



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Victoria Rees, Director of Professional Responsibility

Date: March 9, 2020

Subject: Professional Responsibility Monitoring Report: May 2019- March 2020

For: **Approval**
 Introduction
 Information

Summary

This is my last report as Director of Professional Responsibility. For the March 27th meeting of Council, you have separate reports relating to a request for approval of MDPs from the Code of Professional Conduct Committee, and setting out the Regulatory Risk Framework, Assessment and Management Team actions for 2020-2022. You have current budget information relating to Professional Responsibility under a separate agenda item, and in January 2020, you received updated work plans and oral reports from a number of PR committees. This report will therefore focus on brief information relating to the status of complaints, hearings and claims.

1. Complaints intake and early resolution

This reporting period saw continuation of the higher volume of complaint contacts/inquiries that we observed ramping up in 2018-19. A number of months this period saw well above average number of contacts (e.g. 42 v. 30). We believe that this was, in part, a result of enhancing access to our complaint intake process through adding on-line inquiry forms and emailing of inquiries, rather than just through the phone line. However, the resulting high volume of inquiries put great strain on our already limited resources given other events described below.

We therefore adopted some new measures to permit a Triple P and risk-focused approach to responding to these inquiries while alleviating some of the pressure on the system:

- i. Our Staff Lawyers can now respond to complaint inquiries by email, rather than just by phone. This permits them to better manage the process of responding to inquiries, and provide some preliminary information without having to engage in a full phone conversation; it supports more effective triaging of risk, rather than treating all

- inquiries on a one-size-fits-all, first-come-first-serve basis; and it decreases the time spent with repeat and high maintenance contacts.
- ii. Steps have been taken to reduce the time devoted to responses, particularly by phone, by advising callers that they have a set amount of time to speak with a Staff Lawyer, and if more time is needed thereafter, then a further call can be scheduled. That said, for inquiries of higher risk or from vulnerable individuals, we will always devote the time needed to listen and respond to their concerns. Staff Lawyers are empowered to exercise their discretion as to how best to serve the public interest in this process, balancing accessibility, limited resources and risk assessment.
 - iii. The National Discipline Standards include a standard for responding to complaint inquiries within 1-2 days. This is the only standard we have had difficulty meeting in recent years because of volume, and because we have only two Staff Lawyers dedicated part-time to responding to such inquiries. When one is ill or on vacation, it is not possible to meet this standard. More importantly, because we are dedicating more time to early resolution of complaints, these measures often require multiple calls and more time to resolve. Therefore, this timeliness standard no longer fits our intake and early resolution process. We have collectively agreed not to be beholden to this standard as it no longer measures the value our process brings beyond just the speed of the first response, and we have advised the National Discipline Standards Steering Committee of this in our report filed last month (attached).

2. Complaints investigation and prosecution

The significant misappropriation of funds by Jason Boudrot, and another complex investigation involving now 19 complaint files open against two formerly associated lawyers, have contributed significantly to the volume of calls and complaints. These events happened simultaneously starting in late October 2018, and have carried on to the present. Through the same period, we navigated through a complex sexual harassment investigation, involving multiple witnesses, which resulted in a Consent to Reprimand and resignation by Eric Durnford, rather than necessitating a hearing. The number of complex complaints requiring significant internal and external resources has been higher than normal.

With regard to written complaints, we received 138 in 2019, which is higher than the total in each of the past five years. This increase can be primarily attributed to two of the major events noted above. The Boudrot disciplinary matter is at an end, but the 19 complaints relating to two lawyers referenced above remain open. There have also been a number of lawyers against whom we have had numerous complaints open simultaneously, appearing on CIC agendas repeatedly, and this is an increase over previous years. As you know from the CIC report, the CIC often held meetings with these 'repeat offenders' as part of the investigation process, to attempt to effect real change in their behavior.

We've had a busier period than usual for matters referred to hearing, and matters referred to and monitored by the Fitness to Practice Program (FTPP). In this reporting period, hearing decisions (including Settlement Agreements) were rendered in relation to Adele England, Jason

Boudrot and Duane Rhyno, and charges were held in abeyance regarding Blois Colpitts pending the decision of the Court of Appeal relating to his criminal conviction and sentence (these charges are now moving forward). Mr. Rhyno has filed an Appeal of his disbarment to the Nova Scotia Court of Appeal, and Lyle Howe has filed for leave to appeal his disbarment to the Supreme Court. Two new matters were referred to the FTPP that would likely have otherwise been referred to hearing.

