment and Discrimination

**Goal/outcome:**

(i) Review the recommended amendments from the FLSC Model Code of Conduct Committee to provide greater clarity and guidance regarding lawyers’ duties and professional responsibilities in respect of sexual and other forms of harassment and discrimination.

(ii) Recommend to Council the means to educate members and the public with regard to these amended duties.

**Timeframe for completion:** December 2020

**Resources required:** FLSC Model Code Committee; CPCC; PR Counsel; General Counsel; Council
The work of this Committee advances the Society’s Strategic Framework at the highest level as it provides support to Council and the membership respecting the Purpose of the Society (to uphold and protect of the public interest in the practice of law). Its work is directly related to the Strategic Initiatives and the Foundational Activities of the Society.
<table>
<thead>
<tr>
<th>Committee Mandate and Responsibilities</th>
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<tbody>
<tr>
<td><strong>Mandate</strong></td>
</tr>
<tr>
<td>Supports Council in the governance of the Society by developing professional standards for the area of family law.</td>
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<tr>
<td><strong>Responsibilities</strong></td>
</tr>
<tr>
<td>1. Make recommendations to Council with respect to identification of:</td>
</tr>
<tr>
<td>a) existing applicable professional standards of family law practice and emerging family law issues which may require the development of professional standards; and</td>
</tr>
<tr>
<td>b) changes in the professional standards of family law practice and emerging family issues which require amendments to existing NSBS Professional Standards – Family Law.</td>
</tr>
<tr>
<td>2. Annually review the NSBS Professional Standards – Family Law and advise Council with respect to potential amendments to the Standards, including providing a draft of proposed amendments for Council approval.</td>
</tr>
<tr>
<td>3. Annually review the footnotes and references to the NSBS Professional Standards – Family Law and provide notice to Council with respect to amendments thereto.</td>
</tr>
<tr>
<td>4. Identify and provide resources and tools to assist members to practice in accordance with the Standards.</td>
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<tr>
<td>5. Act as a resource on issues of professional standards for family law as may be required by Council.</td>
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</tbody>
</table>

| Committee Chair – Jeanne Desveaux |

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

<table>
<thead>
<tr>
<th>Matters assigned to Committee by Council’s Activity Plan</th>
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<tbody>
<tr>
<td>1. Review of Committee TOR and Council Policy 16</td>
</tr>
<tr>
<td>2. Society’s Strategic Framework – Consider revising the approach to Standards (proactive, principled and proportionate) such that Standards are drafted based on known risks associated with the area of practice.</td>
</tr>
<tr>
<td>Details for each Project/Initiative</td>
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<tr>
<td>1. Name of project:</td>
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<tr>
<td>Domestic Violence in the context</td>
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<tr>
<td>of family law</td>
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<tr>
<td>Goal/outcome of project:</td>
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<tr>
<td>To consider the development of a</td>
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<tr>
<td>Standards and Best Practices with</td>
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<tr>
<td>respect to domestic violence in</td>
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<tr>
<td>the context of family law.</td>
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<tr>
<td>Timeframe for completion:</td>
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<tr>
<td>On-going.</td>
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<tr>
<td>Resources required (volunteer,</td>
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<tr>
<td>staff):</td>
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<tr>
<td>The committee will rely on</td>
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<tr>
<td>assigned staff, volunteer</td>
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<tr>
<td>committee members, and (if</td>
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<tr>
<td>necessary) other NSBS staff who</td>
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<tr>
<td>may have specific expertise</td>
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<tr>
<td>required (eg: website,</td>
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<tr>
<td>communications).</td>
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<tr>
<td>2. Name of project:</td>
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<tr>
<td>Revise the lawyer’s competence</td>
</tr>
<tr>
<td>standards to expressly include</td>
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<tr>
<td>cultural competence</td>
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<tr>
<td>Goal/outcome of project:</td>
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<tr>
<td>To include cultural competency</td>
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<td>expressly as an element of lawyer</td>
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<td>competence.</td>
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<td>Timeframe for completion:</td>
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<td>may have specific expertise</td>
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<tr>
<td>required (eg: website, communications).</td>
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<tr>
<td>3. Name of project:</td>
</tr>
<tr>
<td>Annual Review of Standards</td>
</tr>
<tr>
<td>Goal/outcome of project:</td>
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<tr>
<td>Ensure Standards and their</td>
</tr>
<tr>
<td>references/footnotes remain a</td>
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<tr>
<td>comprehensive, accurate</td>
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<tr>
<td>reflection of current law.</td>
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</table>
The Committee will undertake to review a number of standards each year with the intention in a three to four year cycle to review all standards.

**The three standards to be considered this year are:**

- Conflict of Interest
- Client Competence
- Lawyers’ Competence

**Timeframe for completion:**

Present any necessary “above-the-line” changes to Council in order to ensure changes are made within the 2018/2019 Council year. Make “below-the-line” changes as the need for same arises.

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

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

<table>
<thead>
<tr>
<th>4. Name of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consider new areas for Standard / Best Practice development</td>
</tr>
</tbody>
</table>

**Goal/outcome of project:**

To identify new areas for the development of Standards and Best Practices.

**Timeframe for completion:**

On-going. To be completed in conjunction with annual review of the existing standards.

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

The committee will rely on assigned staff, and volunteer committee members, and other NSBS committees if appropriate.

<table>
<thead>
<tr>
<th>5. Name of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withdrawal as counsel in the context of family law</td>
</tr>
<tr>
<td><strong>Goal/outcome of project:</strong></td>
</tr>
<tr>
<td>To consider the development of a Standards and Best Practices with respect withdrawal as counsel in the context of family law.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong></td>
</tr>
<tr>
<td>On-going.</td>
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<td></td>
</tr>
<tr>
<td>8. Name of Project</td>
</tr>
<tr>
<td>-------------------</td>
</tr>
<tr>
<td><strong>Goal/outcome of project:</strong></td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong></td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong></td>
</tr>
</tbody>
</table>

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

The work of this Committee advances the Society's strategic framework by supporting the Foundational Activities relating to engagement with members when Standards are drafted and by identifying best practices for lawyers in the province as noted above.

We are currently reviewing the existing Family Law Standards with a Triple P approach to ensure that they are reflective of the current work of the Society.

**The Committee will consider discussing Certification surrounding Collaborative Law.**

**The Committee is aware of upcoming changes to the Divorce Act which may adjust the work it will complete during this work plan.**
Committee Work Plan and Progress Report
2019-2020

Professional Standards (Real Estate Law) Committee
Interim Report and Updated Work Plan – January 2020

Committee Mandate and Responsibilities

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

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

Committee Chair: Danielle MacLean

Sub-committees, if any, and names of Chairs: N/A

Matters assigned to Committee by Council’s Activity Plan

1. Review of Council Policy 16 and the Society’s Strategic Framework
2. Review Committee TORs and recommend changes to Council as required
3. Continue the review of all Standards to ensure they are Triple-P compliant (principled, proactive and proportionate).

Committee Projects/Initiatives
1. The Committee will review and update or create a variety of Standards:

**Completed Standards in 2019:**
Subdivision/Consolidation

**Standards to be presented to Council in 2020:**
Discharge of Mortgages
Encroachments
Estates
Options and Rights of First Refusal
Zoning and Other Occupancy Permits

**New Standards / resources to be created:**
Opening letter for mobile home purchases
Non-resident Disposition
Property Tax

**Standards currently in review / to be reviewed:**
Access
Builder's Liens
Debentures
Documentation of Advice
Expropriations
Judicial Sales
Leaseholds
Matrimonial Property Act
Opinion and Certificate of Legal Effect
Personal Property
### COMMITTEE WORK PLAN AND PROGRESS REPORT
2019-2020

<table>
<thead>
<tr>
<th>Plans and Surveys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proof of Execution</td>
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<tr>
<td>Quieting of Titles</td>
</tr>
<tr>
<td>Rebuttable Presumptions</td>
</tr>
<tr>
<td>Tax Deeds</td>
</tr>
<tr>
<td>Tidal Waters</td>
</tr>
<tr>
<td>Trustee’s Deeds</td>
</tr>
</tbody>
</table>

Other - Development of practice tools; ongoing review and update of all standards and addition of practice notes to as many standards as possible; addition of new resources; review of applicable case law.

2. Identify tools and resources to assist members in practice, in particular, identify and recommend resources to be made available to members through the LIANS website.

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

The Committee will measure its success by the amount of work in the chart is completed.

The Committee partners with the two NSBS Equity Committees, as well as lawyers, by asking for their input prior to finalization of any amendments / new Standards. The Standards are communicated to the membership by email and are available to the membership and the public via the internet.

The work of this Committee advances the Society’s strategic framework by supporting the Foundational Activities relating to engagement with members when Standards are drafted and by identifying best practices for lawyers in the province as noted above.
Professional Standards (Wills, Powers of Attorney and Personal Directives) Committee

<table>
<thead>
<tr>
<th>Committee Mandate and Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mandate</strong></td>
</tr>
<tr>
<td>The Professional Standards (Wills, Powers of Attorney and Personal Directives) Committee supports Council in the governance of the Society by developing professional standards for the practice of wills, powers of attorney and personal directives (collectively referred to as “Wills”). Included, though in the Committee’s discretion, is the development of standards in the related practice areas of estates and trusts.</td>
</tr>
<tr>
<td><strong>Responsibilities</strong></td>
</tr>
</tbody>
</table>
| 1. Make recommendations to Council with respect to identification of:  
   a) professional standards and emerging issues in Wills practice that may require the development of professional standards; and  
   b) changes to the Wills Standards and emerging issues that require amendments to existing Wills Standards.  
2. As required, review the Wills Standards, amend as necessary and advise Council with respect to potential amendments, including providing notice of the amendments for Council approval;  
3. As required, review, and amend or revise if necessary, the footnotes and references to the Wills Standards;  
4. Identify and provide resources and tools to assist members to practise in accordance with the Standards;  
5. Act as a resource on issues of professional standards for Wills as may be requested by Council. |

<table>
<thead>
<tr>
<th>Committee Chair</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tim Matthews, QC</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sub-committees, if any, and names of Chairs:</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Matters assigned to Committee by Council’s Activity Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Drafting and annual review of Committee Terms of Reference and review of Council Policy 16</td>
</tr>
<tr>
<td>2. Society’s Strategic Framework – Consider revising the approach to Standards (proactive, principled and proportionate) such that Standards are drafted based on known risks associated with the area of practice.</td>
</tr>
<tr>
<td>3. Review of Standards</td>
</tr>
</tbody>
</table>
# COMMITTEE WORK PLAN 2019-2020

## Details for each Project/Initiative

1. **Name of project:**
   - **Capacity to do a Will and execute a Power of Attorney or Personal Directive**
   - **Subproject:** Beneficiaries who lack legal capacity, e.g. minors, parties under disability

   **Jeanne Desveaux & Shannon Ingraaham-Christie**

   **Goal/outcome of project:**
   To consider the development of a Standard for establishing whether a client has legal capacity to execute such documents and whether the beneficiary has the capacity to accept the gift or act as the attorney.

   **Timeframe for completion:**
   On-going.

   **Resources required (volunteer, staff):**
   The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (eg: website, communications).

2. **Name of project:**
   - **Powers of Attorney**

   **Trinda Ernst**

   **Goal/outcome of project:**
   To set out the elements of valid powers of attorney.

   **Timeframe for completion:**
   On-going.

   **Resources required (volunteer, staff):**
   The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (eg: website, communications).
### 3. Name of project:

**Wills**

**Mary Jane Saunders**

**Goal/outcome of project:**

To set out the elements of a valid will and expressing testamentary intent.

“Wills” will be a broad heading where other projects (i.e. Mutual Wills, Matrimonial Property, Multijurisdictional Wills)

**Timeframe for completion:**

On-going.

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

The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (e.g.: website, communications).

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### 4. Name of project:

**Personal Directives**

**Shannon Ingraham-Christie**

**Goal/outcome of project:**

To set out the elements of valid personal directives.

**Timeframe for completion:**

On-going.

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

The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (e.g.: website, communications).
<table>
<thead>
<tr>
<th>5.</th>
<th>Name of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Issues that can arise from second and subsequent marriages such as beneficiaries from different relationships</strong></td>
<td>Benjamin Carver</td>
</tr>
<tr>
<td><strong>Goal/outcome of project:</strong></td>
<td>To identify if there are issues appropriate for a standard</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong></td>
<td>Present any necessary “above-the-line” changes to Council in order to ensure changes are made within the 2018/2019 Council year. Make “below-the-line” changes as the need for same arises.</td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong></td>
<td>The committee will rely on assigned staff, volunteer committee members, and general membership (by way of consultation with family lawyers prior to finalizing any “above the line” amendments).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>6.</th>
<th>Name of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beneficiary Designations</strong></td>
<td>Erin O'Brien Edmonds</td>
</tr>
<tr>
<td><strong>Goal/outcome of project:</strong></td>
<td>To identify issues with respect to designations.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong></td>
<td>On-going. To be completed in conjunction with annual review of the existing standards.</td>
</tr>
<tr>
<td><strong>Resources required (volunteer, staff):</strong></td>
<td>The committee will rely on assigned staff, and volunteer committee members, and other NSBS committees if appropriate.</td>
</tr>
</tbody>
</table>
### 7. Name of project:

**Responsibility for taxes when leaving specific types of property (e.g. RSPs) to beneficiaries**

**Tim Matthews**

**Goal/outcome of project:**

To consider the tax implications and responsibilities of bequests and other gifts.

**Timeframe for completion:**

On-going.

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

The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (eg: website, communications).

### 8. Name of project:

**Property, personal or real, held in joint tenancy, resulting trusts and intentions of the giver**

**Larry Graham, Mary Jane Saunders, Tanya Butler**

**Goal/outcome of project:**

To identify issues when client wants to bequest such property to someone other than the joint tenant or trust beneficiary.

**Timeframe for completion:**

To be completed by the end of the current work plan term.

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

The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (eg: website, communications).
9. **Name of project:**

**Multi-jurisdictional Wills**

**Tim Matthews**

**Goal/outcome of project:**

To consider this practice and if the client requires or desires dual wills, the steps necessary to ensure both are valid.

**Timeframe for completion:**

On-going.

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

The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (e.g., website, communications).

10. **Name of Project**

**Other documents that express intention**

**Jessica Lyle & Trinda Ernst**

**Goal/outcome of project:**

How to ensure these documents which express intention are valid

**Timeframe for completion:**

To be completed by the end of the current work term.

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

The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (e.g., website, communications).
<table>
<thead>
<tr>
<th>Name of Project</th>
<th>Goal/outcome of project:</th>
<th>Timeframe for completion:</th>
<th>Resources required (volunteer, staff):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lawyers acting as executors and proctors, personal conflicts, etc</td>
<td>When can / should the client’s lawyer act in this capacity and when should they decline to so act.</td>
<td>To be completed by the end of the current work term.</td>
<td>The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (eg: website, communications).</td>
</tr>
<tr>
<td>Larry Graham &amp; Shannon Ingraham-Christie</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Cross the line from a simple to a complex estate</td>
<td>What constitutes a simple estate and the indicia of an estate that cannot be characterized as simple.</td>
<td>To be completed by the end of the current work term.</td>
<td>The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (eg: website, communications).</td>
</tr>
<tr>
<td>Erin O’Brien Edmonds</td>
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</tbody>
</table>

**Committee Work Plan 2019-2020**

NOVA SCOTIA BARRISTERS' SOCIETY
### 13. Name of Project

**Revocation Clause**

**Mary Jane Saunders**

**Goal/outcome of project:**

What form of revocation clause should be used in wills. Should to refer to “wills and testamentary dispositions” or “wills and codicils”?

**Timeframe for completion:**

To be completed by the end of the current work term.

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

The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (eg: website, communications).

### 14. Name of Project

**TFMA, Matrimonial Property Act, and other statutes that impact standards (e.g. intestacy)**

**Benjamin Carver**

**Goal/outcome of project:**

What form of revocation clause should be used in wills. Should to refer to “wills and testamentary dispositions” or “wills and codicils”?

**Timeframe for completion:**

To be completed by the end of the current work term.

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

The committee will rely on assigned staff, volunteer committee members, and (if necessary) other NSBS staff who may have specific expertise required (eg: website, communications).
The work of this Committee advances the Society’s strategic framework by supporting the Foundational Activities relating to engagement with members when Standards are drafted and by identifying best practices for lawyers in the province as noted above.

<table>
<thead>
<tr>
<th>Additional Comments on Committee’s Plans or Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>The work of this Committee advances the Society’s strategic framework by supporting the Foundational Activities relating to engagement with members when Standards are drafted and by identifying best practices for lawyers in the province as noted above.</td>
</tr>
<tr>
<td>Law Office Management Standards Committee</td>
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<tr>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Committee Mandate and Responsibilities</td>
</tr>
<tr>
<td><strong>Mandate:</strong></td>
</tr>
<tr>
<td>The Law Office Management Standards Committee supports Council in the governance of the Society and its purpose of protecting the public interest in the practice of law by developing professional standards for the management of law offices in Nova Scotia.</td>
</tr>
<tr>
<td><strong>Responsibilities:</strong></td>
</tr>
<tr>
<td>1. Identify for Council:</td>
</tr>
<tr>
<td>a) existing professional standards of law office management and emerging law office management issues which may require the development of professional standards that fulfill the Society’s obligations to regulate in the public interest; and</td>
</tr>
<tr>
<td>b) changes or variations in standards of law office management and emerging law office management issues which may require amendments to the NSBS Law Office Management Standards and make recommendations to Council accordingly.</td>
</tr>
<tr>
<td>2. Identify, and assist lawyers in the establishment and implementation of, resources and tools to assist with practice in accordance with the Standards.</td>
</tr>
<tr>
<td>3. Annually review the NSBS Law Office Management Standards and advise Council with respect to potential amendments including a draft of proposed amendments.</td>
</tr>
<tr>
<td>4. Annually review the footnotes and references to the NSBS Law Office Management Standards and provide notice to Council with respect to any amendments.</td>
</tr>
<tr>
<td>5. Act as a resource on issues of law office management standards as may be requested by Council.</td>
</tr>
<tr>
<td><strong>Committee Chair:</strong> Bob Carter</td>
</tr>
<tr>
<td><strong>Sub-committees, if any, and names of Chairs:</strong> Technology sub-committee – Chair, Paul Saunders</td>
</tr>
<tr>
<td><strong>Matters assigned to Committee by Council’s Activity Plan</strong></td>
</tr>
<tr>
<td>In 2019, Council asked the Committee to review the tools, processes and standards that lawyers may want to use to assist them in exercising their professional judgment in determining when to keep or destroy files. In addition, Council asks the Committee to look at the existing resources that deal with succession planning and determine if additional resources or guidance is needed. This work is nearing completion and will be presented to Council by Spring 2020.</td>
</tr>
</tbody>
</table>
## Details for each Project/Initiative

### 1. Name of project:

**Standard(s) review re: Record Retention**

<table>
<thead>
<tr>
<th>Goal/outcomes of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Ensure NSBS LOM Standards #1 and #4 (and references/footnotes) remain a comprehensive, accurate reflection of current law.</td>
</tr>
<tr>
<td>• Provide lawyers guidance in navigating their obligations while they seek to reduce the cost and burden of old files.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
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</thead>
<tbody>
<tr>
<td>Spring 2020</td>
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</table>

<table>
<thead>
<tr>
<th>Resources required (volunteer, staff):</th>
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<tbody>
<tr>
<td>Committee members and NSBS staff support, as required</td>
</tr>
</tbody>
</table>

### 2. Name of project:

**Standard(s) review and development re: Succession Planning**

<table>
<thead>
<tr>
<th>Goal/outcome of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Ensure NSBS LOM Standards (and their references/footnotes) provide a comprehensive, accurate reflection of current law (including <em>LPA Regulations 4.6.4 - 4.6.6</em>) re legal practice succession planning.</td>
</tr>
<tr>
<td>• Either propose a new NSBS LOM Standard re: Succession Planning for Council’s consideration, or determine how and whether existing Standards might be amended to reflect current law.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
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<tbody>
<tr>
<td>Spring 2020</td>
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</table>

<table>
<thead>
<tr>
<th>Resources required (volunteer, staff):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee members and NSBS staff support, as required</td>
</tr>
</tbody>
</table>
### Committee Work Plan and Progress Report 2020

#### 3. Name of project:

**Succession Planning practice resources review and recommendations**

<table>
<thead>
<tr>
<th>Goal/outcome(s) of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Complete a comprehensive review of existing practice tools and resources to assist lawyers with succession planning (including file retention and destruction).</td>
</tr>
<tr>
<td>• Identify quality tools and/or develop new tools and resources to assist NS lawyers and firms in fulfilling their obligations.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
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</thead>
<tbody>
<tr>
<td>January 2020</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Resources required (volunteer, staff):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee members and NSBS staff support, as required</td>
</tr>
</tbody>
</table>

#### 4. Name of project:

**Standard(s) review re: Technology in practice**

<table>
<thead>
<tr>
<th>Goal/outcome(s) of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Complete a comprehensive review and update of LOM Standard #6 (Cloud Computing) and its supporting Practice Notes and Additional Resources, in order to:</td>
</tr>
<tr>
<td>o ensure it remains a comprehensive, accurate reflection of current law; and</td>
</tr>
<tr>
<td>o help small firms manage risk in migrating their practice to the cloud.</td>
</tr>
<tr>
<td>• Identify and recommend potential new practice standards – or revisions to existing standards - relating to use of technology in practice, in order to:</td>
</tr>
<tr>
<td>o ensure the standard(s) reflect a comprehensive, accurate reflection of current law; and</td>
</tr>
<tr>
<td>o support lawyers and firms in navigating their obligations while integrating technology solutions into their practices.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Resources required (volunteer, staff):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology Standards subcommittee (to be appointed); Committee members and NSBS staff support, as required.</td>
</tr>
</tbody>
</table>
## 5. Name of project:

### Standards review re: professional fees

#### Goal/outcome(s) of project:
- Ensure NSBS LOM Standards (namely, Standards #3, 5, and 7) provide a comprehensive, accurate reflection of current law and practice relating to professional billing and fees.
- Determine whether and how ‘timekeeping’ is addressed appropriately in the context of the practice standards.
- Ensure an access to justice lens is applied in reviewing the standard(s) and supporting resources.

#### Timeframe for completion:
September 2020

#### Resources required (volunteer, staff):
Committee members and NSBS staff support, as required.

## 6. Name of project:

### Standard review re: equity and diversity

#### Goal/outcome(s) of project:
- In consultation with the Equity and Access Office (and the Equity Committees), review LOM Standard #8 (and its footnotes) and ensure it remains a comprehensive, accurate reflection of current law and best practices.
- If determined appropriate, develop a supporting Commentary to help lawyers and firms understand and achieve compliance with the practice standard.
- Complete a comprehensive review and of and update the referenced practice resources.

#### Timeframe for completion:
December 2020

#### Resources required (volunteer, staff):
Committee members and NSBS staff support, as required. NSBS Equity and Access Office staff and Equity Committees.
Additional Comments on Committee’s Plans or Progress
Professional Standards (Criminal Law) Committee

Interim Report and Updated Work Plan – January 2020

Committee Mandate and Responsibilities

Mandate:
The Professional Standards (Criminal Law) Committee supports Council in the governance of the Society by developing professional standards for the area of criminal law.

Responsibilities:
- Make recommendations to Council with respect to identification of:
  - Existing applicable professional standards in criminal law practice and emerging criminal law issues which may require the development of professional standards;
  - Changes in the professional standards of criminal law practice and emerging criminal practice issues that require amendments to existing NSBS Professional Standards – Criminal Law.
- Annually review the NSBS Professional Standards – Criminal Law, amend as necessary and advise Council with respect to potential amendments to the Standards, including providing notice of the amendments for Council approval;
- Annually review the footnotes and references to the NSBS Professional Standards – Criminal Law;
- Identify and provide resources and tools to assist members to practice in accordance with the Standards;
- Act as a resource on issues of professional standards for criminal law as may be requested by Council.

Committee Chair – Brian F. Bailey

Sub-committees, if any, and names of Chairs – N/A

Matters assigned to Committee by Council’s Activity Plan

1. Review of Council Policy 16 and the Society’s Strategic Framework
2. Review Committee TORs and recommend changes to Council as required.
3. Continue the review of all Standards to ensure they are Triple-P compliant (principled, proactive and proportionate) and culturally competent.
Details for each Project/Initiative

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

1. Name of project: **Cultural Competence**

   Goal/outcome of project:
   To research and develop a standard with respect to cultural competence in criminal law.

   Timeframe for completion: Ongoing

   Progress Update:
   First stages of drafting the standard have been completed.

2. Name of project: **Guilty Pleas**

   Goal/outcome of project:
   To research and develop a standard with respect to guilty pleas.

   Timeframe for completion: Ongoing

   Progress Update:
   The standard has gone to the Equity Committees for consultation as well as the membership. It will soon be ready for final approval at Council.

3. Name of project: **Withdrawal of Guilty Pleas**

   Goal/outcome of project:
   To research and develop a new standard with respect to withdrawing a guilty plea.

   Timeframe for completion: Completed

   Progress Update:
   The standard has gone to the Equity Committees for consultation and has been circulated to the membership twice (2017, 2019). This standard received final approval by Council on November 22, 2019.

4. Name of project: **Charter Applications**
<table>
<thead>
<tr>
<th><strong>Goal/outcome of project:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>To research and develop a standard with respect to charter applications for lawyers in the context of criminal proceedings.</td>
</tr>
<tr>
<td><strong>Timeframe for completion:</strong></td>
</tr>
<tr>
<td><strong>Progress Update:</strong></td>
</tr>
<tr>
<td>The standard is with the Equity Committees for review. It will be going to the Membership for comment once the Committee has reviewed and consolidated feedback from REC/GEC.</td>
</tr>
</tbody>
</table>

5. **Name of project:** Bail Hearings  
   **Goal/outcome of project:** To Research and develop a standard with respect to bail hearings.  
   **Timeframe for completion:** Ongoing  
   **Progress Update:** A draft standard is almost complete. It will then be circulated to the Equity Committees for feedback.

6. **Name of project:** Conflict of Interest  
   **Goal/outcome of project:** To research and develop a standard with respect to issues of conflict of interest for lawyers in the context of criminal proceedings and being retained by clients to assist them with criminal charges.  
   **Timeframe for completion:** Ongoing  
   **Progress Update:** Research has been completed and a draft standard is being created.

7. **Name of project:** Jordan Standard  
   **Goal/outcome of project:** To research and develop a standard with respect to *Jordan’s Principle*.  
   **Timeframe for completion:** Ongoing  
   **Progress Update:** Committee and volunteer resources have been assigned and research is underway.

8. **Name of project:** Young Offender Standard
<table>
<thead>
<tr>
<th></th>
<th>Goal/outcome of project:</th>
<th>Timeframe for completion:</th>
<th>Progress Update:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>To research and develop a standard with respect to young offenders and the differences between youth and adult offenders.</td>
<td>Ongoing</td>
<td>Committee and volunteer resources have been assigned and research is underway.</td>
</tr>
<tr>
<td>9.</td>
<td>Name of project: <strong>Resolution Discussions &amp; Plea Arrangements</strong></td>
<td></td>
<td>The standard is with the Equity Committees for review. It will be going to the Membership for comment once the Committee has reviewed and consolidated feedback from REC/GEC.</td>
</tr>
<tr>
<td>10.</td>
<td>Name of project: <strong>Interaction with a Witness</strong></td>
<td></td>
<td>The research stage is ongoing.</td>
</tr>
<tr>
<td>11.</td>
<td>Name of project: <strong>Proposed Standards to be considered for drafting in 2020:</strong></td>
<td></td>
<td>To create new standards on the above topics.</td>
</tr>
</tbody>
</table>
### 12. Name of project: Other

Development of practice tools; ongoing review and update of all standards; addition of practice notes/best practice tips when applicable; addition of new resources and case law.

The work of this Committee advances the Society’s Strategic Framework by supporting the Foundational Activities relating to engagement with the membership when Standards are drafted, as well as by identifying best practices for lawyers in the province as noted above.
Racial Equity Committee

Committee Mandate and Responsibilities

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

Responsibilities:

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

Committee Co-Chairs: Josie McKinney and Ryan Brothers

Subcommittees and names of Chairs:

1. Networking Event – Tony Amoud;
2. Race and Law Paper Prize Subcommittee – Jade Pictou and Alex MacKillop;
3. Judicial Appointments and Judicial Appointment Guidelines Subcommittee – Alisha Brown-Fagan and Jamie Vacon;
4. Work with Community Organizations to Address Legal Gaps Affecting Racialized and Indigenous Communities Subcommittee – El Jones;
5. Internationally Trained Lawyers Initiative – Godfred Chongatera;
6. Cultural Competence Education & Standards Subcommittee - Josie McKinney;
7. Response to Truth and Reconciliation Calls to Action – Tuma Young;
8. Preston Land Issues Working Group – Not Necessary at this time;
9. Review and Amend Terms of Reference – Level Chan;
Matters assigned to Committee by Council’s Activity Plan

Activities are directly connected to the Strategic Framework and Access to Justice Action Plan.

<table>
<thead>
<tr>
<th>Details for each Project/Initiative</th>
</tr>
</thead>
</table>
| **1.** Name of project: **Networking Event**  
Subcommittee Chair: Tony Amoud.  
Members: TBD. |
| Goal/outcome of project:  
- June 2019 networking event will honor the racialized and Indigenous clerks being called to the Bar. Also award the Race and the Law Paper Prize. Provides an opportunity for racialized and Indigenous lawyers, articled clerks, law students and internationally trained lawyers to network and liaise with each other. |
| Timeframe for completion: June 2019. |
| Resources required (volunteer, staff): Cost is $2500 to $3000, Organizing required by staff and volunteers. |
| **2.** Name of project: **Race and Law Paper Prize**  
Subcommittee Chair: Jade Pictou and Alex MacKillop.  
Members: TBD. |
| Goal/outcome of project:  
- Award a Schulich School of Law student with the prize in May 2019. |
| Timeframe for completion: May 2019. |
| Resources required (volunteer, staff): Prize money from Stewart McKelvey, Minimal funds required for materials and plaque. Volunteer and staff subcommittee does organizing and judging. |
| **3.** Name of project: **Judicial Appointments and Judicial Appointment Guidelines**  
Subcommittee Chair: Alisha Brown-Fagan and Jamie Vacon.  
Members: TBD. |
| Goal/outcome of project:  
- Continue to work for an equity audit of guidelines and appointment process; and  
- Continue to canvas REC views with the Nova Scotia Minister of Justice. |
| Timeframe for completion: Ongoing. |
| Resources required (volunteer, staff): Staff and volunteer time. |
| **4.** Name of project: **Work with Community Organizations to Address Legal Gaps Affecting Racialized and Indigenous Communities**  
Subcommittee Chair: El Jones.  
Members: TBD. |
| Goal/outcome of project:  
- Represent REC at community meetings and events;  
- Review legal counsel of choice issue by Nova Scotia Legal Aid recipients;  
- Public information provision; and  
- Perform research in gap areas. |
| Timeframe for completion: Ongoing. |
|   | Name of project: **Internationally Trained Lawyers Initiatives**  
|   | Subcommittee Chair: Godfred Chongatera.  
|   | Members: TBD.  
|   | **Goal/outcome of project:**  
|   | ▪ Connect internationally trained lawyers to legal workplaces across the province  
|   | **Timeframe for completion:** Ongoing.  
|   | **Resources required (volunteer, staff):** Both volunteer and staff time will be required.  
|   |  
| 6. | Name of project: **Cultural Competence Standards & Education**  
|   | Subcommittee Chair: Josie McKinney.  
|   | Members: TBD.  
|   | **Goal/outcome of project:**  
|   | ▪ Advise Council regarding mandatory cultural competence education for lawyers;  
|   | ▪ Incorporate African Nova Scotian content in materials for bar exam;  
|   | ▪ Increase evaluation of cultural competence on bar exam;  
|   | ▪ Continue offering training sessions across legal workplaces and judiciaries in the province; and  
|   | ▪ Incorporate cultural competence standards in family and criminal law.  
|   | **Timeframe for completion:** Ongoing.  
|   | **Resources required (volunteer, staff):** Staff and volunteer time.  
|   |  
| 7. | Name of project: **Response to Truth and Reconciliation Commission Calls to Action**  
|   | Subcommittee Chair: Tuma Young.  
|   | Members: TBD.  
|   | **Goal/outcome of project:**  
|   | ▪ Advise Council on implementation of the TRC Calls to Action; and  
|   | ▪ Participate in the TRC Working Group.  
|   | **Timeframe for completion:** Ongoing.  
|   | **Resources required (volunteer, staff):** Staff and volunteer time.  
|   |  
| 8. | Name of project: **Preston Land Issues Working Project**  
|   | **Goal/Outcome of the project:**  
|   | ▪ Monitor response to land claims by Nova Scotia Department of Natural Resources.  
|   | **Timeframe for completion:** Ongoing.  
|   | **Resources required (volunteer, staff):** Staff and volunteer may be required.  
|   |  
| 9. | Name of project: **Review and Amend Terms of Reference**  
|   | Subcommittee Chair: Level Chan  
|   | Members: TBD.  
|   | **Goal/outcome of project:**  
|   | ▪ Connect internationally trained lawyers to legal workplaces across the province  
|   | **Timeframe for completion:** Ongoing.  
|   | **Resources required (volunteer, staff):** Both volunteer and staff time may be required.  
|   | **Law student resources may also be required.**
### COMMITTEE WORK PLAN AND PROGRESS REPORT
**2019-2020**

<table>
<thead>
<tr>
<th>Goal/Outcome of the project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Review with an equity lens and update, as necessary;</td>
</tr>
<tr>
<td>• Add IB&amp;M Director as a standing member of REC; and</td>
</tr>
<tr>
<td>• Potentially include reference to law student liaison.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2019.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Resources required (volunteer, staff):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff and volunteer.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of project: <strong>Council Composition</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Subcommittee Co-Chairs: Josie McKinney and Ryan Brothers.</td>
</tr>
<tr>
<td>Members: Josie McKinney, Level Chan and Ryan Brothers.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Goal/Outcome of the project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Engage with Council/Governance and Nominating Committee with respect to Council Composition and whether diversity are reflected;</td>
</tr>
<tr>
<td>• Prepare a joint-memo with the Gender Equity Committee (“GEC”) expressing the committees views; and</td>
</tr>
<tr>
<td>• Create a diverse candidate roster of lawyers in Nova Scotia, along with practice area.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ongoing.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Resources required (volunteer, staff):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff and volunteer. Law student resources may also be required.</td>
</tr>
</tbody>
</table>

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

- The REC will encourage diversity on Council through supporting diverse candidates to put their names forward for all Council seats including the Second Vice President, At large positions and public representatives;
- The REC will continue to provide ongoing support to the IB&M Initiative;
- The REC will continue to provide an advisory role to Council;
- The REC will liaise with the CBA Equity Committee and the GEC;
- The REC will support racialized and Indigenous community organizations to provide legal information by request;
- The REC will engage with law students to seek their input; and
- The REC will participate in any other relevant initiatives as they arise.
COMMITTEE WORK PLAN AND PROGRESS REPORT
2019 – 2020

Gender Equity Committee

<table>
<thead>
<tr>
<th>Committee Mandate and Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mandate:</strong></td>
</tr>
<tr>
<td>The Gender Equity Committee supports Council in the governance of the Society and in advancing Council’s strategic framework by promoting, monitoring and providing advice about programs and policies that address issues of gender discrimination, in the legal profession and the administration of justice.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Responsibilities:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Develop policy and program options for the promotion of equity and diversity in the legal profession in Nova Scotia.</td>
</tr>
<tr>
<td>• Develop policy and program options to increase access to the legal profession by members of equity seeking groups.</td>
</tr>
<tr>
<td>• Raise awareness of issues of historic and current gender discrimination as they relate to the legal profession and the administration of justice.</td>
</tr>
<tr>
<td>• Identify issues, provide advice to Council and carry out assigned work regarding:</td>
</tr>
<tr>
<td>- Barriers and impediments to entry into the Nova Scotia legal profession and involvement in the Society by women;</td>
</tr>
<tr>
<td>- Experiences of women, as members of the Nova Scotia legal profession and with regard to the administration of justice, and</td>
</tr>
<tr>
<td>- The intersection of gender discrimination with other forms of discrimination affecting equity seeking groups.</td>
</tr>
<tr>
<td>• Assist the Equity Officer, as requested, in:</td>
</tr>
<tr>
<td>- Promoting awareness of equity issues in the legal profession and the administration of justice;</td>
</tr>
<tr>
<td>- Carrying out the Society’s programs and initiatives that address equity issues in the legal profession and the administration of justice;</td>
</tr>
<tr>
<td>- Carrying out programs and initiatives for the legal profession in Nova Scotia on equity and cultural competency.</td>
</tr>
<tr>
<td>• Working collaboratively with the Society’s Racial Equity Committee on matters of mutual interest and with particular focus on promoting and addressing issues of equity generally in the legal profession and the administration of justice.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Committee Co-Chairs:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheree Conlon &amp; Nasha Nijhawan</td>
</tr>
</tbody>
</table>

| Sub-committees and names of Chairs: TBD following finalization of work plan |

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

2 The 2015 report of the Truth and Reconciliation Commission calls on the Federation of Law Societies of Canada, and implicitly the individual law societies to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the United Nations Declaration on the Rights of Indigenous Peoples, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and anti-racism.
# Matters assigned to Committee by Council’s Activity Plan

Activities are directly connected to the Strategic Framework and Access to Justice Action Plan.

