

Nova Scotia Barristers' Liability Claims Fund

The Nova Scotia Barristers' Liability Claims Fund is established and operated pursuant to the Legal Profession Act and Regulations, as part of the Nova Scotia Barristers' Society's public protection mandate.

The Fund conducts the mandatory professional liability insurance program for the benefit of the practicing insured members.

Annual Report 2003



2003/2004 BOARD, COMMITTEES AND STAFF

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CLAIMS REVIEW

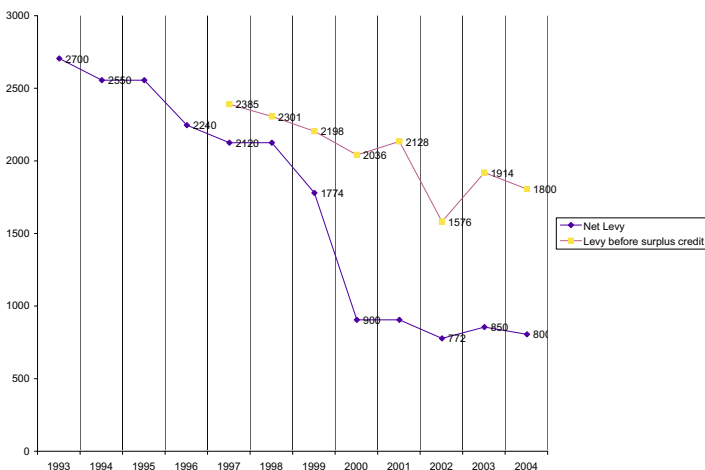
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THE NSBLCF WEBSITE IS FOUND AT WWW.NSBLCF.CA
THE 2003 CLIA ANNUAL REPORT IS AVAILABLE AT WWW.CLIA.CA

NOVA SCOTIA BARRISTERS' LIABILITY CLAIMS FUND REPORT

I am pleased to report on behalf of the Board that the Nova Scotia Barristers' Liability Claims Fund has had another very strong year. The practicing levy for private practitioners for the 2004-2005 year is \$800; for Nova Scotia Legal Aid staff lawyers, \$400; and for lawyers for the provincial government, \$350.



Insurance Levy - 12 Year History

This represents a \$50 decrease for private practitioners over last year.

It is the second lowest assessment for members in the last decade, well off the high of \$2700 per member reached in the early 1990s. It is also one of the lowest insurance assessments in the country.

Our actuaries advise us that the true levy necessary to meet our expected liabilities in the coming year would be approximately \$1800 per private practitioner, or about 2.25 times the levy being charged to private practitioners. We are able to subsidize this amount through the return of excess surplus held by the Fund to insured members. We do this in consultation with our actuaries. Since we are gradually depleting our surplus, we can expect the levy to increase over time. *Members should not expect the levy to remain at these low rates indefinitely.*

Our investment experience has been better than anticipated in the past year, which has contributed to the excess surplus available to be returned to insured members. As well, we continue to have a very favourable loss experience. We can all do our part to contribute to the situation by being careful and claims wise in the way we practice.

Our claims experience with CLIA (which provides coverage of our liability claims in excess of \$300,000 up to a maximum of \$1,000,000 per occurrence) continues to be extraordinarily good. We are once again able to withdraw excess subscriber's equity, this time in the amount of \$339,000. This amount has

allowed us to increase the credit being offered by the Fund to each insured member. We will continue to return excess surplus over time, in keeping with the recommendations of our actuaries. While the portion of the levy which is payable to CLIA has increased slightly to \$292 from \$280, Nova Scotia remains the province with the lowest levy assessed by CLIA as a result of its positive claims experience and good file management.

The Legal Aid rate has been recommended at 50 percent of the private practitioners' rate or \$400, in keeping with a practice started some years ago.

Provincial government lawyers pay an amount equal to the CLIA premium together with a contribution to administration and a part of their exposure.

The government lawyer rate of \$350 is made up as follows:

| | |
|---|--------------|
| CLIA premium | \$292 |
| Administration and contribution to exposure | \$58 |
| Total | \$350 |

The Fund is committed to managing your funds cautiously. We are very pleased with the financial health of the Fund and our consequent ability, through return of surplus, to stabilize rates for members during these difficult times in financial and insurance markets. We can all do our part to keep increases in rates to a minimum, by practicing carefully with a view to loss prevention.

