

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.