## Project/Initiative #1 – Sexual and Gender Harassment and Discrimination in the Legal Profession

<table>
<thead>
<tr>
<th>1.</th>
<th>Name of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Renewal of Postcard Campaign, “It Will be Our Little Secret”</td>
</tr>
</tbody>
</table>

**Goal/outcome of project:**
To (a) obtain current statistics and information regarding the experiences of Nova Scotia lawyers; (b) compare the data to that collected in the initial campaign in 2010; (c) use the data to identify to Council the areas of priority in the areas of (a) support for lawyers who are subjected to harassment and/or discrimination and (b) training and education for lawyers and legal entities.

**Timeframe for completion:**
Introduction: March, 2019
Completion: December, 2019

**Resources required (volunteer, staff):**
Staff and volunteer time

<table>
<thead>
<tr>
<th>2.</th>
<th>Name of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Advising Council: Education and Training</td>
</tr>
</tbody>
</table>

**Goal/outcome of project:**
Compile information and data collected from the postcard campaign, previous student surveys and national articling student survey (by CBA National Young Lawyers) and advise Council on gender equity issues, including recommendations for education and training (ie. Credentials, Professional Responsibility, LSS, MSELP).

**Timeframe for completion:**
Ongoing

**Resources required (volunteer, staff):**
Volunteer and staff time

<table>
<thead>
<tr>
<th>3.</th>
<th>Name of Project:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Dara Gordon Event</td>
</tr>
</tbody>
</table>

**Subcommittee:**
Sheree Conlon, Carolyn MacAulay, Marc Njoh, Michelle Chai

**Goal/Outcome of project:**
Networking event with educational component, ie, promotion and facilitation of active involvement of women lawyers in leadership roles in the broader legal and...
The focus of this year’s event will be on sexual and gender harassment and discrimination in the legal profession.

**Introduction:** February, 2019

**Timeframe for completion:** May, 2019

**Resources required (volunteer, staff):**
Funding provided by McInnes Cooper; Organizing required by volunteer and staff subcommittee

### Project/Initiative #2 – Provide Advice to Council

**Name of project:** Provide advice and recommendations to Council on issues as they arise, including:

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Development of a process for consultation with one or both of the equity committees, including from the standards committees.</td>
</tr>
<tr>
<td>2.</td>
<td>Provide recommendations on the Annual Lawyer Report, including what statistics should be collected, if some or all are mandatory, how the information should be reported (considering confidentiality), and consideration of why there is a low response rate, particularly on questions related to gender, gender identity and sexual orientation.</td>
</tr>
<tr>
<td>3.</td>
<td>Continued consultation on potential changes to council composition.</td>
</tr>
<tr>
<td>4.</td>
<td>Recommendations on process for the appointment of council committee members.</td>
</tr>
<tr>
<td>5.</td>
<td>Recommendations regarding an equity policy for the appointment of officers, public representatives and committee appointments, including review of the skills and attributes matrix.</td>
</tr>
<tr>
<td>6.</td>
<td>Provide input on the strategic plan.</td>
</tr>
<tr>
<td>7.</td>
<td>Bringing Council’s attention to community concerns when appropriate.</td>
</tr>
<tr>
<td>8.</td>
<td>Additional issues as they arise where input from GEC is appropriate.</td>
</tr>
</tbody>
</table>
## Finance Committee (and Sub-committees/Task Forces)

### Committee Mandate and Responsibilities

**Mandate:** The Finance Committee supports Council in the governance of the Society by monitoring the finances of the Society, acting on behalf of Council in regard to the annual audit of the Society finances, and acting on behalf of Council in respect of the management of the Society investments, and acting on behalf of Council to accept the annual financial statements of the Society and the auditor’s report on those statements.

**Responsibilities:**

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

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

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

### Committee Chair:
Maurice Chiasson

### Committee Vice-Chair:
Peggy Gates-Hammond
Committee Work Plan and Progress Report
2018-2019

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

- Finance Committee Task Force (Vice-Chair of Finance Committee)

Matters assigned to Committee by Council's Activity Plan

To be determined

Finance Committee Project/Initiatives:

1. Continued development of multi-year Budget
2. Revenue and fee generation review (Task Force)
3. Review and update Internal Controls and processes
4. Review and update of Financial, Administration and Operational Policies
5. Continue work on a Risk Management Framework (operational) for the Society in conjunction with the Regulatory Risk and Outcomes Measurement
6. Practising Fee (processes) best practices review
7. Triennial Compensation Review for NSBS Employees

Significant Issues to be Monitored:

A. Finance Committee members term ending December 31, 2018 - Orientation for 2019-20
B. Significant changes and improvements are being made to the iMIS Database and supporting information technology systems.
### Details for each Project/Initiative:

<table>
<thead>
<tr>
<th></th>
<th>Name of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Continued development the multi-year Budget</strong></td>
</tr>
</tbody>
</table>

**Goal/outcome of project:**
As part of the Society’s commitment to be fiscally responsible and increase transparency in the budgeting and financial reporting processes a rolling three (3) year budget process will be developed. Forecasted demographic, inflationary, contractual estimates, historical information will be considered in the development of revenue and expense estimates year over year.

As we continue to evolve the multi-year budget initiative a number of related issues are being addressed, including:

- **a.** Reconciling the budgeting and program planning processes so that there is a logical order to program planning, budget development and fee setting. Committee calendars (terms) have been adjusted with a change to start date/month of January – effective January 2019. The potential turnover in membership of the Finance Committee will have to be considered as orientation activities will occur during the timing of the majority of budget planning.

- **b.** What will various program staffing and budgets look like under Legal Services Regulation (LSR) and the various organizational reviews undertaken as the Society in recent years? In particular, we need to ensure that early planning and forecasting are done to project program expenditures/revenue in Professional Responsibility, Education & Credentials/Legal Services Support, and Library & Information Services, along with the realignment and categorization of revenues and expenses. This exercise will require continued revisions to forecasting for organizational structures and program/regulatory expenditures.

- **c.** Review of historical volunteer, committee and staff expenses and policies to determine if they are still appropriate given the changing nature of regulation.

- **d.** Work with committee and internal stakeholders to review and accurately develop financial requirements for future year(s).

**Timeframe for completion:**
To be continued throughout the 2018-19 fiscal year (onwards).

**Resources required:** To be completed during regular Committee meetings  
**Responsible:** Director, Finance & Administration  
**Consult with:** Executive Director, Society’s Management Team
<table>
<thead>
<tr>
<th>2.</th>
<th>Name of project:</th>
<th>Revenue and fee generation review (Task Force)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Goal/outcome of project:</td>
<td>The Task Force will be involved in considering the various ways the Society charges fees and generates revenue. The review will encompass such areas as;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>a. A review to see if there any additional means in which the Society could generate fee or other income (e.g. “User Fees”) from lawyers or other parties. This work will include reviewing the current membership statuses and determining if an additional category dealing with lawyers looking for a means of providing “reduced services” with a lower annual fee (pre-retirement category). Others areas of revenue generation that will be reviewed may include such items as; fee for services, late filing fees, credentialing/transaction fees (e.g. Change of Category down), advertising, user fees, law stamps etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b. Trust Account – We are considering a restructuring of the entire trust oversight program. One option is to look at fees and/or transaction levies that would have the full/partial costs of trust oversight borne by lawyers who have trust accounts.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c. Various Fee models – Determining if there are there alternatives to a ‘universal fee’ based on such items as years of service, income/revenue, type of practice, etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>d. Refund Policy(ies) (also part of policy project #4 and practising fees #6) – Determine what a fair and equitable approach to providing credits and/or refunds to lawyers who change categories during the fee year. The goal will be to reduce the administrative burden on Society staff while still being fair to lawyers.</td>
</tr>
<tr>
<td></td>
<td>Timeframe for completion:</td>
<td>January 2019 – in time for 19/20 budget process. Will continue in future years as well</td>
</tr>
<tr>
<td></td>
<td>Resources required:</td>
<td>Small Task Force led by Vice-Chair of Finance Committee</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Responsible: Director, Finance &amp; Administration</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Consult with: Executive Director, Society Management Team</td>
</tr>
</tbody>
</table>
3. **Name of project:**

**Review and update Internal Controls and Processes**

**Goal/outcome of project:**
As part of the Committee’s responsibility to monitor risk, ensure the documentation of the Society’s financial and administrative controls and processes. Maintenance of current internal control written procedures and operational processes that have. The project will include the review of the following tasks:

- a. Preparation of an inventory of key financial, information technology, and human resource management processes;
- b. Development of “auditing” reports and tools that provide information on data integrity.
- c. Assignment of Process Owners (staff members responsible for documenting, updating, and communicating processes);
- d. Integration of Process Owner responsibilities in the relevant staff Position Descriptions;
- e. Establishment of a risk model to be used in prioritizing the documentation of the inventoried processes;
- f. Development of a template for the documentation of processes and provision of training to staff in the use of the template and related software tools.
- g. Documentation of processes in order of highest to lowest priority.

**Timeframe for completion:**
This project has continued over the past few years with significant improvements being made. Process and procedure documentation is expected to be completed during the 2019-2020 fiscal year with the completion of the iMIS system enhancements.

**Resources required:**
- Project Manager: Director, Finance & Administration
- Consultation: Society Departments
- Content development: All Finance & Administration staff
4. Name of project: **Review and update of Financial, Administration and Operational Policies**

Goal/outcome of project:
As part of the Committee’s responsibility to monitor risk and efficient use of Society’s resources. The Committee will work with management to review and update applicable Financial, Administration and Operational policies. The project will include the following tasks:

- a. Review of current financial and operational policies, determine which should be updated and in what priority.
- b. Review and ensure all policies are documented on a register complete with historical revision information.
- c. Establish a framework whereas all financial and operational policies are reviewed and updated on a regular basis (e.g. every 2 to 5 years) including a policy register.

Timeframe for completion:
To be completed over the next two years.

Resources required:
- Project Manager: Director, Finance & Administration
- Consultation: Society Departments
- Content development: All Finance & Administration staff

5. Name of project: **Continue work on a Risk Management Framework (operational) for the Society in conjunction with the Regulatory Risk and Outcomes Measurement.**

Goal/outcome of project:
In conjunction with the Society’s work on Regulatory Risk and Outcomes Measurement, the goal is to further the development of the risk management framework, for the operational side of the Society, and present a completed draft framework to the Committee for review. This framework will be accompanied by a cost-benefit analysis of proposed risk mitigating strategies.

Timeframe for completion:
On-going throughout the year(s).

Resources required:
- Responsible: Director, Finance & Administration
- Consult with: Executive Director, Senior Management
### 6. Name of project:
**Practising Fee (processes) best practices review**

<table>
<thead>
<tr>
<th>Goal/outcome of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The processes involved in the billing, collection and administration of practising fees have evolved over the past number of years as the focus has been on providing an increased level of customer service to the Society’s members (i.e. Practising, non-practising, retired, etc.) The goal is to determine if processes can be revised in manner that will reduce the burden on Society staff while still maintain the Triple P (Principled, Proactive, Proportionate) model of regulation.</td>
</tr>
<tr>
<td>The current processes are mostly manual and require a large time commitment from Society staff who have been required to send numerous reminder emails and make phone calls to members to help ensure members’ fee payments are made on time and they are not administratively suspended. This results in about 4-5 staff spending the month of June doing nothing but working on fee collection.</td>
</tr>
<tr>
<td>In addition, changes in category, employer and transfers create a vast amount of work for credentialing and administrative staff due to the timing of payments and current practice of providing refunds to firms/lawyers/companies.</td>
</tr>
<tr>
<td>The Topics that will be reviewed include, at a minimum:</td>
</tr>
<tr>
<td>- Fee Refunds</td>
</tr>
<tr>
<td>- Pre-authorized payment plans</td>
</tr>
<tr>
<td>- Timing of payments (inc. statistics on when fees are paid and by who)</td>
</tr>
<tr>
<td>- Invoicing</td>
</tr>
<tr>
<td>- Suspensions (Administrative and other)</td>
</tr>
<tr>
<td>- Reinstatement and other fees</td>
</tr>
<tr>
<td>- Reminder calls and notices</td>
</tr>
</tbody>
</table>

| Timeframe for completion: |
| Prior to fee invoices being sent to members for the 2019/2010 fees season (April 30, 2019) |

| Resources required: |
| Responsible: Director, Finance & Administration |
| Consult with: Executive Director, Finance & Administration employees, Credentialing employees |
7. **Name of project:**

**Triennial Compensation Review for NSBS Employees**

<table>
<thead>
<tr>
<th>Goal/outcome of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Committee will be asked to provide advice to the Executive Director as part of the Triennial compensation review towards the goal to ensure that positions at the NSBS are compensated fairly (Halifax salaries average/mean) in accordance with Council Policy 18.23.2.</td>
</tr>
</tbody>
</table>

Positions are reviewed for Experience and Education required to perform the duties outlined in position descriptions. Position Descriptions will be updated to reflect any changes that have incurred since the previous review in 2015.

The Committee will meet with the Society’s external consultant at the beginning of the process to review the objectives of the Compensation Review (November). The Committee will then review the results of the review in time for the budget preparation (January-February) and prepare for presentation to Council (March-April).

<table>
<thead>
<tr>
<th>Timeframe for completion:</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 2018 through April 2019 in order to be completed for 2019/2020 budget preparation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Resources required: External Consultant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible: Executive Director, Manager, Human Resources, Director, Finance &amp; Admin</td>
</tr>
<tr>
<td>Consult with: Senior Management</td>
</tr>
</tbody>
</table>
Significant Issues to be Monitored:

A. Finance Committee members terms expire December 31, 2018. There may be new members for 2019-2020 who will require orientation.

B. Significant changes and improvements are being made to the iMIS Database and supporting information technology systems. This will require a great deal of resources and time from the Finance & Administration Department and Director over the next 6-9 months.
MEMORANDUM TO COUNCIL

From: Finance Committee

Date: October 11, 2019

Subject: Authority of Finance Committee Regarding Audited Statement Approval

Recommendation/Motion:

The Finance Committee is recommending the Terms of Reference for the Finance Committee be amended to reflect and align with current Society Regulations and current practice as they relate to approval of the Society’s annual audited financial statements.

The recommended new wording for the Terms of Reference, under Audit responsibilities is:

- Approves the annual audited financial statements and the Auditor’s Report on behalf of Council

This would replace the current wording:

- Recommends to Council approval of the audited financial statements and the Auditor’s Report on them

Rationale:

The Finance Committee noted a discrepancy in wording between the Society’s current approved Terms of Reference and their Regulations regarding the Committee’s authority as it relates to the Society’s audited financial statements.

The Regulations, under the Legal Profession Act, S.N.S 2004, c. 28 (as amended July 19, 2019) state:

2.9 Committees
2.9.1 Council shall appoint the following committees:

(f) FINANCE COMMITTEE monitors the finances of the Society, acts on behalf of Council in regard to the annual audit of the Society’s finances and acts on behalf of Council in respect to the management of the Society’s investments; (emphasis added)

The Finance Committee has been acting in accordance with the Regulations in approving the Audited Financial statements and the Auditors Report on behalf of Council, rather than recommending that Council approve.

The Finance Committee recommends that Council approve the amendment of the current Terms of Reference to align with the relevant Regulations.
## Credentials Committee

### Committee Mandate and Responsibilities

**Mandate:** Terms of Reference for the Credentials Committee

### Credentials Committee - Terms of Reference

<table>
<thead>
<tr>
<th>Type</th>
<th>Regulatory Committee</th>
</tr>
</thead>
</table>

**Mandate**

- The Credentials Committee supports Council in the governance of the Society by recommending to Council changes to policy relating to the credentialing process, which includes the opening and closing of practices and the requirements to remain in practice;
- The Credentials Committee carries out the responsibilities assigned to it under Part I of the Act and supports Society staff in addressing their responsibilities under:
  - Part 3 Admissions
  - Part 4 Trust Accounts
  - Part 5 Membership Categories and Changes in category;
  - Part 6 Lawyers from other jurisdictions
  - Part 7 LLPs and Law Corporations
  - Part 8 Mandatory CPD
  - Part 13 Real Estate Practice
- The Committee provides policy advice to ensure that regulation is proactive, principled and proportionate

**Responsibilities**

- Refer to Part I of the Act and Parts 3, 4, 5, 6, 7, 8 and 13 of the Regulations;
- To consider and recommend to Council policy direction relating to aspects of the credentialing process that impact the Society’s obligations to applicants, members, and other affected individuals, or that impact key outcomes of the credentialing process;
- To make recommendations to Council for its approval respecting the Legal Profession Act, and Regulations governing the credentialing process;
- Appoint a Credentials Review sub-committee.
## Composition
- At least six and no more than nine members
- Appointments shall be made and vacancies filled by Council
- The Chair of the committee shall be appointed from Council

## Committee Chair
- The Committee Chair shall be appointed by Council
- The Committee Chair is responsible for annually reviewing with the Committee: Council Policy 16, these Terms of Reference, and the Society’s Strategic and Annual Plans

## Procedures and Work Product
- Quorum for the committee shall consist of three members
- The Committee shall operate in accordance with Council
- The Committee shall maintain minutes of its meetings
- The Committee may appoint sub-committees to assist it with its work.

## Reporting
- The Committee performs a regulatory function for the Society and in that respect is independent from Council
- In its advisory capacity, the Committee may make recommendations for policy
- The Committee shall provide a report on its work to Council no later than the May Council meeting

## Staff support
- Director, Education & Credentials

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**Committee Chair:**
Cheryl Canning, Q.C.

**Sub-committees:**

- Internal Review Subcommittee: Mark Everett, Chair
- Bar Examiners Committee: James Martin, Chair
## Details for each Project/Initiative

<table>
<thead>
<tr>
<th></th>
<th>Name of Project:</th>
<th>Goal/outcome of project:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Revamping of Bar Admission Course</strong></td>
<td>the Society will have a new Bar Admission Course that will provide coaching in lawyering skills and will ultimately test competency of individuals wishing to be called to the bar in Nova Scotia</td>
</tr>
<tr>
<td></td>
<td><strong>Time Frame for completion:</strong></td>
<td>Completed by June 2020</td>
</tr>
<tr>
<td></td>
<td><strong>Resources Needed:</strong></td>
<td>E&amp;C staff, Credentials Committee, Council, Equity and Access Office, Communications Officer</td>
</tr>
<tr>
<td>2</td>
<td><strong>Policy on Writing Bar Examination outside Society offices</strong></td>
<td>Amend current policy to create requirement that applicants write the Examination in an approved formal exam setting and with authorized proctors.</td>
</tr>
<tr>
<td></td>
<td><strong>Time Frame for completion:</strong></td>
<td>May 2019</td>
</tr>
<tr>
<td></td>
<td><strong>Resources Needed:</strong></td>
<td>E&amp;C staff, Credentials Committee</td>
</tr>
<tr>
<td>3</td>
<td><strong>Restorative approaches to credentialing</strong></td>
<td>1. Review the credentialing policies and materials that may need to be updated to take restorative approaches into consideration</td>
</tr>
<tr>
<td></td>
<td><strong>Time Frame for completion:</strong></td>
<td>Fall 2019</td>
</tr>
<tr>
<td></td>
<td><strong>Resources Needed:</strong></td>
<td>ED, E&amp;C staff, Credentials Committee, Fed. input from Professor Jocelyn Downie, REC</td>
</tr>
</tbody>
</table>
4. **Name of project:** Interjurisdictional Law firms  
   **Goal/outcome of project:**  
   The Society will have regulations that deal with inter-jurisdictional firms in a Triple P manner and are harmonious with other provinces  
   **Timeframe for completion:**  
   May 2020  
   
   **Resources required (volunteer, staff):**  
   E&C staff, Credentials, Council, Trust Account Working Group, Federation of Law Societies

5. **Name of project:** Bar Examination Rewrites  
   **Goal/outcome of project:**  
   The Society has appropriate regulations governing the number of times an applicant may rewrite the Bar Examination.  
   **Timeframe for completion:**  
   May 2019  
   **Resources required (volunteer, staff):**  
   E&C staff, Credentials and Council.

6. **Name of project:** Assisting Equity Office and GEC with articling clerk survey  
   **Goal/Outcome of Project:**  
   The Credentials committee is able to assist in the creation and implementation of a survey for articled clerks.  
   **Timeframe for completion:**  
   unknown at this time  
   **Resources required (volunteer, staff):**
<table>
<thead>
<tr>
<th>Name of project:</th>
<th>Posthumous call to the bar for World War 1 veterans who were attending law school</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal/outcome of project:</td>
<td>To honour those who fought for Canada and lost their lives in War.</td>
</tr>
<tr>
<td>Timeframe for completion:</td>
<td>unknown at this time.</td>
</tr>
<tr>
<td>Resources required (volunteer, staff):</td>
<td>Credentials Committee, archivist? Volunteers?</td>
</tr>
</tbody>
</table>
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>
<tbody>
<tr>
<td>Complete MSELPA rollout to full implementation of the 3-year cycle</td>
<td>All firms are on a three-year cycle</td>
<td>January 2020: Update to Council</td>
<td>Monitor progress through Executive Director’s updates</td>
</tr>
<tr>
<td></td>
<td>1st “batch” firms have a “Confidential Planner”</td>
<td>July 2019: First “batch” of firms complete process</td>
<td>Ensure regular receipt of reports</td>
</tr>
<tr>
<td></td>
<td>MSELPA regularly updated to reflect user feedback</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MSELPA workbook and links to resources are available to all members</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council uses data, stories and insights from LSS work in its decision-making</td>
<td>Membership has access to and is using LSS team</td>
<td>January 2020: LSS update for Council</td>
<td>Monitor progress through Executive Director’s updates</td>
</tr>
<tr>
<td></td>
<td>Process for measuring usage is established</td>
<td></td>
<td>Review LSS data and anecdotes and apply to decisions at Council</td>
</tr>
</tbody>
</table>
Council reviews and considers data and anecdotes from LSS team in relation to its activities

Council regularly shares data and anecdotes with the membership and the public, and promotes use of LSS resources

<table>
<thead>
<tr>
<th>Explore ways to support members in their use of technology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technology competency standard created following approval to changes in the FLSC Model Code</td>
</tr>
<tr>
<td>January 2020: LOMC attending council; Report from CPCC re: technology competence standard</td>
</tr>
<tr>
<td>Getting updates from LOMSC and ED</td>
</tr>
<tr>
<td>Consider and approve after applying various lenses</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Empower Council to make decisions about regulatory risk</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indicators</th>
<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report describing risk work delivered to council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Council demonstrates comfort with incorporating risk into its discussions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>March 2020: Report delivered</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Have conversations about risk at Council</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use a risk lens in Council decisions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discuss how to promote the incorporation of risk into committee decisions next year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explore, and where appropriate, support the viability of innovative models of legal services delivery, including multidisciplinary practices (MDPs)</td>
<td>Code of Professional Conduct Committee and Professional Responsibility Policies &amp; Procedures Committee deliver recommendations to Council</td>
<td>September 2019: Report on additional research and consultation with stakeholders</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Assess the feasibility of an “innovation sandbox” model for use in Nova Scotia</td>
<td>Council decides whether to adopt rules permitting MDPs and if so, adopts regulatory changes</td>
<td>March 2020: Recommendations to Council from CPCC; decision</td>
</tr>
</tbody>
</table>

| OBJECTIVE: Review and replace the Bar admission course | |
|---|---|---|---|
| 2019-2020 outcomes | Indicators | Important dates | Council tasks |
| Determine future role of CPLED at the Society | Council adopts a policy about CPLED’s role in the provision of the Skills Course | September 2019: Policy decision discussion | Adopt policy following triple-P, risk, and equity lens analysis. |
| Council determines future funding model for Skills Course | Council adopts funding model following recommendation from the CPLED Subcommittee | January 2020: Funding model decision | Create CPLED Subcommittee |
Adopt funding model following triple-P, risk, and equity lens analysis

**OBJECTIVE:** Investigate and implement, if appropriate, differential membership fee models

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
<th>Indicators</th>
<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>September 2020: decision</td>
<td>Ensure Finance Committee delivers report</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Determine next steps following application of triple-P, risk, and equity lenses</td>
</tr>
</tbody>
</table>

**OBJECTIVE:** Communicate and engage with members

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
<th>Indicators</th>
<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council and the Society establish ongoing presence in Nova Scotia’s various legal communities</td>
<td>Society launches new website Council meetings in community expand the Society’s contacts among lawyers in those communities</td>
<td>December 2019: website launch</td>
<td>Council members attend legal community and public events, in their capacity as Council members Council members report on activities done in between meetings</td>
</tr>
</tbody>
</table>
Council members learn about concerns among their constituents through meetings or events
When appropriate, Council members use key messaging to provide information about Council priorities and Triple-P approach including its use in practice

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
<th>Deadline</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assess current mentorship programs supported by the Society, and explore new models</td>
<td>Council and staff can identify what a “triple-P” mentorship model would look like</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>Research and develop a new mentorship approach that is “Triple-P”</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>
<td>Council assigns this task to relevant committee(s)</td>
</tr>
</tbody>
</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>
<th>2019-2020 outcomes</th>
<th>Indicators</th>
<th>Important dates</th>
<th>Council tasks</th>
</tr>
</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, especially in rural communities</td>
<td>January 2020: decision; direction to committee</td>
<td>Establish committee and define its scope of work; Approve committee work plan</td>
</tr>
<tr>
<td>Identify and provide supports to address the challenges and needs of rural members</td>
<td></td>
<td>TBD</td>
<td>Look for opportunities to support articling activities in rural and small communities</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></td>
<td>Ensure deliverables by ED and LOMSC are received by Council</td>
</tr>
<tr>
<td>Review information related to socio-economic barriers to access to legal services</td>
<td>Law Office Management Standards Committee creates Checklists and guidelines for file retention and destruction and distributes to the membership</td>
<td>May 2020: Updates from LSS, LOMSC</td>
<td>Council receives education and key messaging on succession planning tools to share and promote with members. Updates made to Annual Lawyer Report to identify and confirm successor lawyers. Promote the use of these tools among the profession</td>
</tr>
<tr>
<td>---</td>
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<td>---</td>
<td>---</td>
</tr>
<tr>
<td>May 2020</td>
<td>November 2019</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review information provided by equity seeking groups on their struggles to access competent legal services</td>
<td>Council will review information related to socio-economic barriers to accessing legal services collected during strategic planning consultations and council in community sessions, as well as other relevant materials, to consider next steps in addressing barriers for Council year 2020-2021</td>
<td>May 2020</td>
<td>Review materials and consider next steps</td>
</tr>
<tr>
<td>May 2020</td>
<td>Identify and define “underserved areas” requiring focused action</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review information gathered at the Council in the community sessions and develop a plan to address the issues raised, especially as it relates to ensuring equity seeking groups are able to access lawyers properly trained and aware of the issues facing such equity groups</td>
<td>Council will review the information gathered at the Council in the community sessions and develop a plan to address the issues raised, especially as it relates to ensuring equity seeking groups are able to access lawyers properly trained and aware of the issues facing such equity groups</td>
<td>May 2020</td>
<td>Review information and develop work plan to address points raised by community members</td>
</tr>
</tbody>
</table>
Review the Nova Scotia Code of Professional Conduct

<table>
<thead>
<tr>
<th>Review code of conduct requirements in relation to competence to determine if changes are recommended in relation to lawyer’s obligation to be culturally competent</th>
<th>January 2020</th>
</tr>
</thead>
</table>

Council to ask CPCC to add this work to its work plan for 2020 with an update to Council in the next council year

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>
<th>2019-2020 outcomes</th>
<th>Indicators</th>
<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Council members and Committee Chairs are educated on equity</td>
<td>Equity lens tool, when complete, is in regular use by Council members</td>
<td>Ongoing</td>
<td>Council should determine what additional training and/or education is required for</td>
</tr>
<tr>
<td></td>
<td></td>
<td>June 2020</td>
<td></td>
</tr>
</tbody>
</table>

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)
**Issues**

Issues of equity and discrimination are given due consideration in all aspects of the Society’s work

- **Equity lens tool kit training is undertaken by all Council Members and Committee chairs**
- **Council committee training includes consideration of equity issues**

**Council and Committee Chairs**
- Use some or all aspects of the equity lens tool during Council discussions
- Provide staff with feedback on how the tool can be improved

**Standards reviewed for appropriate references to lawyer cultural competence in the delivery of legal services**

- **Council receives updates from all relevant standards committees on this matter**

**Ongoing**
- Flag issues for standards committees as they arise
- Ensure standards committees deliver reviews
- Adopt new equity consultation policy *(Jan-2020)*
- Council approves a current definition of “Equity Seeking Communities”

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**OBJECTIVE: Promotion of Equity, Diversity and Inclusion in the Legal Profession**

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
<th>Indicators</th>
<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council continues to develop and leverage its education, experiences and networks to promote equity, diversity and</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>
</tr>
<tr>
<td></td>
<td>Council members share news about educational opportunities</td>
<td></td>
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<td></td>
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<tr>
<td>Council supports the TRC Working Group</td>
<td>Indicators</td>
<td>Important dates</td>
<td>Council tasks</td>
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<tr>
<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 Ongoing</td>
<td>Determine the types of support the working group needs from Council, and provide as needed Promote the work of the working group among the membership and encourage qualified members to get involved</td>
<td></td>
</tr>
<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 February: education session</td>
<td>Every Council member makes effort to attend education sessions Apply knowledge to discussions at Council as appropriate</td>
</tr>
<tr>
<td>Improved Council attendance at education sessions</td>
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</tbody>
</table>

**OBJECTIVE:** Implementing meaningful responses to the TRC Calls to Action and MMIWG inquiry call to justice

- 2019-2020 outcomes
- Council supports the TRC Working Group
- Council enhances its knowledge of Indigenous issues and the legal system
<table>
<thead>
<tr>
<th>Ensuring provision of education plan as recommended by TRCWG</th>
<th>Multiple sessions available to council/committees/membership</th>
<th>April: education session</th>
<th>TBD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education sessions add to knowledge/understanding of cultural humility and justice issues as identified in calls to action/justice</td>
<td>Attend and promote education sessions among the membership</td>
<td></td>
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</tbody>
</table>

**OBJECTIVE:** Develop mechanisms to hold members accountable for the delivery of culturally proficient legal services

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
<th>Indicators</th>
<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Develop a plan to establish practice guidance and minimum requirements for cultural competence</strong></td>
<td>Council will establish a plan to obtain necessary research and recommendations to move forward with decision making to establish guidance and requirements for the cultural competence of lawyers</td>
<td>March 2020 TBD</td>
<td>Council to consider the establishment of a sub-committee or other process for developing recommendations regarding cultural competency requirements</td>
</tr>
<tr>
<td><strong>Conduct triple-P, equity and risk assessments for options for mechanisms to hold lawyers accountable for the delivery of culturally competent legal</strong></td>
<td>Recommendations from TRC working group received based on survey results; and from REC?</td>
<td>May 2020</td>
<td>Conduct these assessments or delegate to committees as appropriate</td>
</tr>
<tr>
<td>Feedback from SATs</td>
<td></td>
<td></td>
<td>Council to consult with REC and TRC</td>
</tr>
<tr>
<td>New PREP course orientation day feedback (in person)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>TRC module in PREP course</td>
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</table>
The Equity lens tool kit training and/or other cultural competency training is referenced on the yearly reporting requirements for all members (as a subset of CPD credits)

Revise the Yearly Reporting requirements to include reference to cultural competency training

| Society collects and reviews information about current cultural competency training for lawyers | Council considers amending the Annual Lawyer Report to ask lawyers if they have included cultural competency training as part of their required CPD plan. Council reviews available information about current cultural competency training awareness, attendance and needs. | May 2020 | Council will review recommendations for amendment to ALR questions. Council will review information related to attendance at Society cultural competency training sessions Council will review information from TRCWG survey relating to cultural competency training. |

**OBJECTIVE:** Addressing barriers to entry to the legal profession

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
<th>Indicators</th>
<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Facilitate and encouraging partnerships between entry into the legal profession of members of equity seeking groups and by partnering with community organizations to</td>
<td>Community Organizations are engaged in this initiative TBD</td>
<td>TBD June 2020</td>
<td>Council promotes practice of law in various communities Council will identify community organizations that could be leveraged to promote this initiative</td>
</tr>
<tr>
<td><strong>educate</strong> and encourage entry into the legal profession/community members about the role of the lawyer and the role of the regulator</td>
<td></td>
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</table>

**OBJECTIVE:** Ongoing engagement with Nova Scotia’s diverse communities

<table>
<thead>
<tr>
<th>2019-2020 outcomes</th>
<th>Indicators</th>
<th>Important dates</th>
<th>Council tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD: Implementation of Council communication and engagement plan</td>
<td>Plan-developed</td>
<td>January-2020: Plan introduction</td>
<td>TBD</td>
</tr>
</tbody>
</table>
MEMORANDUM

From: Jane Willwerth
To: Tilly Pillay
Date: November 29, 2019
Subject: Activity plan feedback transcript

For: Approval □ Introduction □ Information X

Below is a transcript of notes recorded by participants in Council’s activity plan discussion at their November 2019 meeting.