The Board has approved the funding of a risk manager's position to work with members on a completely confidential basis in controlling practices which give rise to claims. It has been determined by the Society in its annual plan that they will begin to develop a new assistance program that will build upon the risk management and loss prevention initiatives of the Fund. The details of this program and how it looks will require considerable work by Council and the Fund Board in the coming year.

The Fund is very pleased to continue its activities for the benefit of members. I would like to thank all members of the Board for the commitment and dedication they continue to show to the Fund. I would also like to especially thank your Director of Insurance, Deborah Rozee, and the dedicated staff, Patricia Neild, Gerri O'Shea and Christine Ward, who work so diligently to assist members. It is indeed a pleasure and an honour to be Chair of the Board of the Fund.

A summary of the past year's financial highlights, taken from the audited financial statements of the Fund, follows this report.

Sandra MacPherson Duncan, Chair

DIRECTOR'S REPORT AS OF DECEMBER 31, 2003

CLAIMS ACTIVITY

Last year saw a small decrease in the number of reported claims. There were 221 claims reported to the Fund during 2003; down by 61 from the prior 12 month period. The downward trend appears to be continuing during 2004. We are fortunate to be out of step with most other Canadian jurisdictions which are experiencing an increase in claims frequency.

CLAIMS REPORTED PER 100 INSURED LAWYERS

| | | | | | | | | | | |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 93 | 94 | 95 | 96 | 97 | 98 | 99 | 00 | 01 | 02 | 03* |
| 28.42 | 22.34 | 22.16 | 18.13 | 16.90 | 14.58 | 15.64 | 14.04 | 17.52 | 14.83 | 13.49 |

* 6 Months

By far, the origin of most claims continues to be founded in poor communication. The miscommunications arise both with clients and with other counsel and are often compounded by a failure to document the retainer, advice and instructions in writing. A consistent practice of confirming client and opposing counsel communications in writing will significantly reduce the potential of a claim. In the event a claim is made, the documentation will increase the likelihood of a successful defence of the member.

Given the volume of real estate activity, it is not surprising that real estate matters continue to represent over 50 percent of all reported claims. Real property practice is changing as Nova Scotia moves to a land titles regime. The Fund will continue to respond to claims arising from lawyers' negligence for a period of 10 years from the date of the lawyer's certificate. Only time will tell what impact if any this change will have on real estate conveyancing claims.

LIMITATION PERIODS

At a recent CLIA meeting to discuss large losses across all CLIA jurisdictions, 5 of the 14 claims discussed were the result of missed limitation periods. The losses associated with these claims are valued between \$250,000 to \$6 million dollars per file.

| | % WITH LOSSES | AVERAGE INCURRED LOSS |
|------------------|---------------|-----------------------|
| ALL AREAS OF LAW | | |
| 1990-2004 | 38% | 13,005 |
| LAST 5 YEARS | 40% | 10,970 |
| CIVIL LITIGATION | | |
| 1990-2004 | 28% | 12,817 |
| LAST 5 YEARS | 33% | 13,134 |

In Nova Scotia we have been fortunate to have fewer losses due to missed limitation as a result of the ability to take remedial action by way of an application under s.3 of the *Limitation of Actions Act*. Nevertheless, we are seeing an increase in the number of missed limitation claims and associated expense relative to other areas of law. While the average loss for all areas of law has decreased in the last five years, the same costs have increased for civil litigation claims, most of which arise from missed limitation periods.

Last year the loss prevention committee approved the creation of limitation and appeal period tables. These tables can be found at www.nsblcf.ca under the Loss Prevention Resource link. These tables can be set up as a shortcut on your desktop.

Create a shortcut from your desktop. Go to www.nsblcf.ca and click on Loss Prevention Resource. Right Click and select Create Shortcut. Click and choose Yes. You will now have these comprehensive reference tables on your desktop for ease of reference.

The time taken to add this reference to your systems and to review your office procedures on limitation periods and tickler systems will be well worth the effort. Not only will you reduce the exposure of your insurance program to loss, you reduce your own risk of the stress, non-productive time, and poor client relations which result when deadlines are missed due to inadequate office systems and procedures.

Lawyers practising in other jurisdictions must remember that unlike Nova Scotia, in many jurisdictions there is no statutory relief for missed limitation periods.

