

Agenda

Benchers

Date: Friday, November 3, 2023

Time: **9:00 am – Call to Order**

Location: Hybrid: Bencher Room, 9th Floor, Law Society Building & Zoom

Recording: *Benchers, staff and guests should be aware that the audio and video of the public portion of this Benchers meeting will be recorded to ensure an accurate record of the proceedings. Any private chat messages sent will be visible in the transcript that is produced following the meeting.*

VIRTUAL MEETING DETAILS

The Bencher Meeting is taking place as a hybrid meeting. If you would like to attend the meeting as a virtual attendee, please email BencherRelations@lsbc.org

RECOGNITION

1	Presentation of the 2023 Law Society Indigenous Scholarship
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CONSENT AGENDA

Any Bencher may request that a consent agenda item be moved to the regular agenda by notifying the President or the Manager, Governance & Board Relations prior to the meeting.

2	Minutes of September 22, 2023 meeting (regular session)
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3	Minutes of September 22, 2023 meeting (<i>in camera</i> session)
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4	External Appointment: Land Title and Survey Authority
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Agenda

REPORTS		
5	President's Report	Christopher A. McPherson, KC
6	CEO's Report <ul style="list-style-type: none"> • Indigenous Intercultural Course Update • Demonstration of Digital Licensure Cards 	Don Avison, KC Virginia Kwong
7	Briefing by the Law Society's Member of the Federation Council	Brook Greenberg, KC
DISCUSSION/DECISION		
8	Return to Practice Rules	Cheryl D'Sa
9	Appointee Adjudicator Expense and Reimbursement Policy	Herman Van Ommen, KC
FOR INFORMATION		
10	2024 Fee Schedules	
11	2024 Executive Committee and Bencher Meeting Dates	
IN CAMERA		
12	Other Business	

Minutes

Benchers

Date: Friday, September 22, 2023

Present: Christopher A. McPherson, KC, President
Jeevyn Dhaliwal, KC, 1st Vice-President
Brook Greenberg, KC, 2nd Vice-President
Paul Barnett
Kim Carter
Tanya Chamberlain
Jennifer Chow, KC
Christina J. Cook
Cheryl S. D'Sa
Lisa Dumbrell
Brian Dybwad
Katrina Harry, KC
Sasha Hobbs
Lindsay R. LeBlanc
Dr. Jan Lindsay

Geoffrey McDonald
Steven McKoen, KC
Paul Pearson
Georges Rivard
Michèle Ross
Gurminder Sandhu
Thomas L. Spraggs
Barbara Stanley, KC
Natasha Tony
Michael Welsh, KC
Kevin B. Westell
Sarah Westwood, KC
Guangbin Yan
Gaynor C. Yeung

Unable to Attend: Tim Delaney

Kelly H. Russ

Staff: Don Avison, KC
Gurprit Bains
Avalon Bourne
Barbara Buchanan, KC
Natasha Dookie
Su Forbes, KC
Vicki George
Kerryn Holt
Jeffrey Hoskins, KC
Aara Johnson
Alison Kirby
Julie Lee

Michael Lucas, KC
Alison Luke
Claire Marchant
Fiona McFarlane
Tara McPhail
Jeanette McPhee
Doug Munro
Lesley Small
Christine Tam
Adam Whitcombe, KC
Vinnie Yuen

Guests:	Dom Bautista	Executive Director, Courts Center & Executive Director, Amici Curiae Friendship Society
	Ian Burns	Digital Reporter, The Lawyer's Daily
	Kaitlyn Cumming	Co-Recipient, Law Society Scholarship for Graduate Legal Studies
	Freya Kodar	Dean of Law, UVic
	Elizabeth Kollias	President, BC Paralegal Association
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Tristan Miller	Co-Recipient, Law Society Scholarship for Graduate Legal Studies
	Scott Morishita	President, Canadian Bar Association, BC Branch
	Caroline Nevin	CEO, Courthouse Libraries BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia
	Lana Walker	Assistant Dean of Law, Thompson Rivers University
	Graeme Wood	Legal Reporter, Glacier Media

RECOGNITION

1. Presentation of 2023 Law Society Scholarship for Graduate Legal Studies

President Christopher A. McPherson, KC introduced and congratulated the co-recipients of the 2023 Law Society Scholarship for Graduate Legal Studies, Kaitlyn Cumming and Maxwell Philip Tristan Miller.

CONSENT AGENDA

2. Minutes of July 14, 2023, meeting (regular session)

The minutes of the meeting held on July 14, 2023 were approved unanimously and by consent as circulated.

3. Minutes of July 14, 2023, meeting (*in camera* session)

The minutes of the *in camera* meeting held on July 14, 2023 were approved unanimously and by consent as circulated.

4. External Appointment: Legal Aid BC

This item was removed from the Consent Agenda for discussion *in camera*. Kim Carter, Brian Dybwad, and Katrina Harry recused themselves from this item.

Following discussions *in camera*, the following resolution was passed unanimously:

BE IT RESOLVED the Benchers appoint Sarf Ahmed to the LABC Board for a three-year term commencing September 25, 2023 concluding September 24, 2026.

REPORTS

5. President's Report

Mr. McPherson confirmed that no conflicts of interest had been declared.

Mr. McPherson began his report by speaking about the National Day of Truth and Reconciliation. He indicated that the Law Society would be closing its offices to observe this important day, and he encouraged everyone to wear an orange shirt in the lead up to and on September 30. He spoke about how wearing an orange shirt shows support for those who were forced to attend residential schools, honours survivors and the children who never returned home, creates awareness of inter-generational impacts, and demonstrates a collective commitment to end anti-Indigenous racism. Mr. McPherson spoke about the recent screening of

a documentary for staff and Benchers about Phyllis Webstad, her orange shirt story, and how she began the Orange Shirt Society movement. He indicated that the documentary was available for a fee on the International Indigenous Speakers' Bureau website. Mr. McPherson spoke about the work of the Law Society in regard to truth and reconciliation, both what has been accomplished thus far, and what the Law Society hopes to accomplish, particularly in regard to having a justice system that treats everyone fairly. He spoke about the work of the Indigenous Engagement in Regulatory Matters Task Force and the importance of the implementation of the Task Force's report and recommendations and continuing the work towards reconciliation. He also spoke about the Indigenous Cultural Awareness Program. He indicated that a meeting had been held with the leadership of the First Nations Justice Summit, where discussions took place about one of the program's modules regarding treaty rights and some modifications to be made to that module.

Mr. McPherson reflected on the single legal regulator initiative. He indicated that he was of the view that the Law Society's concerns regarding the importance of independence had been heard by the Ministry.

Mr. McPherson then provided an update on his recent events and activities, including attending the retirement celebration for Chief Justice Robert J. Bauman and speaking with the new group of law students at UBC.

6. CEO's Report

Don Avison, KC began his report by speaking about the recent event featuring a documentary about Phyllis Webstad, which was held to commemorate Orange Shirt Day, and he thanked staff for their efforts in organizing. This significant event took place in the Law Society's new atrium space, and Mr. Avison spoke about an upcoming meeting with the leadership group of Access to Justice BC, which would also make use of this space.

Mr. Avison spoke about the 2022 National Discipline Standards Implementation Report, which provides a comparative overview as to how all Canadian law societies perform against the standards. He indicated that two standards were not met, but that substantial improvement had been made in these areas. He also spoke about the need for discussions with the Federation of Canadian Law Societies regarding updating some of the standards to reflect the work being done in terms of disciplinary reform.

Mr. Avison informed Benchers that the Federation had commenced proceedings in the Supreme Court of BC to challenge the validity of changes to sections 237.3 and 237.4 of the *Income Tax Act*, which attempt to subject lawyers to reporting obligations. He spoke about the work of the Federation in combatting money laundering, including the recent release of the National Online Anti-Money Laundering and Terrorist Financing Education Program.