ACTIVITY PLAN DISCUSSION NOTES:

GOAL ONE – “TRIPLE P”

(Rod recording)

1. Is there anything important missing that we need to include for this Council Year?
   Concept is admirable but it is a concept. How is this to be operationalized? How can it be measured?
   Similar to equity lens
   The development of the tool kit should be deliverable this year
   Series of questions that ask ourselves – a cheat sheet

2. Is there something that should be removed or deferred to next year? (Bearing in mind we will be almost mid-way through the council year at the conclusion of this meeting)
   Parking lot – paralegal in vs out – 2020 or..?

3. Is there enough information in the Plan to assist Council to ensure it can exercise appropriate oversight of the strategic activities of the Society for the coming months?
   Yes
GOAL TWO – “ACCESS TO LEGAL SERVICES”

(Patrick recording)

1. Is there anything important missing that we need to include for this Council Year?
   Dates for completion are vague
   Need more [unintelligible] indicators
   We don’t want to lose sight of the role of articling and funding articles for students in rural and small communities. That’s something we talked about at the strategic planning process.
   Should Council identify what we mean by under-serviced parts of the province? Both geographical and by socio-economic and other equity groups.

2. Is there something that should be removed or deferred to next year? (Bearing in mind we will be almost mid-way through the council year at the conclusion of this meeting)
   No.
   How do we, as Council members, promote the use of these tools among the procession?
   A Council task could be how it can educate themselves on what the tools are, and how to access them.

3. Is there enough information in the Plan to assist Council to ensure it can exercise appropriate oversight of the strategic activities of the Society for the coming months?
   Council could probably have more information on issues related to small and rural communities – many of us have our own perspectives.
   Can Council continue to branch out to other communities to better learn socio-economic circumstances of people?
GOAL THREE – “EQUITY”

(Natalie recording)

1. Is there anything important missing that we need to include for this Council Year?

Lack of substance – no concrete tasks for Council, staff and/or ED to perform; general in nature vs striving for me.

Impacts on the society as a whole – how will they be achieved. Eg ‘given due consideration’ vs an explicit list of tasks in #1.

Risk of having a goal with no measurable outcomes. Eg mandatory cultural competence and unconscious bias training for all committee chairs and members; build ways to integrate toolkit into the annual report.

PD Plans reporting – awareness among membership

We have to exercise oversight – need clear objectives to evaluate.

2. Is there something that should be removed or deferred to next year? (bearing in mind we will be almost mid-way through the council year at the conclusion of this meeting)

No – cultural competence is not a destination – needs to be included every year.

3. Is there enough information in the Plan to assist Council to ensure it can exercise appropriate oversight of the strategic activities of the Society for the coming months?

No

Detail in #1 is much greater than in #2 and #3.

Focus on specific, measureable, action oriented tasks.

Clarity of language – rewrite/remove items that are vague and rewrite so there is meaning and action in each Council task and it relates to clean, well defined outcomes; language in abstract.

Is beyond Equity Office and GEC/REC responsibility.

Focus on January meeting should be to provide additional detail on #2 and #3.

#3 tasks and indicators are not complete – be bold but in a smart way.

LSS and MSELGP roll out – where do we integrate toolkit training as part of these tools.
1. Is there anything important missing that we need to include for this Council Year?

1- What is due consideration to these objectives – what is a positive action
2- Going to do things and (unintelligible) vs (unintelligible) to do
3- High level! Haven’t defined and refined with role
4- Needs to be measureable. Lack of substance and (unintelligible) steps
5- good, if not obtained can carry over
6- ex 1 – mandatory cultural competence and unconscious bias training for committee chairs and members, attend equity tool training and opportunities for everyone to take, then: take further! Have a box that says ‘I have taken equity lens webinar’ (annual report)

2. Is there something that should be removed or deferred to next year? (Bearing in mind we will be almost mid-way through the council year at the conclusion of this meeting)

No – Cultural competence is ongoing – ‘it’s not a destination’

3. Is there enough information in the Plan to assist Council to ensure it can exercise appropriate oversight of the strategic activities of the Society for the coming months?

Enough info? No – not measurable.

Ex. Pg 9-10. Develop mechanisms – mandatory training (How are we going to do it) specific tasks.

PARKING LOT:

- Paralegal regulation
- Cultural competence ongoing
- Definition of ‘competent’
- Triple P toolkit for lawyers
MEMORANDUM TO COUNCIL

From: Jennifer Pink, Manager, Legal Services Support

Date: January 14, 2020

Subject: Legal Services Support update and presentation of Succession Planning Toolkit

<table>
<thead>
<tr>
<th>Date – January 10, 2020</th>
<th>Executive Committee</th>
<th>N/A</th>
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<tbody>
<tr>
<td>Date – January 24, 2020</td>
<td>Council</td>
<td>For Information and Approval</td>
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</table>

Recommendation/Motion:
It is moved that the enclosed Succession Planning / File Retention Toolkit is approved by NSBS Council as a resource to educate and support NS lawyers in compliance with their obligations to maintain a current succession plan (pursuant to Regs. 4.6.1(f), 4.6.2(d), 4.6.4-4.6.6).

Executive Summary:
The MSELTP Self-Assessment program formally launched in July 2019 and the LSS team has since engaged with more than 100 law firms about the self-assessment process. The work is time intensive as we are committed to making direct contact with each firm to explain the program before sending them the Self-Assessment Tool. We are seeing multiple benefits from these calls and the program as a whole but it is too early to assess or report on outcomes. Evaluation strategy will be a priority for 2020.

We started tracking LSS data in 2018 and have since recorded 365 practice advice interactions (excluding ethics and trust account advice). During the same period, the Society has registered 55 new firms. This data provides meaningful guidance on the issues affecting the profession and the priorities for practice resources and tools.

Together, these core LSS programs and advisory work tell us that succession planning and file retention continue to be the ‘hottest topics’ where firms seek guidance and practice resources. Following Council’s direction in early 2019, the LSS team has collaborated with the Law Office Management Standards Committee to further the work of the Succession Planning Working Group.
and find / develop effective practice tools to support the NS lawyers and firms in fulfilling their succession plan obligations. The results are the NSBS Succession Planning Toolkit – presented here for Council’s input and approval. If Council is not ready to endorse the Toolkit today, we respectfully request its approval via OnBoard in February.

**Analysis:**

**MSELP self-assessment program – progress and impressions to date**

When we last reported to Council (May 2019) we were completing the second of two rounds of program testing. These told us that the online reporting tool (SAT) was too complex and detailed and detracted from the educational purpose of the program. We spent a few months revising the SAT and finalizing the administrative process.

The MSELP self-assessment program for solos and small firms went ‘live’ at the end of July 2019.

We determined that in order to effect the greatest uptake of the new program, we should invest time upfront having conversations with each firm to explain the purpose of the program and the process. This is time intensive work and will lessen in future cycles (once the majority of firms are familiar with the program). But there are significant benefits from these conversations, as discussed below.

The basic process applies a ‘Triple P’ approach, as follows:

1. We call firms to engage about the MSELP program. Sometimes discussions happen right away. More often messages are left and calls returned later, or we follow up.
2. We ask firms to identify when the best time is for them to complete the MSELP – ie the start of the next month, or another future month.
3. On the first working day of each month, we administer a ‘batch’ of SATs via email to those firms who identified that month as the best time to complete the MSELP. We ask them to complete and submit their SAT by the end of the month (ie 4 weeks to complete).
4. During the third week of the month, we send a reminder to firms with outstanding SATs.
5. At the end of the month, we send a second reminder.
6. Firms submit completed SATs throughout the month, and beyond. We track status of each outstanding SAT and follow up with those on a case-by-case basis.
7. LSS staff review the SATs and send a follow up email, highlighting resources / tools to support the firms’ identified priority areas for development. The responses vary according to the needs and circumstances of the firm.
8. In some cases, LSS staff determine that follow up will include a phone or in person meeting. (Note that in the original program design we committed to a 25% meeting follow up response.)

Since the formal launch:

- 101 law firms (including sole practitioners) have been contacted / called about the MSELP program
56 firms have been sent the SAT (with at least 20 more scheduled to go out in January) and 11 more are pre-scheduled
34 firms have completed the SAT (+52 during testing phases)

The proactive, initial calls Rob McCleave (LSS staff lawyer) is making to firms are reaping benefits. First, they are opportunities to ‘demystify’ the program and provide assurance of its educational and supportive intent. We back up our ‘Triple P’ message and approach by offering complete flexibility around when firms can complete the assessment, according to their workloads and schedule. As a result, we are seeing a high rate of return on the SATs, even among some firms that have previously demonstrated resistance to regulatory oversight.

These calls are also uncovering pressing issues or questions that lawyers have in practice. They are uncovering a growing list of lawyers approaching retirement who seek guidance in navigating preparation for that process. This aligns with our work to create resources to support firms for practice cessation and succession. It also means we are creating a network of lawyers to stay in contact with as those supports are enhanced and refined – and so, we are able to ensure they start the retirement process in a proactive and supported way. It is likely that without having made these calls, many of these lawyers would have delayed contacting the Society until retirement plans were imminent and then would discover practice issues that need resolving (e.g. trust balance distribution; file succession), meaning delay and frustration on their part.

Overall, our impression is that the program is achieving its ‘early stage’ goals – namely:

1. Creating opportunities for productive engagement between the Society and solo / small firms and building positive relationships;
2. Helping firms reflect on their MSELp and identify priority areas for systems development or improvement; and
3. Helping the Society identify what tools and resources firms need to address their priority areas for development.

We base these impressions on what firms tell us during initial phone calls, on their comments in their SATs, on our interactions during the follow up phase, and on our conversations when we meet lawyers at events (conferences, county bar meetings, etc.). We are also hearing third party feedback from Council members and others. It is too early to measure the impact of the program. Developing an evaluation strategy is a priority for the coming months, starting with developing and implementing an online follow-up survey.

While it is too early to attribute resistance to the MSELp program (i.e. refusal to complete the SAT or engage with us about it), we must anticipate that this will happen and start thinking about an appropriate Triple P response when rare cases arise. We welcome and seek Council’s input on this.

We are collecting meaningful data through the program that already is informing the Society’s work and LSS priorities. Every firm that completed the SAT to date has indicated they could benefit from resources in one or more areas. The most common areas where firms request resources to support MSELp development are:
We are already well underway in our work to develop and disseminate tools in support of the first two of these (see next section). A priority for 2020 is to develop resources for NS firms around selecting / purchasing firm software.

In addition to asking firms to identify areas where practice resources can help them, we ask each to identify up to three priority areas for their MSELP development. These priorities inform our LSS response to firms. Of the SATs submitted to date, the top three identified priorities (in equal numbers) are:

- Reducing paper / developing a file retention and destruction policy
- Succession and business continuity planning
- Time and priority management

The next most commonly identified priorities, in descending order, are:

- Developing retainer agreements / engagement letters (including limited scope agreements)
- Developing billing practices / time tracking
- Reviewing and developing written office policies / manuals
- Staff training
- Developing communication / relationship management skills

We are in full swing now and though staff workload has increased significantly, we have more to do to see the full benefits of the self-assessment program. MSELP program goals for 2020 include:

- Staying on track to complete the first 3-yr MSELP cycle by Summer 2022
- Making direct contact with firms before sending them the SAT
- Developing strategies to help achieve a 100pc completion rate
- Developing an evaluation strategy and implementing an online response survey
- Continually improving the program based on user feedback
- Re(developing) the SAT for medium / large firms in preparation for tool administration in 2021
- Refining MSELP policies based on what we’ve learned to date
- Identifying the practice resources and support most needed by NS lawyers and firms.
New Firm Registration and practice advice

LSS aims to provide lawyers and firms access to timely and accurate information and practice advice from the Society. Since we started tracking LSS activity (in January 2018) the team has:

- Documented more than **365 advisory interactions** between lawyers / firms and LSS staff (up from 230 in May 2019). These do not include discussions about standard credentialing or other regulatory processes. They are matters where regulatory or practice advice was sought and provided – sometimes straightforward matters, other times requiring a collaborative staff response.
- Registered **55 new law firms** (up from 35 in May 2019)

We track the topic(s) or areas of support sought during each LSS interaction. Excluding the ethics queries that go directly to PR Counsel (tracked separately) and the Trust Account queries that go directly to the TA team (also tracked separately), LSS exchanges most often related to (in descending order):

- Opening a practice / registering a new practice
- Changing firms
- Trust accounts
- Succession planning
- File management
- Ethics advice
- Winding up / retirement
- Law Corps
- Fees
- Notary public
- Merging firms
- Mentoring

Collaboration across Society staff is key to effective LSS service delivery. Recognizing this, in Fall 2019 we started meeting weekly with other core LSS advisory staff (across all departments) to work through higher risk scenarios and achieve Triple-P strategies. This approach is working well and it will continue during 2020.

New Firm Registration continues to receive positive feedback as far as program benefits for designated lawyers / firms. It also affords the Society opportunity to gain a fuller understanding of the nature of legal services provision in the province and emerging practice trends. We continue to see an increase in interjurisdictional practices opening as well as non-traditional practice structures – for example, the Dalhousie Technology Law Clinic, which will begin providing public (paid) legal services in early / mid 2020. Most new firms seek cloud-based file and case management solutions, and many seek information and resources to support their purchasing decisions.
Succession Planning (including file retention and destruction) continues to be ‘the’ major theme and area where lawyers and firms seek guidance. We are hearing this through the MSELP program, through our outreach work, and through calls to the LSS team for practice advice.

This priority comes as no surprise – in Nova Scotia, 64% (146/229) of our sole practitioners are 55 years of age or older – and we require that each lawyer and firm maintain a current succession plan addressing a range of client and practice management considerations (subregulation 4.6.4-4.6.6).

To support lawyers and firms in achieving compliance, Council directed the Law Office Management Standards Committee to further the work of the Succession Planning Working Group and develop the necessary resources to plan for effective practice cessation.

Under the LOMSC’s guidance, LSS staff developed a draft toolkit that has been ‘tested’ at various presentations and through discussions with many firms across the province over several months. The templates and guidance in the toolkit are fluid. We continue working to find solutions to several barriers to effective succession planning (e.g. standardizing financial institution acceptance of a successor’s authority re: trust accounts; limiting retention time for foundation documents) and as this work advances, we will update the toolkit.

The Toolkit comprises the following documents and templates, enclosed:

1. Guide to Succession Planning
2. Detailed succession plan template
3. File retention / destruction policy template
4. Checklist of succession planning considerations
5. Simple succession plan template (i.e. no trust account)
6. Targeted paper reduction guide
7. Successor promotion pamphlet

The Equity & Access office reviewed the toolkit and made minor amendments. This final version was presented to the Law Office Management Standards Committee at its meeting on January 13th and is presented to Council with the Committee’s strong support. We seek Council’s approval of the toolkit so we can add it to the website and start actively promoting it as Society guidance. If Council is not ready to endorse the Toolkit today, we respectfully request its approval via OnBoard in February.

Mentorship is another theme that continues to surface through our advisory work. Lawyers are sometimes surprised to know that the Society can help in this area. There are existing programs through the Society’s Equity & Access Office, LIANS, and Dalhousie’s Schulich School of Law to name just a few – but no centralized effort to direct lawyers to the right program, to help those with ‘one off’ needs questions, or to fill other ‘gaps’ between the existing programs.

Together with the Society’s Executive Director and Manager, Equity & Access, we recently met with Schulich School of Law’s Director of Career Services to start a discussion about how lawyer and firm mentorship needs can be addressed in a more centralized and comprehensive way. We identified
opportunities to collaborate in 2020, including a facilitated networking opportunity for small and rural firms with potential articled clerks / law students. We will update Council as these plans evolve.

Communications and community engagement

The LSS team continues attending various association meetings and events to build awareness of our work and learn about current issues in practice and perceptions of the Society more generally. Since May 2019:

- Jen Pink (LSS manager) attended several County Bar meetings (Kings, Pictou, Western Counties) with Angela Simmonds, Manager, Equity & Access and NSBS President, Carrie Ricker and used these meetings as an opportunity to raise awareness of the Society’s vision for Member support services

- Rob McCleave (LSS staff lawyer) presented sessions on Succession Planning at:
  - June 2019 Annual Meeting
  - Western Counties Bar meeting (October 2019)
  - LIANS / NSBS Solo and Small Firm Conference (November 2019)
  - Lunenburg County Bar meeting (November 2019)

- Jen and Rob, together with Council member Melanie Petrunia, presented at the CBA conference on the ‘Law Firm Lifecycle’ (including New Firm Registration, LSS support, and succession planning considerations)

- At the time of writing, Rob is finalizing plans to meet with 8+ law firms in the Sydney region on January 16-17 to discuss succession planning / file retention.

Next steps and priorities

Outside of core MSELP and NFR program activities, the priorities for LSS over the coming months include:

1. Publicizing the Succession Planning Toolkit via the new NSBS website, through the MSELP and NFR programs, and presentations / outreach.
2. Continuing our work to eliminate barriers to practice succession and updating the toolkit accordingly.
3. Expanding the LSS resource portal on the new NSBS website and gathering user feedback.
4. Working with our partners, developing a strategy for a holistic and centralized approach to lawyer mentorship services.
5. Developing information / guidance for small law firms on legal practice software.
6. Creating and administering an MSELP response survey.

Ongoing and longer-term priorities include:
1. Continuing to develop opportunities and networks for external engagement and education (through County bar meetings, professional association conferences, law firm CPD sessions, etc).
2. Continuing to bring key ‘issues’ identified through LSS engagement to Council for appropriate response.
3. Developing and delivering tools, resources and programs in response to priority issues.
4. Continuing to nurture an LSS culture and approach among Society staff by implementing LSS infrastructure and processes.
5. Developing an evaluation strategy for LSS programs and outcomes.

Exhibits/Appendices:
NSBS Succession Planning Toolkit (January 2020):
   1. Guide to Succession Planning
   2. Detailed succession plan template
   3. File retention / destruction policy template
   4. Checklist of succession planning considerations
   5. Simple succession plan template (i.e. no trust account)
   6. Targeted paper reduction guide
   7. Successor promotion pamphlet
Legal Services Support - Succession Planning Guide

In development

Where do I start?

The Society’s Regulations, made under the *Legal Profession Act*, say what you need in your succession plan:

Succession Plan

4.6.4 A law firm or sole practitioner must

(a) maintain a current succession plan for the practice including all lawyers in the firm;

(b) annually review the succession plan; and

(c) pursuant to Regulation 4.11, report to the Executive Director regarding the succession plan.

4.6.5 A succession plan must contemplate the unique arrangements that will be necessary in the event of the cessation of the lawyer’s practice for any reason, including

(a) temporary disability or incapacity;

(b) long term disability or incapacity; and

(c) death of the lawyer.

4.6.6 At a minimum, a succession plan must include information and adequate arrangements to allow for the handling of clients’ property and management of the practice with regard to the following, where applicable

(a) open and closed files;

(b) wills and wills indices;

(c) foundation documents and other important records;

(d) other valuable property;

(e) passwords and the means to access computers, email, accounting and other electronic records;

(f) trust accounts and trust funds;
(g) other accounts related to the member’s practice; and

(g) any other arrangements necessary to carry on or wind up the lawyer’s unique practice.

Find the Regulations online.

Retirement preparation and succession planning for an emergency are closely linked. The regulatory requirements for succession planning are similar to the requirements for changing from your practicing membership category. In other words, it’s inevitable that you do the planning discussed in this Guide. Learn more about changing category here.

Models

A good way to start looking at your options is to consider basic models for succession:

1) **Internal**: A traditional model for succession in small practices is to recruit a young lawyer or clerk to take over. While this can work well, we do hear from members about how it’s increasingly difficult to attract someone who will stay.

2) **Sale**: Another traditional approach is to arrange a sale of your practice in advance of retiring. This works best if you have unique goodwill that is transferrable and if your practice is 'clean,' including having paper and trust accounts in good order.

3) **Merger**: A model we see is sole practitioners and small firms joining another firm before they get to the point where a successor is needed. Some continue to operate out of their existing offices as a satellite of the merged firm. This can be a way to reduce worry and management responsibilities and allow you to approach retirement gradually.

4) **Successorship**: A lawyer-successor comes in at the point you are unable to practice, attends to your responsibilities and either keeps or distributes your files. Sometimes, a sale of all or part of the practice is possible, best arranged in advance.

5) **Stewardship**: where the responsibilities are simple enough, some lawyers want to use a non-lawyer (e.g. spouse, office manager …) to do most of the work to wind up their practice and then to look after file retention/destruction. A lawyer is still needed to supervise. Please see next section.

Another way to weigh your options is to consider three basic outcomes for your practice at retirement, disability or death:

1) **Wind-up**: clients dispersed, obligations transferred elsewhere, practice shuts down, remainder, if any, goes to you or your estate.
2) **Transfer**: clients and obligations go to the same lawyer or law firm. You or your estate may be able to negotiate payment for the transfer of the practice. Practice transferred intact.

3) **Stay put**: practice stays intact, lawyer(s) internally take(s) responsibility.

There are likewise different ways to cover costs and obtain payment for you or your estate:

1) **Insurance**: It is typically recommended if it is an option for you, even if you expect money to come in from your practice over time. If you plan to cover the costs at death or disability with insurance, you can look after your succession costs, debt and perhaps have a surplus for your estate. For example, a life insurance policy payable to your successor or firm plus an agreement to pay the balance to a beneficiary can give you peace of mind.

2) **Sale**: you worked out a price or valuation formula for your practice, including any transferable goodwill. You have a contract, which could be a partnership agreement or otherwise.

3) **Balance after succession accomplished**: your practice at succession may have receivables, WIP that can be billed, owned equipment that can be sold and surplus cash in your general account. In some instances, all or part of the practice might be saleable, but that’s hard to do if you are not around to help with the transition. You may also have obligations: payables, accounting costs especially if you have a trust account, staff obligations, taxes etc.

4) **Negative payment**: you plan for your estate to pay for succession.

**Who does what?**

The key players in a succession situation are your (1) personal representative/trustee/POA; (2) lawyer, either to do the work to effect your chosen model as Successor or to supervise the work of a Steward; and possibly (3) Steward.

If your practice is busy or has complexity, such as a trust account, transactions to close, many files, or your preparation work is not advanced, you probably need to put everything into the hands of a lawyer as your Successor.

If your sole practice is being wound-up and is simple, (fewer open files, no transactions or trust account and sufficient preparation work) you can consider having a Steward do most of the work, supervised by a lawyer. A Steward is a trusted non-lawyer (e.g. family, staff or friend – possibly your personal representative or person who has an enduring power of attorney) who is able to do the required wind-up work under supervision of a lawyer of your choice.
The people you choose must agree and should be aware of what they’re agreeing to. You need to be confident they will be of sufficient health to do the job when the time might come, or have an alternate.

**Lawyer - Successor:** A lawyer with a similar practice is often chosen. This might be the most sure-footed way to reliably and responsibly deal with your affairs, and is necessary if you cannot check all of the boxes below under the next paragraph re stewardship. They needn’t practise in your community but must be able to attend at your office sufficiently to complete the task. They must know what they’re in for and consent in writing so there’s no confusion.

**Non-lawyer Steward:** You might be thinking about a spouse or even staff member as a Steward to wind up or even sell your practice. They are not insured or bound by the Code of Professional Conduct, so they need supervision by a lawyer. Without adequate supervision, you would not be ensuring your professional obligations are met.

- No trust account or property/transactional practice, unless a successor lawyer is arranged to immediately take on responsibility for your trust account and any transactions.
- You are confident that all of your clients’ interests will be looked after.
- Counsel is in place to supervise and to answer questions.
- A stewardship agreement with a confidentiality clause is executed (see sample simple stewardship plan).
- The instructions and information you provide are sufficient.
- The task is manageable by your chosen Steward: consider the volume of files, the type of work and whether it involves a lot of deadlines, limitations, court appearances etc.
- Your preparation is adequate so their tasks are easy.
- You have laid the groundwork for quickly transferring your open files to lawyers.
- Your closed files should be ready for destruction and labelled for when to destroy by your retention/destruction policy.
- You keep no original wills (or you provide for them).
- Counsel agrees to accept (preferably in electronic form) the files with instructions for will and POAs, as well as any foundation documents if you practiced property under the LRA.
- If you, in your professional judgement, decide to use a stewardship model, here is a sample simple stewardship plan which you may use to create your own.
In your succession, whether effected by a lawyer or a steward with counsel, think about different roles that can be distinct people or combined in some way:

<table>
<thead>
<tr>
<th>1 Lawyer as Successor</th>
<th>1 Non-lawyer Steward</th>
</tr>
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<tbody>
<tr>
<td>2 Other people may help (e.g. your staff), responsible to the Successor</td>
<td>2 Lawyer supervising</td>
</tr>
<tr>
<td>3 Personal representative</td>
<td>3 Personal representative</td>
</tr>
<tr>
<td>4 Attorney per enduring POA</td>
<td>4 Attorney per enduring POA</td>
</tr>
<tr>
<td>5 Lawyer(s) to whom your files might be referred</td>
<td>5 Lawyers to whom your files might be referred</td>
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Preparing for Succession

Below, we discuss different aspects of practice commonly encountered in succession. To make your plan, you have three tasks to prepare over time:

1) Simplify and prepare to make succession – or retirement – possible
2) Organize information for your successor
3) Provide solutions for the issues you anticipate.

The biggest consideration, regardless of whether you want to sell, retire, or simply prepare for contingencies: how to make your practice more appealing to others, especially to take on any lingering obligations like open files and foundation documents. Prepare by doing a “clean up” over time.

How you retain files

Electronic storage, backed up electronically perhaps on a separate drive or on the Cloud, is increasingly preferred by NS lawyers. There are many benefits. Several firms have successfully transitioned. Feel free to call for guidance if you are considering a transition.

The considerations for destruction of e-files are the same as for paper files, below.

If you have a lot of paper, it can be intimidating for a potential successor/purchaser to contemplate how to deal with it. The same holds true for anyone you wish to have succeed you. Our Targeted Paper Reduction Plan Guide is meant for you.
There are some paper items, identified below, that present long-term storage challenges that get in the way of smooth succession. If you can’t scan everything, there are real advantages to scanning these items.

Closed files: Paper and Electronic

With the advent of privacy laws and changes in attitude toward paper, lawyers have had to rethink their file retention/destruction practices. The reason we keep closed files is to defend against liability claims or professional responsibility complaints. Beyond that, lawyers are not archivists. Storage for other reasons, or for longer than reasonably necessary, is problematic, whether your files are paper or electronic.

Privacy Laws & Your Closed Files

Files often contain considerable personal information. Lawyers must consider privacy laws, in particular PIPEDA.

1. The law prohibits you from keeping personal information that isn’t necessary, so you have to ask:
   a. what is personal information
   b. what is truly necessary to keep and
   c. for how long is it necessary to keep it?
2. What you keep has to be safeguarded: protected from potential prying eyes, either locked up or appropriately protected electronically, and destroyed without breaching privacy

Personal information includes any information which identifies or could be reasonably used to identify an individual, including names, addresses, email addresses, telephone numbers, Social Insurance numbers, government identification numbers, credit or debit card numbers, health information, financial information, geographic locations, IP address, or any other personally identifiable information, including copies of such information, and materials derived from such information, and any other information associated with or linked to such information.

The necessity to keep file contents, including the personal information therein, is determined by:

1. Does the information exist elsewhere? (e.g. medical files, court documents, Crown disclosure, documents filed at RJSC, documents given to the client)
2. The need to be able to respond to professional liability or responsibility matter.

Once it is no longer necessary to respond to liability or responsibility matters, consider whether there is any legal necessity to keep any personal information. If not, you MUST then destroy or depersonalize it.
Professional Responsibility & Your Closed Files

Lawyers like to have the protection of their file in case a complaint arises, and also have a responsibility to cooperate. Complaints to NSBS that are proper Professional Responsibility matters become less common as years pass, and are certainly uncommon ten years after a file is closed.

If you destroy a file in accordance with a *bona fide* file retention and destruction policy (see below) and as long as you don’t do so with knowledge of a potential complaint or claim, the destruction will very likely be seen as reasonable.

If you have consistently copied your client and documented advice and instructions with them, the client themselves may have everything needed to help the lawyer answer to a complaint.

Answering Insurance Liability Claims & Your Closed Files

Lawyers must cooperate with our insurer, including delivery of the file to respond to a claim. This doesn’t mean keeping files forever. Fortunately, LIANS has created guidelines that provide a path to file destruction at the end of a reasonable retention period.

Create a policy for file destruction, implement it and keep up to date with your shredding.

Here’s a link to our [File Retention/Destruction Policy Template](#).

Here are guidelines for your firm’s policy from LIANS Director Lawrence Rubin:

1. Write a professionally acceptable\(^1\) policy for destruction that uses your professional judgement.
2. Return documents and other property that belong to clients.
3. Be mindful of legislated limitation periods as there might be some types of files that warrant keeping longer than most (e.g. infant settlements, people with disabilities).
4. Follow the policy and don’t make exceptions on by file, by document or by client.
5. Keep a record of what files were destroyed and when.
6. Your policy may distinguish between files of different types (e.g. personal injury, criminal, property).
7. Don’t shred things where you know there’s a claim/potential claim.
8. If you do the above, your insurance coverage should still apply even after you destroy the file (assuming you haven’t done anything so outlandish as to otherwise effect your coverage).

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\(^1\) In light of your professional obligations including to your insurer, objectively viewed.
Because of the *Limitation of Actions Act*, and because claims experience across the whole NS Bar is very low for files that are closed 15+ years, you might conclude 15 years is an appropriate destruction period for most (but not all) types of files. If you reach a different conclusion, make sure it is soundly based and takes account of the factors mentioned above.

**Tips**

- If you don’t do so already, cull your files of redundant material and anything that can be returned to a client before storage.
- Consider destroying file materials that exists elsewhere and can thus be reconstructed in the unlikely even it is needed.
- Box your closed files by destruction date.
- Do not box foundation documents and will files with other types of files.
- The point is to handle the paper once and for you or your successor to be able to shred entire boxes without more sorting.

**File Retention/Destruction Summary: Making it easy**

You have a *PIPEDA*-based obligation to NOT keep personal information longer than necessary.

Unless you identify another legal obligation for keeping particular client records, your necessity for keeping files relates to insurance and complaints. A few exceptions are outlined later in this Guide.

You should have a *bona fide* file retention/destruction policy and follow it.

Please make destruction easier on yourselves.

**Trust accounts**

Clean up old balances, working through them systematically. To start, eliminate 3+ yr old balances. Then tackle your 2+ yr old balances; then your 1+ yr old balances.

If necessary, take advantage of the periodic applications the Society makes respecting undistributed trust funds. If you want, try one balance to get you comfortable with the process.

