



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

FROM: Jacqueline L. Mullenger
DATE: May 5, 2020
SUBJECT: Monitoring Report – Education and Credentials

For: Approval
Introduction
Information

Recommendation/Motion:

Executive Summary:

The purpose of this report is to brief Council about credentialing responsibilities and the work of the department of Education & Credentials. A summary of the regulatory work undertaken by the department is attached as Appendix “A”.

Analysis:

Introduction

The Education & Credentials department is the gatekeeper for those who wish to join the profession. Section 4 of the *Legal Profession Act*, defines the purpose of the Nova Scotia Barristers' Society - to “uphold and protect the public interest in the practice of law”. In pursuit of this purpose, one of the responsibilities of the Society is to establish standards for the qualifications of those seeking membership in the Society.

The Society’s Regulations provide specifics as to how this mandate will be accomplished.

Education & Credentials deals with applicants applying to become members of the Society, as well as with current members who wish to change their membership category upward (i.e. to practising lawyer) or downward (to non-practising, retired or to resign). In each instance we recognize the need to bring a risk focus to our analysis of the issues that need to be addressed. At this stage, as our part of the regulatory reform work in this area, we are gathering information and insight into what risks there are and

how they might be addressed, rather than implementing a true risk management process. If regulatory reform is approved, it is understood risk management and abatement will then become part of the regulatory role.

There are three avenues by which a person may become a member of the Society:

1. Article and complete the Bar Admission Course;
2. Transfer from another province within Canada; and
3. Transfer from outside Canada.

Members of the Society hold one of the following categories:

1. Practising Lawyer;
2. Non-Practising;
3. Resigned;
4. Life Member; or
5. Articled Clerk.

Since February 2010, the inception of the *Fair Registration Practice Act*, the responsibility for making initial admissions and credentialing decisions has shifted to the Executive Director. Only decisions about character and fitness are referred to the Credentials Committee in the first instance.

The *Fair Registration Practices Act* requires additional resources to be expended. Staff are required to complete yearly reports and undergo a review of all of our admission processes every two years. In addition there are bimonthly FRPA breakfast meetings and the Director sits on an ad hoc advisory committee for FRPA that provides advice to the FRPA Review Officer. As has been reported previously, FRPA caused the Society to review all of the admission processes and ensure that information regarding admissions is available and easy to understand.

The Credentials Committee is responsible for making decisions on applications where the applicant's character or fitness is in issue. In the past fiscal year one application was taken to the committee as Society staff identified a conflict. Most decisions about changing category, admissions and articling are made by staff.

The Work of E&C

The work of the department can be broken down into Credentialing, Skills course, Bar examination, LSS/MSELP and Mandatory continuing professional development; each will be dealt with in turn.

Credentialing

The credentialing work consists of many types of applications as set out earlier. The vast majority of this work involves changes in category and transfers to Nova Scotia. It is important to note that the vast majority of department resources as used to complete this work each year.

For the many years of we have been issuing electronic rulings which has stood us in good stead since the pandemic. Staff have been able to continue their work at the same level since working from home as a result of all of our files being electronic.

We have been working with other provinces to urge them to do more things electronically such as certificates of standing. One of the blessings from the pandemic has been that many are now accepting these electronically. We hope that will continue when we all go back to the office to work.

Our main focus this year has been on getting the regulations and policies updated for the Implementation of the new PREP course and adapting to the pandemic.

We have continued to also review processes, policies and decision making to ensure that risk and triple “P” principles are taken into account in all situations. We start each analysis by looking at what risk may be involved to the public by the request that is being made.