Mr. Avison updated Benchers on the recent meeting with the Technology Committee of the Supreme Court of BC regarding the progression of the use of generative AI technology. He indicated that the Law Society would be developing a practice resource on this matter, and the upcoming Federation meetings in October would also be focused on the use of AI.

Mr. Avison then provided an update regarding the upcoming Bencher General Election. He indicated that all candidates, including current Benchers, would need to provide their nomination materials by the deadline of October 16, 2023.

Mr. Avison spoke about the regulatory reform currently taking place in Scotland and read a statement from the Commonwealth Lawyers Association regarding the proposed changes in Scotland to Benchers.

The report of the Indigenous Engagement in Regulatory Matters Task Force has now been published in its final form, and Mr. Avison indicated that he would ensure that all Benchers received a copy. He spoke about ongoing discussions with the First Nations Justice Summit regarding modifications to one of the modules within the Indigenous Cultural Awareness Program regarding treaty rights. Mr. Avison indicated that the Law Society would be making a push to see the Program completed by all members of the profession by the end of the year.

Mr. Avison informed Benchers that the Law Society would be moving towards the implementation of digital licensure cards for the profession. He indicated that the digital cards would include a QR code linking to the Lawyer Directory to allow quick, direct access to the search function when scanned.

Mr. Avison informed Benchers that he had just received a letter from the Attorney General regarding the implementation of the single legal regulator. He informed Benchers that the Attorney General had indicated that legislation regarding the single legal regulator would be shifted to the spring legislative session. He read the letter to Benchers, and then indicated that he was of the view that it was a good decision to shift the legislation to the spring, as there would be quite a bit to get done in preparation.

DISCUSSION/DECISION

7. 2024 Initiatives, Budgets and Fees

Jeevyn Dhaliwal, KC, Chair of the Finance and Audit Committee introduced the item, followed by a presentation to Benchers on the proposed 2024 initiatives, budgets, and fees delivered by Mr. Avison, Jeanette McPhee, and Su Forbes, KC.

Mr. Avison began by presenting on some of the considerations in setting the 2024 budget, including a focus on strategic priorities and effective operations; an increase in in-person events

and meetings, along with a mix of hybrid and fully virtual meetings; and the stabilizing and declining interest rates and inflation. He indicated that net asset reserves would be used to fund a portion of the proposed 2024 operational budget, one-time projects, and external organization funding to enable the 2024 practice fee and the 2024 indemnity fee to be kept at current levels. Mr. Avison then reviewed the key operational priorities for 2024 in line with the Law Society's strategic plan, including the single legal regulator initiative, innovation sandbox initiatives, exploration of alternate pathways to licensing, continued review of professional regulatory operations, implementation of the recommendations of the Indigenous Engagement in Regulatory Matters Task Force report, professional development and practice support, continued focus on anti-money laundering initiatives, and implementation of the diversity action plan.

Ms. McPhee reviewed 2024 revenue highlights, including a projected revenue increase of 8%; an increase in the forecasted number of lawyers; a decrease in the projected number of PLTC students; an increase in projected electronic filing, TAF and real estate market activity, and a large increase in interest income due to rising interest rates.

Ms. McPhee then reviewed 2024 expense highlights including market based salary increases, modest increases in staff resources, increased technology costs to support the digitization of the workplace, and increased professional development costs. She indicated that there would be a decrease in external counsel fees compared to 2023 due to lower than expected costs. Ms. McPhee also provided an overview of the Law Society's net assets, capital plan, and trust assurance, and provided an overview of external funding included in the practice fee.

Ms. Forbes provided an overview of the Lawyers Indemnity Fund, including an overview of 2023 reports, claims, investment returns, and LIF net assets. She indicated that the indemnity fee has been maintained at current rates for six consecutive years.

Mr. Avison spoke about the initiatives the budget proposed to utilize reserves to fund, including Courthouse Libraries BC. He indicated that he was of the view that this expense should be covered by the regular budget, as opposed to reserves, and that this should be addressed for future budgets.

Benchers spoke about the practice fee and whether continuing to not increase the amount year over year would be sustainable in future years. Benchers also discussed reviewing what the Law Society funds as a whole and considering what could be offset in future budgets.

The following resolutions were passed unanimously:

BE IT RESOLVED:

- Effective January 1, 2024, the practice fee be set at \$2,303.00, pursuant to section 23(1)(a) of the *Legal Profession Act*.

BE IT RESOLVED:

- the indemnity fee for 2024 pursuant to section 30(3) of the *Legal Profession Act* be set at \$1,800;
- the part-time indemnity fee for 2024 pursuant to Rule 3-40(2) be set at \$900; and
- the indemnity surcharge for 2024 pursuant to Rule 3-44(2) be set at \$1,000.

The Benchers then commenced the *in camera* portion of the meeting.

AB
2023-10-25

CEO Report

November 3, 2023

Prepared for: Benchers

Prepared by: Don Avison, KC

1. Single Legal Regulator Update

As Benchers know, the Ministry of the Attorney General formally indicated on September 22, 2023 that the anticipated legislative reforms to British Columbia's legal regulation landscape would not be brought before the Legislative Assembly in 2023, but that a bill setting out proposed changes would likely be tabled at the Assembly's spring session in early 2024. A copy of the correspondence from the Attorney General is attached.

Discussions with senior officials at the Ministry of the Attorney General continue and – at this point – it is evident that a considerable amount of work remains necessary to complete the legislative drafting process.

I am mindful of the reality that the spring session will be the last one prior to the next provincial election and that government has a very ambitious legislative agenda. However, I remain optimistic that the single legal regulator initiative will attract some measure of priority in confirming the legislative agenda for the spring session.

At the November Bencher meeting, I plan to take some time to put the changes expected in British Columbia in the context of reform initiatives that have either been implemented – or are under consideration – in other jurisdictions. This was an area of significant focus at the International Conference of Legal Regulators (the ICLR) that took place recently in Dublin, Ireland.

2. BC's International Credentials Recognition Act

This Bill, introduced earlier this month, has significant implications for a number of professions.

We will provide Benchers with an overview of the legislation at the November meeting. In the interim, I have attached correspondence with the Ministry of Post-Secondary Education and Future Skills.

This is an area where, both nationally and in this province, I believe we have a good story to tell about the deployment of foreign-earned credentials through the Federation's National Committee on Accreditation (NCA) Program and the progressive innovations facilitated through our inter-provincial mobility agreements.

3. Bencher Elections

Voting opened on November 1, 2023 and will conclude at 5:00 pm on November 14, 2023. The outcome will be announced on November 15, 2023.

One of the more challenging aspects of this election cycle will be the anticipated level of turnover at the Bencher table.

At least eight current Benchers will have either reached the maximum number of terms that can be served by the end of the current term or have elected to not seek another term. In addition, one of the OIC appointees will also “time out” after six years of dedicated service to the public interest. It is important to remember that the electoral process could result in an even greater degree of change.

All of this will take place during a period when the legal regulatory environment will experience significant change. As a result, we plan to provide an elevated level of on-boarding orientation for all new Benchers as we enter upon the 2024-25 term.

4. Concerns Regarding Emerging Trends in Provincial Government Use of the Notwithstanding Power

Recent developments in deployment of the notwithstanding clause in the Constitution are generating concerns about whether governments are becoming increasingly comfortable with use of that extraordinary power forty years after the proclamations of the Canadian Charter of Rights and Freedoms. President Christopher McPherson, KC spoke to the significance of this at a recent call ceremony.

Benchers may wish to consider the implications of these changes at the November meeting and perhaps should address whether the Federation has an important role to play in advancing these concerns at the national level.

5. LSBC’s New Atrium Space

Our new space is getting good use and has been well-received by staff and by external partners who have made use of the facility. At the staff level, we have had high attendance participation at an Orange Shirt event (several Benchers also attended) and at a Town Hall on the implications of the expected single legal regulator changes. Access to Justice BC’s Leadership Group also held a very successful event on October 5, 2023.

6. Indigenous Intercultural Course

The Indigenous Intercultural Course is part of the Law Society's commitment to implement the Truth and Reconciliation Commission's call to action 27.