Contact our Trust Assurance team at 902 422 1491 or at trustaccounts@nsbs.org if you would like support, or simply have questions, about trust account issues including old balances.
To change category, your trust account will need to be properly closed, including a final accountant’s report

**Foundation documents from LRA property matters**

“Foundation documents,” from certifying title under the *LRA* (primarily your searches) are defined in *Regulation* at 1.1.1 (ma). The way our regulations and those under the *LRA* have been interpreted, foundation documents are maintained indefinitely. They must be accepted by another lawyer in order for you to change category and retire. If you do no other scanning, consider scanning and indexing your foundation documents to cut down on the space they consume and to make it easier to find another lawyer to accept them. We are looking for a more workable solution.

**Pre-LRA title searches & pre-LRA property files**

These are old closed files: see above. Claims experience across all files is very low once 15 years have passed from file closure. If you destroy old property files pursuant to a *bona fide* retention/destruction policy, you will still be covered by LIANS.

If you’ve been practising a long time, this might require a change in thinking. Before the *LRA*, there was also no “new” *Statute of Limitations*, files were paper and thinner than any paper files today, it was much easier to find someone to take your paper files, privacy laws were less developed and it was common to see property files as long-term keepers to guard against any potential liability, answer any question or provide any service should the need ever arise. Now, paper is regarded as a burden and an obstacle to succession. Paper also presents certain risks that have grown over time.

**Open files**

You should consider as part of your plan who can take your open files of different kinds. Your plan assures your clients are served in a timely way, and that deadlines are not missed. While you can make arrangements for another lawyer to take on your open files, it is ultimately the client’s choice. When the client consents, their file and trust funds can be transferred.

**Wills, instructions and index**

We strongly recommend returning original wills to your clients now. Wills must sometimes be kept – and easily found – for far longer than the practice of the lawyer.
Return them before you lose touch with the client, because they are an obstacle to having a succession plan that works.

If you do keep wills, somebody else has to agree to hold them. The client should consent when their will moves, so contact information is important. Index your wills.

Consider scanning to accomplish long-term storage of the instructions/capacity information. These are also long-term storage issues.

Tip: swear and attach affidavits of execution to all your wills, if not done already.

**Enduring Powers of Attorney**

NSBS recommends that you NOT keep the ONLY original. If you have the only one, consider returning it. If you have one of multiple originals, consider the commitment you made to your client among other factors before it might be destroyed. Capacity issues can arise, so your file might be important years from now. We recommend you scan your POA files to facilitate keeping them for a long time.

**Client property (including documents and minute books)**

As you close files, return client property to the clients.

Sometimes lawyers send letters seeking instructions about client property, e.g. old minute books or original papers, without success. Google, Facebook, POL, the RJSC website, Canada 411 and LinkedIn are great resources for finding people. We suggest you search to find your client and then try a phone call or an email to get instructions to destroy or return. Confirm any instruction to destroy. Some clients never pick up their property; a courier is better than being stuck with it indefinitely.

Consider including the fate of unreturnable client property in your retainer agreements.

**Minute books**

Minute books are client property. Avoid situations where you are holding minute books for clients with whom you might lose contact. Keep in mind that under the *Nova Scotia Companies Act*, even after a company has been struck off or dissolved by surrendering its certificate of incorporation, it can be revived. You might not even know if there is property (e.g. shares, bank account, land) in that company’s name. Fortunately, the Articles, Memorandum, special resolutions, and names of officers and directors are all filed with RJSC and can be reproduced, which might be enough to revive the company.

The irreplaceable items are any evidence of legal and beneficial ownership (e.g. shares and share ledgers) and minutes.
Once the company is struck off, consider scanning any irreplaceable items (there might be none with a simple single shareholder company). Then shred the minute book contents. Recycle or dispose of the seal.

**Replaceable Content**

There are other examples where paper file contents are simply copies of documents which exist at an authority. Some firms find it cheaper and easier to shred paper documents that are replaceable: medical records, Crown disclosure, case law, court-filed documents, RJSC filed documents and perhaps other things. The logic is that it can be cheaper to get a second copy than to scan or pay for additional storage. If the information is personal, even if you store electronically, your PIPEDA obligations are an additional reason to shred replaceable items.

**Banking arrangements**

Banks are inconsistent with what they will accept as a means of transferring responsibility for a trust account. While we’re working on a better solution, our best advice is to meet with your bank manager to ensure they’ll accept what you put in place. The most successful method with banks that we know of is for a successor lawyer to become a second signatory, but not everyone likes that idea. Your will and POA might suffice, but run them past your bank.

As you might worry, sometimes a will is acceptable, but when the lawyer dies the accounts can’t be accessed quickly enough for pending matters. NSBS can help a successor achieve the deceased lawyer’s wishes by seeking an emergency custodianship order.

**Undertakings**

How is someone to discharge any outstanding undertakings? A clear record, like an accessible undertaking book or list, can help your successor. In preparation, you can see the value in minimizing your outstanding undertakings, which typically goes hand-in-hand with cleaning up a trust account.
How do I make it all happen?

Succession planning is part of your estate planning.

1. Figure out what you need and want.
2. Get things in order to make the job easier, or plan to do so.
3. Recruit someone to look after your affairs.
5. Review regularly, in this case annually.

You might wish to consult a lawyer about your succession plan.

If you were doing this for a non-lawyer client, you would put provisions in their will and enduring power of attorney to give the successor the authority they need to wind down the business and which express your wishes. Your own process is no different.

We have created a sample Succession Plan which you may use as a base or for guidance.

We recommend that you discuss your plan with your successor so they know what tasks they face and agree.

Money issues

Contemplate what must be paid as the successor wraps up your obligations, and how that will be looked after. Consider:

- Should I get insurance, perhaps through CBIA, to cover costs like payroll, getting another lawyer up to speed on files, storage and shredding of old files etc? This is advisable but not always possible.
- How can I maximize the value of my practice in someone else’s hands, so costs are less of an issue?
- Do I expect there to be value left over after costs? Who gets it?
- Have I had an adequate discussion with my successor about money issues?

Tips for firms

You can adapt the Sample Succession Plan if you wish, or create your own. You might already have an understanding among partners. Now it’s time to write it down. You need a plan for every lawyer at your firm. Make your plan clear for your successor/colleagues so your clients, colleague(s) and family are looked after.
Tips for sole practitioners

The Sample Succession Plan was drafted with sole practitioners, or the last member of a firm, in mind. In general, look for a successor likely to practice in similar areas of law, close enough to help (though not necessarily in your community) and who will be practising for the foreseeable future. In recruiting a successor, what would attract them? Perhaps they see it as a return of kindness or favours or a professional courtesy. Your goodwill with your returning clients has some value, but consider that a competitor could open an office next door. Your WIP, AR, excellent staff and future value in open files are assets. There will be liabilities. A key to success is what you do to prepare. You are the only lawyer who knows your practice, so you have to make it possible for someone else to do what is needed.

Tip for sole practitioners with simple practices: Stewardship

Some lawyers ask if they can use a staff member or spouse to do most of the work at succession. To help you reflect on this, which we call “stewardship,” we developed a Sample Simple Succession Plan (Stewardship). See more detail, above.

Before you choose your spouse or a family member, as some want to, ask yourself a hard question: could they perform all the necessary functions in a timely way if grieving or looking after you?

What is the Society doing?

Clients can be seriously inconvenienced or prejudiced if a practice fails to have a succession plan. There are also significant costs to the Society, and hence all members, from members who leave behind masses of paper files and trust funds with no successor in place.

The Society has a multi-pronged approach to encourage and support all practices to have proper, functional succession plans:

- Succession plans are now required under our regulations.
- The Legal Services Support (LSS) team delivers succession planning workshops and works with members, including meetings with individual firms.
- LSS has developed supportive materials like this guide, a template succession plan, a template file retention/destruction plan, and a succession checklist.
- Firms will reflect on succession planning when they complete their triannual “MSELP” self-assessment of management systems.
- When new firms register with the Society, they discuss succession planning with our Legal Services Support team.
• LSS has supported practitioners facing imminent succession challenges.
• The Law Office Management Standards Committee is considering a file retention and destruction standard and a succession planning standard.
• We’re open to working with groups of lawyers in an area to help organize shredding and storage in an effort to keep the cost under control.
• LSS has identified a number of possible ways to make succession easier and is looking for/working on solutions.
• Our Trust Assurance team works with firms that report old balances to offer advice and encourage resolution.
• The Trust Account Working Group is exploring how lawyers can best transfer responsibility for their trust accounts at the time succession is needed.

On this issue and otherwise, Legal Services Support is available to advise lawyers at all stages of practice.

More Information & Resources

Connect with the Society’s Legal Services Support team at 902-422-1491 or LSS@nsbs.org to discuss your succession planning.

NSBS-LSS: File Retention/Destruction Plan Template
NSBS-LSS: Succession Plan Sample
NSBS-LSS: Succession Checklist
NSBS-LSS: Sample Simple Succession Plan (Stewardship) for Simple Situations
NSBS-LSS: Targeted Paper Reduction Plan Guide

LIANS has useful links and precedents on succession-related issues.

The Law Society of BC, Law Society of Alberta, and Law Society of Ontario all have sections on their websites devoted to succession, including precedents you might choose to adapt. Beware that the law and practice can be different: Ontario, for example, allows testators to have two wills.
Legal Services Support - Sample Succession Plan

In development

This sample is designed to help lawyers, particularly in sole practice or, with adaptation, in small firms, to develop and maintain a succession plan. It covers many things a successor needs to deal with and should know. It should help you think about the preparations you ought to make.

This sample walks you through making a succession plan. It:

- describes what you must have per the regulation,
- invites you to think about what will trigger and how you will effect succession
- invites you to consider practices and preparations for a wide range of considerations common in practice, in checklist format. Some might not apply to your practice.
- discloses to your successor how you organize your practice for each consideration
- suggests possible wording for any direction to your successor related to these considerations

If you choose to use this sample, check off (or describe) the circumstances that apply to your practice and make choices. Add customized text where needed – it is meant to be adapted by you for your circumstances. Please note that you need to provide for execution of your plan in your will and in an enduring power of attorney.

If you are a sole practitioner, you can use this Sample Plan with minimal adaptation. If you are in a firm of 2 or more lawyers, you will need a plan for the practice including all lawyers. There will be planning for individual lawyers and for the firm. You can adapt this plan or create one of your own: colleagues will already be familiar with the practice, planning for associates will likely be easier, but many provisions will nevertheless apply.

Regulation pursuant to the Legal Profession Act - Succession Plan

4.6.4 A law firm or sole practitioner must:
(a) maintain a current succession plan for the practice including all lawyers in the firm;
(b) annually review the succession plan; and
(c) pursuant to Regulation 4.11, report to the Executive Director regarding the succession plan.
4.6.5 A succession plan must contemplate the unique arrangements that will be necessary in the event of the cessation of the lawyer’s practice for any reason, including:
   (a) temporary disability or incapacity;
   (b) long term disability or incapacity; and
   (c) death of the lawyer.

4.6.6 At a minimum, a succession plan must include information and adequate arrangements to allow for the handling of clients and management of the practice with regard to the following, where applicable:
   (a) open and closed files;
   (b) wills and wills indices;
   (c) foundation documents and other important records;
   (d) other valuable property;
   (e) passwords and the means to access computers, email, accounting and other electronic records;
   (f) trust accounts and trust funds;
   (g) other accounts related to the member’s practice; and
   (h) any other arrangements necessary to carry on or wind up the lawyer’s unique practice.

Who

1. This is the Succession Plan of _________________________ (“I," “me,” or “my”).

2. The lawyer who will take responsibility for my practice (“my Successor”) in the event I am unable to continue is __________________________. 1

3. My Successor consents in writing to be my Successor by signing the bottom of this Succession Plan.

General

4. This Succession Plan constitutes a memorandum of understanding between me and my Successor as to how succession of my practice will take place and what steps I will take in advance to get ready for that eventuality.

5. This plan contains sensitive information and belongs in a locked safe or similar location, by both Firm/Lawyer and Successor.

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1 While some lawyers want to choose their spouse or a staff member to be their successor, only practising lawyers are insured, and only lawyers are bound by the Code of Professional Conduct. A spouse or staff member may assist with succession under the appropriate supervision of a successor lawyer, if the successor lawyer agrees.
How to effect

This section touches on many personal preferences. You are encouraged to draft your will and power of attorney carefully to accomplish what you want.

6. My will provides my Successor with the authority to deal with my law practice (including a law corporation) and implement my Succession Plan in the event of my death. Location/access information: ________________________________.

7. An enduring power of attorney provides my Successor the ability to deal with my law practice (including a law corporation) and implement my Succession Plan in any circumstance of cessation of my practice for any reason, other than death, including (a) temporary disability or incapacity and (b) long term disability or incapacity. Location/access information: ________________________________.

8. My enduring power of attorney provides (choose):
   □ a Gatekeeper with the power to trigger this plan by determining if my practice has ceased for any reason contemplated in Regulation 4.6.5. My Gatekeeper is ___________________________.
   □ the determination of whether my practice has ceased for any reason contemplated in Regulation 4.6.5 shall be based on facts evidenced in a manner set out in my enduring power of attorney.

9. My enduring power of attorney may provide for circumstances where my practice or part thereof can be returned to me (if, for examples I return to wellness).

10. My will and enduring power of attorney:
    □ cover the issue of any compensation to my Successor.

   There are many possible ways to handle this issue, including a fee, a favour, an expectation that receiving fees for the Successor’s work on open files is enough, a transfer of ownership etc. You have to think about what the Successor should receive and what your family might receive. Is there life insurance involved? Be clear.

11. For my trust accounts, I have met with my financial institution’s manager and determined what their organization will accept. I and my Successor have executed whatever documentation is required to allow my Successor to assume control of my trust account.

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2 This might be as a trustee. It can be as a bequest. Circumstances will vary widely, and might require tax planning. Or the practice might have limited value in the absence of the testator.

3 This is the BC model. A Gatekeeper can be a trusted family member or friend who is different than the Successor.

4 This is the Ontario model. (Be careful if looking at Ontario as their probate practice allows the use of two wills).

5 NSBS hopes to develop with financial institutions a standard acceptable way to effect the transfer of control of a trust account at succession; for now, bank practices vary so you and your bank must be in agreement on this point.
Preparing my practice for succession & Succession Plan

12. My Succession Plan is set out below. I describe my practice and define my plan by checking items and completing blanks. (*Preparations will make it easier for your Successor, but will also make it easier for you to retire/pass on your practice voluntarily when you want.*)

13. Open files (*check all which apply)*:
   - I have electronic files. I scan as documents come in. Location(s) ___________________.
   - I have paper files. Location(s) ___________________; 6
   - My practice is to return any original documents I don’t need to my clients.
   - My files contain original documents which need to be returned at the conclusion of the matter.
   - My open files are all cataloged in the following location (eg your file management/billing software).

   How will Successor find files, backups, passwords? ________________________.

   Succession Plan (*sample*): My Successor, after obtaining the consent of the client, may succeed me as counsel on any file my Successor chooses, may make suitable recommendations of other counsel who might be appropriate, and absent a choice of new counsel within a reasonable period of time shall provide the file to the client as if transferring a file of my Successor’s own.

14. Schedule (*indicate where Successor can quickly find my schedule showing all court appearances, deadlines, closings etc. and how to access it*): ____________.

15. Closed files (*check all which apply)*:
   - I have electronic closed files: everything/many files are scanned.
   - I have a written destruction policy, location ________________________.
   - That policy provides for the orderly eventual destruction of most of my electronic files.

   How will Successor find files, backups, passwords? ________________________.

   - I have paper closed files.
   - I have a written destruction policy located ________________________.
   - My closed files are located in boxes. Location ________________________.
   - My closed files have been culled, especially of material that must or could be returned to my clients.
   - My closed files are both grouped together and labelled by destruction date.

6 Lawyers take files home, keep different types of files in different places.
☐ My files are ready to shred as is (including being culled and grouped and labelled by destruction date).
☐ Where files contain materials that must be kept (eg foundation documents) they are kept separate from files ready to shred.
☐ My closed files are catalogued in the following location: ________________.

How will Successor find passwords? ________________________________.

Succession Plan (sample): My Successor will store my closed files and continue to destroy older files in accordance with my policy or my Successor’s policy.

16. Foundation documents for Property Matters (check all which apply).
☐ I do not have foundation documents as I have never practised property law or taken responsibility for another lawyer’s foundation documents.
☐ I am familiar with the definition of “foundation documents” Regulation 1.1.1 ma.7
☐ My foundation documents are indexed, and may be part of my closed file catalogue (location, and how will Successor find passwords?) ________________________________.
☐ I have scanned my foundation documents; they are electronic because it facilitates indefinite storage (location, and how will Successor find passwords?) ________________________________.
☐ I currently hold the foundation documents of the following lawyers who no longer practise (location, form (paper or electronic), and how will Successor find passwords?) ________________________________.

Succession Plan (sample): My Successor will retain all foundation documents currently in my possession and will provide for them to be held by another practising lawyer whenever my Successor ceases to practise, unless released of that obligation by law.

17. Minute Books / Company Agent / Company Registered Office / Seals (check all which apply):
☐ I have no minute books or seals, do not serve as recognized agent nor do I have any client corporate entity who uses my office address as registered office.
☐ I maintain approximately ___ minute books, an index of which is located ________________________________.

7 (ma) “foundation documents” means information on which a practicing lawyer relied in support of the exercise of professional judgment in rendering an opinion of title or certificate of legal effect, and includes an abstract of title, searches, documents, notes, survey fabric, or other title information, whether prepared by the lawyer or others and all information required to be kept pursuant to the Land Registration Administration Regulations.
How will Successor find passwords? ____________________________.

☐ I have made reasonable efforts\(^8\) to find clients to return any minute books and seals in any situation where I am not regularly in contact with the client.

☐ I have ceased to be the recognized agent and my address is no longer registered office for any company where I am not in regular contact with the client.

☐ I recognize that minute books and seals are client property and that NS law allows companies to be revived.

☐ For companies which have been struck off and for which I cannot locate the client, I have scanned evidence of legal and beneficial ownership and minutes, then shredded the minute book and discarded or recycled the seal.

☐ A list of the companies for which I am recognized agent and for which my address is registered office is located _____________.

How will Successor find passwords? ____________________________.

Succession Plan (sample): My Successor will treat any of these like open files.

18. Trust accounts (check all which apply):

☐ I do not hold any money in trust.

☐ I have eliminated all old\(^9\) trust balances or will do so by ____________ date, and will keep to that standard.

☐ Where appropriate, I will take advantage of the applications to dispose of undistributable trust funds by ____________ date.

☐ I will work with the NSBS trust assurance team to eliminate old trust balances.

☐ I list all my general trust accounts and trust accounts for specific clients, attached, including account numbers and bank branch.

☐ All of the files and records relating to outstanding trust balances are available and not slated for destruction.

☐ Location of trust account records: ________________________________

Succession Plan: see 11, above.

19. Undertakings (check all which apply):

☐ I have no outstanding undertakings and will not have any.

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\(^8\) An internet search involving sites such as LinkedIn, Facebook, POL, Canada 411 can help.

\(^9\) Aim to get to the point where you have no balances over a year old, unless necessary – it will make things easier for you in different ways. Our Trust Assurance Team can help you.
☐ A full record of all my outstanding undertakings can be found at ________________ location.
☐ My plan to fulfill my undertakings is as follows: ____________________.

Succession Plan (sample): My Successor will discharge any remaining undertakings as best they are able.

20. Operating accounts (often called “general accounts”), accounts receivable, and work in progress check any which apply

- The details of any operating accounts under my control are as follows:

  Succession Plan (this is a sample so you can change this): My Successor may use the operating account, accounts receivable and render accounts for the work in progress to pay for any expense related to my practice, and any projected future expense.

  ☐ My Successor may bill for and pay to them self a reasonable fee for services rendered.
  ☐ My Successor shall pay any balance to my Estate if I am dead or, if I am alive, to me or whomever has lawful authority over my property.
  ☐ Other (please set out): ________________________________.

21. Wills, will instructions/evidence of capacity and will indices (check all which apply, add anything necessary):

  ☐ I have never had a wills practice, so this is not applicable.
  ☐ I have no original wills (recommended)
  ☐ I keep approximately ___original wills in _____________ location.
  ☐ My will index is located _______________ and is kept up to date.
  ☐ My closed will files are organized together and not sprinkled through my other files (recommended)
  ☐ My closed will files (instructions/capacity information) are located ______.
  ☐ My closed will files are electronic (recommended).
  ☐ I have made reasonable efforts to return all original wills to the care of the clients. (recommended)
  ☐ I have noted any special instructions or concerns with the will, e.g. if I appear to have lost touch with the client.
  ☐ The wills I possess all have affidavits of execution (recommended)
  ☐ _____wills are missing an affidavit of execution. I have made appropriate efforts to obtain them and documented any relevant information, kept with the will.
I have made reasonable efforts to keep the contact information up to date for any will I hold.

Succession Plan (sample, if you have any wills): I would like my Successor to contact each client and notify them of the location of their will. It is up to my Successor whether she/he offers the service of continuing to hold wills for clients.

22. Powers of Attorney pick one:
- I have no original POAs
- I have original POAs, and my client always also has an original (describe where they are kept)

23. Other Valuable Client Property and Documents (choose):
- I hold no client property, other than in any trust account mentioned above.
- I have a list of client property which I hold, along with current contact information for the client(s). I will keep this list up to date. Location: ____.

Succession Plan (sample): I would like my Successor to contact each client and notify them of the location of their property. It is up to my Successor whether she/he offers the service of continuing to hold such property for clients.

24. Passwords and Means to Access computers, programs, email, accounting and other electronic records:
- Attached in strict confidence and with a request that it be kept locked in a safe (or located in the following secure location) is a complete list of all access information and passwords relating to my practice.
- A complete list of all access information and passwords relating to my practice can be found as follows: ________________________.

25. Access to safe(s) and safety deposit boxes:
- The combination for my safe(s) is (are) listed ________________________.
- The keys for my safety deposit box(s) is (are) ________________________.
- The safety deposit box is (identifying info and location) ________________________.

26. Office access (check all which apply):
- You may obtain access to my office by (deliver spare keys, describe from whom the Successor can obtain keys): ________________________.
- I have storage space located at ________________________.
  The keys are ________________________.
27. Personnel records and issues (check all which apply):
   - I have no current or former employees.
   - My current employees\(^{10}\) and their job titles are: ____________________.
   - You can find personnel files/records at ____________________.

Succession Plan (customize this sample plan as required): I leave it to your discretion to deal with my employees.

28. Financial records (other than trust account records):
   - These records are located ____________________.
   - List any accountant or bookkeeper ____________________.

Succession Plan: I ask you to keep these records long enough to satisfy any standards in place with CRA and NSBS and to share them as required with my personal representative or holder of any power of attorney dealing with financial matters.

29. Any other arrangements necessary to carry on or wind up my unique practice:
   - Describe anything else about financial wind up, e.g. who is to file tax for law corp, HST.
   - Describe anything else.

30. Annual review:
   - It is acknowledged that this plan must be reviewed annually by me pursuant to Subregulation 4.6.4 (b), and any changes must be agreed to by both parties.

This memorandum of understanding respecting a lawyer’s Succession Plan is entered into on the _________ day of ____________, 20____.

__________________________________________       _______________________________
Lawyer making plan       Successor lawyer

   - Diarize for review in one year (or less).

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\(^{10}\) The Successor has to bear in mind that there might be remittances, unpaid salary/vacation pay or other liabilities, depending on the circumstances of the succession. Parties should not forget to discuss employees. For a successor, keeping an employee can make a huge difference.
The LSS Guide to Succession Planning is recommended to help you make this policy.

Name of practice ________________________________

(“The Firm,” “our,” “us,” and “we,” even if sole practice)

Date ________________________________

Footnotes, and italicized words, apart from statute names, do not form part of this policy.

Purposes

1. To provide for retention of closed files for a reasonable time in case we need to respond to a possible liability claim or a professional misconduct complaint; and
2. To provide for the timely destruction of records to protect privacy, reduce costs, reduce the burden of paper files, and facilitate succession.

Scope

Applies to all client files, paper and electronic, now or hereafter in our possession.

Recital

We considered the twin purposes of this policy, the applicable law and our professional obligations to our clients and colleagues including (please review and check the below):

☐ Obligation to follow all privacy laws including PIPEDA, including an obligation not to retain personal information longer than necessary;
☐ The Limitation of Actions Act;
☐ Obligation to cooperate with our insurer to defend any professional liability claim;

1 Claims experience is very low for files that have been closed for 15 years. If you destroy a file pursuant to a bona fide retention/destruction policy, LIANS still provides coverage. See our Guide to Succession Planning.
☐ Limitations relevant to our practice which might apply to some files (e.g., children, wills) and whether they are relevant to the issue of retention/destruction;
☐ Obligation to have a succession plan;
☐ Obligation to produce the file if a complaint is made;
☐ Moral obligation to not leave behind a mess for others to pay for/clean up.

**General Retention Period**

Having regard to our obligations, our professional judgement, and what is professionally acceptable, we will retain, with only the Exceptions noted below, all client files for: (pick one)

☐ 15 years  
  or  
☐ _____ years.

**Exceptions**

**Foundation Documents** (only for LRA-vintage Real Estate Transactions) (see definition below) Must be kept according to the Regulation under the Legal Profession Act. Foundation documents must be accepted by another lawyer when you change category; consider keeping them in electronic form.

Definition from Legal Profession Act:

(\textit{ma}) "foundation documents" means information on which a practicing lawyer relied in support of the exercise of professional judgment in rendering an opinion of title or certificate of legal effect, and includes an abstract of title, searches, documents, notes, survey fabric, or other title information, whether prepared by the lawyer or others and all information required to be kept pursuant to the Land Registration Administration Regulations.

Policy (choose one):

☐ We will retain foundation documents indefinitely.
☐ We do not practice real estate law, have no foundation documents, and will not accept responsibility for another lawyer’s foundation documents without reviewing this policy.
☐ Other: __________________________________________________________________________________

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\(^2\) Over-retention of files is a known obstacle to succession planning.
\(^3\) This involves an objective view of your professional obligations, including to your insurer.
\(^4\) Regulation 8.2.1 to 8.2.5
Minors

*Please consult the Limitation of Actions Act*

Policy (choose one):
- When the client reaches the age of 34 years;
- Other: ________________________________________________________

Persons Under a Disability

*Please consult the Limitation of Actions Act before establishing a destruction date.*

Policy:
- At the time of closing the file, a destruction date will be established having regard to the ultimate limitation period as it applies to the particular client.

Original Wills, POAs, and instructions and information on capacity

*Please research the issue of retention of originals and of the files, which include capacity evidence. Consider how long these might need to be kept. We recommend you do not keep original wills. Store the instructions/capacity information separately from other files so they don’t get destroyed until you know they can be and consider scanning them to make long term storage feasible.*

Policy:
- Please describe your policy

Criminal law files ending in acquittal

Choose one:
- 5 years after closing
- ___ years after closing

Minute Books (applies to minute books & seals which, after reasonable efforts to find the client including online, cannot be returned. *Choose one:*
- Once a company is struck off, scan evidence of legal and beneficial ownership (eg shares, registers) and any minutes, then shred book contents and destroy or recycle seal. Destroy scanned documents ____ years after strike-off.
- Other: (spell out)

Other Exceptions must be identified

*Do not make exceptions for particular clients or files. Exceptions can be for broad groups of files, like those dealing with a particular area of law.*
Q: Why didn’t you draft an exception for property files, including pre-LRA title searches?

A: The rationale for retaining/destroying them is same as for other files. (Privacy law requirements, for how long might you reasonably be subject to a liability claim or complaint, compliance with client ID regulations, and the facts that very few claims are made after 15 yrs from closing the file and you will still be covered by LIANS if you destroy a file pursuant to a bona fide policy.) Pre-LRA property files are simply old files. While it used to be common to keep property files for a long time, the profession and laws have changed.

Rules for Destruction:

Following these rules and a proper policy can prevent an adverse inference being drawn against you. They are recommended by LIANS and NSBS-LSS.

1. Do not destroy any file or part thereof where you know there will be a claim or possible claim.
2. Do not destroy a file any earlier than this Policy provides.
3. Files are destroyed within a reasonable time once their retention period is over.
4. Don’t make new exceptions (e.g. for clients, files or parts of files) when it comes time to destroy.
5. Destroy the entire file contents (assuming client property has been returned). Do not keep bits and pieces. (You can save research memos in a library, electronic or paper.)
6. Keep a record of the destruction date. If the file is destroyed pursuant to one of the listed Exceptions to your general retention period (e.g. 15 years), note which Exception.

Signed and dated on behalf of The Firm:

Be sure your lawyers and staff are all trained on applying this policy.

The rest of this document is not part of the policy

5 See LSS Guide to Succession Planning for a more complete explanation.
6 If you destroy a file outside these rules and your bona fide policy, you could open yourself up to a possible allegation you did so in order to hide something
Store for destruction: checklist with tips for closing files:

- The easiest, cheapest and least stressful practice is to cull your file when you close it. Touch once and reduce your PIPEDA exposure.
  - Return original materials and client property to your client.
  - Remove duplicates, notepads and research.
  - Determine if there are documents that can be reproduced from an authority if ever you need them in future. Return to client or shred. These are often rich in sensitive personal information so don’t keep them unnecessarily (e.g., hospital records, Crown disclosure, corporate filings, tax returns).
- Have the responsible lawyer set a destruction date pursuant to the above Policy and mark it on the file. The destruction date can be as simple as a year. The key is to set it up to destroy in efficient chunks (i.e., you are setting this up so all your files marked 2034 will easily be destroyed in 2034).
- Store your files (paper and electronic) grouped by destruction date. Plan to destroy paper by the box, shelf, etc. If you are closing two files that, by your Policy, have two different destruction dates, they belong in different boxes, each labelled with a destruction date.
- Back-up your files by destruction date.
- Keep foundation documents separately—they are a good place to start storing electronically. Most start off as e-documents anyway and it’s easier to meet your obligations at the end of practice. Get your searcher to scan, not fax!
- Keep will and POA files separately (i.e., in their own boxes or, better, scanned).

Shredding will now be easier and you can breathe more easily about your compliance with privacy law.

Miscellaneous tips:

You cannot exit practice without providing for your closed files, wills, and foundation documents, so plan ahead.

Your potential successor may be put off by a volume of paper overdue for destruction.

You pay through your dues for the rising expense of custodianships and receiverships. A big chunk of that cost relates to paper files. We all have a role and an interest in reducing paper.

Consider switching to electronic record keeping, becoming common

If you retain electronic files, you still need a retention/destruction policy, but it’s easier to leave practice because your closed files and foundation documents won’t be a roadblock.

Scanning is ultimately a business decision that also helps with your professional obligations.

Questions? Contact the Legal Service Support team: 902-422-1491 or LSS@nsbs.org


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7 But the original will is best given to the client. If not, give adequate thought to storing it.
Template annual privacy procedure: Destruction Day

1. Adjust depending on how you store your files.
2. Book time for lawyers and staff once a year to do this. Put it in peoples’ calendars.
3. For Destruction Day, if possible, run a list of all files you possess for which the retention period has now elapsed.
4. Do your best, and feel free to call Legal Services Support for guidance.
5. For files you encounter which were not prepared with the above checklist:
   a. as you proceed through your paper and electronic files, double-check that they do not contain will or POA instructions or foundation documents;
   b. if your retention/destruction policy provides for a longer retention period than this Destruction Day, mark the destruction date on the file and store it in a way that your attention will be drawn to it at the right time (e.g. a box or electronic location labelled “2034);
6. If you encounter a file where you have information that a possible claimant in the event of a claim suffered or suffers from a disability as defined in the Limitation of Actions Act, separate the file and note why.
7. If you encounter a file for which you know of a potential or actual claim or complaint, do not destroy it. Report any potential claim to LIANS if you haven’t already.
8. For paper files, shred all of the contents and note the date of destruction (on a list of files, or even on the file folder).
9. Using your list (or folders)
   a. Identify and destroy any electronic file
   b. Identify and destroy any electronic back-up(s)
   c. check your desktop for any lingering information (e.g. files in Word, PDF, Excel…) and destroy same.
10. Emails – either:
    a. Go through your emails that are not in the file and eliminate them matter-by-matter, or
    b. Delete all emails older than a certain age (perhaps your general retention period).
11. Back-ups including system back-ups: now is a good time to destroy unnecessary back-ups. Keep only what you need.
Legal Services Support Checklist - Succession Planning Considerations  *in development*

This checklist\(^1\) is for firms and sole practitioners. It is a list of things to consider but is not exhaustive. It can be used in conjunction with our Succession Planning Toolkit, which includes a Guide, Sample Succession Plan, File Retention/Destruction Policy Template and this checklist.

Making your practice readily accessible for someone else

- Create and maintain an accessible **office procedure list**. Review and update the list from time to time and provide detailed directions regarding every aspect of your office’s operations:
  - How to check for a conflict of interest;
  - How to use the calendaring system;
  - How to generate a list of active client files, including client names, addresses, and phone numbers;
  - Where client ledgers are kept;
  - Billing practices;
  - How to find accounts receivable;
  - How the open/active files are organized;
  - How the closed files are organized and assigned numbers;
  - Where the closed files are kept and how to access them;
  - The office policy on keeping original documents of clients;
  - Where original client documents are kept;
  - Where the safety deposit box is located and how to access it;
  - The bank name, address, account signers, and account numbers for all law office bank accounts;
  - The location of all law office bank account records (trust and general);
  - Where to find, or who knows about, the computer passwords;
  - How to access your voice mail (or answering machine) and the access code numbers;
  - Where the post office or other mail service box is located and how to access it;
  - Accounts payable – when, who, how etc.;
  - HST – frequency, who does it, how;
  - Payroll – who/how done, frequency; and

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\(^1\) Adopted in part from a checklist prepared by the Law Society of BC
• Payroll remittances – who/how it is done.

