

Agenda

Benchers

Date:	Friday, March 8, 2024
Time:	9:30 am – Call to Order
Location:	The Bencher Meeting is taking place as a virtual meeting. If you would like to attend the meeting as a virtual attendee, please email BencherRelations@lsbc.org
Recording:	<i>The public portion of the meeting will be recorded. Any private chat messages sent will be visible in a transcript of the meeting.</i>

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.

1	Minutes of February 2, 2024 meeting (regular session)
2	Minutes of February 2, 2024 meeting (<i>in camera</i> session)
3	Code of Professional Conduct: Technological Competence
4	Terms of Reference: Equity, Diversity, and Inclusion Advisory Committee
5	Appointed Bencher and Tribunal Adjudicator Expense Policies

REPORTS

6	President's Report
7	CEO's Report

DISCUSSION/DECISION

8	Rule Amendments: Client Identification and Verification
9	Rule Amendments: Executive Committee Election Tie Votes
10	Rule Amendments: Call Ceremonies
11	In Principle: Disclosure and Privacy Review
12	In Principle: Bencher Election Rules Revisions

Agenda

UPDATES		
13	National Discipline Standards Report: Update & Implementation	Natasha Dookie
14	Alternative Discipline Process: Program Update	Natasha Dookie & Jessica Abells
FOR INFORMATION		
15	What We Heard – Access to Justice Priorities for the Law Society in 2024	
IN CAMERA		
16	Other Business	

Law Society

of British Columbia

Bencher Meeting: Minutes (Draft)

To: Benchers

Purpose: Approval (Consent Agenda)

Date: Friday, February 2, 2024

Present:

Jeevyn Dhaliwal, KC, President	Benjamin D. Levine
Brook Greenberg, KC, 1st Vice-President	Dr. Jan Lindsay
Lindsay R. LeBlanc, KC, 2nd Vice-President	Jaspreet Singh Malik
Simran Bains	Jay Michi
Paul Barnett	Georges Rivard
Aleem Bharmal, KC	Michèle Ross
Tanya Chamberlain	Gurminder Sandhu, KC
Nikki L. Charlton	Thomas L. Spraggs
Jennifer Chow, KC	Barbara Stanley, KC
Christina J. Cook	James Struthers
Cheryl D'Sa, KC	Natasha Tony
Tim Delaney	Michael F. Welsh, KC
Brian Dybwad	Kevin B. Westell
Ravi R. Hira, KC	Gaynor C. Yeung
Sasha Hobbs	Jonathan Yuen
James A.S. Legh	

Absent: Tim Delaney Thomas L. Spraggs

Staff present:

Don Avison, KC	Claire Marchant
Avalon Bourne	Fiona McFarlane
Barbara Buchanan, KC	Jeanette McPhee
Natasha Dookie	Michael Mulhern
Su Forbes, KC	Doug Munro
Vicki George	Rashmi Nair
Katrina Harry, KC	Mimi Odkhuu
Kerryn Holt	Maryanne Prohl
Jeffrey Hoskins, KC	Michelle Robertson
Aara Johnson	Gregory Sexton
Amanda Kerr	Lesley Small
Alison Kirby	Arrie Sturdivant
Julie Lee	Christine Tam
Michael Lucas, KC	Adam Whitcombe, KC
Alison Luke	Leanne Wood
David MacLean	Vinnie Yuen

Guests:

Dom Bautista	Executive Director, Amici Curiae Friendship Society & ED of Law Courts Center
Nicola Bodnarchuk	President Guest
Mark Bodnarchuk	President Guest
Ian Burns	Digital Reporter, The Lawyer's Daily
Sebastien Chern	Federation of Asian Canadian Lawyers BC
Dr. Cristie Ford	Professor, Peter A. Allard School of Law
Ray Dhaliwal	President Guest
Indira Dhaliwal	President Guest
Shanna Gu	Federation of Asian Canadian Lawyers BC
[REDACTED]	Lawyers Assistance Program of BC
Freya Kodar	Dean of Law, University of Victoria
Barbara Korenkiewicz	President Guest
Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
Valerie LeBlanc	Director of Professional Development, CBABC
Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
[REDACTED]	Lawyers Assistance Program of BC
Mark Meredith	Treasurer and Board Member, Mediate BC Society