For the vast majority of lawyers, the date for completing the mandatory online course and certifying completion is January 1, 2024. I will provide an update at the November Benchers meeting on the Law Society's efforts to remind lawyers to complete the course before the deadline and progress to date on the completion of the course.

Don Avison, KC
Chief Executive Officer



VIA EMAIL

Ref. 640820

September 22, 2023

Chris McPherson, KC, President
The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9
Email: president@lsbc.org

David Watts, President
The Society of Notaries Public of British Columbia
Suite 700 – 625 Howe Street
PO Box 44
Vancouver BC V6C 2T6
Email: president@snpbc.ca

Elizabeth Kollias
President and Education Chair
The British Columbia Paralegal Association
PMB 215, 71 West 2nd Avenue
Vancouver BC V5Y 0J7
Email: elizabeth@bcparalegalassociation.com

Dear Chris McPherson, David Watts and Elizabeth Kollias:

I am writing to thank your organizations on your continued efforts to work with my Ministry as we pursue legislative reforms to the *Legal Profession Act* and *Notaries Act*.

As you are aware, when we released an intentions paper in September 2022, we targeted introducing proposed legislation as early as the fall of 2023. As we considered the work that needed to be completed, including consultations with your organizations as well as our Indigenous partners and others, we determined it would be prudent to shift the target for the legislation to the spring 2024 session. Fortunately, this also aligns with broader government planning of the legislative agenda.

While this does give us more time, it still will require the Ministry to effectively complete its work by the end of this calendar year. This will require a concerted effort by all. I am confident with your assistance we will be able to present a well thought out and thorough bill that will meet the objectives that we articulated when we began this project.

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Ministry of Attorney General

Mailing Address:
PO Box 9044 Stn Prov Govt
Email: AG.Minister@gov.bc.ca
Victoria BC V8W 9E2
website: www.gov.bc.ca/ag

Telephone: 250-387-1866
Facsimile: 250-387-6411

Chris McPherson, David Watts and Elizabeth Kollias
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Thanks again for your continued assistance and input.

Sincerely,

A handwritten signature in black ink, appearing to be 'Niki Sharma', with a long horizontal stroke extending to the right.

Niki Sharma, KC
Attorney General

Law Society of British Columbia

October 6, 2023

Sent via email: SWD.Minister@gov.bc.ca
PSFS.DeputyMinister@gov.bc.ca

Bobbi Plecas
Deputy Minister, Ministry of Post-Secondary Education and Future Skills
PO Box 9884
Stn Prov Govt
Victoria, BC V8W 9T6

Dear Deputy Minister Plecas:

**Re: Consultation: International Credential Recognition For
Internationally Trained Professionals**

Introduction

We welcome the opportunity to provide some information relating to the accreditation of foreign credentials for admission to the legal profession in British Columbia, and to provide some background that will be necessary to take into account relating to your consideration of policy changes respecting the credentials of foreign-trained applicants to various professional bodies in BC, including those seeking admission to the Bar.

The Law Society is currently re-examining the admission process for *all* applicants to the Bar, and this may result in lawyers trained in other jurisdictions who wish to practise law in BC being presented with additional opportunities than currently exist. The Law Society must ensure, however, that the public interest in the administration of justice is protected, and that lawyers with foreign credentials are able to demonstrate knowledge of BC law and competence in providing legal services in BC.

Donald J. Avison, KC
Executive Director/Chief Executive Officer

The Consultation and “What We Heard” Paper

As you know, the Law Society participated in consultations conducted by the Ministry on this topic, and we have had the benefit of reviewing the “What We Heard” prepared by the Ministry following the consultations.

We agree with the general themes identified through the consultation. Having read through the paper, however, there are several comments we believe are important to take into account when examining the issue of foreign accreditation in the context of the legal profession.

All regulatory authorities – be they government or self-regulatory bodies – should always work to reduce unnecessary barriers created by regulatory processes, but this of course does not mean that all barriers are unnecessary. Deference should be given to the regulatory body when assessing these barriers from a third-party perspective, as it is the regulatory body, using its expertise and experience, that must act in what it perceives to be the public interest.

Importance of fairness and transparency

Fairness and transparency of regulatory body processes is an important objective and is one that the Law Society fully supports. As a modern and progressive regulator, we work to ensure, as best we can, that our processes are fair, open and transparent to all who need to utilise them. Through various policy initiatives over the years, we have developed new, better, and fairer approaches to credentialing processes and requirements.

Commitment to a Diverse Profession

The Law Society is committed to working toward establishing and maintaining a diverse legal profession in BC. The Law Society believes that the public is best served by an inclusive profession that reflects BC’s diverse communities. Lawyers from other countries add to that diversity, although it is important that such lawyers understand the practice of law here to ensure their clients benefit from their rights as recognized in Canada.

Differing Justice Systems and Laws

Law and the justice systems are integral to defining the cultural features of a country. Law is an expression of social policy that is developed through the

country's governing structures and through its courts. Laws vary across jurisdictions, as do the structures through which the law is enforced. Knowledge of the laws or justice system of one country does not necessarily assist a lawyer practising law in another country.

Moreover, the role of a lawyer in both society and in the justice system varies across jurisdictions. The "zealous advocate acting in the client's interest" role that exists in some countries would not be understood by lawyers coming from states governed through more autocratic or totalitarian regimes. The common law (and Canadian constitutional) principle of "innocent until proven guilty" is reversed in other systems of law. The role of a prosecutor in some systems is based much more on the role of a government official than it is in other countries, where the prosecutor is independent of the government itself even though the prosecutor is nominally employed through the government or the state. The importance of the privileged relationship between a client and the client's lawyer, which is fundamental in some jurisdictions, is unknown in others where there may be expectations that lawyers must share information learned from the client with others, including the state. These are all matters that must be taken into account when examining the credentials of foreign-trained lawyers. Legal professionals from separate jurisdictions do not always bear as much resemblance to each other as do those engaged in other professions.

Interprovincial Mobility and the National Committee on Accreditation for Foreign Applicants

The law societies in Canada have long recognized the importance of providing for a transparent, national approach to qualify applicants who obtained their qualification to practise law outside any one particular province, or from a foreign jurisdiction.

For domestic lawyers, in the late 1990s and early 2000s we, together with other law societies through the Federation of Law Societies of Canada, developed one of the first interprovincial mobility agreements, which permitted lawyers licensed in other provinces to practise law in BC without having to requalify. This process was innovative and established a road map for other professional bodies in the country. It has served the public and legal professionals well for the last quarter century.

For foreign applicants, different processes are required. Through the Federation of Law Societies of Canada, the National Committee on

Accreditation (NCA) was created in the 1980s to assess foreign qualifications for the purpose of equating them to the standard of academic qualifications earned through a degree from an approved faculty of common law in a Canadian university. BC has participated in this process since its creation. The criteria applied by the NCA has varied over the years, recognizing developments in expectations and standards. The NCA's processes continue to undergo review by the Federation through its law society members to ensure that the applicant's *knowledge* of Canadian law and processes is sufficient that their engagement in practice in BC will not put putative clients, or the system as a whole, at risk. Through the NCA process, the Law Society has admitted more than 1,200 lawyers over the last decade.

It is important to understand, however, that the NCA is a committee of the Federation of Law Societies, and that its rules and processes are created and governed by that organization. Applicants who have gone through the NCA process and obtained a certificate of qualification are then eligible for entry into the Law Society's admission program. While the Law Society of BC is a member of the Federation, there are thirteen other members as well, and the Federation Council representative from British Columbia has only one vote. The Law Society of BC has no direct control over the processes of the NCA.

Self-Regulation of Lawyers and An Independent Legal Profession

An independent bar must be understood as integral to the functioning of a free and democratic society. The rule of law, which is a fundamental principle of Canadian law and a foundational principle of the Canadian Constitution, requires all institutions and citizens to be governed equally under the law. This principle depends in part on the maintenance of an independent bar that is able to represent and advise clients on their rights and obligations without fear of threats, reprisal or sanction by others. Lawyer independence therefore requires that a lawyer's duties are set by the profession through its regulatory body, and not by government or anyone else. To perform this role effectively, lawyers must be free from influence or interference from the state.