☐ Ensure that you are able to generate complete client and file open lists with up-to date contact information.
☐ Have secure documentation recording all accounting and financial information, access codes and passwords and identify document location in your planning instructions.
☐ Record all deadlines on every file in a central calendar system which is easily accessible.
☐ Thoroughly document all files sufficiently to allow the conduct of file to be assumed without delay and expense to clients.
☐ Keep all time and billing records up-to-date.
☐ Avoid keeping clients’ property or clients’ original documents. Return original documentation to clients as soon as possible.
☐ Purge and close files regularly.
☐ Review and update annually the attached Law Office Contacts and Basic Information.
☐ Consider including in retainer agreements provisions indicating your arrangement for a Power of Attorney/Trustee to manage or dispose of your practice in the event of your disability, incapacity or death.

Other recommended preparations for eventual succession:

☐ Make a file retention/destruction policy (see NSBS-LSS Template Policy).
☐ Keep up to date with destruction pursuant to your policy.
☐ Eliminate trust account balances older than three years.
☐ Return client property; make a list of anything you do have.
☐ Consider whether to return all original wills.
☐ Consider whether to return all minute books and seals.

Mechanics of Succession Plan:

☐ Review your succession plan regulatory obligations – see our guide or sample plan.
☐ Choose a trigger mechanism for your succession plan in the event your practice ceases for a reason other than death (see our guide and sample plan) examples include:
  o Factual threshold based on evidence, and
  o Having a Gatekeeper distinct from your Successor decide if the threshold is met.
☐ Have discussions with all appropriate persons regarding practice succession plans – family, office staff, Power of Attorney/Trustee, Personal representative, personal lawyer, Gatekeeper, banking personnel and insurance.
☐ Discuss necessary financial issues (e.g. what happens to assets, how do liabilities get covered, what is your mutual understanding of what the successor is entitled to).
☐ Consider, if advisable, financial arrangements such as obtaining a line of credit (unused) and/or life and disability insurance to cover your office overhead and your Power of Attorney/Trustee expenses. Consider for how long this would be needed.
☐ Consider income replacement for yourself during disability.
☐ Sole practitioner: write a succession plan.
☐ Firm of 2 or more: write a succession plan covering:
   • Firm-wide matters,
   • Each lawyer in the firm, and
   • Consider a “wipe-out” situation.
☐ Legal advice: this is an important matter for you and your family and no lawyer is in the best position to advise them self. Are there potential issues (e.g. tax) that are beyond your knowledge?
☐ Draft any will changes.
☐ Draft any enduring power of attorney changes.
☐ Make formalized arrangements for trust accounts to be accessed and maintained in case of your illness, incapacity or death and confirm their effectiveness with your financial institution.

Practice Items to Consider in Succession Plan include:

☐ Open files (indexed on your software?);
☐ Open Legal Aid files (are they identifiable as such on your index?);
☐ Closed files (indexed on your software?);
☐ Foundation documents, indexed;
☐ Minute books, seals, recognized agencies and registered offices (indexed);
☐ Wills, will index and instructions/capacity information;
☐ List of undertakings; and
☐ Other valuable property of clients.

Periodic Review (as needed and no less than annually)

☐ Review whenever there are changes that might impact your plan.
☐ Schedule annual reviews of your plan, your will & POA, any other agreement or list.
☐ Check-in with your successor when you review.

Notes:
Law Office Contacts and Basic Information

Your Full Name ____________________________________________________________

SIN ____________________________ Telephone # ______________________________

NSBC # __________________________ Date of Birth ____________________________

CBA # __________________________ Place of Birth ____________________________

HST # __________________________

Law Corporation Name ____________________________________________________

Incorporation date __________________ CRA tax # _____________________________

Incorporation # __________________________

Office

Address ____________________________________________________________________

PID # (if office is owned by you or your law corporation) ______________________

Office Phone __________________________ Work Cell Phone ____________________

Email Address __________________________ Website __________________________

Home

Address ____________________________________________________________________

Phone __________________________ Personal Cell Phone ________________________

Spouse/Next of Kin

Name __________________________

Home Address __________________________________________________________________

Home Phone __________________________ Cell Phone ____________________________

Office Manager

Name __________________________

Home Address __________________________________________________________________

Home Phone __________________________ Cell Phone ____________________________

2 Adapted from the Law Society of British Columbia
Assistant

Name ___________________________

Home Address _____________________________________________________________________

Home Phone _____________________  Cell Phone _______________________

Bookkeeper

Name ___________________________

Home Address _____________________________________________________________________

Home Phone _____________________  Cell Phone _______________________

Computer, telephone/voice mail, security codes, cell phone, website, safe: numbers, user names and passwords (Contact person who knows where this information is stored)

Name ___________________________  Relationship ______________________

Best way to contact __________________________________________________________________

Landlord

Name ___________________________  Contact Person ___________________

Address ______________________________________________________ ____________________

Phone __________________________

Lease or other term of rental ____________________________________________

Lease or rental termination date _________________________________________

Location of documents ________________________________________________

Will

Personal representative Name ____________________________

Address __________________________________________________________________________

Phone __________________________  Cell Phone _______________________

Alternate Personal representative Name ____________________________

Address __________________________________________________________________________

Phone __________________________  Cell Phone _______________________
Location of Will

Power of Attorney (Personal)

Attorney Name ___________________________
Address __________________________________________________________________________
Phone __________________________  Cell Phone _______________________
Alternate Attorney Name ___________________________
Address __________________________________________________________________________
Phone __________________________  Cell Phone _______________________
Location of personal Power of Attorney ___________________________

Accountant

Name ___________________________  Firm Name _______________________
Address __________________________________________________________________________
Phone __________________________  Cell Phone _______________________

Successor

Name ___________________________  Firm Name _______________________
Address __________________________________________________________________________
Phone __________________________  Cell Phone _______________________

Gatekeeper (if any)

Name ___________________________
Address __________________________________________________________________________
Phone __________________________  Cell Phone _______________________

Practice Bank Accounts (expand list as necessary)

General Account(s)
Institution ________________________ Phone __________________________
Address __________________________________________________________________________
Bank Contact Person _______________ Other Signatory ___________________
Account Number(s) ________________________________

Trust Account(s)
Institution ________________________ Phone __________________________
Address __________________________________________________________________________
Bank Contact Person _______________ Other Signatory ___________________
Account Number(s) ________________________________

Safety Deposit Box(es) for Practice (expand list as necessary)
Institution ________________________ Phone __________________________
Address __________________________________________________________________________
Bank Contact Person _______________ Box Number(s) __________________
Location of key(s) _________________ Other Signatory ___________________

General Office Insurance (theft, fire, liability)
Insurer __________________________ Phone __________________________
Contact Person ___________________
Address __________________________________________________________________________
Policy # __________________________

Excess Professional Liability Insurance
Insurer __________________________ Phone __________________________
Contact Person: ___________________
Address __________________________________________________________________________
Policy # __________________________
Disability Insurance for Practice Coverage

Insurer __________________________  Phone __________________________
Contact Person ____________________
Address ____________________________________________________________
Policy # __________________________ Beneficiary: Successor

Life Insurance for Practice Coverage

Insurer __________________________  Phone __________________________
Contact Person ____________________  Beneficiary: Successor
Address ____________________________________________________________
Policy # __________________________ Beneficiary: Successor

Location of Storage for Closed Files (expand as necessary)

Storage Company ____________________  Phone __________________________
Address ____________________________________________________________
Locker # __________________________
Access Requirements _________________________________________________

Leases of Equipment, etc (expand as necessary)

Item leased _________________________________________________________
Lessor __________________________  Phone __________________________
Contact Person ____________________
Address ____________________________________________________________
Expiration Date _________________

Business Credit Cards (expand the list as necessary)

Institution ________________________  Phone __________________________
Address ____________________________________________________________
Account number(s) ________________________________________________
Other Signatory _________________
Maintenance contracts and contacts: (cleaning, printers, copier, fax, computers, postage machine, snow removal, garbage, paper shredding etc) (expand list as necessary)

Item or job covered _____________________________________________________________

Location of contract/terms of service__________________________________________

Identity ______________________  Phone __________________________

Address _____________________________________________________________________
Sample Simple Succession Plan for Wind-up (Stewardship with Counsel)

This Sample is for a sole practice that is relatively simple (e.g., few areas of law, perhaps less than 50 files, perhaps no staff, no trust account, no real estate files, no wills/will files; it might also work in a practice with many Legal Aid files which is otherwise simple.) It is meant to help you, but you must still adjust it to suit your circumstances, wishes and particular obligations. This sample uses a trustworthy staff or family member to do the work, but under the supervision of a lawyer.

Date and name of law practice
___________________________________________

1. I have a will, ______________________ is my Personal Representative/Trustee, and in the will I provide sufficient authority to wind-up my practice if I am dead.

2. I have an enduring power of attorney that gives __________________ the authority to deal with or wind-up my practice if I am still alive, and under what circumstances.

3. _______________ (my “Steward”) agrees to do the primary work to effect this plan;

4. If Steward is not a lawyer, I appoint ________________ as Counsel.

5. My Steward shall work under the direction of Counsel, as Counsel is responsible to make certain all of my professional obligations are discharged.

6. Call the Barristers’ Society; notify them I have ceased practising. Legal Services Support is available. 902 422 1491

7. Schedule: Located ______________. Consult re: impending deadlines and prioritise. Promptly advise client, any court and other parties what is happening. See 8 below.

8. Open Client files: (choose the one which applies, or customize):
   - With Counsel’s supervision and help, Steward will help find new counsel for my clients, with the choice of counsel being fundamentally up to my clients.
   - With the consent of the client, Counsel may keep any files or find new lawyers.
   - Return open files to my clients, provide them with the attached list of lawyers.
   - Return all my open files to the clients, advise them to find their own lawyer.

9. Closed files: Keep them in secure storage. Tell NSBS who has the key. My file destruction policy is located ______________. My files are ready to shred. Counsel shall first confirm what a “closed file” is, then Steward is to (choose one):
   - Periodically shred my files which have reached their destruction dates; or
   - After ______ (date), shred all my files.

10. WIP: You may render bills for unbilled fees and disbursements. Counsel shall review before a bill goes out. You may choose to:
    - Discount my fees ___% in light of the disruption to the client;
    - Not bill any fees less than $ _______ or disbursements less than $_____.


11. Accounts Receivable: you may send reminder notices and collect accounts.
12. Accounts payable: please keep sufficient funds to cover them.
13. Use the funds in my practice account to pay the costs of wind-up. If insufficient, obtain funds from my estate. More information might be in my will and POA. Counsel shall be paid (choose one or write your own):
   □ An honourarium of __________.
   □ An hourly rate of __________.
   □ No pay, as Counsel may keep files with the clients’ consent.
   □ Other ____________________________________________________________________________.
14. I do not have:¹
   □ Any trust account;
   □ Any real estate foundation documents;²
   □ Any original wills of clients;
   □ Will files/instructions including information about capacity.
15. Additional instructions/information
   □ I have left further instructions and information, including how to access everything needed, on an attached document, (*we recommend you first review our Succession Planning Checklist.*)
16. This plan will be reviewed annually. Any changes will be brought to the attention of the undersigned.
17. In any circumstance where I might reasonably return to practice, you may say so to my clients, but put their interests first by making sure they get timely representation.

We all acknowledge our role. We agree to keep confidential all information about every client, including their identity, to comply with professional obligations and privacy laws.

_________________________   __________________________
Executor                     POA

_________________________   __________________________
Steward who will wind up     Counsel (if different)

Lawyer making plan

¹ If you do have any of these items, or anything else where your obligations will not be met by this sample plan, you need to provide for them, or transfer them to another lawyer now. See our Guide to Succession Planning.

² "foundation documents" means information on which a practicing lawyer relied in support of the exercise of professional judgment in rendering an opinion of title or certificate of legal effect, and includes an abstract of title, searches, documents, notes, survey fabric, or other title information, whether prepared by the lawyer or others and all information required to be kept pursuant to the Land Registration Administration Regulations. *Legal Profession Act Regulation 1.1.1 ma*
Do you have paper files? To help your retirement or succession go smoothly, we recommend a targeted paper reduction project aimed at the biggest long-term storage and succession hurdles. Eliminate indefinite responsibilities that weigh you down most, and move on to shredding to reduce volume and protect privacy.

1. **Create** a file retention/destruction policy. You may use our [Template Policy](#). Do this now.

2. **End** the practice of keeping the papers mentioned in this plan. Do this now.

Then go through your old files systematically, over time. As you do:

3. **Return** paper responsibilities to your clients, over time, wherever possible:
   - All original wills and single-original POAs;
   - Original client documents in closed files;
   - All minute books, or at least those where you are: not actively engaged in updating them, or have any risk of losing contact with your client;
   - Other returnable papers – see (possible new guide of checklist for closing file).

4. **Purge** duplicates, research (your memos are likely electronic, save them that way), materials that can reliably be reproduced later from an authority and other unnecessary contents.

5. **Scan** three burdensome things, then index and back them up. Scan over time, but set a time. Scan in house. Convert these three long-term succession obstacles into electronic form. Make them easily received - without undue burden - by a successor. Each is described in more detail in our [Guide to Succession Planning](#):
   - Will & POA files (not the original wills or POA)
   - Foundation documents from real estate transactions
   - The irreplaceable documents from old unreturnable minute books (see Guide)

As you scan, shred the paper copies.

6. **Shred**
   - Follow your policy and shred. A good policy will help you achieve significant reduction. Start soon and watch your burden shrink.
   - Group your remaining files by destruction date to make it easier to shred them.
To make this work well, set goals, devote regular time, and make tasks part of people’s responsibilities.

Get creative about finding clients to return documents: use Facebook, Google, LinkedIn, POL, RJSC…

If you reduce your existing paper, even in a targeted way, you will boost your ability to:

- change category and retire when you want,
- change careers smoothly and quickly,
- attract someone to take your practice,
- help your successor or steward wind up your practice, and
- reduce worry.

---

1. LPA Regulation 1.1.1 (ma) “foundation documents” means information on which a practicing lawyer relied in support of the exercise of professional judgment in rendering an opinion of title or certificate of legal effect, and includes an abstract of title, searches, documents, notes, survey fabric, or other title information, whether prepared by the lawyer or others and all information required to be kept pursuant to the Land Registration Administration Regulations.

2. In a typical NS minute book, the irreplaceable parts are any evidence of ownership (legal or beneficial) like share certificates and share ledgers, and minutes. The replaceable parts are the Articles, Memorandum, Special Resolutions and list of officers and directors, because they are on file at RJSC.
Get started:

Let us know you’re interested in being on a list of lawyers/firms that are approachable to help, and what models. We’ll give that list to lawyers who ask.

You may also approach practitioners directly. Make the most of the opportunity.

Step up: help make succession a success

Be a Succession Lawyer

Models

- Advise a successor or bursar (someone helping with responsibilities)
- Merge with small practice: it’s a pre-retirement strategy for them, growth for you
- Provide wrap-up service (disbursing all files)
- Take on a practice when succession required (keeping many files)
- Consider satellite offices, clinics and electronic means to maintain acquired goodwill

It’s easier for everyone if a practice is prepared. So at the same time we’re asking practices to have a plan, we’re encouraging and helping them to prepare, e.g:

- File destruction policy & implementation
- Trust account clean up
- Moving to electronic storage
- Encouraging non-retention of wills, original documents, client property
- Support—being there to help

Expect NSBS-LSS to work to make things easier over time
Succession Plan Realities for Lawyers

In NS, we have:
- 249 sole practitioners
- about half outside HRM
- some work from home
- 43 two lawyer firms
- 54 3-5 lawyer firms

Soles with a bustling general practice have a challenge recruiting another local practitioner, even though they have lots of goodwill.

Soles with a limited scope practice might have an easier practice to wind up and a tight, loyal client base.

The youngest lawyer in a small firm faces the same succession challenges as a sole practitioner.

Small firms, like married couples, must consider a “wipe out” scenario.

Why step up?

NSBS has made succession planning a requirement and much of the planning can be common.

Clients can suffer if lawyers suddenly leave practice, for whatever reason including death, without arrangements in place. The cost of custodianships is rising.

We’ll soon have 450 practices that will need a lawyer from outside their firm to play a role to make their succession plan work. This represents most legal services—and access to justice—in rural NS.

Succession planning is not as daunting in a larger firm because others know your practice and you have a chance to contribute to your profession.

You have a chance to help a colleague or their family at a time of great need.

Caption describing picture or graphic
MEMORANDUM TO COUNCIL

From: Cheryl Canning, Chair, CPLED sub-committee
Date: December 6, 2019
Subject: Tuition and Subsidy for PREP course

For: Approval X
Introduction
Information

Recommendation/Motion:

Be it resolved that:

Upon the recommendation of the CPLED sub-committee, the Society will maintain the tuition of $3750 plus tax for the upcoming PREP program commencing in June 2020. Further, the Society will seek funding to subsidize the tuition for articled clerks who are able to demonstrate financial hardship.

Analysis:

• Background

At its meeting in October, Council struck the CLPED sub-committee to study the options for financing the PREP program and to make recommendations to Council.

The sub-committee members are: Cheryl Canning, QC, Maurice Chiasson, QC, Andrew Nickerson, QC, Ellen Burke, Jillian Barrington and Michelle Chai. Staff included Jacqueline Mullenger and Kate Shewan. The first time the sub-committee met it focused its attention on determining what information it would need to inform its decision. At the second meeting, with the benefit of that information, the sub-committee deliberated its options and formulated the resolution set out above.
The information considered included the perspectives of the members of the sub-committees themselves, as the composition of the sub-committee had been carefully composed to include input from Council, the finance committee, from private practice within and outside HRM, and the gender equity committee. He had invited a representative from the racial equity committee to participate as well but that fell through at the last minute. Recognizing this gap, the sub-committee asked for input from Michelle Williams (Director of the IB&M Initiative at the Schulich School of Law and a member of REC). The sub-committee asked Kate Shewan to confirm for the sub-committee what the increase would be to member fees in certain subsidy scenarios, and it asked for comparator information from other provinces and territories who will be offering the PREP program.

As Council is aware, the current cost of the Skills Course to the Society is approximately $6000 per student. The tuition for the PREP program will be $6100 per student. We have confirmed that this registration fee will be in place for a three year period. The tuition will be paid directly to CPLED.

The Society will no longer be receiving revenue from the Skills Course. CPLED will reimburse the Society for out of pocket expenses related to the PREP course which will be run out of the Society offices. The Society will also receive financial credit for the human resources we provide to the PREP program.

- **Options**

The sub-committee determined that the options available are three:

1. Require the students/firms to pay the full $6100 with no subsidy;
2. Maintain the current tuition of $3750 and increase the current subsidy; or
3. Increase or decrease the tuition and alter the subsidy accordingly.

**Option 1**

At our first meeting the sub-committee determined that given the Society’s mandate and strategic goal to increase access to legal services we could not, in good conscience, recommend the total user pay system that is contemplated in option 1. We determined that philosophically, all members have an obligation to help educate those who are coming into the profession as a way to ensure access to legal services and the continuation of the profession. Some members do this by accepting and training articled clerks, some contribute by paying for their clerks to take the course and others contribute by subsidizing the cost of the course.

The sub-committee is of the view that eliminating the subsidy and charging the full $6100 to students would very likely result in fewer firms accepting clerks and/or paying for clerks to take the course and quite likely reduce the number of available clerk positions. The sub-committee is concerned that this would adversely affect those students from equity seeking groups disproportionately.
The sub-committee is also aware that the Society has applied to the Nova Scotia Law Foundation for funding to pay the tuition for up to 10 clerks who can demonstrate financial hardship, thereby decreasing the members’ obligation to subsidize the cost of the course.

As a result of this decision the sub-committee moved on to consider options 2 and 3.

**Option 2**

At a tuition of $3750 Nova Scotia will be subsidizing our clerks in the amount of $2250 per student.

Staff obtained information from our partner law societies about the cost of their tuition and the amount of their subsidies. All three of the prairie provinces will be charging $3500 per student and the balance of the cost will be subsidized. This is a substantial increase to tuition for each of them as their current tuitions were far lower. Both NWT and Nunavut send their students to Alberta and Manitoba for the program and they will be charging the full $6100 per student as they cannot afford a subsidy.

The prairie provinces will be subsidizing approximately $2600 per student. It is noteworthy that both Manitoba and Saskatchewan receive funding from their law foundations so the subsidy cost to the law societies (i.e., to the members) is lower than $2600 per student.

Staff have put together a budget showing the analysis of the subsidy options. That budget is attached as exhibit “A”.

The members are currently subsidizing the course by approximately $73 per member. Should the Society maintain the current tuition at $3750 and subsidize at the rate of $2250 per student, the increased cost to the membership would be approximately $31 per member. This assumes that the law foundation grant of $61,000 is obtained.

If the Society does not receive a grant from the Law Foundation, the increased costs to the members would be approximately $69 per member.

At the moment, the sub-committee is not able to ascertain whether the increase could be covered under current financial resources (i.e., if it could be absorbed by the Society thereby leaving practicing fees the same) or if the practising fee would need to be raised. This would form part of the budget discussion. The sub-committee felt their recommendation would not change regardless of the outcome of this discussion.

Further, the sub-committee is of the view that even if the Society does not receive the grant it should commit to covering the tuition costs of students who are able to demonstrate financial hardship; especially given our commitment to access to legal services and promoting equity and diversity in our membership.
Option 3

Finally, the sub-committee considered whether the tuition should be increased or decreased, thereby changing the amount of the subsidy as well. For all of the reasons set out above we determined it would not be appropriate to increase the tuition. Further, the cost of Nova Scotia’s tuition is already higher than that of the other PREP provinces.

There was consideration given to lowering the tuition given that our PREP partners are charging a lower tuition. As this would further increase the required subsidy and given that the Society may assist students with financial hardship, it was determined that this was not a feasible option.

Summary:

If the proposed motion is passed, tuition for 2020 will remain at $3750. The subsidy provided by the Society will be $2250. This could result in:

- A $0 increase to member’s practicing fees if the Society’s budget permits; or
- A $31 increase to member’s practicing fees if members cover the subsidy and we receive the grant we are hoping to receive from the Law Foundation; or
- Up to a $69 increase to member’s practicing fees if members cover the entirety of the subsidy and no grant is received.
**Exhibit A**

**Analysis of subsidy options for Skills Course**

This analysis is provided as a follow-up to the questions raised in our CPLED Skills Course meeting discussion. Specifically, the question of how much we would be subsidizing on a per member basis in the CPLED proposal and how much we were previously subsidizing.

Estimates costs and subsidy are as follows:

The cost paid directly to CPLED, based on 72 students, with 10 covered by a grant, and with a charge to students of $3,750, works out at $145,700.

Based on 2,040 members this equates to $71 per member.

However if we include the estimated internal costs of running the skills course, there would be a total cost of $208,000 which works out to a subsidy of $102 per member.

In the previous in-house scenario, estimating the total costs of running the skills course, the net cost of the program was around $149,000, which based on 2040 members works out at a subsidy of around $73 per member.

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<thead>
<tr>
<th></th>
<th>Old</th>
<th>New</th>
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<tbody>
<tr>
<td></td>
<td>In-house</td>
<td>CPLED</td>
</tr>
<tr>
<td>Additional CPLED Cost (assuming 72 students &amp; $2,350 subsidy)</td>
<td>-</td>
<td>169,200</td>
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<tr>
<td>Foundation Grant</td>
<td>-</td>
<td>(23,500)</td>
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<tr>
<td>Total Paid to CPLED</td>
<td>-</td>
<td>145,700</td>
</tr>
<tr>
<td>Cost per member paid to CPLED (2,040 members)</td>
<td>$0</td>
<td>$71</td>
</tr>
<tr>
<td>NSBS Skills course operation including overheads</td>
<td>435,655</td>
<td>157,138</td>
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<tr>
<td>Revenues</td>
<td>(286,500)</td>
<td>(94,555)</td>
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<tr>
<td>Total Internal Costs to NSBS</td>
<td>149,155</td>
<td>62,583</td>
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<tr>
<td>Internal Cost per member for NSBS costs</td>
<td>$73</td>
<td>$31</td>
</tr>
<tr>
<td>Total Costs including overheads</td>
<td>149,155</td>
<td>208,283</td>
</tr>
<tr>
<td>Total Cost per member for total of internal and CPLED costs</td>
<td>$73</td>
<td>$102</td>
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(Based on 72 students and 2040 members)

Note: This is based on an estimated allocation of departmental costs for the skills course. When the skills course was delivered internally, it was part of the overall work done in the Education and Credentialing Department, with time, costs and overhead specifically relating to the course not tracked separately.
MEMORANDUM TO COUNCIL

From: Credentials Committee

Date: January 15, 2020

Subject: Transitional Regulation for PREP course

For: Approval x

Introduction □

Information

Recommendation/Motion:

Be it resolved that attached transitional regulation for the PREP course are approved and will become effective as of January 24, 2020.

Analysis:

As we prepare to move to the new program we have determined that we need to create a transitional regulation that will permit us to alter the requirements to qualify to be called to the bar. Specifically, we need to deal with anyone who commences articles after November 1st or applies as a foreign transfer after that date.

The reason being that currently the regulations require articled clerks to complete the existing Skills Course. As that will no longer be available we have to provide for how they qualify. Although anyone starting now cannot take the in-person course, they could argue that they should be able to take the online course. That however, will not work as there will not be another in-person course that they can take. We need to start them in the new course when it begins. This does mean that anyone who starts between December 2019 and May 2020 will have their call delayed by several months because the new course will not begin until July 2020.
As a result if you start articles in December 2019 you would normally have been able to be called in January 2021 if you were successful in every component because you could do the online components early in 2020 and then the in-person course in the fall of 2020. With the transition regulation you would not be eligible for call until June 2021 so you will be delayed by 6 months.

However, If you start in January 2020 you would have been eligible for call in April 2021, with the new course you would not be eligible until June 2021; so there is a two month delay.

If you start in February, March or April of 2020 you would not have been eligible for call until June 2021 and you will still be eligible for the same call under the PREP program.

In terms of the Foreign transfers, they, like everyone else have three opportunities to write the Bar Examination; Given our current regulations, legal counsel has advised that we must give applicants already in the system, those opportunities to write the examination. As a result, we are committed to running the Bar Examination for three more sittings: January 2020, July 2020 and January 2021. If we do not change the regulation, we will continue to be committed to running the Bar Examination and have the burden of the costs of that examination.

We are proposing that we create a regulation that requires any foreign applicant applying after January 1st to be moved to the new regime. That means that they would be required to take the PREP program unless we create a different policy or regulation.

The drafted regulation is attached for your review as Appendix A.

All of which is respectfully submitted.

Jacqueline L. Mullenger
Director, Admissions & Professional Development
<table>
<thead>
<tr>
<th>Existing Regulation</th>
<th>Proposed Regulation</th>
<th>Rationale</th>
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<tbody>
<tr>
<td><strong>14.3 PREP Program Transition</strong>&lt;br&gt;14.3.1 In this Regulation,&lt;br&gt;(a) “old Bar Admission Course” means the Bar Admission Course as defined by Regulation 3.6.1;&lt;br&gt;(b) “PREP Program” means the Practice Readiness Education Program established by CPLED;&lt;br&gt;(c) “CPLED” means the Canadian Centre for Professional Legal Education; and&lt;br&gt;(d) “foreign transfer” means a person approved under Regulation 6.5.</td>
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<td><strong>14.3.2</strong> Beginning on January 1, 2020, any person approved for enrollment as an articled clerk, pursuant to Regulation 3.3, or for Permanent Mobility by a lawyer from Outside Canada, pursuant to Regulation 6.5, will be required to complete the PREP Program, unless otherwise determined by the Executive Director.</td>
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<td><strong>14.3.3</strong> The final three sittings of the Bar Examination will be held in January 2020, July 2020 and January 2021 and no further sitting of the Bar Examination will be offered after January 2021.</td>
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<td>Existing Regulation</td>
<td>Proposed Regulation</td>
<td>Rationale</td>
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<td>14.3.4 A person who has been approved as an articled clerk pursuant to Regulation 3.3, prior to January 1, 2020, and who has not successfully completed the old Bar Admission Course will be governed by Regulation 3.6, in particular subregulations 3.6.6 and 3.6.10.</td>
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<td>14.3.5 A person who has been approved as a foreign transfer prior to January 1, 2020, and who has been required to complete the old Bar Admission Course but failed to do so, will be governed by Regulation 3.6, in particular subregulations 3.6.6 and 3.6.10.</td>
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<td>14.3.6 Despite subregulation 3.6.10, the final opportunity for any person to rewrite the Bar Examination will be in January 2021.</td>
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<td>14.3.7 The final sitting of the Bar Examination will be held in January 2021 and no further sitting of the Bar Examination will be offered.</td>
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<td>14.3.8 No person will be permitted to defer the writing of the Bar Examination but may elect to participate in the PREP Program as set out in subregulation 14.3.9.</td>
<td>This section is meant to prevent deferrals simply because an individual is not prepared.</td>
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<td>Existing Regulation</td>
<td>Proposed Regulation</td>
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<td><strong>14.3.9</strong> If a person is unable to successfully complete the Bar Examination in or before January 2021, that person will be permitted to register in the PREP Program without the permission of the Executive Director only if they would have been eligible to write or rewrite the Bar Examination were a further sitting available.</td>
<td></td>
<td>This section was added to cover exceptional an unforeseen circumstances while avoiding the need for further sitting of the Bar Exam after January 2021. This section preserves additional attempts by allowing the individual to register for PREP without the need for permission from the Executive Director.</td>
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<td><strong>14.3.10</strong> A person who is registered in the PREP Program pursuant to subregulation 14.3.9 will be responsible to pay the required PREP registration fee.</td>
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<td><strong>14.3.11</strong> A person referred to in subregulation 14.3.4 or 14.3.5 may elect at any time to participate in the PREP Program provided they meet the requirement of subregulation 3.6.10(c) and pay the required PREP registration fee.</td>
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<td><strong>14.3.12</strong> A person referred to in subregulation 14.3.3 or 14.3.4 who does not meet the requirement of subregulation 3.6.10(c) may be registered in the PREP Program at the discretion of the Executive Director.</td>
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<td><strong>14.3.13</strong> Beginning on January 1, 2020, a non-practising member, retired member or life member who applies to resume practice pursuant to subregulation 5.6.1 may be required to complete the PREP Program.</td>
<td></td>
<td>The next three sections were added to address the questions re: readmissions and applications to change to practising. Both these regulations refer to the terms of approval requiring “successfully completing all or a portion of the Bar Admissions Course”. In the interim this will allow the Director of Education &amp; Credentials as</td>
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<td>Existing Regulation</td>
<td>Proposed Regulation</td>
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<td>delegate of the Executive Director to replace this requirement with the PREP program.</td>
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<td><strong>14.3.14</strong> Beginning on January 1, 2020, a person who has resigned from the Society, and who is not a member of another Law Society in Canada or who has been disbarred and has applied to be readmitted pursuant to subregulation 5.10.1 may be required to complete the PREP Program.</td>
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<td><strong>4.13.15</strong> Subregulations 14.3.13 and 14.3.14 replace subregulations 5.6.5(b) and 5.10.6 (b).</td>
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Executive Summary

As the regulator of Nova Scotia's legal profession, the Nova Scotia Barristers' Society (NSBS) exists to uphold and protect the public interest in the practice of law.

We fulfill our public interest mandate by ensuring that lawyers deliver competent and ethical legal services in accordance with standards for legal professionals. The Society’s membership is currently comprised of over 2000 lawyers.

Council is the Society’s governing body and includes 21 voting members who are elected lawyers from across the province, as well as five appointed public representatives. Council is supported by numerous committees, hundreds of volunteers and a dedicated staff led by the Society’s Executive Director.

Council ensures that the Society fulfils its purpose by striving for excellence in regulation of the profession, promoting the highest standards of competence and ethical conduct of lawyers and striving for equity, diversity and inclusion within the profession.

Council establishes the Society’s strategic direction. Following a series of consultations with members, stakeholders and the public in 2019, Council created a set of Strategic Goals and Objectives to guide its work for the next three years (2019-2022).

The 2019-2022 Strategic Plan outlines three goals and each goal has measurable objectives.

Our strategic goals are as follows:

1. The Society regulates the legal profession in the public interest in a proactive, principled and proportionate manner
2. More Nova Scotians will have access to ethical and competent legal services.
3. Nova Scotians will be served by a legal profession that is diverse, inclusive and culturally competent

Goal #1 of our strategic plan identifies that it is our objective to “communicate and engage with members.” Council will champion this strategic plan and help to lead the Society’s communications initiatives.

As ambassadors of the Society, Council members will help to share key messages, encourage their colleagues to connect with the Society and encourage attendance at Society events.
This communication plan outlines Council’s role in supporting the Society’s communications to ensure we communicate with members collaboratively. This plan also outlines specific strategies and measureable objectives so we can review and track our communications efforts. This is a living document so we can edit and update accordingly.

Council’s Role

- Visit & review the News & Events section of the NSBS website
  - InForum https://nsbs.org/news-media/inforum-newsletter/
- Attend NSBS events (Annual Meeting, TRC education sessions, LIANS/NSBS Conference, IB&M Reception, meetings with communities, Pride Parade & more) and attend other related events such as County Bar meetings
- Follow/Like/Share NSBS posts on our social platform
  - Twitter https://twitter.com/NSBS
  - Facebook https://www.facebook.com/NSBarristers/
  - LinkedIn https://www.linkedin.com/company/ns-barristers%27-society/
- Review & share Society key messages – messaging prepared in 2020
- Share Council election information
- Write a blog post for InForum – Council’s work, highlight Council in the Community, Strategic Plan status updates, your role as a Council member.
  - NSBS Blog https://nsbs.org/news-categories/nsbs-blog/
- Forward NSBS emails (surveys, events, elections etc.) to colleagues
- Forward anecdotal feedback from colleagues to Tilly and/or Collette

Key messages

- The Society exists to uphold and protect the public interest in the practice of law.
- **The Society regulates the legal profession in the public interest in a proactive, principled and proportionate manner.**
- **The Society will communicate and engage with members**
- Acting in the public interest, the Society provides leadership, value and support to a competent, ethical, inclusive and engaged legal profession.
- Council is the Society’s governing body and ensures that the Society fulfills its purpose.
- Council establishes and champions the Society’s Strategic Plan. **Council created a set of Strategic Goals and Objectives to guide its work for the next three years (2019-2022).**
- Lawyer, stakeholder and public engagement is necessary to advance the Society’s strategic priorities and initiatives.
- The Society puts the public first, engaging with equity-seeking communities and advocating for increased access to legal services.
The Society is responding to the Truth and Reconciliation Commission’s Calls to Action.