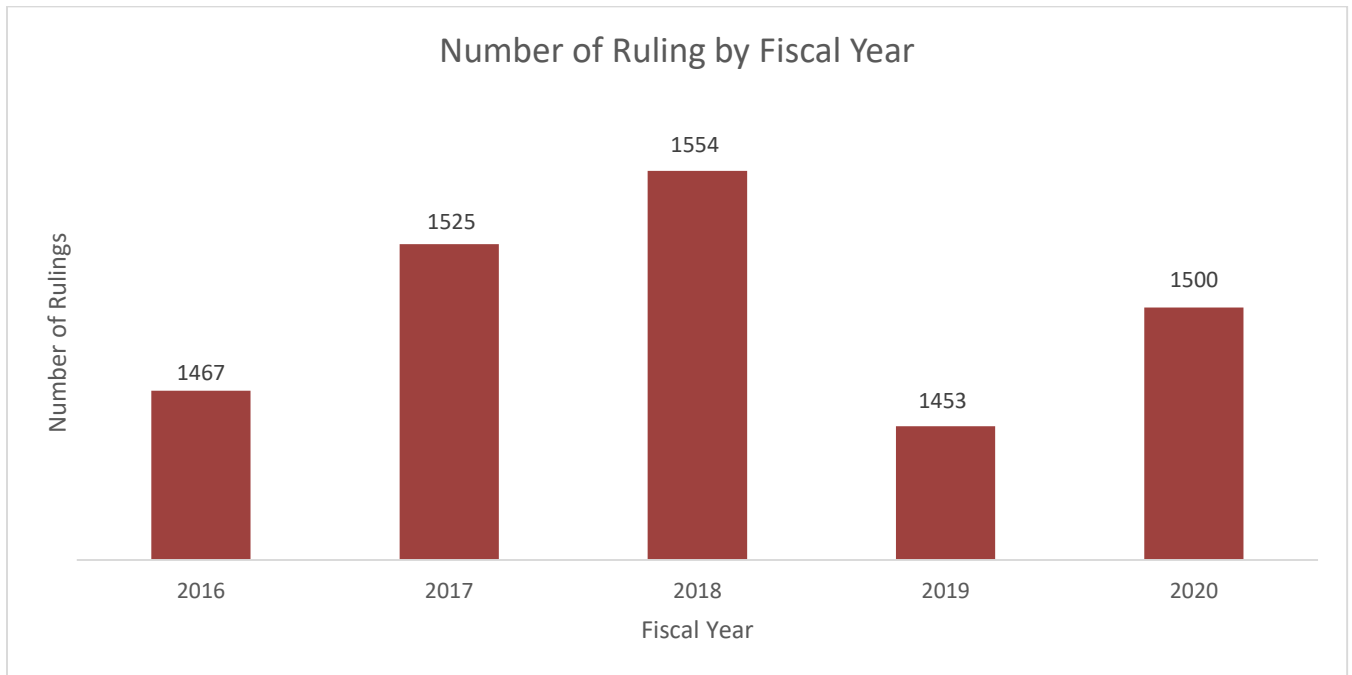
We then consider what is the most proactive, principled and proportionate way to approach the decision. Examples include finding ways to permit people to return to practice without necessarily rewriting the Bar Exam, permitting more flexible articling arrangements, abridging articles to avoid creating unnecessary burdens, finding ways to test the skills of foreign transfer without necessarily insisting that they article or work under supervision. Working to avoid situations where people cannot work for a prolonged period of time if there is no risk to public to permit them to do so.

Moving away from the Bar Examination is also creating new opportunities to think and work in a different way. As we no longer can ask foreign transfers to write the Bar Examination we must examine whether there is a reasonable alternative to that requirement. Asking lawyers who have practised elsewhere for many years to take a course in teaching and assessing their lawyering skills may not be the most effective tool. Instead, we may ask them to simply demonstrate their competency by completing the PREP final assessment and undertaking a review of our Bar Review Outlines which outline the main areas of law in Nova Scotia.

The statistics in the following paragraphs show the numbers of in-house rulings for each fiscal year. We are currently in the 2021 fiscal year, however, we are reporting on the statistics for the 2020 fiscal year which just ended. Please note that some of our rulings require more analysis than others. For example, making a ruling on a foreign transfer takes more resources and time than processing an application for a notary public.

Nevertheless, each application must be processed; a decision must be made and communicated to the applicant, thereby taking resources.

In total, the following in-house rulings have been issued:



We also track certificates of standing, and abridgment of articles. The abridgment applications have come about as a result of our decreased bar admission ceremonies.

Credentialing Rulings

The Department handled 19 types of rulings during the course of the year, in addition to the Articling Rulings. The types of rulings are set out below in a chart that shows the numbers of rulings for each fiscal year.

The numbers for the last year in each category have remained relatively consistent. There was an increase in the number of members who changed down but most of those were prior to the fallout from the pandemic. There were also fewer domestic transfers but an increase in foreign transfers. Retirements were down this past year but given the current situation we may see an increase in retirements in the current fiscal year. We have not seen a surge in changes of category, retirements or resignations since the beginning of the pandemic.