3. Lawyers' Fund for Client Compensation Claims

In the May 2019 update to Council, you were advised that at that time we had received over 30 claims relating to the significant defalcation by Jason Boudrot. I can advise that the total number of claims filed between December 2018 and December 2019 was 65. This is the largest number of claims we have ever received in relation to one 'misappropriation event'.

Claims received total \$1,833,728.04. However, of this amount, one claim which was denied in the early stages as outside the jurisdiction of the Fund totaled \$538, 721.91.

The Lawyers' Fund for Client Compensation Committee and staff have worked diligently to process the claims as expeditiously as possible, and held monthly meetings of up to four hours to do so. To date, the Committee and Council have approved claims totaling \$1,008,391.51. Fortunately, as a result of our insurance coverage for the Fund provided by CLIA, the Society's portion of payments has totaled only \$500,000, with the balance reimbursed by CLIA.

A handful of claims remain to be processed, but the vast majority of the claims work is complete as of this month. The OnBoard voting system for Council claim approvals has worked very well and allowed us to process claims more expeditiously in the public interest.

Other

This large volume of public protection work in PR has been completed well under-budget this year. It is fortunate that the bulk of these complaints and claims came in just before and after our new General Counsel and paralegal arrived in January 2019. Without these additional experienced resources, together with our existing hard working professional staff, the costs and delays would have been far greater. The accuracy of our budgeting process, and using multiple year averages, has also contributed to strong financial management of what are often unpredictable costs in PR.

While efforts continue to be made to carry out more of the complex investigations work in house, we do not foresee much reduction in the need for external investigations assistance in the future given the complexity of the cases we continue to deal with, and the need for unique expertise in some matters. All current prosecutions are being handled by General Counsel, who is also in the process of assuming responsibility for the majority of Custodian and Receiver matters in-house.

The PR Department remains a very tightly resourced department where any staff absences or increase in volume have an immediate impact on our ability to manage the workload, despite

significant cross-training and assistance within and across departments. With the claims work starting to decline, this will hopefully help create some capacity within the department, but may only permit attention to matters that have otherwise been of lower priority by comparison, and left undone (e.g. case digests, inventorying custodian and receiver files). Consideration should be given to analyzing whether the existing staff resources remain adequate to effectively meet the current and longer term demands in the area of Professional Responsibility, in the public interest.

On a more positive note, there has been significant progress toward development of a new Case Management System, to be implemented shortly, which is expected to increase efficiencies with information management and reports.

Exhibits/Appendices:

National Discipline Standards Report 2019

National Discipline Standards

Status Update: January to December 2019

(Submission deadline: March 1, 2020)

Nova Scotia Barristers' Society

PLEASE NOTE: The template has been revised to reflect changes to the standards effective January 1, 2019 (highlighted)

STANDARD	CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)
Timeliness			
1. <i>Telephone inquiries:</i> 75% of telephone inquiries are acknowledged within one business day.	Not met	We have two Staff Lawyers (in a department of 5) who have responsibility for complaint calls, as well as all complaints processing, investigation and ADR. We have been receiving an increasing number of complaint calls, emails and on-line complaint inquiries, in part due to our decision to enhance access to this process on our website. We (Director and CEO) have empowered Staff Lawyers to be able to return these inquiries in different ways including by email, or referral to other resources, as a means of taking more control of the time required for intake. This has helped Staff Lawyers better manage high volume periods, days of staff illness or vacation, stress, and deal with high-conflict	We have taken the actions described in the column to the left in order to gain a higher level of control over the time involved in intake. We are responding appropriately to intake calls, emails and on-line forms, and assessing risk for triage purposes, and while our acknowledgements may not be within 1 – 2 days, we have increased access to our complaints process which we feel on balance is more appropriate

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)
			individuals because we have agreed that this standard no longer fits well with our intake process and more flexibility is required. Our paralegal/EA now helps manage high volumes and data entry from calls during heavy periods. Our intake process is also more risk-focused, which means that not all calls are treated the same – some require a faster response than others, and this triage is essential to taking back control, and not letting new but lower priority matters prevent us from getting to our existing higher priority matters.	than acknowledging within 1 -2 days. Some calls require more time and some less, in the interests of public protection. This is part of our early resolution process and goals.
	100% of telephone inquiries are acknowledged within two business days.	Not met		
2.	<i>Written complaints:</i> 100% of written complaints are acknowledged in writing within three business days.	Not met	This was met 96% of the time. On 4 occasions, acknowledgements were sent out within 4 days, and on 1 occasion the acknowledgement was sent within 5 days. 3 of these occasions were due to a high volume of intake when we launched the on-line fillable intake form.	