Self-regulation operates to minimize such influence and interference and allows the legal profession to set and administer standards for admission to the practice of law. It should not be within the authority of the state to have a role in determining who can and who cannot become a lawyer, because this would create the possibility of government prioritizing criteria for admission to the profession that could harm the effective operation of the rule of law. This

principle admittedly sounds hyperbolic, but it is nevertheless an important principle that must be preserved. There are abundant examples around the world where there is no independent bar, or where its preservation has been lost or is being threatened, and this has an adverse effect on the freedom and well-being of the citizens of those countries.

Government regulation that interferes with the admissions processes set by the Law Society could therefore adversely affect the independence of the legal profession, which could set dangerous precedents for other incursions on principles designed to maintain the rule of law.

Advisory vs. Directive Orders

As noted above, the Law Society has already taken a number of steps to improve the diversity of the legal profession, and intends, in all its policy initiatives, to ensure the principles of equity, diversity and inclusion are considered and applied to the greatest extent possible, and to ensure that its processes are fair, open and transparent. That is the basis upon which the Law Society's Strategic Plan is set, and it underlines the principles of how the Law Society intends its authority be exercised.

The Law Society recognizes that, in a diverse society, there are many different viewpoints, and the Law Society may give more emphasis to certain issues than other organizations consider proper. For many years, the Law Society has been subject to the processes of the Office of the Ombudsperson, an office that is able to receive complaints about the processes we engage in, and to make *recommendatory* orders about how our processes should be improved where improvement is deemed desirable. We have taken the Ombudsperson's recommendations seriously in every instance where recommendations have been made and have, in many cases, implemented the recommendations either in whole or with modifications as we deem necessary to properly protect the public interest in the administration of justice. We believe that this process is helpful and would be one we would support in any legislative move toward improving processes, including those relating to fairness and transparency, for the credentialing of foreign-trained individuals.

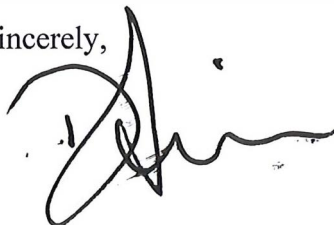
Concluding remarks

The Law Society supports the overarching objectives underlying your consultation, and in particular agrees that fairness and transparency in the processes of regulatory bodies is an important objective. We are currently

reviewing our admission processes, keeping these objectives in mind. Nevertheless, we believe that there are unique considerations that need to be accounted for in the regulation of legal service providers, and that these need to be kept in mind by government as you give consideration to the matters in issue.

We would be pleased to have an opportunity to discuss these matters in more detail with you. We would also appreciate an opportunity to consider any draft legislative provisions you may be considering before they are presented in a Bill to the Legislature.

Sincerely,

A handwritten signature in black ink, appearing to read 'Don Avison', with a large, stylized initial 'D'.

Don Avison, KC (*he/him*)
Executive Director/Chief Executive Officer

Memo

To: Benchers
From: Brook Greenberg, KC, Law Society Representative on the Federation Council
Date: October 23, 2023
Subject: **Report on the Federation of Law Societies of Canada (the “Federation”) October 2023 Meetings**

Purpose

1. This memorandum is intended to provide a summary of the Federation’s October 2023 meetings, which included:
 - a. the Federation’s annual conference (the “Conference”) held on October 12 and 13, 2023;
 - b. the Joint Forum held on October 13, 2023;
 - c. the CEOs’ Forum and the Presidents’ Forum held on October 13, 2023; and
 - d. the Federation Council meeting held on October 14, 2023.

The Conference

2. The theme of the Conference was the regulation of legal services in the age of generative artificial intelligence.
3. The Conference was held at the Kwanlin Dün Cultural Centre (the “Cultural Centre”). The Conference commenced with a sacred fire opening ceremony conducted by Elder and Peacemaker, Phillip Gatensby, a member of Raven Clan of the Inland Tlingit Nation.
4. Elder Gatensby tended the sacred fire and visited with attendees throughout the first day of the Conference. Elder Gatensby then conducted a sacred fire closing ceremony at the end of that day.
5. The Conference program on the first day comprised:
 - a. A keynote address by Daniel Martin Katz who, among other things, is a Professor of Law at Illinois Tech – Chicago Kent Law. Professor Katz provided a detailed

review of the history and mechanics of generative artificial intelligence, as well as its current and potential use in the provision of legal services.

- b. My real-time demonstration of the use of Chat GPT 3.5.
- c. A presentation by Francis Barragan, Ivan Mokanov, and Marc-André Morisette of CanLII and Lexum, outlining the development and use of generative AI in CanLII and Lexum offerings. In particular:
 - CanLII has been experimenting with AI generated case summaries, including summarizing recent case law from Saskatchewan using generative AI tool GPT 4.
 - The results of the AI generated summaries have been evaluated by humans, and the results are “good and promising”.
 - The presenters emphasized that CanLII and Lexum’s use of generative AI was intended to be entirely transparent and aimed at enhancing access to legal information. These aspects distinguish their application of generative AI from most other commercially focused applications.
 - Going forward, CanLII and Lexum are working on:
 - Creating summaries of statutes using generative AI.
 - Using machine learning to improve search rankings by training AI on human evaluations of search rankings.
 - Using generative AI to allow for semantic rather than lexical searching (searching for concepts rather than words, such as searching for a process rather than a specific statute).
 - Creating intelligent searching that allows searches to be refined through an iterative process, and that provides annotations as to how the retrieved results relate to the requested search.
- d. A presentation on generative AI and legal ethics provided by Professor Amy Salyzyn of the Faculty of Law, University of Ottawa, and Katrina Ingram the founder and CEO of Ethically Aligned AI. The presentation covered a range of ethics topics, including:
 - how existing ethics rules relate to the use of generative AI tools;
 - what other regulatory approaches may be necessary or advisable; and

- what other regulators are doing or considering doing in respect of generative AI.
- e. A panel discussion on Innovation and Regulation in Legal Services Delivery moderated by Len Polsky, Manager Legal Technology and Mentorship for the Law Society of Alberta, with presenters:
- Adam Whitcombe, KC, Deputy CEO of the Law Society of BC;
 - Art Wilson, Manager Access to Innovation (A2I), Law Society of Ontario; and
 - Catherine Claveau, Bâtonnière Barreau du Québec.

The panel discussed their experiences with innovation sandboxes, and how those experiences may inform regulation of technology and innovation going forward.

6. The second day of the Conference kicked-off with a panel moderated by Justin Robichaud, KC, Federation Council Member from New Brunswick, with presenters:
- Jonathan Goldsmith, Council Member of the Law Society of England and Wales;
 - Xavier Beauchamp-Tremblay, Regional Lead Legal Transformation KPMG; and
 - Dr. Cristie Ford, Professor at Peter A. Allard School of Law.

This panel discussed a very broad range of matters, including:

- Core issues for legal regulators include:
 - generative AI providing legal advice not through a lawyer; and
 - dual regulation of lawyers by both regulators and governments, and whether the regulation of generative AI by government could effectively end self-regulation and lawyer independence.
- A review of the proposed EU legislation regulating generative AI based on a risk-based approach, which characterizes activities related to the administration of justice as high risk, but the provision of legal services as minimal or no risk.
- Experiences in financial regulation where there have been failures to recognize the risks related to innovation, and how those unrecognized risks undermine effective regulation.