Joven Narwal, KC	Member, Law Society of BC
Caroline Nevin	CEO, Courthouse Libraries BC
Tina Parbhakar	Strategic Coordinator, A2JBC and co-founder of South Asian Legal Clinic of BC
Carleen Thomas	Elder, Tsleil-Waututh Nation
Ron Usher	General Counsel and Practice Advisor, The Society of Notaries Public of British Columbia
Adam Ueland	Executive Committee Member, Trial Lawyers Association of BC
Lana Walker	Assistant Dean of Law, Thompson Rivers University
Sarah Westwood, KC	Life Bencher, Law Society of BC
Linda Russell	CEO, Continuing Legal Education Society of BC
Karen St. Aubin	Acting CEO & Director of Membership & Education, Trial Lawyers Association of BC
Fiona Wong	President, Federation of Asian Canadian Lawyers, BC

Oath of Office

1. Indigenous Welcome

Carleen Thomas, a member of the Tsleil-Waututh Nation, introduced herself to Benchers and welcomed them to the meeting and to the ancestral lands of the Tsleil-Waututh people. Ms. Thomas spoke about her ancestral history and how during colonizing times, the language and names of her people were stolen, which is why it is so important for her to acknowledge and recognize the members of her family. She spoke about the history of Indigenous peoples in Canada, and the impact of colonization on Indigenous peoples, as well as the work that still needs to be done in terms of truth and reconciliation. Ms. Thomas also spoke about the need to help educate each other, so that these changes can come about more easily and more quickly, so that the next generation does not have to continuously fight for recognition of their rights.

2. Administer Oaths of Office

The Honourable Chief Justice Christopher E. Hinkson administered oaths of office (in the form set out in Rule 1-3) to President Jeevyn Dhaliwal, KC, First Vice-President Brook Greenberg, KC, and Second Vice-President Lindsay R. LeBlanc, KC and all the Benchers whose terms began on January 1, 2024.

Chief Justice Hinkson congratulated all of the Benchers and spoke about the important role Benchers play in service to the public and to the legal profession in protecting and upholding the rule of law. He spoke about the fundamental importance of the independence of the judiciary and of the profession and wished Benchers and the Law Society success in protecting it.

Consent Agenda

3. Minutes of December 8, 2023, meeting (regular session)

The minutes of the meeting held on December 8, 2023 were approved unanimously and by consent as circulated.

4. Minutes of December 8, 2023, meeting (*in camera* session)

The minutes of the *in camera* meeting held on December 8, 2023 were approved unanimously and by consent as circulated.

5. KC Nomination Advisory Committee Appointment

President Jeevyn Dhaliwal, KC and First Vice-President Brook Greenberg, KC recused themselves from this item.

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers appoint President Jeevyn Dhaliwal, KC and First Vice-President Brook Greenberg, KC as the Law Society's representatives on the 2024 KC Appointments Advisory Committee.

6. Retired Member Fee Waiver Request

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers approve the retired member's request for a waiver of the retired member fee for 2024 and the retired fees for the rest of the lawyer's life.

Reports

7. President's Welcome and Report

President Jeevyn Dhaliwal, KC welcomed Benchers, staff, and guests to the first Bencher meeting of 2024.

She confirmed that no conflicts of interest had been declared, aside from the recusal of Mr. Greenberg and herself from Item 5.

Ms. Dhaliwal began her report by speaking about the desire of Benchers to serve the greater good on behalf of the public. She spoke about the honour of serving her communities as the Law Society's first South-Asian President, and she encouraged all Benchers to think about their communities when fulfilling their obligations as Benchers. Ms. Dhaliwal committed to doing her best in serving as President and in working together with Benchers to govern the Law Society within its mandate of protecting the public interest. She thanked Benchers for their support over the first few weeks of her presidency.

Ms. Dhaliwal updated Benchers on the opening of the South Asian Legal Clinic of BC. She indicated that she had invited Tina Parbhakar, Strategic Coordinator, A2JBC and co-founder of South Asian Legal Clinic of BC to the Bencher meeting to speak about the work of the Legal Clinic.

Ms. Dhaliwal spoke about Access to Justice Week, which would be taking place from February 5 to 9. She encouraged Benchers to participate in the numerous events that were being planned, and highlighted the Making Waves initiative in Bella Coola, which has helped increase access to legal support in remote, primarily Indigenous, communities.

Ms. Dhaliwal then spoke about Black History Month, the theme of which this year is Black Excellence, a heritage to celebrate, a future to build, and invited Natasha Tony to speak about her experiences and some of the events that would be taking place over the course of February.