**Audiences**

- Council
- NSBS Members
- Legal & Justice Stakeholders
- Public
- Media

**Goals**

- Increase awareness of Society’s mandate to uphold and protect the public interest and what the Society does as a regulator
- Increase awareness of Council’s role as the Society’s governing body.
- Ensure members, the public, media and key decision-makers are aware of the Society’s leadership role.
- Ensure members are effectively informed and encouraged to participate in Society activities.
- Establish tools and tactics so Council members are equipped to champion the 2019-2022 Strategic Plan.

**Objectives**

- **Increase member attendance** at Annual Meeting by 20% by June 2021
- **Increase member attendance** at TRC education sessions by June 2021
- **7 average member comments** on NSBS blog by June 2021 - Blog will officially launch on the new site January 2020
- **Increase views on NSBS blog** by June 2021- Blog will officially launch on the new site January 2020
- **Increase attendance of community members & members** at Council in the community events by 10% June 2021.
- **Increase positive media opportunities** by June 2021
- **Increase stakeholder & public subscriptions to InForum** by June 2021 currently stakeholders can’t easily subscribe to our newsletter so with the new website we will aim for an average of 3 new subscribers monthly between January 2020 (new website) & June 2021
- **Increase in web traffic to member resource portal & pages** between December 2019 (launch of new site) and June 2021
- **Increase web traffic to strategic plan & About Us pages on nsbs.org website** between January 2020 & June 2021
• **Increase social media follows** by June 2021 – Facebook averages 5 new likes a month so we will aim for 8 new likes a month, Twitter averages 10 new follows a month and we will aim for a consistent *15 new follows* a month

• **Increase in average responses to member surveys** by June 2021 – average survey response is 133 responses & our goal will be to aim for 170 responses a survey

• **Increase opens to InForum & other direct communications to members** by June 2021 – current average of 40% opens & aim for increase of average of 45% opens

• **Increase Council election participation** by June 2021 – The 2019 election results was 30.96% with 579 votes of a total 1870 eligible voters casting electronic ballots. This was a slight increase from 2017. In 2021, equipped with a strategic communications plan to roll out the election, our goal is to increase participation to 35%.

**Strategies**

• Establish, encourage & foster two-way communications with members – Blog comments, consult with members & seek feedback, continue the feedback loop (follow up with what we heard)

• Equip Council with key messaging on priority issues

• Utilize the Society’s existing communications tools to connect with members, public & stakeholders – InForum, social media platforms, website, direct email (Mailchimp), survey tool (SurveyMonkey)

**Measurement**

We will measure the following to ensure we are achieving our communications objectives:

• Event attendance – tracked through survey monkey
• Event feedback – collect & tracked online
• Survey responses
• Social media follows/likes/shares & comments
• Website traffic – tracked monthly
• Blog comments – tracked monthly
• Anecdotal feedback
• Council election participation
MEMORANDUM

TO: Council, Nova Scotia Barristers Society

FROM: Lawrence Rubin, Director of Insurance
       Lawyers' Insurance Association of Nova Scotia

DATE: October 25, 2019

RE: Report on Lawyers' Assistance Program (LAP)

Included in LIANS' regulatory mandate is the establishment and oversight of the Lawyers' Assistance Program ("LAP").\(^1\) The provider of the program is Homewood Health Inc ("Homewood") and LIANS' oversight is by way of a Committee that reports to the Board.

As of this date, the members of the Committee are Sean Foreman (LIANS Board Rep), Amy Bradbury, Craig Berryman, Nancy Rideout and Natalie Woodbury.

At the end of 2019, Amy, Craig and Nancy will be retiring from the Committee having reached their term limit. Effective January 2020, the Committee members will be Sean Foreman (LIANS Board Rep), Jennifer Anderson, McFarlane Njoh, Krista Smith and Natalie Woodbury.

Though I briefly refer to the work of the Committee in my semi-annual reports to Council, I have not provided usage information. The Committee at its most recent meeting noted that some of this information would be of interest to Council.

Part I: The LAP

Homewood provides similar services to most law societies in Canada. Contact information for NSBS Members is on LIANS' website. In addition, we have brochures available that LIANS pays for but we freely give out. I have attached a copy to this memorandum. The LAP covers lawyers, firm staff and their dependants. The cost of the program is included in the annual Society fee.

The program year is July 1 – June 30.

Part II: Usage

All numbers below are percentages. As the actual number of users is low and spread over a variety of issues and services, a person using one service or another, or calling about one issue or another, can have a significant effect on usage data. Accordingly, raw data is not particularly useful but usage rates provide a sense of the issues users face.

\(^1\) Regulation 12.4.7 enacted pursuant to the Legal Profession Act provides that LIANS shall establish, conduct and maintain programs to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems.
Utilization Overview and Historical Comparison

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<tr>
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</thead>
<tbody>
<tr>
<td>Total Usage % of</td>
<td>9.14</td>
<td>7.52</td>
<td>7.26</td>
<td>9.07</td>
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<td>Group</td>
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<tr>
<td>Counselling</td>
<td>86.1</td>
<td>87.3</td>
<td>85.2</td>
<td>84.2</td>
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<tr>
<td>Life Smart</td>
<td>11.4</td>
<td>11.6</td>
<td>13.2</td>
<td>14.0</td>
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<tr>
<td>Coaching</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>E-Services</td>
<td>2.5</td>
<td>1.2</td>
<td>1.7</td>
<td>1.8</td>
</tr>
</tbody>
</table>

Annual usage in the 7% range is not an abnormal rate for professions. However, the Committee is of the opinion this is on the low side for our group. In the most recent program year, usage increased to 9.14%. By way of comparison, Homewood’s benchmarks for the year ended June 30, 2019 are 10.84% for Homewood Overall and 8.34% for Legal Services.

Demographics (all figures are percent of all users and are from the 2018 – 2019 annual usage report)

(i) Gender
- Female: 75.1
- Male: 24.4
- Not Specified: 0.5

(ii) Relationship
- Member (includes staff): 82.9
- Spouse: 9.8
- Dependent: 7.3

(iii) Age
- 20 and under: 5.4
- 21 – 30: 14.1
- 31 – 40: 41.5
- 41 – 50: 21.0
- 51 – 60: 15.6
- 61+: 2.4

(iv) Years of Practice
- Less than 5: 28.8
- 5 to less than 10: 12.7
- 10 to less than 15: 8.8
- 15 to less than 20: 7.8
- 20 to less than 25: 2.0
- 25+: 4.4
- Not Specified: 35.6

(v) New cases HRM v. Outside HRM
- HRM: 55 (versus 73% of lawyers in HRM)
- Outside HRM: 45 (versus 27% of lawyers outside HRM)

(vi) Repeat v. New Users
- New: 48.8
- Repeat: 51.2
# Services Used

## Counselling Services (category figure is percent of all users, specific issue is percent of category)

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<td>Addiction</td>
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<td>3.3</td>
<td>4.0</td>
<td>3.7</td>
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<tr>
<td>Alcohol / Substance</td>
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<td>50.0</td>
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<td>80.0</td>
<td>100</td>
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<tr>
<td>Internet</td>
<td></td>
<td>0</td>
<td>50.0</td>
<td>20.0</td>
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<td>Food</td>
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<td>33.3</td>
<td>0</td>
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<tr>
<td>Other</td>
<td></td>
<td>16.7</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Family</td>
<td></td>
<td>5.5</td>
<td>7.3</td>
<td>12.5</td>
<td>11.3</td>
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<tr>
<td>Health</td>
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<td>2.2</td>
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<td>58.3</td>
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<td>26.6</td>
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<td>25.0</td>
<td>28.2</td>
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<tr>
<td>Depression</td>
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<td>14.7</td>
<td>26.1</td>
<td>15.3</td>
<td>24.4</td>
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<td>Stress</td>
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<td>19.3</td>
<td>34.7</td>
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<td>0.6</td>
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<td>Work</td>
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<td>9.4</td>
<td>8.6</td>
<td>10.3</td>
<td>7.1</td>
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<tr>
<td>Burnout</td>
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<td>0</td>
<td>11.8</td>
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<tr>
<td>Change in Workplace</td>
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<td>0</td>
<td>0</td>
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<tr>
<td>Return to Work</td>
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<td>7.7</td>
<td>0</td>
<td>8.3</td>
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<tr>
<td>Demotion</td>
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<td>7.7</td>
<td>7.1</td>
<td>16.7</td>
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<td>8.3</td>
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<td>Work Trauma</td>
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<td>Work Stress</td>
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<td>38.5</td>
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<td>Workplace Conflict</td>
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<td>38.5</td>
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<td>8.3</td>
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<td>Crisis / Trauma</td>
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<td>Abuse – emotional / verbal (outside of family)</td>
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<td>37.5</td>
<td>16.7</td>
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<td>37.5</td>
<td>33.3</td>
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<td>33.3</td>
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</table>
Life Smart / Plan Smart Services (percent of all users)

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<tr>
<td>Career Counselling</td>
<td>37.5</td>
<td>25.0</td>
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<td>20.0</td>
<td>33.3</td>
<td>21.4</td>
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<td>19.0</td>
<td>14.3</td>
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<tr>
<td>Jumpstart Your Wellness</td>
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<td>20.0</td>
<td>4.8</td>
<td>7.1</td>
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<tr>
<td>Legal Advisory Services</td>
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<td>7.1</td>
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<td>New Parent Support</td>
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<td>14.3</td>
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<td>Nutritional Counselling</td>
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<td>15.0</td>
<td>9.5</td>
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<td>Relationship Solutions</td>
<td>12.5</td>
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<td>14.3</td>
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<td>Smoking Cessation</td>
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<td>0</td>
<td>0</td>
<td>3.6</td>
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<tr>
<td>Grief and Loss</td>
<td>4.2</td>
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<tr>
<td>Elder and Family Care</td>
<td>4.2</td>
<td>0</td>
<td>0</td>
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</table>

Counselling Method (percent of all users)

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<tbody>
<tr>
<td>Face to Face</td>
<td>74.0</td>
<td>91.4</td>
<td>89.0</td>
<td>85.7</td>
</tr>
<tr>
<td>Phone</td>
<td>14.4</td>
<td>7.9</td>
<td>9.6</td>
<td>12.5</td>
</tr>
<tr>
<td>Web</td>
<td>11.6</td>
<td>0.7</td>
<td>1.5</td>
<td>1.8</td>
</tr>
</tbody>
</table>

The reduced usage of face-to-face and increased usage of phone and particularly the web is a positive trend. It means that not having a service provider in the locale of the person seeking assistance is not a deterrent to using the services Homewood provides.

The LAP Committee strongly believes that it is incumbent on all lawyers who see a peer struggling to take a few minutes and mention the program as the health of our Members is a concern of the profession as a whole.

Should Council have any questions for either the Committee or myself, feel free to contact me.

Respectfully submitted,

Lawrence Rubin
Director
Your Member and Family Assistance Program (MFAP)

Achieving your health and wellness goals just got easier.

Professional

We guarantee your confidentiality. We are Homewood Health™, a trusted Canadian company with years of experience delivering the best possible support for clients like you. Everyone is guaranteed confidentiality within the limits of the law. You won’t be identified to anybody—including your employer.

Choices

Counselling that’s convenient for you. Counselling is available in person, by phone, by video, or online. There is no cost to you. Offices are local and appointments are made quickly, with your convenience in mind. Have a preference for location or appointment time? We’ll do our best to accommodate your preferences.

Life Smart Coaching

You can receive coaching support for a variety of life balance and health issues, or get expert support to better manage your career. Life Smart Coaching services are available by phone.

Health

• Nutrition
• Lifestyle Changes
• Jumpstart your Wellness
• Smoking Cessation

Life Balance

• Childcare and Parenting
• Elder and Family Care
• Relationships
• Financial
• Legal

Career

• Career Planning
• Workplace Issues
• Pre-Retirement

Counselling

For all of life’s challenges
Your Member and Family Assistance Program helps you take practical and effective steps to improve your well-being and be the best you can be. We offer a supportive, confidential, and caring environment and will provide you with counselling for any challenge:

• Family
• Marital
• Relationships
• Addictions
• Anxiety
• Depression
• Life transitions/change
• Grief/Bereavement
• Stress
• Other personal issues

Online Resources

The right information at the right time
Access Homeweb anytime for e-Learning, interactive tools, health and wellness assessments, and a library of health, life balance, and workplace articles.

Contact Information

Contact us 24 hours a day, 7 days a week
1-866-299-1299
TTY: 1-888-384-1152
International (Call collect): 604-689-1717
En français: 1-866-398-9505
homeweb.ca

Member and Family Assistance Program
Coaching | Counselling | Support
Confidential | Available anytime

Homewood Health | Santé

1-866-299-1299
TTY: 1-888-384-1152
International (Call collect): 604-689-1717
En français: 1-866-398-9505
homeweb.ca

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A tear-out wallet card is provided below.
C'est demain, demain la journée nationale de la soin et de la sécurité pour l'enfant. Pour une journée de soins de qualité, il est important de bien préparer le repas et les activités de l'enfant. 

La journée de la santé du bateau est une occasion de sensibiliser les enfants aux bienfaits de la bonne alimentation. Les repas équilibrés et variés sont essen

Coaching Intellectue

Résolution de problèmes

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MEMORANDUM TO COUNCIL

From: Trust Account Regulations Working Group

Date: October 15, 2019

Subject: Regulation Change Re. Accountant Certification

For: Approval X Introduction □ Information □

Recommendation/Motion:

That the attached proposed amendments to Regulation 4.10.3 “Requirements for opening a trust account” be approved, with the use of the Accountants Certification to be discontinued, and additional questions relating to the financial systems instead being included on the Lawyers certification.

Background

Currently, prior to a law firm opening a trust account, the Society requires the completion of an Accountant Certification. The certification from the accountant is intended to verify that a system is in place that allows for the detailed elements of the required accounting records for trust accounts, and also requires the accountant to confirm, based on their review and inquiry, that a practising lawyer designated by the firm has been instructed on the appropriate use of the Trust Accounting System.

A number of concerns have been raised around this certification:

1. There has been pushback from accounting firms and CPA N.S. as the requests being made of accountants are not in compliance with Accounting Standards on “Agreed Upon Procedures.” which require an accountant to carry out specific procedures and report on the outcome of the procedure, rather than extrapolate this to giving an opinion or confirmation. This is different from a Review engagement or an Audit, to provide “confirmation” as requested on the form would require significantly more procedures, and a cost potentially in the thousands of dollars range. The lack of clarity also make it likely that different accountants perform very different work, depending on their interpretation of the requirements.

2. Often the certification happens upon formation of a new firm, before any transactions have been processed. As a result, those accountants who are preparing the certification cannot verify that the system is being used correctly.

3. Often accountants have only verified that accounting software has been purchased and installed.

4. Accountants are unable to confirm that the lawyer is trained on the appropriate use of the system, unless they provide the training themselves.
5. This certification was implemented prior to the Trust Assessment, which is now completed by any lawyer who will be a signatory on a trust account. Verification that a lawyer has an understanding of how to operate an accounting system to maintain trust account records now happens during the assessment, whereas previously it was thought that the accountant would verify this during the certification.

The Trust Account Regulation Working Group understood that the initial objectives for which the Accountant Certification was put in place were to ensure that the Lawyer had an accounting system in place that was capable of maintaining the required trust account records, and that the lawyer had the knowledge to operate the system.

The group felt that these objectives could be achieved through a combination of:

1. The Trust Assessment that is now being used to verify a lawyer's knowledge around accounting for trust accounts, and
2. An expanded certification by the Lawyer including a confirmation that they have implemented a trust accounting system that will allow them to comply with regulation 10.4.2 Required Records. (See attached)

The working group determined that this was a preferable approach to revising the Accountant Certification to comply with Agreed Upon Procedures accounting standards, which would also result in a requirement for expanded accountant engagements.

The added benefit is reduced costs for new firms at start-up.

Both the current Accountant Certification and the proposed expanded Lawyers certification are attached.
### REGULATION AMENDMENTS

<table>
<thead>
<tr>
<th>Existing Regulation</th>
<th>Proposed Regulation</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Requirements for operating a trust account</strong></td>
<td><strong>Requirements for operating a trust account</strong></td>
<td>The certification that accountants have been asked to sign is not reflective of what they are actually able to certify, particularly because at the time of the certification, no transactions have been conducted through the account. The Trust Account working Group has recommended that the certification come from the lawyer, and the Society will conduct an educational audit within 6 months of the lawyer opening the account to assist with any problems or deficiencies in the lawyer’s accounting systems.</td>
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<tr>
<td>4.10.3 Prior to operating a general trust account, a lawyer or law firm through its Designated Lawyer, must:</td>
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<td></td>
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<tr>
<td>(a) successfully complete a Trust Account Assessment as required by subregulation 4.10.2.1;</td>
<td>(a) successfully complete a Trust Account Assessment as required by subregulation 4.10.2.1;</td>
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<tr>
<td>(b) provide a certificate in the prescribed form from a licensed professional accountant, confirming that the practicing lawyer or law firm has in place a trust accounting system that will enable compliance with Part 10 of the Regulations;</td>
<td>(b) provide a certificate in the prescribed form from a licensed professional accountant, confirming that the practicing lawyer or law firm has in place a trust accounting system that will enable compliance with Part 10 of the Regulations;</td>
<td></td>
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<tr>
<td>(c) confirm that appropriate arrangements, in writing, have been made with the financial institution to comply with the requirements of Section 30 of the Act;</td>
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<td></td>
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<tr>
<td>(d) in the case of a lawyer, hold a practicing certificate; and</td>
<td>(d) in the case of a lawyer, hold a practicing certificate; and</td>
<td></td>
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<tr>
<td>(e) meet such other requirements as may be prescribed by Council.</td>
<td>(e) meet such other requirements as may be prescribed by Council.</td>
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</table>
Lawyer’s Certification
Regulation 4.10.3 Requirements for operating a trust account

Instructions

Prior to operating a general trust account, a lawyer or law firm through its Designated Lawyer, must provide a certificate in the prescribed form, confirming that the practicing lawyer or law firm has in place a trust accounting system that will enable compliance with Part 10 of the Regulations and meet such other requirements as may be prescribed by Council.

Email this form to TrustAccounts@nsbs.org. We do not require the original

SECTION A – LAW FIRM INFORMATION

1. Law firm name: __________________________________________________________

2. In the case of a firm, the other Practising Lawyers are (attach separate sheet if necessary):
____________________________________________________________________________
____________________________________________________________________________
____________________________________________________________________________

SECTION B – TRUST ACCOUNTING SYSTEM INFORMATION

1. The nature of the accounting system is mainly:

   Manual (ledger books) ☐   Computer service provider ☐
   Accounting software ☐   Other (explain) ☐
   Other software ☐

Name of software used to maintain computerized trust records or “other”:
____________________________________________________________________________

2. Accounting records are maintained primarily by:

- Full-time accountant/bookkeeper
- Part-time accountant/bookkeeper
- Accounting firm
- Secretary/staff
- Law firm’s principal(s)
- Other (please explain below)

Name of person(s) maintaining accounting records: ________________________________.

Position/designation/office of the person(s): ________________________________.

3. Is a system in place to ensure accounting data is backed up on a regular basis?

- N/A
- Yes
- No

SECTION C – LAWYER’S CERTIFICATION

I, ______________________________ have read and reviewed the relevant sections of the Legal Profession Act (s. 29-32) and the Regulations (Part 4 – Obligations of Lawyers and Law Firms and Part 10 – Trust Accounts).

I undertake to advise you of the details of any General Trust Account I open (including an account in trust for Service Nova Scotia if applicable). I further undertake to advise the Law Foundation of Nova Scotia (via an LF1 form) upon the opening of any General Trust Account.

I certify that I have an understanding of and am in compliance with the Code of Professional Conduct.

I certify that any trust funds held and/or accepted will be in relation to legal services provided.

I certify that I have an understanding on rules regarding Anti-Money Laundering and Anti-Terrorist Financing as set out in Part 4 of the Regulations.

I certify that I have an accounting system and processes in place that will enable me to comply with Regulation 10.4.2 Required Records.

I acknowledge that I cannot begin the operation of a Lawyer’s Trust Account until I receive approval from the Executive Director.

________________________
Practicing Member

________________________
Date
NOVA SCOTIA BARRISTERS' SOCIETY

ACCOUNTANT CERTIFICATION

Send completed form to:
The Executive Director, Nova Scotia Barristers' Society
800 – 2000 Barrington Street, Halifax, NS B3J 3K1

Re: _______________________________

Lawyer or Law Firm

In accordance with Regulation 4.10.3(b) of the Legal Profession Act and based on my review and enquiry, I certify that the lawyer/law firm noted above has a Trust Accounting System in place that will allow for the following:

- a book of original entry or data source showing the date of receipt and source of trust money for each client and identifying the client on whose behalf the trust money is received,
- a book of original entry or data source showing all disbursements out of trust money for each client and showing each cheque number, the date of each disbursement, the name of each recipient, and identifying the client on whose behalf each disbursement is made out of trust money,
- a clients' trust ledger showing separately for each person on whose behalf trust money has been received all such money received and disbursed and any unexpended balance,
- a record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made,
- a book of original entry or data source showing the date of receipt and source of all money received other than trust money,
- a book of original entry or data source showing all disbursements of money other than trust money and showing each cheque or voucher number, the date of each disbursement and the name of each recipient,
- a book, data source or chronological file of copies of billings showing all fees charged and other billings to clients, the dates such charges are made and identifying the clients so charged,
- a record showing all trust property held in trust from time to time for all clients, and identifying the client on whose behalf the property is held
- a system which will allow for the monthly reconciliation of the total of balances held in all trust accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the books and records together with the reasons for any differences between the totals and which will be supported by
  (i) a detailed listing made monthly showing the amount of trust money held for each client and identifying each client for whom trust money is held, and
  (ii) a detailed reconciliation made monthly of each trust account in a financial institution,

Based on my review and enquiry, I confirm that the practicing lawyer, or in the case of a law firm, a practicing lawyer designated by the firm, has been instructed on the appropriate use of the Trust Accounting System.

I confirm that I have reviewed Part 10 of the Regulations under the Legal Profession Act.
I confirm that I am an Accountant licensed by the Public Accountants Board of Nova Scotia.

_____________________________  _______________________________
Signature of Accountant          Date

_____________________________  _______________________________
Name of Accountant               Acknowledgement by lawyer

July 2019
MEMORANDUM TO EXECUTIVE

From: Code of Professional Conduct Committee
Date: December 5, 2019
Subject: Proposed Amendments to the Code of Professional Conduct re: Technological Competence, and Chapter 3.4 Housekeeping

For: Approval x Introduction □ Information □

Decision Requested


Background

The Model Code of Professional Conduct was created a number of years ago through the efforts of the Federation of Law Societies of Canada (FLSC) and subsequently adopted in Nova Scotia by Council in 2012. Since that time, it is the role of the Standing Committee on the Model Code of Professional Conduct to consider and propose amendments as appropriate from time to time. Elaine Cumming, Professional Responsibility Counsel, currently serves as the NSBS representative on this committee.

Recommendations for amendments can be proposed by individual jurisdictions, as well as by the Standing Committee itself. Amendments proposed by the Standing Committee are circulated to all jurisdictions for consideration, following which the input and comments received are then further considered by the Standing Committee, which then incorporates the suggestions as appropriate. Final proposed amendments are then referred to the FLSC Council for approval and adoption for the Model Code. Once adopted by the FLSC, these amendments are then referred back in final form for consideration and adoption by the NSBS Council.

In the interests of maintaining a truly national Code of Conduct to the extent possible, final amendments to the Model Code are most often adopted as presented, and jurisdictions try not to amend or adopt their own language unless there are substantive differences in local practice. It is hoped that any substantive concerns are identified during the first round of consultations.
Analysis

For background information on this particular matter, please refer to the attached materials from David Swayze, Chair, Standing Committee on the Model Code of Professional Conduct, dated August 31, 2019 with attachments.

1. Rule 3.2-1 Competence – Commentary on Technological Competence

The NSBS Code of Professional Conduct Committee reviewed the original proposed amendment in 2018, and supports and recommends the current proposed amendment to the Commentary of Rule 3.2-1 Competence (in italics below):

Rule
A lawyer must perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer.

Commentary
…

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer’s practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer’s duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer’s practice and responsibilities and whether relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:
   a) The lawyer’s or law firm’s practice areas;
   b) The geographic locations of the lawyer’s or law firm’s practice; and
   c) The requirements of clients.

2. Housekeeping amendment – Chapter 3.4 Doing Business with a Client

The NSBS Code of Professional Conduct Committee supports and recommends the proposed housekeeping amendments to the Commentary of Rule 3.4-27 Competence:

   3.4-32 – change numbering of Rule referenced in Commentary [2] to Rule 3.4-32
   3.4-34 – change numbering of Rule reference to Rule 3.4-35

Neither of these amendments require any further adjustment to our current Code of Professional Conduct.
Attachments:

August 31, 2019 memo with attachments from David Swayze, Chair, Standing Committee on Model Code of Profession Conduct
MEMORANDUM

FROM: David Swayze, Chair, Standing Committee on the Model Code of Professional Conduct

TO: Federation Executive

DATE: August 31, 2019

SUBJECT: Commentary on Technological Competence

ISSUE

1. The Standing Committee on the Model Code of Professional Conduct ("Standing Committee") is recommending a change to Rule 3.1-2 to add commentary on Technological Competence. The proposed amendment will be submitted to Council for approval at its October 19, 2019 meeting. The proposed amendment is attached for your information (Attachment "A").

OVERVIEW

2. The Standing Committee began its consideration of whether the Model Code should be amended to address a legal professional’s duty to maintain technological competence in 2016. An environmental scan conducted at that time revealed that technological competence had already become an issue for regulators and lawyers in a number of jurisdictions. In January 2017 the Standing Committee released a consultation package that included a draft amendment to the Commentary to Rule 3.1-2 addressing technological competence. The feedback received on the proposal was generally positive.

3. The proposed amendment was initially referred to Federation Council for a vote at its December 2017 meeting. Council deferred that vote.

4. In response to some concerns raised about the new commentary the Standing Committee revised its proposal in late 2018. When the amendment was submitted to Council for approval in March 2019 the Law Society of Nunavut expressed concerns that the proposed language could be interpreted as imposing an obligation on lawyers to achieve a minimum level of technological competence rather than as an obligation that a lawyer be technologically competent in respect of technology that they actually use. Nunavut suggested that the lack of reliable access to technology in that jurisdiction could prevent lawyers from meeting the obligation if it were interpreted as a minimum standard. In light of Nunavut’s concerns, Council deferred the vote.

5. Following the Council meeting the Standing Committee reviewed the intention and history of the proposed commentary, the concerns raised by Nunavut, existing provisions and guidelines on technological competence from Canadian and international sources and some recent regulatory issues which had arisen in respect of technological competence. Based on this
work, the Standing Committee has added a paragraph to the commentary to address Nunavut’s concerns. The Standing Committee has confirmed that the Law Society of Nunavut supports the revised proposal.

PROPOSED AMENDMENT

6. The Standing Committee’s purpose in developing commentary on technological competence is to provide guidance which prompts legal professionals to consider both the benefits and risks associated with the use of technology. The revised proposal reminds lawyers of their obligation to (1) be and (2) remain technologically competent. The language reflects the understanding that the required level of competence is contextual: it depends upon a lawyer’s practice areas and circumstances.

7. Proposed paragraph [4A] expresses the purpose of the proposed commentary: to remind lawyers of their obligation to be technologically competent in a manner appropriate to their areas of practice and circumstances.

8. The proposed paragraph [4B] provides interpretive guidance. It clarifies that determining whether a lawyer has maintained the required level of technological competence is a contextual inquiry. The paragraph includes a non-exhaustive list of factors for lawyers and regulators to consider in determining the appropriate level of technological competence.

9. The proposed amendment to the Commentary to Rule 3.1-2 will be before Council for approval in October.
ATTACHMENT A

Competence

3.1-2 A lawyer must perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer.

Commentary

[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client’s behalf.

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

[3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

(a) the complexity and specialized nature of the matter;
(b) the lawyer’s general experience;
(c) the lawyer’s training and experience in the field;
(d) the preparation and study the lawyer is able to give the matter; and
(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

[4] In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer’s practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer’s duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer’s practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

a) The lawyer’s or law firm’s practice areas;
b) The geographic locations of the lawyer’s or firm’s practice; and
c) The requirements of clients.

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and
is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[6] A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

(a) decline to act;
(b) obtain the client’s instructions to retain, consult or collaborate with a lawyer who is competent for that task; or
(c) obtain the client’s consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] A lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client’s instructions to consult experts.

[7A] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1A.

[7B] In providing short-term summary legal services under Rules 3.4-2A – 3.4-2D, a lawyer should disclose to the client the limited nature of the services provided and determine whether any additional legal services beyond the short-term summary legal services may be required or are advisable, and encourage the client to seek such further assistance.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications. A lawyer should only express his or her legal opinion when it is genuinely held and is provided to the standard of a competent lawyer.

[9] A lawyer should be wary of providing unreasonable or over-confident assurances to the client, especially when the lawyer’s employment or retainer may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer’s experience will be such that the lawyer’s views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be
provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or services unrelated to the legal services retainer will also be subject to the constraints outlined in the rules/by-laws/regulations governing multi-discipline practices.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer’s own reputation and practice, incompetence may also injure the lawyer’s partners and associates.

[15] Incompetence, Negligence and Mistakes - This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.
MEMORANDUM

FROM: Federation Executive

TO: Council of the Federation
     Law society Presidents and CEOs (for information)

DATE: September 4, 2019

SUBJECT: Amendments to the Model Code of Professional Conduct

ACTION REQUIRED: DECISION OF COUNCIL

DRAFT MOTION:

WHEREAS when the Model Code of Professional Conduct (the “Model Code”) was adopted by Council of the Federation in 2009 it was recognized that it is a living document that must change over time;

WHEREAS the Standing Committee on the Model Code of Professional Conduct (the “Standing Committee”) was established in September 2010 to monitor changes in the law of legal ethics and professional responsibility and feedback from stakeholders, and to recommend such amendments to the Model Code as it considered appropriate;

WHEREAS the Standing Committee has established a robust process of consultation on all proposed amendments;

WHEREAS as a result of input from stakeholders the Standing Committee has determined that amendments to the Model Code should be made to address issues relating to technological competence;

WHEREAS the Standing Committee has provided a detailed description of the proposed amendments in the memorandum attached as Appendix “A”;

RESOLVED THAT Council approve the amendments to the Model Code proposed by the Standing Committee and attached as Attachment “A” related to technological competence.
ISSUE

1. The Federation Council is asked to approve revised proposed amendments to the Model Code related to technological competence. The background, rationale and language of the amendments are described in the memorandum from Standing Committee Chair David Swayze, attached as Appendix “A”.

BACKGROUND

2. The project to develop the Model Code grew out of the mobility of members of the legal profession. In the mid-2000’s, the law societies agreed that with members of the profession able to move freely between jurisdictions the existing patchwork of rules of professional conduct was difficult to justify and posed challenges for mobile lawyers and national law firms. The goal in developing the Model Code, which was approved by the Council of the Federation in 2009, was to synchronize, as much as possible, the rules of professional conduct in effect in the different jurisdictions.

3. The Standing Committee was established in September 2010 in recognition of the fact that the Model Code must evolve over time in response to changes in the law and changes made by individual law societies as they implement the Model Code. The mandate of the Standing Committee is to monitor changes in the law of professional responsibility and legal ethics, to receive and consider feedback from the law societies and other interested parties regarding the Model Code, and to make recommendations to Council with respect to any changes to the Model Code as it considered appropriate.

4. The Standing Committee consults regularly on the work of the committee and implementation of the Model Code by individual law societies through teleconferences with representatives of each law society appointed to act as liaisons to the Standing Committee. Many of the issues considered by the Standing Committee arise from these consultations.

5. The Standing Committee has also established a formal consultation process through which it solicits feedback on proposed amendments to the Model Code from law societies, legal ethics academics, the Canadian Bar Association, other legal system stakeholders and members of the public. In some cases the consultation on specific rule amendments is preceded by the release of a discussion paper to elicit general input on the underlying issues.

6. In consultation with liaisons from each law society, the Standing Committee has developed a schedule for consultations and amendments to the Model Code that calls for consultation packages to be circulated at the end of January of every year and amendment packages to be circulated at the end of September for a vote by Council in December. The time between circulation of the amendment package and Council’s vote is intended to provide law societies with an opportunity to review the proposed amendments before they go to Council.

7. In light of the history of the proposed commentary on technological competence, this timetable has been revised. The Standing Committee has requested that the proposed amendments be submitted to Council for approval at its meeting of October 19, 2019.
PROPOSED AMENDMENTS ON TECHNOLOGICAL COMPETENCE

8. Since 2016, the Standing Committee has consulted a number of stakeholders regarding proposed commentary relating to technological competence. The Standing Committee released a consultation package which included proposed commentary on technological competence in 2017. The feedback was largely positive. It had been proposed that Council of the Federation would vote on the proposed amendments at its December 2017 meeting. That vote was deferred. A revised proposal was presented to Council for a vote at its March 2019 meeting: that vote was also deferred. The Standing Committee has further revised its proposed commentary on technological competence to address specific concerns raised at Council. The Standing Committee’s detailed description of the proposed amendments is contained in the memorandum of its Chair, attached as Appendix “A”.