- Other failures by financial regulators resulting from the belief that they were not capable of understanding new financial products and approaches.
 - In regulating technology and innovation, it is important to:
 - ensure the independence of the legal profession;
 - emphasize that the provision of legal services, through any medium, be human-centred and focused on human dignity and rights; and
 - consider that while innovation sandbox processes are good and flexible, they can also be used to obtain more information and data from those being regulated within the sandboxes.
 - It is necessary to separate consideration of the consequences of the misuse of technology from consideration of the technology itself. The printing press was an overwhelming boon to humanity, but its invention led to centuries of religious war.
 - There is little risk of stifling innovation in relation to generative AI, the risk is all with respect to under-regulation.
 - A risks-based approach to regulation is generally a good framework, provided consideration is given to the aggregate effect of a number of small risks.
 - Innovation sandboxes could be improved by requiring more information sharing by participants, and by attaching an incubator to the sandbox process, and particularly an access to justice incubator.
7. Following the panel discussion, the Conference hosted a “Great Debate”, which I moderated. The debaters were asked to debate how legal regulators should address the use of generative AI in the provision of legal services. The debaters and the positions they were assigned were:
- Lynda Troup, Federation Council Member from the Law Society of Manitoba, arguing that all use of generative AI in the provision of legal services should be banned.
 - Meagan Lang, President of the Law Society of Yukon, arguing that use of generative AI should be left to the market.
 - Timothy Brown, KC, Executive Director of the Law Society of Saskatchewan, arguing that the use of generative AI should be the subject of rules created by regulators.

8. Finally, the Conference involved table discussions and the use of Mentimeter to identify issues considered to be of greatest importance, and to highlight the ways law societies and the Federation could collaborate and address these matters.

The Joint Forum

9. The Joint Forum of law society presidents, vice presidents, CEOs and other staff began with a discussion of the work being done on competency-based education, and in particular, the National Requirement Review Committee's discussion paper which had been released for feedback in May 2023.
10. Attendees then received an update on the *Income Tax Act* litigation, including that the Canadian Bar Association has decided to intervene in support of the position taken by the Federation.
11. Finally, Christopher McPherson, KC and Adam Whitcombe, KC, provided an update on the move to a single legal regulator in British Columbia.
12. President McPherson and Deputy CEO Whitcombe advised the attendees about the revised timing for the anticipated introduction of legislation by the provincial government, now expected in the spring of 2024.
13. The presenters also reiterated the positions that the Law Society of BC has taken throughout with respect to the proposed move to a single legal regulator, namely that:
 - maintaining the independence of the profession by ensuring the board of the legal regulator is comprised of a majority of lawyers is constitutionally required, essential, and non-negotiable;
 - the Law Society agrees that the focus of any legislative changes should be focused on enhancing access to justice; and
 - significantly reducing the size of the board of the legal regulator does not appear to have much by way of salutary effects on access to justice, but may have extremely deleterious consequences for the hard-won diversity of the current Benchers table, and also may actually have negative effects on access to justice as discussed with the Attorney-General at the June 2023 Benchers meeting.
14. Following the Joint Session, further less-formal discussions were held about a variety of topics in the CEOs' Forum and the Presidents' Forum.

Federation Council Meeting

15. The Federation Council met on October 14th.
16. The Council received a number of reports on a variety of Federation issues, and made decisions on certain resolutions, including the following.

Officer Appointments and Council Election

17. The following officers were appointed for one-year terms commencing on November 15, 2023:
 - Erin Kleisinger, KC was appointed President of the Federation;
 - Teresa Donnelly was appointed First Vice President of the Federation; and
 - Louis-Martin Beaumont was appointed Second Vice President of the Federation.
18. Andrea Argue, KC was elected as the Law Society of Saskatchewan’s nominee to Federation Council, replacing Erin Kleisinger, KC.

The Indigenous Advisory Council

19. Terri-Lynn Williams-Davidson, KC attended the Council meeting as the representative of the Federation’s Indigenous Advisory Council (the “IAC”).
20. The IAC has met five times this year, and twice since the last Council meeting.
21. The two meetings since the last Council meeting were in respect of Discipline Standards, and a meeting with the National Requirement Review Committee to discuss the feedback from Canadian law schools as to what they are doing in response to Call to Action 28.
22. Council was advised that the IAC’s efforts in relation to truth and reconciliation were now truly “infusing” all of the work being done by the Federation.

NCA Assessment Modernization Committee (the “NCAAMC”)

23. The NCAAMC reported that it had drafted a revised NCA competency profile, and had sought feedback on the draft from law societies, academics, and the IAC.
24. The NCAAMC is now reviewing and incorporating the feedback received.
25. The NCAAMC has also prepared a survey to be sent to the professions seeking feedback with respect to the draft revised competency profile. However, the survey will not be

sent out until January to avoid confusion with the other competency related projects currently seeking feedback.

The National Requirement Review Committee (the “NRRC”)

26. The NRRC had previously reported that it finalized its consultation paper in late May. October 16, 2023, is the deadline for submission of comments.
27. Because the Law Society of Ontario requested an extension of that deadline, the date for all law societies to respond was extended to December 4, 2023.
28. The Council of Canadian Law Deans also requested an extension for providing comments.
29. The NRRC is preparing to review the anticipated flurry of responses to the consultation paper.

Money Laundering Prevention

30. The Standing Committee on Anti-Money Laundering and Terrorist Financing (the “Standing Committee”) reported that it was in the process of finalizing guidance to help legal professionals mitigate risks related to money laundering.
31. That guidance will include information about verifying identity in accordance with the changes to the model rules made in the spring of 2023.
32. The online education modules discussed in my last report are now up and running. Engaging with the modules has been accredited for CPD in a number of jurisdictions.
33. The Federation intends to seek data on enforcement of the various money laundering prevention rules, particularly from larger jurisdictions, including from British Columbia.

National Wellness Study

34. The National Wellness Study Steering Committee (the “Steering Committee”) reported that the interviews which will form the data set for Phase II of the National Study are nearly complete in all jurisdictions.
35. The Steering Committee expects to receive a draft Phase II report in 2024.
36. The Steering Committee also recommended the establishment of a Federation Standing Committee on Wellness.
37. Council approved the establishment of such a committee at this meeting, and set its terms of reference.

38. The Federation also intends to contact member law societies to create a “Wellness Counterpart Group”, as well as creating a wellness portal on the Federation Intranet.

Working Group on National Good Character Standards

39. Council passed a motion to establish and set the terms of reference for a working group to consider and make recommendations relating to:
- the policy rationale for a good character requirement;
 - identifying and minimizing the potential adverse effects of the good character requirement and assessment process, including potential differential effects on “marginalized groups”; and
 - best practices regarding the assessment of good character.
40. The Working Group is meant to deliver its recommendations to Council by, or before, March 2025.

CanLII and Lexum Reports

41. CanLII has prepared its 2024 budget.
42. CanLII reported having 600,000 unique visitors per month, five million visits per quarter, and twenty-five million page views per quarter.
43. The Lexum board recently approved its financial statements, which included a clean audit report.
44. Lexum is on-boarding more employees, including more engineers, and now employs forty people.

Next Meeting

45. The next meeting of the Federation Council will be held virtually on December 11, 2023.

Memo

To: Benchers
From: Equity, Diversity and Inclusion Advisory Committee & Credentials Committee
Date: October 20, 2023
Subject: **Amending the Return to Practice Requirements**

Introduction

1. Amending the return to practice requirements presents an opportunity to better balance the purpose of the requirements and the impact of these rules on individuals who take time away from practice. If the Benchers are in favour of the changes proposed in principle, the relevant changes to the Law Society Rules will be prepared for review at a subsequent meeting.

Issue

2. The return to practice requirements are in place to ensure that individuals who have taken time away from practice are equipped to practice law in a competent and ethical manner upon their return. Despite that reasonable goal, the current approach appears to have a disproportionate impact on individuals who take leaves that are more than three years but less than five years, a common amount of time taken by individuals who have and raise young children.

Background

Current Framework

3. The Law Society's current approach to individuals returning to practice is set out in Rules 2-88 to 2-90. Rule 2-89(1) states:

2-89 (1) If, for a total of 3 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first doing one of the following:

(a) passing the qualification examination;

(b) obtaining the permission of the Credentials Committee under subrule (3).