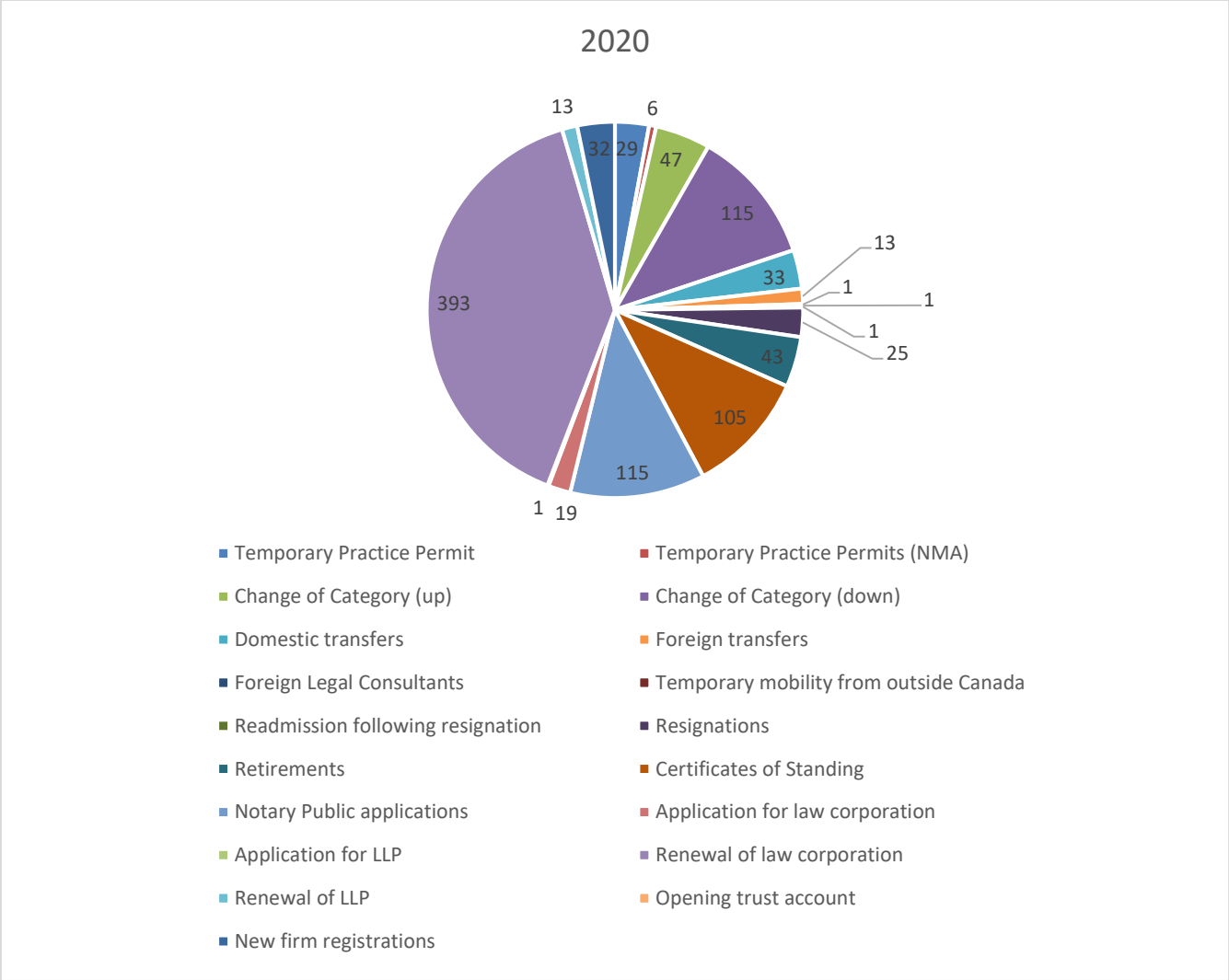
What follows is a breakdown of the types of rulings that staff make and statistics about the credentialing work.

	Fiscal year 2016	Fiscal year 2017	Fiscal year 2018	Fiscal year 2019	Fiscal year 2020
Temporary Practice Permit	34	42	41	43	29
Temporary Practice Permits (NMA)		15	9	5	6
Change of Category (up)	61	55	60	54	47
Change of Category (down)	91	104	112	96	115
Domestic transfers	25	49	42	55	33
Foreign transfers	4	8	11	4	13
Foreign Legal Consultants	3	3	4	1	1
Temporary mobility from outside Canada	2	3	0	0	1

	Fiscal year 2016	Fiscal year 2017	Fiscal year 2018	Fiscal year 2019	Fiscal year 2020
Readmission following resignation	1	2	0	0	1
Resignations	34	34	45	27	25
Retirements	46	48	41	58	43
Certificates of Standing	125	90	120	77	105
Notary Public applications	90	123	123	137	115
Application for law corporation	28	25	17	20	19
Application for LLP	1	4	2	2	1
Renewal of law corporation	490	450	418	401	393
Renewal of LLP	7	8	12	13	13
Trust account assessments					34
New firm registrations			14	23	32

Please note: The Society's fiscal year runs from May 1 to April 30

On the following page is a pie chart of the various types of rulings from the 2020 fiscal year.