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)
3.	<p><i>Early Resolution:</i></p> <p>There is a system in place for early resolution of appropriate complaints.</p>	Met	See above	
4A.	<p><i>Timeline to resolve or refer complaint:</i></p> <p>80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.</p>	Met		
	<p>90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.</p>	Met		
4B.	<p>Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:</p> <p>80% of all internal reviews or internal appeals are decided within 90 days.</p>	Met		

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)
	90% of all internal reviews or internal appeals are decided within 120 days.	Met	Our Complaints Review Committee Policy sets timelines of this nature.	
4C.	Where a complaint has been referred back to the investigation stage from an internal review or internal appeal process: 80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.	Met		
	90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.	Met		
5.	<i>Contact with complainant:</i> For 90% of open complaints there is contact with the complainant at least once every	Met	Our own standard is communication with parties every 30 days.	

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)
	90 days during the investigation stage.			
6.	<p><i>Contact with lawyer or Québec notary:</i></p> <p>For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.</p>	Met		
7.	<p><i>Interim Measures:</i></p> <p>There is an authority and a process for the law society to obtain an interlocutory or interim suspension, restrictions or conditions on a member's practice of law, as the public interest may require.</p>	Met		
Hearings				
8.	75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.	Met		

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)
	95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.	Met		
9.	75% of all hearings commence within 9 months of authorization.	Met		
	90% of all hearings commence within 12 months of authorization.	Met (?)	Charges were authorized against 3 members. 2 met the 75% standard. In 1 instance, charges were served but the hearing was held in abeyance by the panel Chair with parties' consent pending the outcome of an appeal by the member to the Court of Appeal of a criminal conviction and sentence	
10.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	Met	Panels are required to adhere to timelines for release of decisions on merit (60 days), and penalty (30 days), pursuant to our regulations.	
Public Participation				
11.	There is public participation at every stage of discipline; e.g. on all hearing panels of three or	Met	Public reps serve on the Complaints Investigation Committee, the Complaints Review Committee, the Compensation Fund	

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)
	more; at least one public representative; on the charging committee, at least one public representative.		Committee and the Hearing Committee, as well as all hearing panels.	
12.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	Met	Public Representative is the Chair of the Complaints Review Committee	
Transparency				
13.	Hearings are open to the public.	Met		
14.	Reasons are provided for any decision to close hearings.	Met		
15.	Notices of charge or citation are published promptly after a date for the hearing has been set.	Met		
16.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.	Met	Notice of Referral to Hearing timelines and other requirements are set out in our regulations.	
17.	A law society can share information about a lawyer or	Met	Authority to disclose is provided for in the <i>Legal Professional Act</i> and regulations.	

STANDARD		CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)
	Québec notary, either upon request or at its own initiative, with any other law society, or can require a lawyer or Québec notary to disclose such information to all law societies to which they are a member. All information must be shared in a manner that protects solicitor-client privilege.			
18.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	Met		
Accessibility				
19.	A complaint help form is available to complainants.	Met	We now have an on-line fillable intake form, a complaints form with FAQs, and the ability to print the form as well	
20.	There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.	Met	Member discipline history on-line goes back to 1991, and is available through the On-line Membership Directory.	

STANDARD	CURRENT STATUS (met, not met or N/A)	COMMENTS/ ISSUES WITH STANDARD	ACTIONS TAKEN OR PLANNED (where standard is not met)
Qualification of Adjudicators and Volunteers			
21.	There is ongoing mandatory training for all adjudicators with refresher training no less often than once a year, and the curriculum for mandatory training will comply with the national curriculum.	Met	
22.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	Met	
Reporting on Standards			
23.	Each law society will report annually to its governing body on the status of the standards.	Met	