4. Rule 2-88(1) provides a definition of “relevant period”:

2-88 (1) In Rules 2-88 to 2-90, unless the context indicates otherwise, “relevant period” is the shortest of the following periods of time in the immediate past:

(a) 5 years;

(b) the time since the lawyer’s first call and admission in any jurisdiction;

(c) the time since the lawyer last passed the qualification examination.

5. The qualification examination is broken into two parts covering barristers’ work and solicitors’ work. Each part is three hours in length, and individuals must achieve a minimum of 60 per cent on each part to pass.
6. If an individual seeks permission to return to practice, the Credentials Committee may provide its permission if the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or the public interest does not require the lawyer to pass the qualification examination (Rule 2-89(4)).
7. The Credentials Committee undertakes a contextual analysis when considering an application involving the returning to practice requirements including; the length of time the applicant practised prior to the absence; the length of the absence from practice; what type of practice setting the applicant intends to practise upon returning; what area of law the applicant had practised in; and the relevance of any conditions on a return to practice. These factors inform whether an individual need be required to complete the qualification examination.
8. A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee (Rule 2-90).

Equity, Diversity & Inclusion Advisory Committee (EDIAC) Review

9. EDIAC has been considering the impact of the return to practice requirements on equity-seeking groups over the last couple of years, and in detail over the last year. EDIAC’s analysis concluded that the current provisions risk having a disproportionate impact on individuals who have had, and are raising, young children. The issue is particularly acute where a lawyer takes a series of parental leaves over a five-year period, such that Rule 2-89 is triggered. Moreover, EDIAC considered how these requirements can impact lawyers who take on work other than the traditional practice of law when raising young children, a period when familial responsibilities are high and obtaining sufficient childcare can be challenging.
10. Accordingly, the key question that remained was how the Law Society’s Rules and policies can create a more balanced regulatory environment for lawyers who want to return to practice

following a period of caregiving-related leave, while at the same time protecting the public by ensuring standards of competence are met. Following considerable review and analysis, EDIAC concluded that the current approach should be revisited and referred the matter to the Credentials Committee for further consideration.

Annual General Meeting Resolution

11. In June 2023, a Member Resolution was passed at the Law Society’s AGM to “[c]reate an exemption under Law Society Rule 2-89 where the absence is for the purpose of a parental leave and the lawyer has not engaged in the practice of law for a time that is equivalent to their federally entitled parental leave(s).”

Credentials Committee Review

12. In October 2023, the Credentials Committee met to consider changes to return to practice requirements and, after review of the analysis undertaken by EDIAC, supported the recommendation that changes be made.
13. The Credentials Committee was aware that individuals view the prospect of taking the qualification examination as a serious barrier (time to prepare, resources to prepare, etc.) to returning to practice, and recognized that all lawyers have an individual duty under the *Code of Professional Conduct for BC* to ensure that they perform all legal services undertaken on a client’s behalf to the standard of a competent lawyer. That said, from the perspective of the public interest, the Credentials Committee was of the view that education and professional development elements needed to remain part of the return to practice process, as these elements provide an important touchpoint to ensure that those who return to practice return with refreshed knowledge.

Proposed Changes

14. EDIAC and the Credentials Committee agree that amendments to the return the practice requirements should be made, and should be available to all individuals who take time away from practice for any reason. The proposed changes in principle are set out below:
 - a. **Relevant period:** The number of years defining the relevant period set out in Rule 2-88(1)(a) should be increased to seven years.
 - b. **Away from practice for more than three and up to five years of the relevant period:** These individuals should be able to return to practice without taking the qualifying examination or applying to the Credentials Committee, but should be required to take the Law Society’s free online Practice Management Course. The Practice Management Course is of universal utility (rather than being subject matter

specific), provides important reminders on a number of key professional responsibility topics, and is already mandatory for articulated students and some practitioners at small firms. Requiring these individuals to take this course is a sufficiently meaningful indication of their readiness to return to practice, and serves as a less limiting alternative to the conditions that may be imposed by the Credentials Committee.

- c. **Away from practice for over five but under seven years of the relevant period:** These individuals should be able to return to practice without taking the qualifying examination or applying to this Committee, but should be required to take the Practice Management Course and must review materials relevant to the lawyer's area of practice (similar to the requirement in Rule 2-81(3) under which lawyer transferring under a mobility agreement is required to review certain sections of material in the Professional Legal Training Course). In addition to completing the Practice Management Course, adding a requirement that these individuals review materials relevant to their practice is a likely to be a more meaningful indicator of an individual's readiness to return than having them write examinations that may not address or be relevant to their areas of practice.
- d. **Exception:** If an individual who is away from practice for over three but under seven years in a relevant period wishes to apply to the Credentials Committee to obtain an exception from the requirements that they complete the Practice Management Course and other materials (as applicable), they may do so. The exception would be for individuals who could otherwise satisfy the Credentials Committee that they are properly current in their knowledge or that the public interest does not require them to do some or any additional requirements.
- e. **Away from practice for seven years or more:** The approach would remain the same, but some amendments to Rule 2-90 may be necessary for clarity and to make Rules 2-88 to 2-90 read properly together if revised.

Joint Recommendation

15. EDIAC and the Credentials Committee jointly recommend that the Benchers adopt the following resolution.

BE IT RESOLVED to amend Rules 2-88 to 2-90 along with any necessary consequential amendments to change the Law Society's approach to its return to practice requirements as set out in this memorandum.



MEMORANDUM

To: Benchers
 From: Herman Van Ommen, KC, Tribunal Chair
 Date: October 25, 2023
 Re: **Appointee Adjudicator Expense and Reimbursement Policy and Rates**

Purpose

The LSBC Tribunal seeks approval for the attached Appointee Adjudicator Expense and Reimbursement Policy. The Tribunal's recommended policy is unanimously supported by the Executive Committee.

The policy expands per diem payments to include lawyer adjudicators and introduces compensation for decision writing. Additionally, it raises the existing per diem rate for adjudicators. This adjustment is vital to ensure the dedication and availability of Tribunal members in fulfilling their responsibilities.

Immediate Implementation

The Tribunal strongly recommends implementing the policy starting January 1, 2024. As hearings grow longer and more complex, the Tribunal needs to become more professional. Unpaid volunteer adjudicators writing reasons off the end of their desk on evenings and weekends is not conducive to either quality or timeliness. The amount of the per diem proposed is not close to full compensation so there will still be an element of volunteerism.

The proposed policy, particularly payment for writing and deliberation, emphasizes that this work is more like a file than a volunteer activity.

The public interest requires more timely decisions and shortened timelines for the whole hearing process. Pushing unpaid volunteers to devote more time in a condensed timeframe is not realistic.

Challenges for Lawyers

Practising lawyers face challenges when juggling unpaid workdays to oversee multiple hearings and draft decisions within recommended timeframes. Reducing hearings per adjudicator isn't a solution, as it would undermine Tribunal experience. In contrast, implementing the proposed policy would foster a more proficient and motivated Tribunal, marked by professionalism, efficiency, and timely decisions.

Modeling After Ontario's Law Society

The recommended policy aligns with the Ontario Law Society Tribunal's model.

Benefits of Extending Per Diem to Lawyers

Extending daily allowances to lawyers as Tribunal members carries several benefits:

1. **Fair Compensation:** Acknowledges lawyer adjudicators' expertise and effort in ensuring due process and making decisions that affect the lives of legal professionals. Shows appreciation for contributions, especially decision writing.
2. **Transparent Remuneration:** Per diem structure offers transparent compensation, based on actual participation. Ensures fairness and clarity in payment aligned with involvement.
3. **Sustained Commitment:** Recognizes time and effort invested, motivating long-term engagement in Tribunal roles.
4. **Quality Participation:** Incentivizes thorough case reviews and engaged decision making and writing, enhancing Tribunal effectiveness and reputation and compliance with National Discipline Standards.
5. **Equal Treatment:** Ensures fairness among all appointee adjudicators, regardless of their backgrounds. Fosters a sense of unity and equality within the Tribunal, promoting a collaborative and harmonious working environment.