REPORTING OF CLAIMS

A reminder on prompt reporting of claims. One mistake which we see is the failure to recognize when a matter must be reported to the Fund. The insurance policy requires that insureds report *claims, or circumstances that might constitute an Occurrence or give rise to a claim, however unmeritorious*. A claim includes an allegation of an error or omission, the threat of an action, or a demand for money, property or services.

The insurance policy is clear that the insurer has no liability for claims unless the claim is reported during the same policy term that the claim is made against the member or the member became aware of circumstances which could give rise to a claim.

The failure to comply with the policy conditions on reporting may result in a denial of insurance coverage. We recommend that you review the insurance policy to ensure that you are familiar with the terms and conditions that relate to reporting. The insurance policy is available online at www.nsblcf.ca. There is no downside to reporting out of caution and by doing so you will ensure that you have complied with the policy condition precedent to coverage.

NOTES TO THE SUMMARY OF FINANCIAL HIGHLIGHTS

The Fund's financial position as at December 31, 2003 continued to be strong, with an excess of revenue over expenditures of \$1,258,000. The excess of revenue over expenditure was primarily the result of the further return of CLIA surplus subscribers' equity in the amount of \$1,068,000. Reviewing the Statement of Revenue, Expenditures and Reserve, net revenue increased by \$689,000. This increase was largely due to an increase in investments of \$693,910.

The gain on investments is due to a change in investment managers which resulted in a one-time gain on the sale of investments of \$335,034 and improved rate of return on investments. Total claims and expenses decreased by \$651,000 and administration increased by \$5,000. The reserve at year end increased by \$1,258,000 from \$7,884,000 to \$9,142,000.

Deborah Rozee, Director

NOVA SCOTIA BARRISTERS' LIABILITY CLAIMS FUND SUMMARY OF FINANCIAL HIGHLIGHTS FROM DECEMBER 31, 2003 AUDITED FINANCIAL HIGHLIGHTS (000's)

STATEMENT OF FINANCIAL POSITION AS AT DECEMBER 31, 2003

| | December 31 2003 | December 31 2002 |
|--|---------------------|---------------------|
| Cash | \$ 3,953 | \$ 3,062 |
| Accounts receivable | 76 | 26 |
| Prepays | - | 285 |
| Investments | 10,680 | 10,011 |
| Fixed assets | 17 | 22 |
| | \$ 14,726 | \$ 13,406 |
| Accounts payable and deferred revenue | \$ 576 | \$ 346 |
| Provision for unpaid claims and expenses | 5,008 | 5,176 |
| Professional liability insurance reserve | 9,142 | 7,884 |
| | \$ 14,726 | \$ 13,406 |

STATEMENT OF REVENUE, EXPENDITURE AND RESERVE PERIOD ENDED DECEMBER 31, 2003

| | December 31 2003 | December 31 2002 |
|--|---------------------|---------------------|
| Revenue | \$ 2,254 | \$ 1,410 |
| Insurance premiums | 511 | 356 |
| Net revenue | 1,743 | 1,054 |
| Claims and expenses | | |
| Payments | 1,096 | 1,476 |
| Stop loss and group deductible limit reimbursements | 87 | (526) |
| | 1,183 | 950 |
| (Decrease) increase in provisions for unpaid claims and expenses | (168) | 716 |
| Total claims and expenses | 1,015 | 1,666 |
| Administration | 538 | 533 |
| Excess (deficiency) of revenue over expenditure before under-noted | 190 | (1,145) |
| Return of C.L.I.A. surplus subscriber's equity | 1,068 | 2,198 |
| Excess (deficiency) of revenue over expenditure | 1,258 | 1,053 |
| Reserve, beginning of year | 7,884 | 6,831 |
| Reserve, end of year | \$ 9,142 | \$ 7,884 |

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| | 1,183 | 950 |
| (Decrease) increase in provisions for unpaid claims and expenses | <u>(168)</u> | <u>716</u> |
| Total claims and expenses | <u>1,015</u> | <u>1,666</u> |
| Administration | <u>538</u> | <u>533</u> |
| Excess (deficiency) of revenue over expenditure before under-noted | 190 | (1,145) |
| Return of C.L.I.A. surplus subscriber's equity | 1,068 | <u>2,198</u> |
| Excess (deficiency) of revenue over expenditure | 1,258 | 1,053 |
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