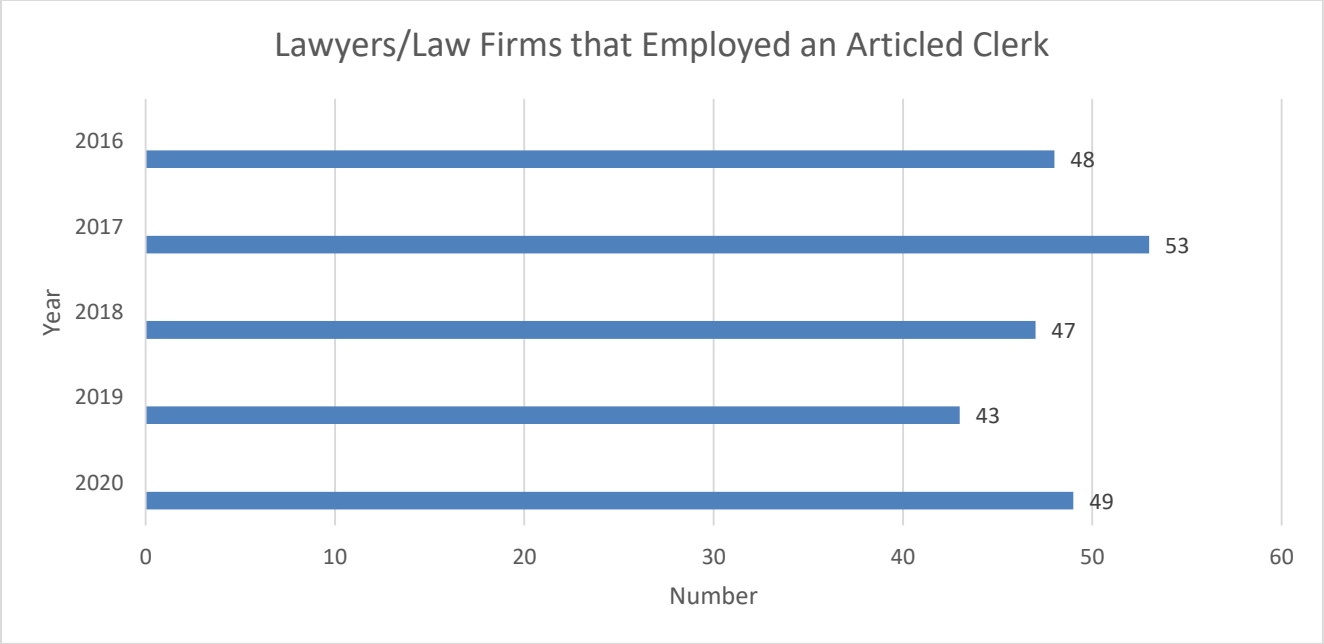
Articling Rulings

The Articling process involves a variety of rulings starting with the approval of the articling application up to and including the application for admission. Below is a list of the types of rulings staff make and statistics for most of those rulings. For the last fiscal year we had 88 articling clerks. This number is different from clerk applications because clerks can apply to article in a different fiscal year than the year they actually article. Since the start of the pandemic we have not seen lay offs of articulated clerks nor have we seen clerks losing their articling positions for the coming year. We currently have 64 articulated clerks registered for the upcoming year and 6 more we are still processing. Many will be delaying their article start date but the Society is working with those to assist them in shortening their articles so they will be able to be called in June 2021. In

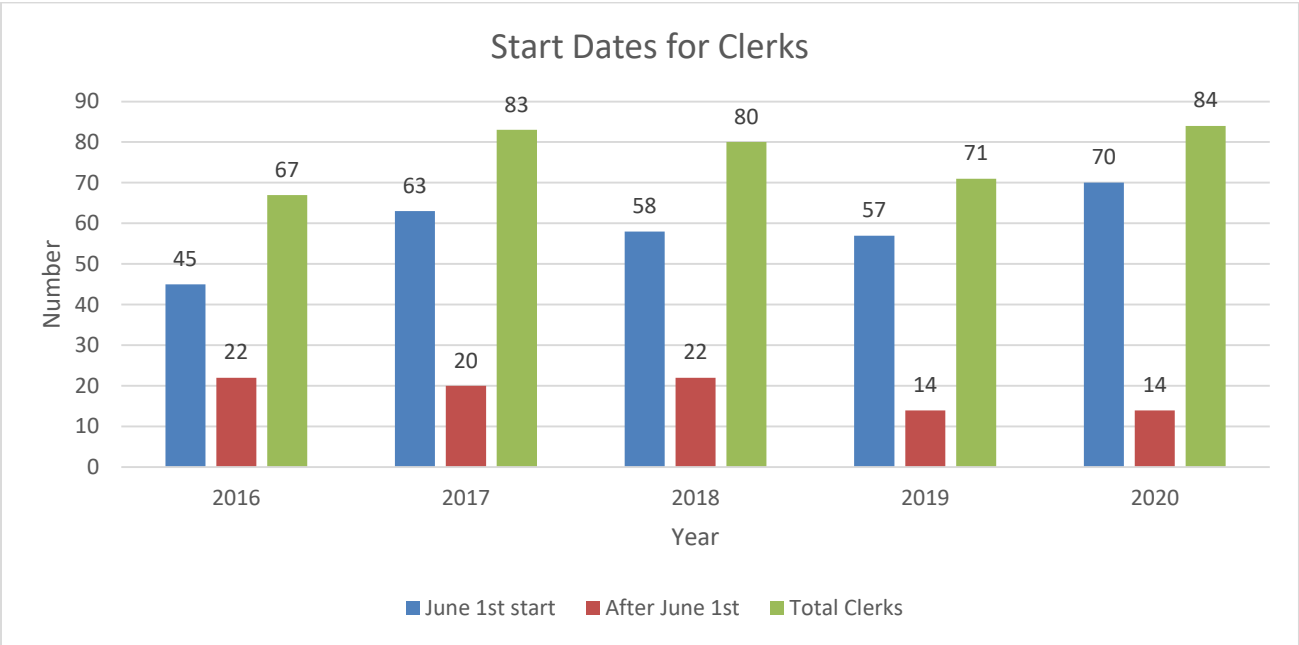
addition, in order to be eligible for call they will need to start the PREP program by June 26, 2020. Many firms have stepped up and are paying for their clerks to begin the program even if their articles are being delayed. The Society is also working on assisting those who are paying for the course themselves with the aid of the grant from the Law Foundation of Nova Scotia.