Financial Impact

The policy necessitates a \$225,000 Tribunal per diem budget to cover payments for adjudicators' hearing and review days, writing days, and mandatory education sessions. If the Benchers approve the increased rate and extended coverage to lawyers, it will be funded from the 2024 reserves with corresponding implications for the operating budget in 2025.

Conclusion

Adopting the Appointee Adjudicator Expense and Reimbursement Policy would ensure fair compensation, transparency, and flexibility, while promoting high-quality participation and skilled lawyers. Aligning compensation with the specialized nature of Tribunal lawyers' work enhances efficiency and effectiveness in hearing proceedings.

Decision Sought

I ask the Benchers to support my recommendation and pass the following resolution:

BE IT RESOLVED the compensation for appointee adjudicators of the LSBC Tribunal be amended as proposed in the attached Appointee Adjudicator Expense and Reimbursement Policy and Rates, effective January 1, 2024.

Attachment: Appointee Adjudicator Expense and Reimbursement Policy and Rates (DM4130576)



APPOINTEE ADJUDICATOR REMUNERATION AND EXPENSE POLICY

January 1, 2024

1 POLICY

- 1.01 An appointee adjudicator (“adjudicator”) is entitled to be remunerated by the Law Society of British Columbia (“Law Society”) for eligible adjudication work performed for the LSBC Tribunal (“Tribunal”) in performance of their duties as an adjudicator.
- 1.02 Each adjudicator is personally accountable for their remuneration and expense submissions and should consult with, and obtain the prior written approval of, the Tribunal Chair (“Chair”) for any activities or expenses not covered by this policy or if in doubt as to the appropriateness of a specific activity or expense for remuneration.
- 1.03 Any activity for remuneration purposes or expense claimed must be clearly related to the mandate of the Tribunal and be eligible under this policy, and must be properly explained and documented.
- 1.04 Expenses incurred on Tribunal business should be consistent with normal living standards.

2 PURPOSE

- 2.01 This policy sets out the principles of remuneration, types of expenses and the maximum claimable amounts.
- 2.02 This policy seeks to ensure adjudicators are appropriately remunerated in recognition of the dedication and responsibility assumed as members of the Tribunal.
- 2.03 This policy is intended to support diverse representation on the Tribunal and recognize adjudicators from different geographical locations within British Columbia.
- 2.04 Adjudicators have the choice to request per diem or expense reimbursement under this policy. They can volunteer their services without compensation.

DM4130576

- 2.05 This policy is meant to assist the Tribunal Chair and staff in managing the Tribunal budget by providing timely, accurate and complete reporting of remuneration activities and expenses on a regular basis.

3 ACCOUNTABILITIES AND RESPONSIBILITIES

3.01 The Tribunal and the Chair are responsible for:

- (a) administering the procedures necessary for implementing this policy;
- (b) promptly processing all Expense Reports and Adjudicator Activity sheets submitted; and
- (c) promptly addressing issues and exceptions in implementing this policy.

3.02 Adjudicators are responsible for:

- (a) ensuring that their time eligible for remuneration and expenses are reasonable;
- (b) maintaining records of their time spent on activities eligible for remuneration and receipts for expenses;
- (c) promptly submitting completed and accurate claims with detailed receipts and other appropriate documentation; and
- (d) proactively addressing issues and exceptions with the Chair.

4 REMUNERATION RATES*

4.01 Effective January 1, 2024 the remuneration rates for eligible adjudication activities are:

- (a) \$135 for an hour or less of time spent within a given calendar day;
- (b) \$390 for more than an hour and up to and including three hours of time spent within a given calendar day (“half day”); and
- (c) \$645 for more than three hours of time spent within a given calendar day (“full day”).

4.02 A maximum of one full day may be claimed for remuneration on any calendar day, including travel time.

*T4A's will be issued for all per diems that are paid during the year.

5 ELIGIBLE ADJUDICATION ACTIVITIES

- 5.01 In this policy, an appearance includes a hearing, a motion, a case conference, a pre- hearing conference and a comprehensive prehearing conference.
- 5.02 The following are adjudication activities eligible for remuneration under this policy:
- (a) attending an appearance at the Hearing Division or the Review Division;
 - (b) attending or viewing information, education or training sessions as required by the Tribunal;
 - (c) preparing for a hearing in accordance with the following:
 - i. for a hearing of the Hearing Division:
 - a. a limit of up to a half day for the first day of a hearing or for a written hearing will apply;
 - b. an additional hour may be claimed for each incremental hearing day;
 - ii. for a hearing of the Review Division a limit of up to a full day per hearing will apply;
 - (d) deliberating with fellow panelists with a limit of up to a half day per decision that leads to written reasons;
 - (e) reviewing and commenting on reasons authored by a fellow panel member with a limit of up to a half day per set of reasons;
 - (f) writing reasons in accordance with the following:
 - i. for a hearing of the Hearing Division:
 - a. if the hearing had a duration of up to a day or if it was a written hearing, a limit of up to two full days for reason writing will apply;
 - b. if the hearing exceeded a day, a limit of a full day per hearing day for reason writing will apply;
 - c. an overall maximum of 10 full days may be claimed for reason writing related to a given hearing;
 - ii. for a hearing of the Review Division, a limit of up to a total of two full days per hearing will apply.
- 5.03 Subject to 5.04 and 5.05, cancelled appearances are eligible for remuneration if cancellation notice of two “clear” business days is not provided. A “clear” notice excludes the day on which the notice is given (i.e., the cancellation date) and the day of the appearance. An adjudicator is eligible for remuneration in the following two scenarios:
- (a) Where an appearance has started but was adjourned or ended early on the same day (*this applies to appearances scheduled to take place on the*

cancellation date):

- i. The adjudicator would be remunerated for time scheduled on the cancellation date, up to a maximum of one full day.
 - For example, the adjudicator would be able to claim a full day if that day's appearance was scheduled for a full day, or a half day if that day's appearance was scheduled for a half day;
 - (b) Where an appearance is cancelled with less than two "clear" business days' notice (*this applies to appearances scheduled to take place after the cancellation date*), an adjudicator would be able to claim a half day for each originally scheduled appearance that falls within two clear business days immediately after the date of cancellation. For example:
 - i. If an appearance is scheduled for Monday (full day), Tuesday (full day), Wednesday (full day) and Thursday (full day) of the same week, and the matter gets settled or adjourned an hour into the appearance on Monday morning, the adjudicator would receive a cancellation fee of one full day for the Monday, a half day for the Tuesday, and a half day for the Wednesday, with no cancellation fee for the Thursday;
 - ii. If an appearance is scheduled for Monday, Tuesday and Wednesday of the same week, and the matter is cancelled on Wednesday of the previous week, the adjudicator would not be entitled to remuneration as notice of two clear business days was provided (the Thursday and Friday immediately following the cancellation date constitute two clear days).
- 5.04 An adjudicator is not eligible for remuneration under 5.03 (b) for cancelled appearances originally scheduled for less than three hours.
- 5.05 An adjudicator is not eligible for remuneration under 5.03 if the adjudicator has outstanding reasons to write. Any remuneration paid in this situation would be for the writing of reasons.
- 5.06 Additional work on behalf of the Tribunal (such as colleague reviews or observing hearings as part of training) is eligible for remuneration if the work was requested or approved by the Chair.
- 5.07 An adjudicator may seek prior written approval from the Chair to exceed the established time limits for preparation, deliberation, review of reasons or reason writing, due to the complexity or nature of the hearing or appearance.

6 TRAVEL TIME

- 6.01 Reasonable travel time will be remunerated in performing Tribunal business as follows:
- (a) If the appearance takes place within the Greater Vancouver Area (GVA) and the adjudicator lives outside of the GVA, travel to and from the Tribunal business;
 - (b) If the Tribunal business takes place outside the GVA and the adjudicator lives outside the location of the appearance, travel to and from the location.
- 6.02 Adjudicators may not claim travel time if the appearance was cancelled in advance.