RECOMMENDATION

9. The Executive recommends that the motion on page 1 of this memorandum be adopted.
MEMORANDUM TO COUNCIL

From: Tilly Pillay QC, Executive Director
Date: January 24, 2020
Subject: Solo and Small Firms Working Group

Council’s strategic plan, under Goal #2, calls for the establishment of a group that is dedicated to supporting sole practitioners and small firms. It also asks us to identify and provide supports to address the challenges and needs of rural members. One way of approaching both these goals is to establish a Working Group comprised of individuals from solo and small firms who geographically represent various areas of the province, as well as different areas of practice. Council can consider what particular tasks they would like this working group to take on, which would assist Council in achieving its goals. The group would, no doubt, also have their own ideas as to how approach these issues and identify priorities that could be worked on.

I raised this at our last Council meeting and we started having preliminary discussions about composition. I am seeking input from Council as to how to establish this Working Group. One place to start is for Council members themselves to identify whether they would like to serve on this Working Group. Council could then task the Executive with recommending a slate of individuals for consideration by Council. Alternatively, a subgroup of Council could assume this task or the Nominating Committee. Whoever takes on this responsibility will need to have clear direction from Council as to what they hope this Working Group to achieve, and what considerations should be taken into account in populating it. I would appreciate your thoughts.
MEMORANDUM TO COUNCIL

From: Victoria Rees
Date: December 5, 2019
Subject: Proposed Merger of Code of Professional Conduct Committee with Ethics Advisory Committee

For: Approval ☑ Introduction ☐ Information ☐

This memo outlines a proposal, recommended to Council by the Governance and Nominating Committee, that the roles of the CPCC and Ethics Advisory Committee be merged into one Committee under the current Terms of Reference and name for the Code of Professional Conduct Committee.

Background

Approximately 18 years ago, the Ethics Committee and Discipline Policies and Procedures Committee were merged into a single Ethics and Professional Responsibility Committee. This was the case for about 6-7 years, until the new Federation of Law Societies Model Code of Conduct was developed, at which point a separate Code of Professional Conduct Committee was created in or around 2010, and the Professional Responsibility Policies and Procedures Committee was continued under this new name. Concurrently, an Ethics Advisory Subcommittee was created to assist staff in responding promptly to more complex ethics inquiries from members. This Subcommittee became a full committee (EAC) a few years ago, as the work of the CPCC on the Model Code became more significant.

Attached is a copy of the proposed Terms of Reference for the CPCC.

The work of the CPCC in relation to amendments to the Model Code of Conduct is primarily dependent on the timing of release of proposed amendments by the Federation’s Model Code of Conduct Committee. The CPCC therefore has capacity to become more involved, as they used to be, in providing ad hoc advice to members with complex ethics inquiries. In addition, it would be of value to the current CPCC to gain more understanding of the practical application of the Rules to daily practice, and the challenges members face in this regard.

The EAC does not meet in person. All complex inquiries (approximately 1 every two months) that are referred to them are done via email (de-identified), or, if controversial or where there is a lack of consensus, by teleconference. These inquiries are sent out as they come in, and responses are generally able to be provided to members within 24 – 48 hours. A record of these inquiries and responses is maintained in our confidential database.
It is important that the member volunteers we engage to assist us with providing ethical advice to other members, possess a range of skills, experiences, backgrounds and practice areas.

Recommendation

It is recommended that the Code of Professional Conduct Committee assume the role of the Ethics Advisory Committee, and that the Ethics Advisory Committee cease to exist as a separate committee. A copy of the proposed new Terms of Reference for the amalgamated CPCC is attached.

If approved, it is also proposed that the following three members of the EAC be appointed to the CPCC, for purposes of responding to ethics inquiries, in order to broaden the knowledge base and demographic representation of the CPCC for these inquiries. These members are:

**Kim Turner QC** – labour and employment law, HRM, professional regulation, previous NSBS investigator and prosecutor

**Michael Brooker QC** – personal injury litigation and real estate, outside HRM, former chair of the Ethics and Professional Responsibility Committee, current NSBS external investigator and practice reviewer

**Malcolm Jeffcock QC** – sole practitioner in criminal defence, outside HRM, with experience in complaints investigation, practice supervision and receiverships

Members of the CPCC and EAC have been advised of this proposal, and the CPCC formally approved this proposal at their meeting on November 29, 2019.

The new CPCC would also benefit from the appointment of a member, now or in due course, who identifies with a racialized community.
**Terms of Reference for the Code of Professional Conduct Committee**
Revised 2019-10-21

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

### Code of Professional Conduct Committee - Terms of Reference

<table>
<thead>
<tr>
<th><strong>Type</strong></th>
<th>Council Committee – Advisory to Council</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mandate</strong></td>
<td>The Code of Professional Conduct Committee supports Council in the governance of the Society by advising with respect to potential amendments to the Code of Professional Conduct (the Code) with reference to:</td>
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<td></td>
<td>- the Society’s mandate to protect the public and to promote the competent and ethical practice of law by our members; and</td>
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<td>- the benefits of maintaining uniform national rules of ethics and professional conduct for lawyers.</td>
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<td>The Code of Professional Conduct Committee supports the Executive Director in the promotion of the ethical and competent practice of law by members of the Society, and provides guidance and advice to members in respect of inquiries about the application of the Code to the practice of law.</td>
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<tr>
<td><strong>Responsibilities</strong></td>
<td>• Reviews any matters identified by Council as being in need of further consideration and report to Council;</td>
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<td>• Liaises with Federation Model Code of Conduct Committee and Council on proposed changes to the Model Code</td>
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<td>• Consults and engages with members, committees and other stakeholders as appropriate, respecting proposed amendments to the Code</td>
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<td>• Makes recommendations to Council respecting amendments to the Code, consistent with the Committee’s mandate.</td>
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<td>• Responds to ethics inquiries as presented by the Society’s Professional Responsibility Counsel or Director, and provide timely guidance and advice on the application of the Code of Conduct to particular practical scenarios presented by members</td>
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<td>• Assists with the provision of ethics education for students, members and others on request</td>
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</table>
| **Composition** | • At least 5 and not more than 10 members  
• Appointments are made and vacancies filled by Council |
| **Chair** | • Chair is appointed by Council |
| **Procedures and Work Product** | • The Committee operates in accordance with Council Policy 16  
• The Committee will maintain minutes of its meetings |
| **Reporting** | • The Committee is advisory to Council, and may make recommendations for policy changes to Council |
| **Staff support** | • Professional Responsibility Counsel |
1. INTRODUCTORY MATTERS/CALL TO ORDER

1.1 Introductory Remarks

President Carrie Ricker called the meeting to order. She explained the dual purpose of the meeting, which was to both conduct Council business and to learn from Nova Scotians with disabilities about their experience accessing legal services. She also explained the day’s structure: most of the meeting would occur prior to the beginning of the workshop, with an in camera session to deal with LFCC claims occurring following the workshop’s conclusion. She noted the land acknowledgement would occur at the start of the workshop, rather than the start of the meeting.

President Ricker introduced the agenda. Tilly Pillay QC, Executive Director, requested that the appointment of Blair MacKinnon to the Lawyers’ Fund for Client Compensation Committee be added to the consent agenda. Council accepted the agenda as amended.
2. IN CAMERA

2.1 Executive Director Report

3. DISCUSSION OF BIG ISSUE

3.1 Strategic Plan and Activity Plan Year 1

President Carrie Ricker provided Council with an updated version of the 2019-2020 Activity Plan. She described the process that lead to the draft’s creation, and explained that Council would be divided into groups to discuss and provide feedback on the plan’s different sections. After having time to discuss in their groups, Council returned with several suggestions intended to make the plan more specific and measurable. Rather than attempt to make any changes during the meeting, it was agreed that a working group of Council would return an amended draft to Council in January. Sheree Conlon QC and Michelle Kelly agreed to sit on this working group with C. Ricker.

4. POLICIES/PROCESSES

4.1 Multidisciplinary Practices: Communications and Engagement Plan

Victoria Rees, Director of Professional Responsibility, presented a draft Communications and Activity Plan intended for Council’s use should they receive questions from the membership as the Society begins exploring the possibility of regulating multidisciplinary practices (MDPs). The plan includes a history of work done to date, a series of key messages, and a schedule for stakeholder engagement. Council members were asked to provide feedback on the plan.

A discussion ensued regarding whether the tone of the key messages gave the impression that the Society was “championing” MDPs rather than seeking opinions about them. Council members were told they are free to alter the tone of the key messages to suit their needs.

A discussion about members’ interest in MDPs followed. V. Rees reported that based on the experience of other jurisdictions, the number of interested lawyers will be small, but could have an outsized impact as it would allow lawyers practicing in niche communities who could not afford to practice on their own to be able to do so alongside other professionals.

4.2 Annual Firm Report

Kate Shewan, Director of Finance & Administration, presented the draft 2020 Annual Firm Report (AFR). She highlighted the proposed changes in the report’s questions about succession planning and file retention. These changes arise out of the Legal Services Support team’s request to receive data that would allow them to design supports and resources for lawyers on these topics. Last year’s AFR asked respondents to confirm that they have a successor for their practice. The new version requires lawyers to identify who their successor is, and to confirm whether arrangements are in place for the successor to take control of financial assets of the firm, and that their financial institution is aware of this.
UPON MOTION BY Patrick Young and seconded by Tuma Young that the changes to the Annual Firm Report be approved. MOTION CARRIED

4.3 Annual Lawyer Report Update

K. Shewan presented summary results of the 2019 Annual Lawyer Report (ALR), highlighting changes in the membership’s demographics. She noted the growing number of aging lawyers in the profession, particularly among those who practice outside of HRM. She also noted the growing number of new calls.

A discussion ensued about whether the drop in the number of practicing lawyers in the “17-26 years since call” quartile indicated that people were feeling burned out or otherwise “chased out” of the profession. T. Pillay noted that there have been no studies done, so it is impossible to know for sure.

K. Shewan also reviewed results from questions about equity and diversity, and the general comments provided by respondents. She concluded by advising that Society staff responded to everyone who provided written comments. S. Conlon asked if it was possible to have the responses to the equity and diversity questions filtered by type of practice; K. Shewan confirmed this could be done on request.

5. APPROVALS

5.1 Criminal Standard: Withdrawal of Guilty Plea

This item was moved to the consent agenda.

5.2 GNC recommendation and ToRs to split GNC into two committees

This item was moved to the consent agenda.

6. CONSENT AGENDA

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

6.6 Appointment of Blair MacKinnon to the Lawyers’ Fund for Client Compensation Committee.
UPON MOTION BY Andy Nickerson QC and seconded by Tuma Young that the Consent Agenda be approved as presented. MOTION CARRIED

7. INTRODUCTORY REMARKS AND WORKSHOP

Following a land acknowledgment, Council Members and attendees participated in the Opening Doors for Everyone workshop delivered by Amanda Grinter of reachAbility. They then broke out into small groups over lunch to discuss the Society’s work and how the Society can better support Nova Scotians with disabilities in accessing legal services.

8. IN CAMERA

8.1 LFCC Claims

Three Lawyers’ Fund for Client Compensation claims were approved in relation to Jason Boudrot, in amounts totaling $16,558.63.

9. FOR INFORMATION

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. 2 MINUTE 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 TO COUNCIL

From: Elaine Cumming

Date: January 14, 2020

Subject: Amendments to GNC Regulations

Date – Executive Committee Approved for submission to Council

Date – Council

Recommendation/Motion:

It is recommended that the amendments to Part 2 of the Regulations regarding the Governance and Nominating Committee be approved.

Executive Summary:

In 2019, a subcommittee of the Governance and Nominating Committee (GNC) was struck to consider the division of that Committee into two committees, each with their own Terms of Reference. A recommendation in this regard was made to Council in November 2019 based on the following:

- The governance and nomination functions require distinct skill sets;
- There was a duplication of effort in the current committee model;
- Nomination work had necessarily been prioritized over governance work;
- The mandates of each area need specific time and attention;
- The importance of using volunteer time effectively and efficiently.

At that November meeting, Council approved the recommendation put forward by the Governance and Nominating Committee to split that Committee into two distinct committees, each with its own Terms of Reference.

There were several changes to the Regulations that were required to facilitate the creation of these two committees. Most of the references to the GNC in the Regulations relate to the Committee making recommendations to Council for the filling of vacancies on Council, and required only the deletion of “and Nominating”. Regulation 2.9.1, which
lists all of the Committees appointed by Council, is amended to ensure that the new Nominating Committee and Governance Committee are included with a brief description of their responsibilities.

Exhibits/Appendices:

Appendix A – draft amendments to Part 2 of the Regulations
## REGULATION AMENDMENTS

<table>
<thead>
<tr>
<th>Existing Regulation</th>
<th>Proposed Regulation</th>
<th>Rationale</th>
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<tbody>
<tr>
<td><strong>Council Fills Vacancy</strong></td>
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<tr>
<td>2.5.6 If the number of candidates nominated is less than the number of members to be elected to Council from a district, Council, following receipt of advice from the Governance and Nominating Committee, may (a) appoint a practising lawyer from the district to be a member of the new Council and to take office when the new Council does, or (b) call a by-election to fill the vacancy.</td>
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<td>2.5.12 If less than three nominations are received for the at-large election, Council, following receipt of advice from the Governance and Nominating Committee, will (a) appoint one or more members of the Society to be a member of the new Council and to take office when the new Council does or (b) call a by-election to fill the vacancy.</td>
<td>2.5.12 If less than three nominations are received for the at-large election, Council, following receipt of advice from the Governance and Nominating Committee, will (a) appoint one or more members of the Society to be a member of the new Council and to take office when the new Council does or (b) call a by-election to fill the vacancy.</td>
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<tr>
<td><strong>Second Vice - President Nominations</strong></td>
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<tr>
<td>2.6.2 On or before January 31 of every year the Governance and Nominating Committee will: (a) advise the members of the Society of its nominee for Second Vice President, and</td>
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<td>(b) call for nominations from others for Second Vice President.</td>
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</tbody>
</table>
| **No Additional Nominations**  
2.6.4 If no additional nominations are received, the candidate nominated by the Governance and Nominating Committee will be deemed to be elected. | **No Additional Nominations**  
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| **2.7.1** At its first meeting, or whenever a vacancy occurs, Council must appoint, from among names presented by the Governance and Nominating Committee, three persons, who are not members of the Society, to be Public Representatives on Council. | **2.7.1** At its first meeting, or whenever a vacancy occurs, Council must appoint, from among names presented by the Governance and Nominating Committee, three persons, who are not members of the Society, to be Public Representatives on Council. | |
| **2.9 Committees**  
2.9.1 Council must appoint the following committees:  
...  
(i) GOVERNANCE AND NOMINATING COMMITTEE, assist Council in the recruitment, appointment and election of members of Council and Officers of the Society and support Council’s commitment to the principles and practices of good governance;  
...  
(r) NOMINATING COMMITTEE, assists Council in the recruitment, appointment and election of members of Council, Officers, Committees, working groups and representatives of the Society. | **2.9 Committees**  
2.9.1 Council must appoint the following committees:  
...  
(i) GOVERNANCE AND NOMINATING COMMITTEE, assist Council in the recruitment, appointment and election of members of Council and Officers of the Society and support Council’s commitment to the principles and practices of good governance;  
...  
(r) NOMINATING COMMITTEE, assists Council in the recruitment, appointment and election of members of Council, Officers, Committees, working groups and representatives of the Society. | |
MEMORANDUM TO COUNCIL

From: Elaine Cumming, Professional Responsibility Counsel
Date: January 17, 2020
Subject: Definition of “Sole Practitioner”

<table>
<thead>
<tr>
<th>Date – January 24, 2020</th>
<th>Council</th>
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Recommendation/Motion:

It is recommended that the amendments to Regulation 4.6 regarding the definition of “sole practitioner” be approved.

Executive Summary:

Amendments to Part 10 of the Regulations were approved by Council in September 2019 which included the deletion of subregulation 10.3.6.1, the definition of “sole practitioner”.

The purpose of subregulation 10.3.6.1 was to provide clarity to lawyers about when they would be required to add a second signatory to their trust account. There was often confusion as to what a “sole practitioner” was for purposes of this regulatory requirement. There are lawyers who practice in space sharing arrangements or other associations with other lawyers who consider themselves to be sole practitioners, but who did not meet the definition and required a second signatory on their accounts. As the requirement for the second signature is no longer required (but still recommended), having a definition is not required for the interpretation of any other Part of the Regulations.

The remainder of Regulation 4.6 will need to be renumbered because of this deletion.

Exhibits/Appendices:

Appendix A – draft amendments to Regulation 4.6
### REGULATION AMENDMENTS

<table>
<thead>
<tr>
<th>Existing Regulation</th>
<th>Proposed Regulation</th>
<th>Rationale</th>
</tr>
</thead>
</table>
| **4.6 Compliance obligations of law firms and sole practitioners**  
  ... | **4.6 Compliance obligations of law firms and sole practitioners**  
  ... | Amendments to Part 10 of the Regulations were approved by Council in September 2019 which included the deletion of subregulation 10.3.6.1. |
| **Definition**  
  **4.6.3** For the purposes of this Regulation, sole practitioner is as defined in subregulation 10.3.6.1. | **Definition**  
  **4.6.3** For the purposes of this Regulation, sole practitioner is as defined in subregulation 10.3.6.1. | The purpose of subregulation 10.3.6.1 was to provide clarity to lawyers about when they would be required to add a second signatory to their trust account. This is no longer necessary, and having a definition is not required for the interpretation of any other Part of the Regulations.  
  The remainder of Regulation 4.6 will need to be renumbered as a result of this deletion. |
| **Sole Practitioner**  
  **10.3.6.1** For the purposes of this Regulation, a sole practitioner does not include a lawyer who is  
  (a) a partner or an employee of the lawyer or that lawyer’s law corporation; or  
  (b) represented or held out to the public to be a partner or person associated in the practice of law with such lawyer or law corporation based on the extent to which the lawyers’ practices are | | Deleted as of Jan 1/20 |
<table>
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<tr>
<th>Existing Regulation</th>
<th>Proposed Regulation</th>
<th>Rationale</th>
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<td>integrated, physically and administratively, whether or not there is in fact a partnership or association.</td>
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MEMORANDUM TO COUNCIL

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

Date – Executive Committee Approved for submission to Council

Date – Council

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 policy also sets out sample calculations for the Committee to follow if there are issues related to any HST liabilities.

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>
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<tbody>
<tr>
<td>APPLICABLE SECTIONS OF THE LEGAL PROFESSION ACT AND REGULATIONS</td>
<td>Part IV of the Legal Profession Act and Part 11 of the Regulations made thereunder</td>
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<tr>
<td>Approved by LFCCC</td>
<td>Effective 2019-09-12</td>
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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 + $120 hst = $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 + $120 hst) = $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 (i.e., 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.
MEMORANDUM TO COUNCIL

From: Professional Standards (Real Estate) Committee

Date: January 14, 2020

Subject: Standard 3.4 – Discharge of Mortgages

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<td>Approval</td>
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</table>

Recommendation/Motion:

This is a revised Standard 3.4 – Discharge of Mortgages for final approval. This Standard has been circulated to the membership and Equity Committees for comment. The Committee reviewed all comments received and, after appropriate consideration to them all, chose to incorporate four into the revised Standard.
Executive Summary:

One of the Committee’s mandates is to review and update existing standards as appropriate and necessary so that the standard aligns with current practice. In this regard, the Committee has determined that the current Discharge of Mortgages standard, approved by Council on November 22, 2002, requires updating to align with current practice and legislation, in particular the *Land Registration Act*.

The revised standard provides guidance and assistance with respect to identification of the parcels that are to be the subject of the release and the appropriate completion of recording of the release.

Exhibit:

Revised Standard 3.4 – Discharge of Mortgages with rationale for the revisions.
<table>
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<th>EXISTING STANDARD</th>
<th>PROPOSED STANDARD</th>
<th>RATIONALE</th>
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<tr>
<td><strong>STANDARD 3.4 DISCHARGE OF MORTGAGES</strong></td>
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A lawyer must examine all mortgages recorded affecting a parcel. A lawyer must, in a timely fashion, obtain and record discharges for those mortgages being discharged.1

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A lawyer must examine all mortgages recorded affecting a parcel. A lawyer must, in a timely fashion, obtain and record discharges for those mortgages being discharged.1

A lawyer who pays out a mortgage or makes a partial payment on a mortgage for the purpose of releasing one or more lots secured by the mortgage is responsible for ensuring that a release of mortgage or partial release of mortgage, as appropriate, is recorded to remove the security from the title to the subject lots.1

A lawyer who is preparing a release of mortgage or recording a release of mortgage must:

a) Confirm with the client and document instructions to release all parcels (if more than one) to be released including any parcels created by subdivision subsequent to recording of the mortgage;

b) Determine if the Releasor has authorized release of all parcels, if the mortgage attaches to more than one;

c) Determine if there has been an amendment or if there is a related instrument such as an assignment of rents, postponement or textual qualification which ought to be released/removed;

d) Ensure that any release by a corporate Releasor is given under seal, failing which the Release must set out the authority of the person executing the Release2;

e) Ensure, when recording a Release, that the name of the Commissioner or other authorized person before whom it is sworn or signed, is typed, stamped, or printed legibly below the signature of such person3;

f) Ensure the accuracy of the information contained in Form 27, bearing in mind the fact that
28(2) and *Limitation of Actions Act*, R.S.N.S. 1989, c. 258. See also *Land Registration Act*, S.N.S. 2001, c. 6, ss. 40(1), 51(4) and 60.

| the Form contains a certificate of legal effect. |
| A lawyer who has given an undertaking for the release of a mortgage must ensure that this is done in a timely manner, either by obtaining and recording a release or by effecting removal pursuant to s.60 of the *Land Registration Act*[^4]. |

**ADDITIONAL RESOURCES**

Mortgage Discharge Escalation Contact List, LIANS website

Form 27 Checklist

**PRACTICE NOTES**

**Release of Multiple Lots**

A lawyer should not rely solely on a Property Online search based on document or book/page number of a mortgage if the lawyer is aware that there are multiple parcels of land to be discharged by a release of mortgage. The lawyer must determine if parcels were subsequently consolidated or subdivided or if those parcels related to the original mortgage have different document numbers due to the number of parcels exceeding the recording limit as they may not have been included in the search results. A lawyer should review the original mortgage description as well as all relevant plans to ensure that all parcels that are subject to the mortgage have been captured in the release.

**Removal pursuant to Land Registration Act s.60**

Where there are reasonable and probable grounds to believe that all of the obligations have been performed, the security interest holder has agreed to the release, the security interest does not affect the parcel, or no security interest exists, a written demand may be served upon the holder of the security interest and if that holder does not comply with the demand within thirty days following service, the Registrar may be required to cancel or amend the recording.

[^4]: *Land Registration Act s.40*
An unreleased security interest in a residential mortgage that is more than forty years old and that has not been amended or supplemented by an instrument recorded during the preceding forty years is not an interest to be included in a parcel register and should not be included in the Application for Registration when migrating. If the mortgage is dated less than forty years ago at the time of migration or if it has been revised or supplemented by a document less than forty years ago, it must be included in the Application for Registration but once the forty year period has elapsed, it can be removed by operation of law.

Real Property Limitations Act s.24(2)

If a period of more than twenty years has elapsed from the maturity date set out in the mortgage or any registered or recorded renewal thereof, the mortgage does not constitute an interest in the parcel and is not to be included in the Application for Registration. If it already exists in the parcel register, it can be removed by operation of law. It should be noted that the application of this provision is not limited to residential mortgages and, unlike s.40(1) of the Land Registration Act, the time period for this remedy is twenty years as opposed to forty years. If there is no maturity date set out in the mortgage or any registered or recorded renewal thereof, section 24(2) is not relevant.

FOOTNOTES

1 Regulations made pursuant to the Legal Profession Act, S.N.S. 2004, c. 28, ss.8.2.7 and 8.2.8

2 Land Registration Act, S.N.S 2001 c.6 ss79 and 83

3 Land Registration Administration Regulation 5(10)

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EXISTING STANDARD | PROPOSED STANDARD | RATIONALE
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**STANDARD 3.4 DISCHARGE OF MORTGAGES**
A lawyer must examine all mortgages recorded affecting a parcel. A lawyer must, in a timely fashion, obtain and record discharges for those mortgages being discharged.¹

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¹ Regulations made pursuant to the *Legal Profession Act*, S.N.S. 2004, c. 28, s. 8.2.4 - 8.2.8. See also *2007 Mortgage Payout Protocol* available on LIANS website.

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In discussing the standards, the Committee determined that the current Discharge of Mortgages standard as approved by Council on November 22, 2002, requires updating to align with current practice and legislation.

The revised standard is intended to give guidance and assistance with respect to identification of parcels to be released and the appropriate completion of recording of the release.
done in a timely manner, either by obtaining and recording a release or by effecting removal pursuant to s.60 of the Land Registration Act⁴.

**ADDITIONAL RESOURCES**

- Mortgage Discharge Escalation Contact List, LIANS website
- Form 27 Checklist

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From: Professional Standards (Real Estate) Committee

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## Council Year: July 2019 – June 2020

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| 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 |

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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: EDI**  
• Report from GNC re 2nd VP nominee  
• Interim reports and updated workplans from Committees  
• TARWG Report  
• Create Sole Practitioner Working Group  
• LSS update  
• Introduction to budget (high level) | 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

- Report on 2019 Annual Lawyer Report
- **Other Activities**
  - CBA Bench/Bar Reception & Dinner – November 21 (Convention Centre)
  - Recognition Reception – November 22
  - Posthumous Calls to the Bar – November 7 at 3:00 pm


- **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 – January 15 at 6:00pm (Maritime Museum of the Atlantic)

### MARCH
- Council Meeting – March 27
- **Big Issue:** Budget introduction/debate/preliminary approval
  - LIANS Report to Council
  - Equity & Access Monitoring Report
  - PR Monitoring Report
  - MDP decision
  - Approval of 2020 Activity Plan

- **Other Activities**
  - 2nd VP Election – if required
  - Dara Gordon Event – Date TBD (or April?)

### 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
  - Dara Gordon event – April 16

### MAY
- 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

### JUNE
- 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

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**To be slotted in:**

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**Updated:** October 28, 2019
## Engagement Calendar 2019-2020

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<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>
<td>• October 23, 12:00pm: Pictou County Bar visit, New Glasgow Swiss Chalet</td>
<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
Happy new year! I hope everyone had an opportunity to have some quiet time at the end of last year. I am excited to continue the work on the Society’s new Strategic Goals and Objectives in 2020. There is much happening at the Society which you will have read about in the various reports and will hear more about from staff and Committee chairs at our January council meeting.

Since my last report, the Society held its annual Recognition Reception where I was honoured to recognize a number of student award recipients, as well as our 50-year practicing members. All of the Reception attendees were also inspired by thoughts shared by the Society’s Distinguished Service Award recipient, Lee Cohen Q.C.

Active engagement with the members continues to be a priority. Throughout the first quarter of 2020, the Society’s officers and Executive Director will be undertaking a series of lunch and learn sessions at law firms in Halifax and Truro similar to the sessions with county bars we have done in other areas of the province.

Our first law firm meeting at McInnes Cooper was well attended and provided valuable feedback and insight from the firm’s and the lawyers’ perspectives. Included in the discussion was an overview of the Strategic Goals and objectives, with specific discussion of the Society’s activities in relation to equity, diversity and inclusion, multi-disciplinary practices and changes to the bar admission program.

I was very pleased to represent the Society and provide remarks at the annual Minister of Justice Mark Furey’s Reception recognizing the Indigenous Black & Mi’kmaq Initiative. It was a wonderful evening offering the opportunity for alumni and students of the IB&M Initiative, as well as members of the legal community, to gather and celebrate the success and ongoing contributions of this program and its participants.

This month, I will also be officiating a Bar Call Ceremony to welcome 12 new members to the Society.

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

From: Tilly Pillay QC, Executive Director
Date: January 24, 2020
Subject: Executive Director’s Report

As always, there is much going on at the Society as we go about our day-to-day business. As I look ahead to 2020, on an operational level, here are some of the priorities we will be focusing on, in order to support Council in achieving its strategic goals and objectives, as well as improving our processes, and bringing value to our membership and the public:

- Communications and engagement strategy with members and the public;
- Implementing the new PREP program as our bar admissions course;
- Developing an internal process whereby those experiencing harassment can contact us knowing that they are safe and supported as they do so;
- Delivering education programs with the support of our various committees to enhance cultural proficiency and awareness and how to apply an equity lens;
- Establish and support a Working Group which focuses on the challenges and needs of our rural members;
- Complete the research, background and consultation work on MDPs so that Council can make a decision on whether to approve this type of practice in Nova Scotia;
- Imbed a regulatory risk process in our organization that staff can use to make sound decisions and to support committees and Council so they have the information they need to evaluate risk issues as they arise;
- Implement Case Management system to improve processes in PR and information sharing across departments;
- Create online forms so that the public and members have easier access;
- Continuing to streamline our trust account processes and remove unneeded regulatory burdens;
- Reaching out to the law school, community organizations and others for opportunities to promote diversity and inclusion in the profession;
- Rollout of succession planning toolkit;
- Support the successful integration of a new Director of Professional Responsibility into our operations and introduce to the membership
This list is not in order of priority, because they are all happening simultaneously. In addition, we know that other priorities may arise during the year that will require us to be nimble and flexible. We are excited about the year ahead and for the positive changes it will bring!
MEMORANDUM TO COUNCIL

From:  Lawrence Rubin  

Date:  January 14, 2020  

Subject:  Professional Standards – Real Estate – Standard 2.4 Plans and Surveys  

Recommendation/Motion:

This is the introduction to Council of a revised standard 2.4 – Plans and Surveys – by the Professional Standards (Real Estate) Committee. Following introduction, the Committee will communicate this proposed revised Standard to the Racial Equity Committee and Gender Equity Committee members for feedback. After incorporating any revisions from the Equity Committees, the standard will be circulated to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval.

Executive Summary:

One of the Committee’s mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. The Committee reviewed the current standard, approved by Council on November 22, 2002, and determined that it required updating to align with current practice. In particular, the committee added to the existing standard that a lawyer should explain to the lawyer’s client the difference between obtaining an up-to-date survey and title insurance.

References to Standard 1.5 (Documentation and Advice) and Standard 5.5 (Title Insurance) were added to the footnotes, to tie into the above-noted change.

Exhibit:

Revised Standard 2.4 - Plans and Surveys with rationale for the revisions.
**EXISTING STANDARD**

**STANDARD**
In preparing an opinion of title, a lawyer must advise the client that any opinion provided to the client will be qualified as being subject to survey.¹
A lawyer must advise the client that the lawyer does not deal with ‘extent’ and that boundary and location are only ascertained through a survey and recommend that the client retain the services of a surveyor to determine the extent of title to the parcel being examined.

A lawyer must confirm the qualification of the opinion as subject to survey prior to closing. The lawyer must confirm the client’s instructions prior to closing.²

Before finalizing an opinion of title, a lawyer must examine plans arising from the search and survey information affecting the parcel. A lawyer should identify and reconcile where possible any material discrepancies between the legal description for the parcel or any information contained in the abstract, and survey information.³

After preparing an opinion of title, a lawyer should advise the client of material discrepancies between plans arising from the search and survey information affecting the parcel.

A lawyer should explain to their client the difference between obtaining an up-to-date survey or location certificate and obtaining a title insurance policy.⁴

**PROPOSED STANDARD**

**STANDARD**
In preparing an opinion of title, a lawyer must advise the client that any opinion provided to the client will be qualified as being subject to survey.¹
A lawyer must advise the client that the lawyer does not deal with ‘extent’ and that boundary and location are only ascertained through a survey and recommend that the client retain the services of a surveyor to determine the extent of title to the parcel being examined.

A lawyer must confirm the qualification of the opinion as subject to survey prior to closing. The lawyer must confirm the client’s instructions prior to closing.²

Before finalizing an opinion of title, a lawyer must examine plans arising from the search and survey information affecting the parcel. A lawyer should identify and reconcile where possible any material discrepancies between the legal description for the parcel or any information contained in the abstract, and survey information.³

After preparing an opinion of title, a lawyer should advise the client of material discrepancies between plans arising from the search and survey information affecting the parcel.

A lawyer should explain to their client the difference between obtaining an up-to-date survey or location certificate and obtaining a title insurance policy.⁴

**RATIONALE**

The Committee reviewed the current standard as approved by Council on November 22, 2002, and determined that it required updating to align with current practices. In particular, the committee added to the existing standard that a lawyer should explain to the lawyer’s client the difference between obtaining an up-to-date survey and title insurance.

References to Standard 1.5 (Documentation and Advice) and Standard 5.5 (Title Insurance) were added to the footnotes, to tie into the above-noted change.
After preparing an opinion of title, a lawyer should advise the client of material discrepancies between plans arising from the search and survey information affecting the parcel.

FOOTNOTES

2. Standard 1.5 - Documentation of Advice and Instruction
4. See Standard 5.5 Title Insurance

ADDITIONAL RESOURCES

Parcel descriptions: Land Registration Act, S.N.S. 2001, c. 6, s. 21(1)
MacLean, Ian H / Title searching land registered parcels (April 2016)
MEMORANDUM TO COUNCIL

From: Lawrence Rubin

Date: January 14, 2020

Subject: Professional Standards – Real Estate – Standard 2.5 Encroachments

For: Approval □ Introduction X Information □

DATE  Council  Introduction
January 24, 2020

Council  Approval

Recommendation/Motion:

This is the introduction to Council of a revised standard 2.5 – Encroachments - by the Professional Standards (Real Estate) Committee. Following introduction, the Committee will communicate this proposed revised Standard to the Racial Equity Committee and Gender Equity Committee members for feedback. After incorporating any revisions from the Equity Committees, the standard will be circulated to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval.