Type of ruling	Fiscal year 2016	Fiscal year 2017	Fiscal year 2018	Fiscal year 2019	Fiscal year 2020
Articled clerk applications	71	79	78	70	84
Articling plans	66	79	86	54	84
Education plans	75	70	57	43	73
Principal applications	57	52	61	48	72
Change in supervising lawyer/principal	0	8	0	1	1
Extension of articles	26	25	24	53	22
Applications for admission	90	120	131	136	113
Termination of articles	0	0	0	0	0
Secondment of articles	16	17	18	13	19
Application to work outside articles	2	1	0	1	0
Abridgement of articles	5	8	5	6	4
Leaves of absence			5	1	2

There are two ways to employ an articled clerk. An individual lawyer may have a clerk or a firm can employ clerks and assign a Supervising Lawyer to oversee the articling process. Overall the number of firms taking clerks remained relatively steady. Most years the variations in numbers are caused by the differences in rural lawyers taking clerks as well as sole practitioners and government. So far this fiscal year 37 firms, lawyers or organizations are taking clerks. The number of lawyers/firms who employed clerks in each previous year is as follows:



The numbers of clerks have varied through the last five years. Those numbers are:



As you will see we continue to see a large number of clerks starting articles after the regular June 1st deadline. Last year we had 14 clerks start after June 1st.

The Society does not gather statistics about students looking for articling positions, as we are not involved in that process and therefore are only aware of issues anecdotally. The Society continues to work with potential clerks and principals to create articling situations that are outside the traditional type of articles but still offer the student a valuable and workable articling experience. This year in particular, we have been sharing information with the Schulich school of law to determine if there are any students looking for articles so we are more aware of the need.

Bar Admission Ceremonies

Since June 2014 the Society has changed the admission ceremonies. Prior to that time, admission ceremonies were offered in most months of the year, resulting in duplication of effort and wasted resources. An attempt was made a few years ago to have the courts accept “paper calls” so that lawyers did not have to appear in court to be called, as happens in many provinces. Unfortunately, our court did not accept this proposal.

As a result, the Society has moved to a system where we have only four ceremonies per year, including the big call in June. The only challenge we have experienced is for articulated clerks and transfers who fall outside the normal schedule. The need for students to wait until the next call date delays their call resulting in an inability to work. We have been solving this issue by abridging articles i.e. calling people before they have completed their articles or supervision and having them go back to their firms once called to complete their term. So far, this has worked well.

The calls for the past years looked like this:

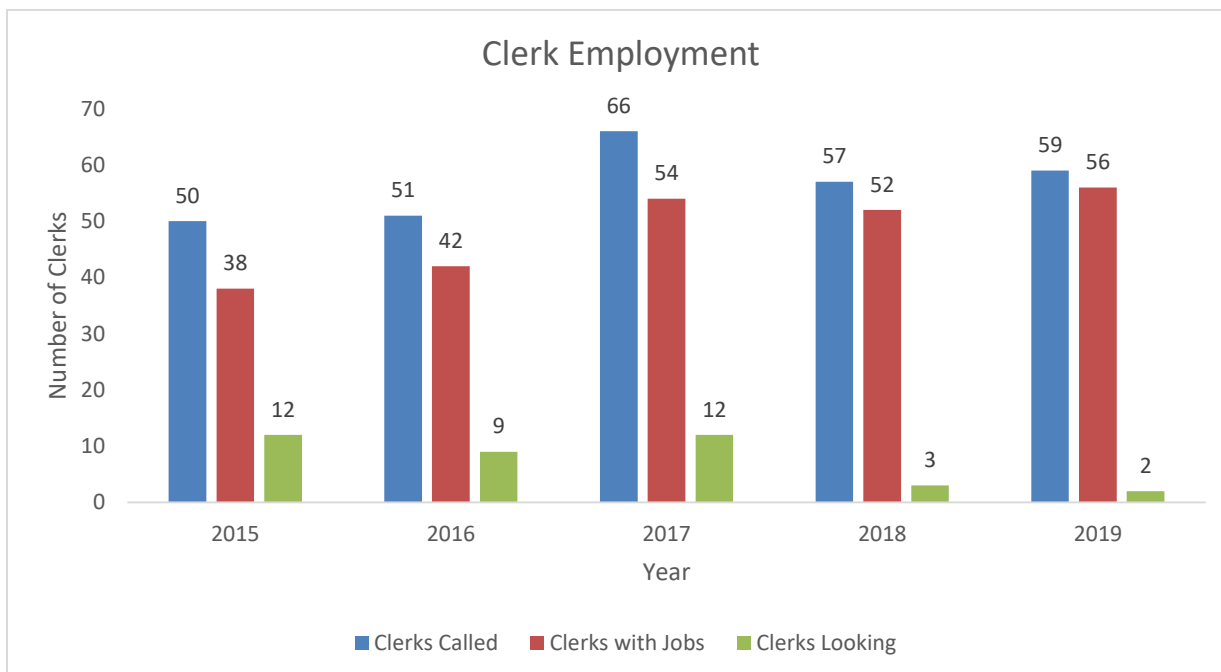
Month of call	Total number called	Articled clerks	Transfers	Readmission following resignation
January 15, 2016	10	4	5	1
April 22, 2016	5	0	5	
June 10, 2016	57	51	5	1
October 14, 2016	28	8	20	0
January 13, 2017	20	3	16	1
April 21, 2017	15	7	8	0
June 9, 2017	74	65	9	0
October 13, 2017	33	12	21	0
January 12, 2018	15	3	12	0
April 20, 2018	9	1	8	0
June 15, 2018	62	58	4	0
October 19, 2018	41	11	30	0
January 11, 2019	20	6	14	0
May 3, 2019	13	1	12	0
June 7, 2019	60	59	1	0

October 11, 2019	20	12	9	0
November 8, 2019 Posthumous call	11			
January 17, 2020	12	1	11	0
April 16, 2020	21	2	18	1

In November 2019, we posthumously admitted 11 veterans who lost their lives in the First World War. The Society collaborated with the Supreme Court to host a special ceremony with relatives reading the oath on behalf of those who made the ultimate sacrifice for our country.