7 EXPENSE AND TRAVEL REIMBURSEMENT

- 7.01 The Law Society reimburses the following travel expenses:
- (a) economy class airfares on commercial flights;
 - (b) ferry, train or bus tickets;
 - (c) airport fees;
 - (d) public transportation costs;
 - (e) parking;
 - (f) toll road charges;
 - (g) taxis and ride sharing (such as Uber, Lyft, etc.) fares, including up to 15-20% gratuity, to and from destinations within a city.
 - (h) use of personal vehicle for Tribunal business on a per kilometre basis. Kilometrage is the payment the Law Society makes to adjudicators for use of their personal vehicles based on a flat rate per kilometre travelled on Tribunal business. Kilometrage flat rates are calculated to reimburse not only gas, repairs, and insurance, but also a fair share of wear and tear (depreciation) on the vehicle. Kilometrage will be reimbursed at the rate of \$0.68/km which may be updated from time to time. Total mileage claimed may not exceed the cost of economy airfare to and from the same destination.
- 7.02 The Law Society recognizes the following reimbursable accommodation expenses.
- (a) Reimbursement will be limited to the accommodation expenses equivalent to those at the Law Society's pre-approved hotels in Vancouver at the negotiated rates for standard or equivalent rooms as set out in the attached **2023 Corporate hotel rates** (updated periodically).

Adjudicators may be reimbursed for executive rooms but if staying in an executive room, will not be reimbursed for breakfast or miscellaneous food and drink. When booking, advise the hotel that you are with the Law Society Tribunal and provide appropriate corporate code, so that the corporate rate is charged.

- (b) Accommodation only may be claimed where the adjudicator is required to stay overnight because he/she is not within commuting distance of the Tribunal business. For example, adjudicators travelling from the GVA to the Tribunal are ineligible for overnight accommodation, unless exceptional circumstances exist and the Chair approves the expense in advance.
- (c) Overnight accommodations may only be claimed where the appearance starts too early for the adjudicator to reasonably arrive on the same day, ends outside of normal business hours or travel on the same day of the Tribunal business activity is not reasonable.

7.03 The Law Society reimburses meal expenses incurred while travelling for Tribunal business and lunch on the day of an appearance whether the adjudicator has travelled or not. Guidelines for meals are to be interpreted reasonably. All amounts include taxes and tips. Detailed receipts must support dining expenses. The Law Society will not reimburse dining expenses for guests or if the Tribunal provided meals. The maximum amount per day for meal and beverage costs, inclusive of tips and tax, is \$110. The daily limit amount includes breakfast, lunch and dinner divided as follows:

- (a) Breakfast = \$25;
- (b) Lunch = \$35;
- (c) Dinner = \$50.

7.04 The Law Society reimburses reasonable miscellaneous expenses incurred in conducting Tribunal business such as:

- (a) Child care and dependent adult care expenses where they are in addition to what would normally be incurred and the caregiver is a non-family member;
- (b) communication charges, such as long distance phone charges, teleconferences;
- (c) Wi-Fi or internet connection expenses;
- (d) courier expenses;
- (e) photocopying and printing charges.

Other expenses incurred because of Tribunal business must be addressed with the Chair.

7.05 The Law Society will not reimburse adjudicators for:

- (a) entertainment;

- (b) alcohol;
- (c) upgrades to higher classes of service for air travel;
- (d) fines such as traffic or parking violations;
- (e) personal items of any nature including clothing, laundry or toiletries;
- (f) additional expenses related to travelling with a guest;
- (g) fees for excess baggage or baggage handling unless the airline charges for any checked luggage.

8 CLAIMS

- 8.01 Adjudicators must submit all detailed and itemized receipts with a completed expense report. Please note: Credit card receipts alone are not sufficient back up for audit and CRA compliance purposes. All receipts should indicate:
- (a) the nature of the expense including the amount, the date and the location.
 - (b) applicable GST/HST amounts and GST/HST registration numbers.
 - (c) travel and hotel receipts should also include name and details of travel or stay.
 - (d) If dining with guests, separate receipts that show only the adjudicator's items should be obtained.
- 8.02 Adjudicators must submit a completed *Committee Member, Appointee Adjudicator & Volunteer Expense Claim Form* to claim remuneration and reimbursement for expenses incurred. If an incomplete or inaccurate *Committee Member, Appointee Adjudicator & Volunteer Expense Claim Form* is submitted the adjudicator will be asked to make amendments and resubmit the form or submit a new one.
- 8.03 Receipts may be scanned and emailed or the originals sent by regular mail.
- 8.04 Completed and signed forms, together with supporting detailed receipts, must be submitted, no later than one month after the expenses were incurred or the time was spent, to:

LSBC Tribunal
 9th Floor – 845 Cambie Street
 Vancouver, BC, V6B 4Z9

T: 604.669.2533

E: TribunalRegistry@lsbc.org

9 REPORTING

- 9.01 In accordance with the Law Society's internal control and governance processes, reports on Adjudicator expenses will be produced as required.

Any questions about the application of this policy may be directed to the Hearing Administrator or to the Chair.

DRAFT

Memo

To: Benchers
From: Michael Lucas
Date: September 29, 2023
Subject: **2024 Fee Schedules**

1. Before the end of each calendar year, the Benchers habitually revise the fee schedules, which appear as schedules to the Law Society Rules, to reflect changes taking effect on the following January 1.
2. Under section 23(1)(a) of the *Legal Profession Act*, the Benchers have approved, at their September 22, 2023 meeting, a practice fee of \$2,303 for 2024. This represents no change from the 2023 fee.
3. At the same meeting the indemnity fee was approved at \$1,800 for lawyers in full-time practice, \$900 for those in part-time practice, and a liability indemnity surcharge of \$1,000. These represent no change from the 2023 fees.
4. In the result, neither the practice nor the indemnity fees have changed for the 2024 calendar year, meaning no amendments to the body of the fee schedules are required.
5. Staff will ensure that the headings for Schedules 1, 2 and 3 (which are not part of the rules and therefore do not require a formal resolution to edit) are amended to strike “2023” and substitute “2024.”

2024 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 18 Virtual	Friday, February 2 Hybrid	Jan 1: New Year's Day Jan 31: New Bencher Orientation Feb 2: Welcome/Farewell Dinner Feb 10: Lunar New Year TBA: CBABC Provincial Council Meeting TBA: CBA Annual General Meeting Feb 19: Family Day
Thursday, February 22 Virtual	Friday, March 8 Virtual	Mar 11 (sundown)-Apr 9 (sundown): Ramadan Mar 18-28: Spring Break Mar 29-Apr 1: Easter
Thursday, April 11 Virtual	Friday, April 26 Hybrid	Apr 9 (sundown)-10 (sundown) Eid April 13: Vaisakhi
Thursday, May 16 Hybrid	Saturday, June 1 Hybrid	May 20: Victoria Day May 30 to June 1: LSBC Bencher Retreat June 5-8: LSA Retreat
Thursday, June 20 Virtual	Friday, July 5 Virtual	June 21: National Indigenous Peoples Day July 1: Canada Day TBA: Federation Council Meeting Aug 5: BC Day TBA: IILACE Conference
Thursday, September 5 Hybrid	Friday, September 20 Virtual	Sept 2: Labour Day Sept 24: AGM Sept 30: Truth and Reconciliation Day Oct 2 (sundown)-4 (sundown): Rosh Hashanah Oct 11 (sundown)-12 (sundown): Yom Kippur
Thursday, October 17 Virtual	Friday, November 1 Virtual	Oct 14: Thanksgiving Day Nov 1: Diwali TBA: IBA Annual Conference Nov 11: Remembrance Day Nov 15: Bencher By-Election TBA: Federation Fall Meetings
Thursday, November 21 Hybrid	Friday, December 6 Hybrid	Dec 25: Christmas Day Dec 26: Boxing Day Dec 25(sundown)-Jan 2 (sundown): Hanukkah Dec 26-Jan 1: Kwanzaa