



# **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 2004**



# 2004-2005 BOARD, COMMITTEES AND STAFF

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**Investment - Sandra MacPherson, Q.C. (Chair)**

**Loss Prevention - W. Dale Dunlop (Chair)**

**Claims Review**

## STAFF

**Deborah Rozee, Director**

**Christine Ward, Executive Assistant to the Director**

**Patricia Neild, Claims Examiner**

**Gerri O'Shea, Claims Examiner**

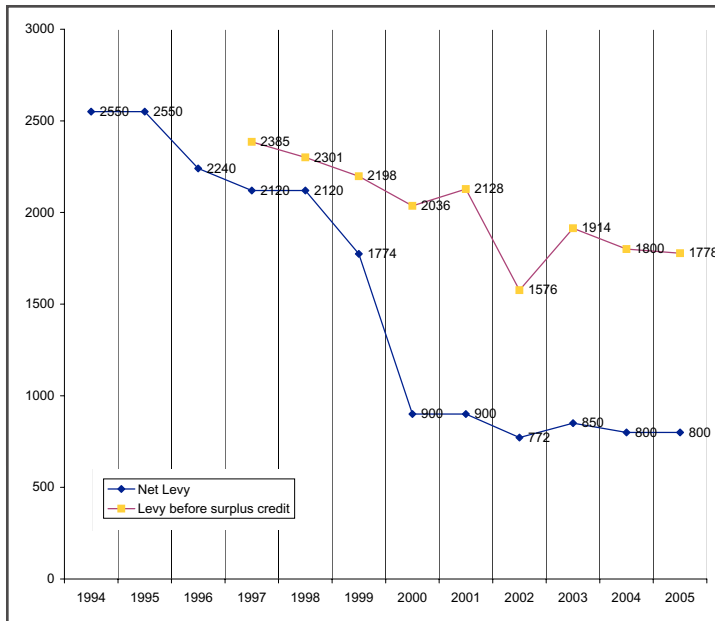
**Robin Russell, Claims Officer**

*The Fund's website is found at [www.nsblcf.ca](http://www.nsblcf.ca)*

*The 2004 CLIA Annual Report is available at [www.clia.ca](http://www.clia.ca)*

# THE 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 full practicing levy for private practitioners for the 2005-2006 year is \$800.00, for Nova Scotia Legal Aid staff lawyers, \$400.00, and for lawyers in the provincial government, \$350.00. There has been no change in the levy over last year.



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 good. As a result, the CLIA premium portion of our insurance levy is the lowest among the participating provinces and territories.

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 for lawyers in this province. We can all do our part to keep increases in rates to a minimum, by practicing carefully with a view to loss prevention.

The Fund is very pleased to continue its activities for the benefit of members. A risk and practice management advisor will be joining the Fund in the coming year to work with members on a completely confidential basis in controlling or changing practices which give rise to claims or other difficulties for members. This is an exciting joint initiative with the Barristers' Society. Confidentiality for members seeking assistance will be assured to encourage members with problems to come forward.

To remind members, this is the second lowest assessment for members in the last decade, well off the high of \$2700.00 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 \$1778.00 per private practitioner, or about 2.2 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 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 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.

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, Deborah Rozee, and the dedicated staff, Patricia Neild, Gerri O'Shea, Robin Russell, 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, is shown on the opposite page.

*Sandra MacPherson Duncan*



# SUMMARY OF FINANCIAL HIGHLIGHTS

## NOTES TO THE SUMMARY OF FINANCIAL HIGHLIGHTS

The Fund's financial position has remained stable during 2004. As at December 31, 2004, there was an excess of revenue over expenditures of \$176,000. The excess of revenue over expenditure was the result of a return of subscribers' equity in CLIA of \$340,000. As shown on the summary, without the return of subscribers' equity by CLIA, there was a deficiency of revenue over expenditure of \$164,000. This deficiency was anticipated and is a planned distribution of surplus to insured members. It is part of the Board's strategic plan to stabilize the

insurance levy while maintaining adequate reserves to ensure long-term stability.

There was a decrease in net revenue of \$183,000 as a result of decreased levy revenue. Total claims and expenses increased by \$140,000 and administration increased by \$31,000.

At year-end, the reserve had increased by \$176,000 over the prior year.

### NOVA SCOTIA BARRISTERS' LIABILITY CLAIMS FUND

#### Summary of Financial Highlights

From December 31, 2004 Audited Financial Highlights  
(000's)

#### STATEMENT OF FINANCIAL POSITION AS AT DECEMBER 31, 2004

	December 31 2004	December 31 2003
Cash	\$ 3,057	\$ 3,953
Accounts receivable	273	76
Prepays	232	-
Investments	11,261	10,680
Fixed assets	29	17
	<b>\$ 14,852</b>	<b>\$ 14,726</b>
Accounts payable and deferred revenue	\$ 461	\$ 576
Provision for unpaid claims and expenses	5,073	5,008
Professional liability insurance reserve	9,318	9,142
	<b>\$ 14,852</b>	<b>\$ 14,726</b>