Due to the global wide pandemic, the Supreme Court agreed to move forward with a paper call for the April 2020 ceremony. This required applicants to swear or affirm their oath before a notary public via video conference, filing an affidavit with the courts confirming they had done so, and signing the roll electronically. The June 2020 will be completed in a similar fashion, however the court has agreed to hold a Zoom hearing to have the new lawyers take their oaths in front of Justice Lynch.

The June call to the bar each year is the call where most of the articulated clerks are called. The numbers for the last few years are set out in the table below. Interestingly, in June 2019, we had 59 articulated clerks called to the bar. Of those, 56 secured positions.



Bar Admission program

As you are aware, we are now moving to a new Bar Admission Program. The students will take the PREP program offered by CPLED and a cultural competence workshop offered by the Society. The PREP program will begin in June 2020. Our students have been registering for the program. To date we have 62 registered. At the moment we are uncertain as to whether the cultural competency workshop will go ahead in-person, online or be delayed as a result of the pandemic.

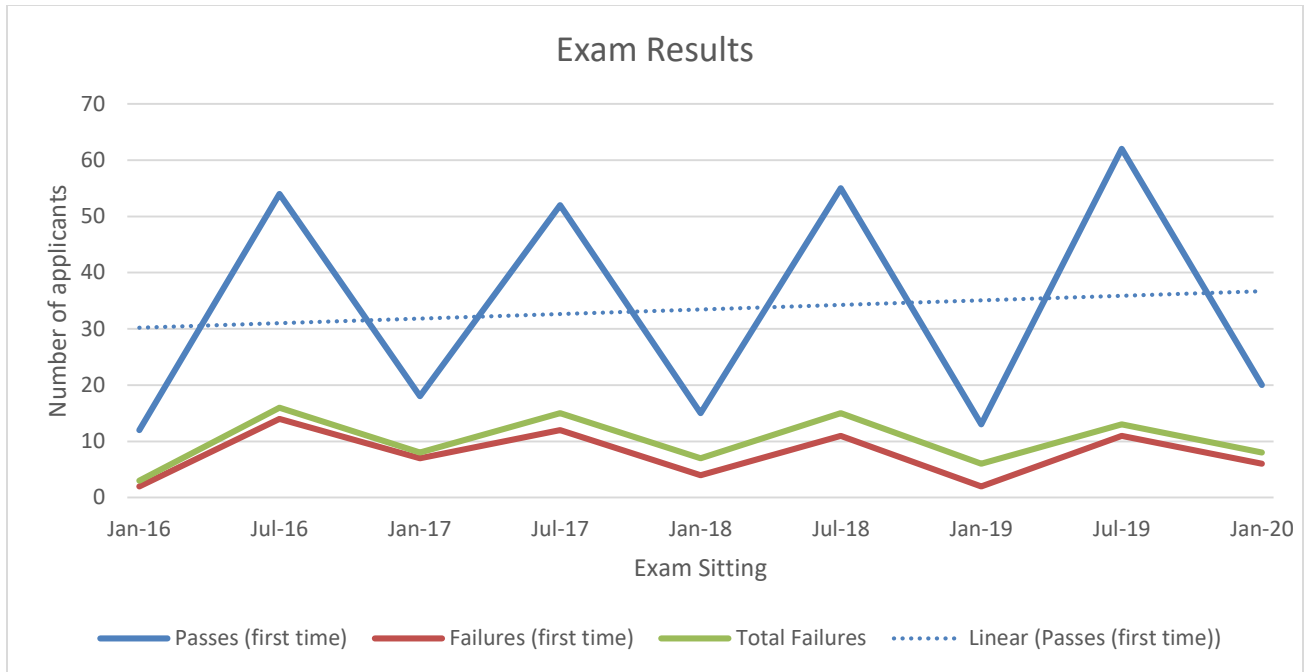
In the meantime we have just completed offering the final version of our legacy Skills Course. The Skills Course is offered 3 times in the fall of each year. The numbers of students taking the course over the last number of years are as follows.

Fiscal year	NS students	PEI students	Total students
2020	84	n/a	84
2019	76	n/a	76
2018	75	14	89
2017	83	9	92
2016	65	8	73

Bar Examination

We are in the final phase of offering the Bar Examination. We have only two sittings remaining. In the last sitting 8 individuals failed the bar examination. Of those only 7 are eligible to rewrite. We also have an additional two who sat out. As a result there should be 9 people writing the July exam. Only those who fail will be eligible to rewrite at the last sitting in January 2021. The numbers over the last years have looked like this:

Exam sitting	Applicants writing	Number of repeaters	Passes (first time)	Failures (first time)	Total failures	Failure rate
2020-01	25 first time	10	20	6	8	24.00%
2019-07	73 first time	5	62	11	13	15.00%
2019-01	15 first time	14	13	2	6	13.00%
2018-07	66 first time	4	55	11	15	17.00%
2018-01	19 first time	13	15	4	7	21.00%
2017-07	64 first time	8	52	12	15	19.00%
2017-01	25 first time	15	18	7	8	28.00%
2016-07	64 first time	4	54	14	16	22.00%
2016-01	14 first time	2	12	2	3	14.28%



The numbers of applicants passing or failing at any given examination continue to fluctuate slightly.