Executive Summary:

One of the Committee’s mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. In discussing the standards, the Committee determined that the current Encroachments standard, approved by Council on November 22, 2002, requires updating to align with current practice, case law and legislation. After further consideration of this standard, the Committee determined that it was unclear about who decides the materiality of an encroachment. These changes clarify this.

Exhibit:

Revised Standard 2.5 Encroachments with rationale for the revisions.
### Existing Standard

#### 2.5 ENCROACHMENTS

When a lawyer examines relevant and available information on the extent of title to a parcel, the lawyer should assess material encroachments on another parcel, or on the parcel being examined, and review the assessment with the client.

The lawyer should ensure that the encroachment:

1. is permitted by a written agreement of the adjoiner, and any mortgagee if required; or
2. qualifies, to the satisfaction of the lawyer exercising professional judgment, for the application of the doctrine of prescription.

A lawyer must explain the encroachment to the client and confirm the client’s instructions prior to closing.¹

### Proposed Standard

#### 2.5 ENCROACHMENTS

**STANDARD**

When a lawyer examines relevant and available information on the extent of title to a parcel, the lawyer should assess encroachments on another parcel, or on the parcel being examined, and review the assessment with the client.

If the encroachment is material to the client, the lawyer should ensure that the encroachment:

1. is permitted by a written agreement of the adjoiner, and any mortgagee if required; or
2. qualifies, to the satisfaction of the lawyer exercising professional judgment, for the application of the doctrine of prescription.

A lawyer must explain the encroachment to the client and confirm the client’s instructions prior to closing.¹

### Rationale

The Committee determined that the Standard was unclear about who determines the materiality of an encroachment. The amendment clarifies this.

### Notes

See Standard 1.5 - Documentation of Advice and Instruction

### Additional Resources:

Easement or right of way as overriding interest: *Land Registration Act*, S.N.S. 2001, c. 6, s. 73(1)(e) and *Marketable Titles Act*, S.N.S. 1995-96, c. 9, s. 7(1)(e)

Prescriptive rights: *Land Registration Act*, S.N.S. 2001, c. 6, s. 74-75; Standard 3.3 - Prescriptive Rights

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¹ See Standard 1.5 - Documentation of Advice and Instruction
MEMORANDUM TO COUNCIL

From: Lawrence Rubin

Date: January 13, 2020

Subject: Professional Standards – Real Estate– Standard 3.9 Trustee’s Deed

For: Approval □    Introduction X    Information □

DATE
January 24, 2020

Council    Introduction

Council    Approval

Recommendation/Motion:

This is the introduction to Council of a revised standard 3.9 Trustee’s Deed – by the Professional Standards (Real Estate) Committee. Following introduction, the Committee will communicate this proposed revised Standard to the Racial Equity Committee and Gender Equity Committee members for feedback. After incorporating any revisions from the Equity Committees, the standard will be circulated to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval.

Executive Summary:

One of the Committee’s mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. The Committee reviewed the current standard, approved by Council on November 22, 2002, and determined that it required updating to align with current practices. Changes to the Standard are adding a reference to Standard 3.10 – Estates as well as adding a third clause to note that in cases when a lawyer is acting for a trust, the trust is not the registered owner, the trustees are.

Exhibit:

Revised Standard 3.9 Trustee’s Deeds with rationale for the revisions.
### STANDARD

Although in general a lawyer is not obliged to inquire as to specific terms of a trust in a conveyance of an interest in a parcel,

1. when the lawyer is acting for the buyer from a trustee, the lawyer must be satisfied that the terms of the trust, on the face of the record or known to the lawyer, are met; and
2. when the lawyer is acting for the seller and circumstances warrant, the lawyer should make further inquiries to ensure that the client as trustee is fully informed of the requirements for an effective conveyance.

### ADDITIONAL RESOURCES

<table>
<thead>
<tr>
<th>Trustee Act, R.S.N.S. 1989, c. 479</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Trustee Act, R.S.N.S. 1989, c. 379</td>
</tr>
</tbody>
</table>

Deeming provisions: **Land Registration Act**, S.N.S. 2001, c. 6, s. 28

See also Real Estate [Standard 3.10: Estates](#)

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1 Land Registration Act, S.N.S.2001,c.6,s.28. Note however that the individual Trustees do not always have to be named. For example, a statute creating a particular Church or organization may indicate that the Church/organization lands are to be held by its Trustees. It is acceptable to describe the Registered Owners in the Company/Entity field as “Trustees of [name of the Church or other organization]” as indicated by the constating documents.
MEMORANDUM TO COUNCIL

From: Lawrence Rubin

Date: January 3, 2020

Subject: Professional Standards – Real Estate – Standard 3.10 Estates

For: Approval □ Introduction X Information □

DATE
January 24, 2020

Council Introduction

Council Approval

Recommendation/Motion:

This is the introduction to Council of a revised standard 3.10 - Estates - by the Professional Standards (Real Estate) Committee. Following introduction, the Committee will communicate this proposed revised Standard to the Racial Equity Committee and Gender Equity Committee members for feedback. After incorporating any revisions from the Equity Committees, the standard will be circulated to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval.

Executive Summary:

One of the Committee’s mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. In discussing the standards, the Committee determined that the current Estates standard, approved by Council on November 22, 2002, requires updating to align with current practice, case law and legislation. The revised standard is intended to give guidance and assistance, particularly with respect to transferring land from a deceased person’s estate with or without a will and the rights of spouses to the matrimonial property.

Exhibit:

Revised Standard 3.10 - Estates with rationale for the revisions.
<table>
<thead>
<tr>
<th>Existing Standard</th>
<th>Proposed Standard</th>
<th>Rational</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STANDARD</strong></td>
<td><strong>STANDARD</strong></td>
<td><strong>In discussing the standards, the Committee determined that the current Estates standard as approved by Council on November 22, 2002, requires updating to align with current practice, case law and legislation. The revised standard is intended to give guidance and assistance particularly with respect to transferring land.</strong></td>
</tr>
<tr>
<td>In any conveyance from a personal representative, a lawyer must ensure that all required consents1 are obtained and be satisfied as to the authority of the personal representative and the validity of the testamentary instrument, if any. A lawyer should be familiar with the provisions of the Probate Act and the Land Registration Act as they affect conveyancing, in particular with respect to the changes to the law and practice.</td>
<td>When contemplating a transfer of land from a deceased person’s estate, whether in an abstract or in current time, a lawyer must be aware of the different laws which apply depending on whether the deceased left a will or died intestate.</td>
<td></td>
</tr>
<tr>
<td>Where there is a will:</td>
<td>Where there is a will:</td>
<td></td>
</tr>
<tr>
<td>A lawyer must be aware that the date of execution of the Will determines whether the Probate Act, S.N.S., 2000, c.31 (the “New Act”)1 or the Probate Act, R.S.N.S., 1989, c.359 (the “Old Act”)2 will apply with respect to the disposition of the deceased’s lands.</td>
<td>A lawyer must be aware that the date of execution of the Will determines whether the Probate Act, S.N.S., 2000, c.31 (the “New Act”)1 or the Probate Act, R.S.N.S., 1989, c.359 (the “Old Act”)2 will apply with respect to the disposition of the deceased’s lands.</td>
<td></td>
</tr>
<tr>
<td>Whether reviewing an abstract or acting for the grantor or buyer of a deceased person’s land, a lawyer must ensure that the Will has been properly proven by the Court of Probate and evidence thereof filed at the Registry of Deeds/Land Registration Office.3</td>
<td>Whether reviewing an abstract or acting for the grantor or buyer of a deceased person’s land, a lawyer must ensure that the Will has been properly proven by the Court of Probate and evidence thereof filed at the Registry of Deeds/Land Registration Office.3</td>
<td></td>
</tr>
<tr>
<td>A lawyer must also ensure that the person(s) who executed or who intends to execute the Deed is/are the person(s) to whom probate was granted; that the Will gives the Executor/Personal Representative the power and authority to transfer the lands and that any heirs who are required to give their consent have done or will duly do so.</td>
<td>A lawyer must also ensure that the person(s) who executed or who intends to execute the Deed is/are the person(s) to whom probate was granted; that the Will gives the Executor/Personal Representative the power and authority to transfer the lands and that any heirs who are required to give their consent have done or will duly do so.</td>
<td></td>
</tr>
</tbody>
</table>

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1 Probate Act, S.N.S., 2000, c.31  
2 Probate Act, R.S.N.S., 1989, c.359  
3 Land Registration Act, S.N.S., 2001, c.6, s. 24. Boyer v. Throop (1993) 129 NSR (2d) 60
embodied in those statutes.

**FOOTNOTES**

1. *Probate Act*, S.N.S. 2000, c.31, s.50-51

**ADDITIONAL RESOURCES**

E. O'Brien Edmonds, *“Property Issues: The Real Estate-Probate Interface”*, in Probate Procedures and Documentation Seminar, (C.L.E.S.N.S., October, 2001)

<table>
<thead>
<tr>
<th>Probate Act, S.N.S. 2000, c. 31 - note particularly vesting of real property in administrator</th>
<th>Land Registration Act, S.N.S. 2001, c. 6, ss. 24 (wills), 25</th>
</tr>
</thead>
</table>

**Intestacy:**

A lawyer must determine whether the date of death of the intestate occurred before the new Act came into effect as that will determine whether the lands transferred directly to the heirs at law.  

A lawyer must be aware of the provisions of the *Descent of Property Act* with respect to intestate deaths prior to 1966\(^4\) and the *Intestate Succession Act* with respect to intestate deaths thereafter.\(^5\)

If, in a chain of title, the heirs of an intestate purport to convey lands, a lawyer must be satisfied that the records indicate that all the deceased have signed off or the provisions of the * Marketable Titles Act* apply to extinguish the missing heir’s interest.\(^6\)

When acting for the Grantor or Buyer of an intestate’s land, a lawyer must ensure that a Grant of Administration has been issued by the Court of Probate and filed at the Registry of Deeds/Land Registration Office.\(^7\)

A lawyer must also ensure that the person(s) who executed or who intends to execute the Deed is/are the person(s) to whom administration was granted and that any persons beneficially entitled to the lands give their consent.

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4 Note: This is most likely to arise in the context of migration.

5 *Descent of Property Act*, R.S. 1954, c.69

6 *Intestate Succession Act*, R.S.N.S. 1989, c.236

7 * Marketable Titles Act*, 1995-96, c.9

8 *Land Registration Act*, S.N.S., 2001, c.6, s. 25
A lawyer must be aware that the interest of a spouse in a matrimonial home is not
affected by the new sections of the *Probate Act.* If a spouse does not hold title to the
matrimonial home when the other spouse dies, the surviving spouse could still have
rights to the property. Note this does not apply to common law spouses.

### ADDITIONAL RESOURCES

- *Probate Act*, S.N.S. 2000, c. 31, s.44 (matrimonial property), 46(1) (states that real
  property of a deceased person vests in the personal representative (executor or
  administrator) as if it were personal property, therefore having legal title).
- *Land Registration Act*, S.N.S. 2001, c. 6, ss. 24 (wills), 25 (intestacy) and 26
  (requirement for certificate of legal effect when application for revision is based on
  administrator’s deed)
- *Intestate Succession Act*, R.S.N.S. 1989, c.236, s.6 (election of matrimonial home).

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9 *Probate Act*, S.N.S., 2000, c.31, s.44(1)

10 *Intestate Succession Act*, R.S.N.S. 1989, c.236, s.4(4)
PRACTICE NOTES

It is helpful to have a precedent Trustee's Deed which calls for recitals confirming that the Grantor was named personal representative by the Grant of Probate and pointing out the provisions in the Will which give the Grantor the power to sell and secondly, anyone who has to consent to a transfer should sign the Deed.
MEMORANDUM TO COUNCIL

From: Lawrence Rubin
Date: January 3, 2020
Subject: Professional Standards – Real Estate– Standard 3.17 Options and Rights of First Refusal

Introduction:

This is the introduction to Council of a revised standard 3.17 - Options and Rights of First Refusal - by the Professional Standards (Real Estate) Committee. Following introduction, the Committee will communicate this proposed revised Standard to the Racial Equity Committee and Gender Equity Committee members for feedback. After incorporating any revisions from the Equity Committees, the standard will be circulated to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval.

Executive Summary:

One of the Committee’s mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. The Committee determined that the current standard, approved by Council on November 22, 2002, requires updating to align with current practice and legislation, particularly with respect to the removal of reference to the rule against perpetuities in both the standard and footnotes. Also added was the recommendation that a lawyer consider how an option/right of first refusal can be removed.

Exhibit:

Revised Standard 3.17 – Options and Rights of First Refusal with rationale for the revisions.
<table>
<thead>
<tr>
<th>EXISTING STANDARD</th>
<th>PROPOSED STANDARD</th>
<th>RATIONALE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>STANDARD</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>When a lawyer conducts a title search and identifies an option or right of first refusal, the lawyer must determine whether the rights created are contractual or run with the land.¹</td>
<td>3.17 OPTIONS AND RIGHTS OF FIRST REFUSAL</td>
<td>The Committee determined that the current standard as approved by Council on November 22, 2002, requires updating to align with current practice and legislation, particularly with respect to the removal of reference to the rule against perpetuities in both the standard and footnotes. Also added was the recommendation that a lawyer consider how an option/right of first refusal can be removed.</td>
</tr>
<tr>
<td>If the lawyer determines that an interest in land has been created, the lawyer should consider whether it is void as infringing the rule against perpetuities.²</td>
<td><strong>STANDARD</strong></td>
<td></td>
</tr>
<tr>
<td>If the lawyer determines that the interest runs with the land and will not be released, the lawyer must explain the interest to the client and confirm the client’s instructions prior to closing.³</td>
<td>When a lawyer conducts a title search and identifies an option or right of first refusal, the lawyer must determine if the option or right of first refusal is still applicable. If the option or right of first refusal is still applicable, the lawyer should consider how the option or right of first refusal can be exercised, and how it can be released.</td>
<td></td>
</tr>
<tr>
<td><strong>FOOTNOTES</strong></td>
<td><strong>FOOTNOTES</strong></td>
<td><strong>ADDITIONAL RESOURCES</strong></td>
</tr>
<tr>
<td>2. Options void as infringing the rule against perpetuities: Politzer v.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ P.M. Perell, “Options, Rights of Repurchase and Rights of First Refusal as Contracts and as Interests in Land” (1991), 70 Can. Bar Rev.¹
² Options void as infringing the rule against perpetuities: Politzer v. ¹
³ If the lawyer determines that the interest runs with the land and will not be released, the lawyer must explain the interest to the client and confirm the client’s instructions prior to closing.³
| Metropolitan Homes Ltd. [1976] 1 S.C.R. 363, per Laskin C.J. (S.C.C.) |
| 3. Standard 1.5 - Documentation of Advice and Instruction |

**ADDITIONAL RESOURCES**

F.J. Powell, "Options and Rights of First Refusal" in Real Property, (C.L.E.S.N.S. April, 1987)
MEMORANDUM TO COUNCIL

From: Lawrence Rubin

Date: January 14, 2020

Subject: Professional Standards – Real Estate – Standard 5.1 Zoning and Occupancy Permits

Recommendation/Motion:

This is the introduction to Council of a revised standard 5.1 Zoning and Occupancy Permits - by the Professional Standards (Real Estate) Committee. Following introduction, the Committee will communicate this proposed revised Standard to the Racial Equity Committee and Gender Equity Committee members for feedback. After incorporating any revisions from the Equity Committees, the standard will be circulated to the membership for review and consultation. The Committee will review any comments received and then present the final form, amended if necessary, to Council for approval.

Executive Summary:

One of the Committee’s mandates is to review and update existing standards as appropriate and necessary so that they align with current practice. In discussing the standards, the Committee determined that the current Zoning Standard, approved by Council on November 22, 2002, requires updating to align with current practice, case law and legislation. In this regard, the Committee determined that because a zoning certificate is not available in HRM for a single-family dwelling, the standard required revisions to reflect that.

Exhibit:

Revised Standard 5.1 Zoning and Occupancy Permits with rationale for the revisions.
<table>
<thead>
<tr>
<th><strong>Existing Standard</strong></th>
<th><strong>Proposed Standard</strong></th>
<th><strong>Rationale</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5.1 ZONING AND OCCUPANCY PERMITS</strong></td>
<td><strong>5.1 ZONING AND OCCUPANCY PERMITS</strong></td>
<td>A zoning certificate is not available in HRM for a single-family dwelling, so the Committee determined that the Standard needs to reflect this.</td>
</tr>
</tbody>
</table>

When a lawyer is acting for the buyer in a conveyance of an interest in a parcel, the lawyer should inquire as to the client’s intended use for the parcel and advise the client on the appropriateness of obtaining zoning and occupancy permit confirmations.¹

When a lawyer is acting for the buyer or mortgagee of new construction, the lawyer should ensure that an occupancy permit has been issued, or that all final inspections required to ensure issuance of the permit have passed.

When a lawyer is acting for the buyer or mortgagee of commercial or multi-unit residential income property, the lawyer should determine whether the use and occupancy is permitted by the appropriate authorities.

When the client elects to proceed without appropriate confirmations or assurances or where there is non-compliance, the lawyer must explain to the client the associated risks and confirm the client’s instructions prior to closing.²

**FOOTNOTES**


2. *Standard 1.5 - Documentation of Advice and Instruction*

**ADDITIONAL RESOURCES**

*Municipal Government Act*, S.N.S. 1998, c. 18

*Land Registration Act*, S.N.S. 2001, c. 6

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¹ The *Building Code Act*, adopts by regulation, the National Building Code.

² The Committee determined that the Standard needs to reflect this.
### ADDITIONAL RESOURCES

**Municipal Government Act**, S.N.S. 1998, c. 18

**Land Registration Act**, S.N.S. 2001, c. 6
MEMORANDUM

To: NSBS Council

From: Jill Perry

Re: Report from Council of the Federation of Law Societies of Canada

Date: January 15, 2020

2019 Annual Conference

This year’s conference was held in St. John’s, NF on October 17th and 18th. Titled “The Practice of Well-being: Exploring the Legal Regulator’s Role,” the conference began with sessions discussing mental health and addiction issues in the legal profession. Presentations then shifted to focussing on the role of the regulator in addressing these problems. Nova Scotia’s Lawyer Assistance Program was highlighted in presentations by both Patrick Cassidy QC and Elaine Cumming.

Federation Council is now considering how the themes emerging from this conference should impact the strategic planning that is currently underway.

A copy of the conference schedule is attached to this memo – please let me know if you would like to access any of the materials.

Federation Council Business

Federation Council meets 4 times a year. There have been 3 meetings since my last report – June, October, and December. The following topics of discussion have dominated those meetings and/or may be of interest to Council members.

1) Committee composition

The Federation Council year begins after the October meeting. Committee composition was approved at the December meeting. I sit on the Steering Committee of the National Action Committee on Access to Justice in Civil and Family members as the Federation’s representative. I am also a member of the National Committee on Accreditation’s Modernization Assessment Committee.
Nova Scotia also has Elaine Cumming on the Standing Committee on the Model Code of Conduct; Victoria Rees on the Standing Committee on National Discipline Standards; Tilly Pillay on the Litigation Committee; and Tuma Young as co-chair of the TRC Calls to Action Committee.

2) Strategic Planning

The Federation’s current strategic plan (2017-2020) has three objectives:

i) Be a knowledge leader and effectively share information and facilitate collaboration;

ii) Identify and promote best practices in professional regulation; and

iii) Demonstrate excellence in governance and service delivery.

Council has been working on developing a new plan. A draft will be circulated to Law Societies prior to Council’s March meeting in Ottawa.

3) Anti-Money Laundering and Terrorist Financing Group

This Federation committee has been active on two fronts. First, they are continuing to review the model rules regarding money laundering and terrorist financing and developing educational materials to assist lawyers with recognizing and understanding the risks in these areas. Second, they continue to work jointly with the federal government and will be presenting to them regarding the audit powers/processes of Canadian law societies.

4) CanLii fees

Law societies support CanLii by paying an annual fee based on the number of members in each society. This amount will stay at $41.93 per FTE (same as last year) for Nova Scotia and all other societies except the Barreau de Quebec and the Chambre des Notaires.

5) CLE Advisory Group

This group was charged with reviewing whether or not it was appropriate for the Federation to continue to provide the annual / bi-annual criminal and family law programs. The group determined that the Federation should continue to do so as long as an appropriate governance and administrative framework is put in place. A final draft of this framework has been provided to the co-chairs of the respective programs and the group is hopeful that it will be approved.

6) TRC Calls to Action Committee

Over the course of the last year, Council members and law society representatives have expressed concern about the apparent lack of progress in this area. The Executive completed
an internal review and communicated to Council the conclusion that it was necessary for the committee to proceed in the manner that it did in view of the nature of the issues. The committee is committed to providing a concrete work product as soon as is possible.

1. 2019 Annual
07:30 - 09:00
Federation / CanLII / Lexum 101 Breakfast Presentation
Conference newcomers and veterans alike will benefit from this overview of the Federation, CanLII and Lexum.

OR

08:00 - 09:00
Buffet Breakfast

09:00 - 09:20
Welcome and Conference Opening
Ross Earnshaw, President
Federation of Law Societies of Canada

Ian Patey, President
Law Society of Newfoundland and Labrador

Barry Fleming, Q.C., Conference Chair
Council member nominated by the Law Society of Newfoundland & Labrador

Morning Theme: What is well-being and why does it matter to the legal profession?

09:20 – 10:00
Out of the Shadows: The Breadth of the Well-being Problem among Legal Professionals
For most, legal practice means long days, tight deadlines and extreme pressure to perform. In 2016, a sweeping U.S. study reported that lawyers and law students disproportionately suffer from substance abuse, anxiety, depression and stress. Bree Buchanan will share these findings and discuss their implications for the legal profession and legal regulators. Bree is the co-chair of the National Task Force on Lawyer Well-Being that published the ground-breaking U.S. report, The Path to Lawyer Well-Being: Practical Recommendations for Positive Change. She is leading a cultural transformation that is helping to promote positive mental health in the legal profession.

Presenter: Bree Buchanan, Senior Advisor, Krill Strategies, LLC
Co-Chair of the (U.S.) National Task Force on Lawyer Well-Being

10:00 - 10:30
Never Better: Three Lessons Learned from Overcoming Addiction
Presenter: Darryl Singer
Head of Commercial and Civil Litigation
Diamond & Diamond Lawyers LLP, Toronto
The Practice of Well-being
Exploring the Legal Regulator's Role

Conference Program
Day One: Thursday, October 17, 2019
All sessions are in Salon A of the hotel unless otherwise indicated

10:30 – 10:45 Health Break

10:45 – 12:00 Unpacking Well-being Issues in the Legal Profession

In this session, panelists will discuss what we know and don't know about lawyer and Quebec notary well-being in Canada. They will analyze existing studies on the topic. Presenters will explore how well-being issues can manifest in one’s professional life and the factors that contribute to these challenges. The panel will also begin to unpack the role of the regulator—a discussion that will continue throughout the Conference.

Moderator: Lise Tremblay, Executive Director, Barreau du Québec

Panelists:
Barbara A. Barker, Legal Services Solicitor
Legal Aid of Newfoundland and Labrador
Bree Buchanan, Senior Advisor, Krill Strategies, LLC
Professor Nathalie Cadieux, Ph.D, CRHA, Principal Researcher
Doron Gold, Staff Clinician, Homewood Health

12:00 - 13:00 Lunch
Salons C & D

Afternoon Theme: The intersection of legal regulation and the well-being of legal professionals - protecting the public

13:00 – 13:15 Fostering Mental Health in the Legal Profession:
A Personal Journey

Presenter: Orlando Da Silva, Senior Crown Counsel,
Serious Fraud Office, Ministry of the Attorney General, Ontario
Conference Program

Day One: Thursday, October 17, 2019

All sessions are in Salon A of the hotel unless otherwise indicated

13:15 - 14:15

Confronting Stigma and Tackling Well-being: Analyzing the Regulators' Role

This session will focus on the role that law societies can and should play in addressing the mental health, addiction and other wellness challenges that legal professionals face. Panelists will explore whether law societies inadvertently contribute to the problem, and examine the systemic and institutional factors at play. They will discuss how legal regulators can reduce stigma, support members who are suffering with well-being challenges and take action to prevent harm.

Moderator: Liz Osler, CEO & Executive Director, Law Society of Alberta

Panelists:
Orlando Da Silva, Senior Crown Counsel, Serious Fraud Office
Ministry of the Attorney General, Ontario
Doron Gold, Staff Clinician, Homewood Health
Carey Majid, Executive Director and CEO
Newfoundland and Labrador Human Rights Commission
Sheila Wildeman, Associate Professor
Schulich School of Law, Dalhousie University

14:15 - 14:35

Stretch and Health Break

14:35 - 15:25

Protecting the Public: How Law Societies Meet Their Mandate

Through the use of scenarios, this panel will examine how law societies can protect the public from members who may be experiencing well-being challenges. What tools do law societies have to take action, and what are the challenges?

Moderator: Michael Lucas, Director, Policy and Planning
Law Society of British Columbia

Panelists:
Lesley Cameron, Executive Director, Professional Regulation
Law Society of Ontario
Lorraine Champion, Executive Director
Alberta Lawyers' Assistance Society
Leah Kosokowsky, Director of Regulation
Law Society of Manitoba
The Practice of Well-being
Exploring the Legal Regulator's Role

Conference Program
Day One: Thursday, October 17, 2019

All sessions are in Salon A of the hotel unless otherwise indicated

15:25 - 16:10  Protecting Law Society Staff, Preventing Harm

Law society staff who deal with members with mental health or other well-being challenges may themselves develop symptoms of burnout and vicarious trauma. What can law societies do to help prevent these conditions and support employees who have been exposed to them?

Moderator: Erin Kleisinger, Q.C., Federation Council Member nominated by the Law Society of Saskatchewan

Panelists:
Lorraine Champion, Executive Director, Alberta Lawyers' Assistance Society
Elaine Cumming, Professional Responsibility Counsel
Nova Scotia Barristers' Society
Aimee Rowe, General Counsel / Deputy Executive Director
Law Society of Newfoundland and Labrador

16:10 - 16:15  Daily wrap-up

Several health-focused activities will be available from 16:30 – 18:30 for those looking for an energetic way to end this first day of the Conference.

Details will be posted on the Federation's Conference intranet page and announced during the Conference. Registration will be required for the massage facilities, and for yoga in the hotel. The online registration form is available on the through the Conference page of the Federation intranet.
The Practice of Well-being
Exploring the Legal Regulator's Role

Conference Program
Day Two: Friday, October 18, 2019

All sessions are in Salon A of the hotel unless otherwise indicated

08:00 - 08:50
Buffet Breakfast
Salons C & D

Day Two Theme: What law societies can do to address the well-being of their members

08:50 - 09:00
Welcome and Overview of Day Two

09:00 - 10:00
What Regulators are doing to Address Member Well-being
Participants will hear from two law societies in Canada that are leading the charge in addressing member well-being, as well as a medical regulator and an international legal regulator. Topics include the use of compassionate alternatives to traditional discipline, educational and regulatory strategies, and the role of legislative regimes in facilitating the regulator’s responses. This session will provide food for thought for the wrap-up workshop on the tools available to law societies in addressing member well-being.

Moderator: Brenda Grimes, Q.C., Executive Director
Law Society of Newfoundland & Labrador

Panelists:
Elyse Bruce, Corporate Counsel
College of Physicians and Surgeons of Newfoundland & Labrador
Patrick Cassidy, Q.C., Chair, Fitness to Practice Committee
Nova Scotia Barristers’ Society
Brook Greenberg, Chair, Mental Health Taskforce
Law Society of British Columbia
Katie McKenna, Solicitor, Head of High Street Member Engagement
Law Society of Scotland

10:00 - 10:30
Lessons Learned: Initiatives by, and for, Law Students
What do we know about law students and well-being? What are Canada’s law faculties doing to address mental health, substance abuse and other wellness concerns? What steps have law students taken to support their peers? These questions and others will be discussed, including why well-being interventions in law school are important for the future of the profession.

Presenters:
Catherine Dauvergne, CCLD President, and Dean
Peter A. Allard School of Law, University of British Columbia
Shannon Snow, Co-founder, Healthy Legal Minds
The Practice of Well-being
Exploring the Legal Regulator's Role

Conference Program
Day Two: Friday, October 18, 2019

All sessions are in Salon A of the hotel unless otherwise indicated

10:30 - 10:45    Health Break

10:45 - 11:15    Mindfulness Workshop
Professor Thomas Telfer will introduce the audience to the positive benefits of being mindful, and lead the group through two short mindfulness practices.

Presenter: Professor Thomas Telfer, Western University Faculty of Law

11:15 - 12:20    Imagining the Possibilities for Change
What tools are in law societies’ toolkits to address well-being and where are the gaps? Where do we need to go, and how can we get there? What are next steps – law society specific and collective? Participants will discuss these questions in small groups, followed by a debrief with the full group.

Facilitators: John MacLean, President
Law Society of Nunavut
Marc Richard, Q.C., Executive Director
Law Society of New Brunswick

12:20 - 12:30    Closing Remarks

12:30 - 13:30    Lunch
Salons C & D

The Joint Presidents’ and CEOs’ Forum will follow lunch.

Federation and Law Society Presidents and Vice Presidents or other elected representatives, CEOs and senior staff, and Federation Council are invited to attend.

13:30 - 16:15    Joint Presidents’ and CEOs’ Forum: Legal Regulation In Focus
Salon A

13:30 - 14:30    Theme One: Equity, Diversity and Inclusion
14:30 - 14:45    Health Break
14:45 - 16:15    Theme Two: Entity and Proactive Regulation
Everyone turns to lawyers for #MeToo advice, but the legal community needs its own reckoning

ELAINE CRAIG AND JOCELYN DOWNIE
CONTRIBUTED TO THE GLOBE AND MAIL
UPDATED DECEMBER 23, 2019

Elaine Craig is an associate professor at the Schulich School of Law at Dalhousie. Jocelyn Downie is the school’s James S. Palmer Chair in Public Policy and Law

The legal profession must change the way it responds to sexual misconduct within its own ranks. The culture of the profession – with its social power, history of elitism and male dominance – makes it harder for women to speak out and easier for men to stay silent.

Take the example of Gerald Regan, perhaps the Nova Scotia legal profession’s most infamous sexual predator. More than three dozen women – babysitters, family friends, dates, secretaries, a journalist and a legislative page – came forward alleging that the former premier violated their sexual integrity over the course of 40 years. These women reported detailed, and often similar, experiences of sexual harassment and sexual assault. Did a single lawyer report the open secret of Mr. Regan’s alleged sexual misconduct to the law society over the course of his six decades as a lawyer? Did the law society ever investigate? We know of no record of reports or investigations.

Instead, in 2006, Mr. Regan was celebrated. The province’s law society awarded him a “special gold pin” and a certificate for having been a member of the Nova Scotia bar for 50 years. It feted him again at a reception in 2015. Why wasn’t he disbarred, instead of celebrated? Some argue that Mr. Regan was acquitted of eight charges of rape and other sexual offences, but the evidence from dozens of other women was not before the jury and charges involving numerous other women were, according to the Supreme Court of Canada, wrongly stayed. The profession had a duty to respond through its own processes to Mr. Regan’s sexual misconduct.

Two days after Mr. Regan died, Nov. 26, 2019, media reported that Eric Durnford, another long-standing member of the legal profession in Nova Scotia, was given a “consensual reprimand” for numerous acts of sexual harassment and sexual discrimination toward multiple women between 2010 and 2018. Three female lawyers and one legal assistant left their jobs, in part because of his misconduct.

Apparently Mr. Durnford’s sexual misconduct in the workplace was a known phenomenon at his law firms. He was warned or “internally disciplined” on five separate occasions between 2011 and 2017 because of the pornography in his office or his “inappropriateness and unprofessionalism” toward women. He began receiving counselling “to obtain insight regarding proper boundaries in his interactions with women” in 2015. Yet, the misconduct continued.
Lawyers were aware of Mr. Durnfurd’s sexually harassing and discriminatory behaviour for years. Why was he permitted to continue like this until retirement age?

That both of these men retained the honorific “Queen’s Counsel” designation that follows their names – even after the revelation of their sexual misconduct – also illustrates a cultural failing in the legal profession.

A professional culture that tolerates, even celebrates, men who engage in harmful sexual behaviour makes it almost impossible for women to speak out about their experiences. Law societies need to be part of the solution, not part of the problem.

Law societies permit, but do not require, their members to report known sexual misconduct by other lawyers. The Codes of Conduct for lawyers state that “A lawyer must not sexually harass any person” and notes that “A lawyer has a special responsibility to respect the requirements of human rights laws in Canada.” This approach is not enough.

Law societies need to change their rules to require lawyers to report other lawyers whom they have reasonable grounds to believe have engaged in sexual harassment or sexual assault. Lawyers who are the victims of another lawyer’s sexual misconduct should not be required to report. Third-party reporting should anonymize the name of the victim, unless they request otherwise. Lawyers can’t report privileged information. But, otherwise, lawyers should be required to notify their law society of improper sexual behaviour rather than merely ignoring it, dealing with it internally or passing the problem forward to other firms by enabling lawyers to transfer. Law societies should discipline, not celebrate, those who engage in this misconduct.

A mandatory-reporting rule for professionals is not unprecedented. In Alberta, doctors must report unprofessional conduct. In Nova Scotia, doctors must report unethical behaviour. Lawyers across Canada are already required to report other types of unethical and unprofessional behaviour. Sexual harassment and sexual assault should be added to this list.

Journalists, performing artists, chefs and others have turned to the legal profession for help, to push for a just response to their #MeToo and #TimesUp moments. When will the legal profession respond appropriately to sexual misconduct within its own ranks?