#### STATEMENT OF REVENUE, EXPENDITURE AND RESERVE PERIOD ENDED DECEMBER 31, 2004

	December 31 2004	December 31 2003
Revenue	\$ 2,009	\$ 2,254
Insurance premiums	449	511
Net revenue	<b>1,560</b>	1,743
Claims and expenses		
Payments	1,296	1,096
Stop loss group deductible limit reimbursements	(206)	87
	<b>1,090</b>	1,183
Increase (decrease) in provisions for unpaid claims and expenses	65	(168)
Total claims and expenses	<b>1,155</b>	1,015
Administration	<b>569</b>	538
(Deficiency) excess of revenue over expenditure before under-noted	<b>(164)</b>	190
Return of C.L.I.A. surplus subscriber's equity	340	1,068
Excess of revenue over expenditure	176	1,258
Reserve, beginning of year	<b>9,142</b>	7,884
Reserve, end of year	<b>\$ 9,318</b>	<b>\$ 9,142</b>

# DIRECTOR'S REPORT

## AS AT DECEMBER 31, 2004

**During 2004, the foundation was put in place for several changes in the operations of the Fund which will become apparent to members over the upcoming year.**

### NAME CHANGE

One obvious change will be the name change from the Nova Scotia Barristers' Liability Claims Fund to the Lawyers' Insurance Association of Nova Scotia, or LIANS for short. This change will come into effect with proclamation of the new Legal Profession Act.

We have been working on the development of a new corporate logo. Over the upcoming months our communications, both print and electronic, will be distributed under our new name and visual identity.

### NEW RISK & PRACTICE MANAGEMENT PROGRAM

We have hired a full-time risk and practice management advisor who will be joining the Fund later this fall. The RPM advisor will be responsible for the development and implementation of a comprehensive program of loss prevention and practice assistance resources for members. The development of the RPM program will allow the Fund to adopt a proactive approach to helping members deal with many of the challenges of practising in today's environment.

The RPM program will offer loss prevention on behalf of the Fund, and practice assistance initiatives on behalf of the Society. There is a strong correlation between the issues underlying claims and practice management problems. We anticipate the merging of these programs will offer efficiencies in program development and delivery, and will provide members with a central source of information and practice aids to deal with a wide range of risk and practice issues.

We are delighted that a long hiring process has resulted in the hiring of an individual who will bring many years of practical experience and a depth of knowledge to the position.

Although still located on the 11<sup>th</sup> floor of the Centennial Building, the Fund's offices have been renovated to provide for the additional staff space required to operate the RPM program.

### LAWYERS' ASSISTANCE PROGRAM

Beginning with the 2005 - 2006 committee year, the Lawyers' Assistance Program will be brought in under the umbrella of Fund programs. The LAP program will continue to be run on a completely confidential basis and the Fund will not receive any information specific to members. LAP services will continue to be provided through an independent office and there will be no change in the current arrangements which ensure complete confidentiality for members utilizing the services provided by the LAP.

Administration of the LAP program through the Fund will permit the development of programs based on an understanding of the full range of practice issues facing members, regardless of the underlying problems. This should result in better program development and increased administrative efficiency.

### CLAIMS ACTIVITY

On the claims side, no development is good news. Claims frequency remains relatively constant. There were 226 claim reports received during 2004; a decrease over the number of claims reported in 2003, but overall in line with recent claims history. The number of reported claims per insured member has also remained quite steady over the past ten years.

CLAIMS REPORTED PER 100 INSURED LAWYERS

94	95	96	97	98	99	00	01	02	03	04
28	23	23	18	18	15	16	14	19	16	14

There has been some increase in severity over recent years. However at this point it is not out of line with our longer term averages.

With respect to new developments, many jurisdictions are seeing an increase in the number of claims with unrepresented parties. While our numbers are too small to point to a meaningful increase, there is no doubt that claims

which go to litigation with unrepresented parties present a challenge to manage and are usually more expensive to resolve. The courts are also dealing with this issue and there is no easy solution.

We have been keeping a close eye on developments in the area of real property claims, and in particular, claims which would fall under the provisions of the Land Registration Act. To date there has been little change in the volume of real property claims. During 2004, 50 percent of all reported claims arose out of real property law and practice. So far in 2005 (May 31) 51 percent of all claims reported arise from real property. This is in keeping with the low end of the range of real property claims reported in prior years.

It is too early to draw any conclusions. We know that in New Brunswick the insurance program experienced a decrease

in the number of real property claims once the province converted to a land titles system. It will be a few more years before we will know whether we gain the same improvement in our claims experience.

Overwhelmingly, the claims that we do see result from inadequate office systems and procedures, mistakes relating to simple oversights, and poor communication of information between lawyers and between client and lawyer. Regardless of the area of law, claims are best avoided through a well-managed workload, and the office systems and trained staff adequate to support the work undertaken. With the new RPM program we will be able to offer members assistance in addressing these issues.

*Deborah Rozee*

CAUSES OF CLAIMS	1994-2004 (%)	2004 (%)
<b>Poor Communication</b>	34%	38%
<b>Conflict</b> two or more parties; unrep. party	2%	4%
<b>Conflict</b> personal/financial interest	1%	0%
<b>Delegation</b>	3%	5%
<b>Delegation</b> to outsider	2%	1%
<b>Fraud</b> by client/other party	1%	1%
<b>Law</b> fail to know/apply law; limitation or deadline	9%	14%
<b>System/Procedure</b> inadequate office systems; procrastination	2%	8%
<b>System/Procedure</b> failure to follow up	9%	4%
<b>System/Procedure</b> inadequate review/ prep	9%	14%
<b>Other</b>	28%	11%
TOTAL	100%	100%



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