The Exam continues to be created and marked initially by our exam consultant. The exams are reviewed and set by our Bar Examiners, who are senior members of the bar. In addition, the Examiners act as a review body if a student asks to have their examination reviewed. These reviews result in very few changes, although occasionally a student will be successful.

We offer an online virtual exam writing seminar to replace the in-person seminar. This permits students to take the seminar at any time and in any place. It is not a “Hollywood” seminar, however, it does give the students the same information they received on a semi-annual basis. Also the students are free to contact staff if they have questions or need assistance.

Mandatory Continuing Professional Development

The mandatory CPD requirement came into effect in June 2012. All practising members are required to complete 12 hours of study annually and to report their activities in the Annual Lawyers Report.

In May 2015 Council passed a resolution, after a review process, to change the MCPD requirement. Beginning this fiscal year all lawyers were required to create and implement a professional development plan on an annual basis. Generally, compliance was high although members did need some encouragement to complete their plans.

We are awaiting the results of this year's Annual Lawyer's Report to determine compliance. Last year there were a few lawyers who were not compliant in terms of reporting but who did have some type of plan in place when inquiries were made.

The Society has resources available to members to assist them in creating a professional development plan. In addition, E&C staff are available to review plans and to assist members should they require individual guidance. As mentioned earlier, staff have offered seminars to a variety of firms and organizations throughout the year.

Society staff have also been working to update the website and to make additional resources available to the membership. As we move forward these resources will be combined with the practice resources currently offered on the LIANS website.

Legal Services Support highlights

Legal Services Support is both a dedicated staff team from Education & Credentials that undertakes specific regulatory projects with an educational focus (i.e. MSELP, New Firm Registration), and a cross-departmental initiative to provide Triple P member-focused advisory services.

Over the past year, the Legal Services Support function has engaged in four key projects:

1. MSELP Self-Assessment program (formally launched in July 2019)
2. New firm registration (a credentialing program)
3. Succession Planning Toolkit (new practice resource)
4. LSS advisory

The **MSELP Self-Assessment** formally launched end of July 2019 after extensive testing, feedback and revision. Since then:

- **160 firms** engaged with LSS staff directly about the program (the nature of these calls and their benefits were discussed in more detail in the last LSS report to Council.)
- **109 firms** were sent the Self-Assessment Tool (and **27 firms** were scheduled to be sent the SAT in future months)
- **75 firms** submitted a completed Self-Assessment Tool

This represents a 69% completion rate for those sent an SAT during the reporting period. We are mindful that many firms take more than the original month long deadline to complete the SAT, so we expect this percentage to rise significantly before the first year of the program is complete (end of July 2020).

Not all firms contacted about MSELP ended up being sent an SAT. An unforeseen benefit of the program has been identifying firms and lawyers contemplating or moving toward retirement. It has 'switched' the conversation but meant we are able to provide meaningful support for those firms as they transition out of practice (or firm closure).

A goal for Year 1 of the program is to administer the MSELP program to at least 1/3 of all law firms in Nova Scotia (ie. 140 of 421 firms). We have already contacted 160 firms and sent the SAT to (or scheduled for receipt over the coming months) 136 firms (including 16 sent in May). So we are on track for end of Year 1 (July 2020).

The LSS team has conducted 15 follow-up meetings (6 in person, 9 by telephone) with firms who completed the SAT during the reporting period. This represents 20% of the respondents and is below the targeted 25% goal, so additional meetings will be scheduled before the end of the first program year.

New Firm Registration continues to be an impactful way for Society staff to proactively engage with members at a critical point in their law practice 'life cycle'. During the 2020 fiscal year, we registered 32 new firms and engaged with many more who reached out to investigate the process and in some cases, start to pursue opening a practice.

In each of these cases we were able to refer lawyers to practice management tools and guidance on both ethical and compliance considerations. In many cases, we made referrals to LAP, to other lawyers (i.e. informal mentorship arrangements), and other resources. Most were referred to our colleagues in the Trust Assurance team to start the process for approval to operate a trust account.

The launch of the **Succession Planning Toolkit** was a significant achievement for the team during the 2020 fiscal year. The toolkit is the product of several years of Council and Committee work and member engagement. We know from the data we track on member engagement (since 2018) that succession planning / file destruction are the practice management issues our members most frequently seek guidance and support on.

During the past reporting period alone, more than 50 LSS interactions with members related to succession planning and/or file destruction. This does not include the many more discussions about succession that arise from calls about MSELP, or in the context of meetings about new firm registration. The Toolkit offers members a practice package of tools and guidance that lives on the NSBS website.

Our 'bread and butter' **LSS advisory** work continues to occupy a significant percentage of staff resource (across the Society). During the 2019/2020 reporting period, we recorded **more than 200 individual LSS enquiries** – and not including those directed to the Trust Assurance team or PR Counsel for ethics advice.

As reported to Council in January 2019, LSS enquiries most commonly related to (in descending order):

- Opening a practice / registering a new practice
- Changing firms
- Trust accounts
- Succession planning
- File management

This has remained consistent since January, with the exception of an influx of questions in March and April relating to remote practice (technology, video conferencing, remote witnessing, etc.) during COVID-19.

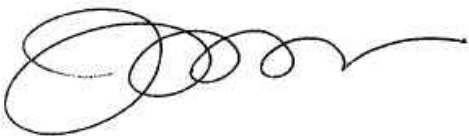
Perhaps the most significant development for LSS advisory in the past year has been the formation of a biweekly LSS / Risk working group comprised of staff across the Society who identify and respond to risk issues through a Triple P lens, and ensure our internal processes and responses are aligned. New practice tools and resources are also developed through the work of this group. Examples include new guidance (in development) for lawyers leaving law firms, and for managing stale trust account balances.

Member outreach was a particular focus for the LSS team during the reporting year. The LSS Manager participated in a series of County Bar roadshow meetings with Society President, Carrie Ricker and Equity and Access Manager, Angela Simmonds. The LSS team presented at a number of professional meetings (2019 Annual Meeting, Western County Bar, Solo and Small firm Conference, Lunenburg County Bar meeting, CBA Conference). LSS Officer Rob McCleave spent time in Cape Breton in early 2020 meeting with a number of law firms to discuss their succession plans.

As a final note, the LSS team has been working with LIANS staff to collaborate on risk and practice management programming and issues. NSBS and LIANS co-hosted the 2019 Solo and Small Practice Conference with great success. Risk issues are identified and shared between staff with a view to enhancing member knowledge and resources collectively.

I would be happy to answer questions, should you have any.

Respectfully submitted,



Jacqueline L. Mullenger
Director,
Education & Credentials

Appendix "A"

Education & Credentials

Below is the regulatory work of the department. Council is involved in the setting of some standards and policy that pertain to credentialing matters.

Articling and Admissions which includes: admission inquiries, Credentials Committee work, articulated clerk applications, Principal/supervising lawyer applications, applications for admission, applications for academic call, education plans, mid-term and final reports, rulings involving articling and admission issues, Internal Reviews, Credentials Inquiries and Bar Admission Ceremonies. The department also processes applications for Notary Public commissions.

Skills Course which includes setting of standards, and curriculum, preparation, delivery and assessment of both in person and online course, volunteer management, internal reviews of marks and working on policy.

Bar examinations which include: choosing testing areas, liaising with Exam Consultant, oversight of Bar Examiners, screening of winter and summer examinations, preparation of Bar Review Outlines, exam writing seminars, accommodation requests, invigilation of exams, appeals, review of failing exams and providing feedback and assistance to applicants.

Transfer Applications which include: rulings involving transfers, bar examinations for transfers, education plans and supervision for transfers, temporary permits for transfers, foreign legal consultants, temporary permits for lawyers from outside Canada, temporary permits for lawyers from within Canada. Internal reviews of rulings

Change of Category Applications which include: changes of category upwards, reinstatement of former judges, readmission following resignation or disbarment, and internal reviews of rulings. Since September 2012, the department has also been responsible for changes of category downwards, including resignations and retirement.

Certificates of Standing/ Letters of standing: The department processes all applications and provides these certificates and letters.

Reports regarding applications for QC appointments and judicial appointments: In the near future the department will be taking over this process which currently happens in the Executive Director's office.

Opening of Trust Accounts: The department is responsible for the opening of new trust accounts. This process includes administering the trust account assessment and working with the member to obtain the appropriate documentation and information about the opening of new trust accounts. In most cases this also involves new law firms

so the need to understand the structures and relationships that are being created becomes part of the focus.

Limited Liability Partnerships: The department is responsible for administration and oversight of both the creation of these entities and their yearly renewal.

Law Corporations: The department is responsible for the administration and oversight of the creation of law corporations and their renewals.

Continuing Professional Development which includes the implementation and monitoring of the requirements set out in the regulations for mandatory cpd, the offering of cpd where appropriate and liaising with members, firms and providers. It also involves the delivery of the LRA assessment and working with other departments to create and implement education for staff, committees and Council.

Legal Services Support / Self-Assessment Process: The department is responsible for the implementation of this work. The work involves the self assessment process as well as giving advice, guidance and support to practicing members who are looking for advice on a variety of topics. It also involves maintaining a resource portal for members and some limited education where the need arises.

New Firm Registration Process: Prior to opening a new practice, a lawyer or firm must go through the new firm registration process which includes completing a registration form and meeting with one of the E&C team members. Staff review the processes, obligations and items that members need to consider prior to opening their practice. If needed, we offer guidance, advice and support.

Standards Committees: The department has taken on responsibility for staffing both the Family Law Standards Committee and the Law Office Economics Management Standards Committee (LOEMC). In the upcoming year the LOEMC will be focusing on Succession Planning.