Natasha Tony spoke about her experience as a Black Canadian, as well as her experience working with the Black Screen Office and as a labour relations specialist building inclusive practices into film and television. She also spoke about the *Employment Equity Act* Review Task Force and its report on a *Transformative Framework to Achieve and Sustain Employment Equity*, authored by Professor Adelle Blackett, which recommended that Black workers should constitute a separate employment equity group for the purposes of the *Employment Equity Act* framework. Ms. Tony also recommended some documentaries that demonstrated Black excellence within the Canadian film industry, including *BLK: An Origin Story* and *Black Life: Untold Stories*. She also encouraged Benchers to attend a preview of Rick DuPree's documentary, *Seattle Black Panthers Fight for Justice and Freedom*, which would be screened on February 6 at the Rio Theatre.

8. CEO's Report

Don Avison, KC began his report by welcoming all Benchers to the meeting. He introduced the new Benchers to the senior staff present at the meeting.

Mr. Avison provided an update on the current status of the single legal regulator initiative and the recent meeting with the Attorney General, at which Ms. Dhaliwal, First Vice-President Brook Greenberg, KC, Second Vice-President Lindsay R. LeBlanc, KC, and Michèle Ross were also in attendance. He indicated that further information would be provided *in camera* and Benchers would be joined by senior representatives from the Ministry for that session. He further indicated that the Law Society had retained counsel to help consider options in response to the draft single legal regulator legislation, and that he was of the view that the public and the profession should be aware that these discussions are taking place.

Mr. Avison then provided an update regarding a meeting organized by the Canadian Bar Association BC Branch with Arif Virani, KC, Minister of Justice and Attorney General of Canada, along with representatives from the Canadian Association of Black Lawyers, South Asian Bar Association, Federation of Asian Canadian Lawyers, and the Trial Lawyers Association. The primary focus of the discussion was on encouraging an increase in applications for federal judicial appointments, and Mr. Avison indicated that the Law Society would be

providing some video content to help facilitate a greater understanding of the applicable processes and the public interest need to widen the pool of potential applicants.

Mr. Avison spoke about the Law Society's recent public communications regarding disciplinary matters. He indicated that he was of the view that there may be the need for some amendments to the Law Society's Rules with respect to disclosure and transparency related to interim suspensions, resignations in the face of disciplinary matters, and other similar kinds of circumstances. He also indicated that serving the public interest requires that the public understand the nature of different disciplinary matters.

Mr. Avison informed Benchers that nearly all of the profession had completed the Indigenous Cultural Awareness program, and that he was of the view that a number of those who had not yet recorded completion of the program had likely completed but not recorded their completion.

Benchers discussed the meeting with Minister Virani and what was being done to encourage visible minorities to apply for federal judicial appointments. Mr. Avison advised that this was one of the specific issues discussed at the meeting, and representatives from a number of equity seeking groups were in attendance. He indicated that he was working with some of these groups to incorporate their input into the video content the Law Society was preparing. Mr. Avison also encouraged Benchers to look to their communities and support those who wished to put forward an application.

9. Briefing by the Law Society's Member of the Federation Council

Brook Greenberg, KC provided a brief overview of the written report he provided for Benchers' information, which included an overview of the recent Federation meeting. He indicated that the next Federation Council meeting would take place on March 12, 2024.

Benchers discussed Mr. Greenberg's report, particularly the establishment of the Good Character Working Group. Mr. Greenberg advised that the Working Group would be looking into the different aspects of the good character requirement, the policy rationale, and how it should be structured to ensure that it does not have unintended or disproportionate effects on traditionally under-represented groups. He also spoke about the impacts of the good character requirement on discussions regarding the single legal regulator initiative, as this could affect the ability to have a national standard.

Guest Presentations

10. Update on the Lawyers Assistance Program

Ms. Dhaliwal welcomed and introduced Derek LaCroix, KC, Executive Director of the Lawyers Assistance Program of BC (LAPBC), along with lawyers [REDACTED], to the meeting.

Mr. LaCroix presented on the work of LAPBC and reviewed its structure and key components. He spoke about the *National Study on the Health and Wellness Determinants of Legal Professionals in Canada* and reviewed some of the findings and recommendations. Mr. LaCroix spoke about the services provided by LAPBC and the importance of lawyers seeking help when needed.

[REDACTED] spoke about their experiences with addiction and mental health and their involvement with LAPBC and the importance of its programs in supporting and assisting lawyers suffering from mental health and addiction challenges.

11. Access to Justice Presentation

Ms. Dhaliwal welcomed and introduced Tina Parbhakar, Strategic Coordinator, Access to Justice and co-founder of the South Asian Legal Clinic of BC to the meeting.

Tina Parbhakar spoke about the recent opening of the South Asian Legal Clinic of BC, which will provide unbundled legal services, alongside summary advice and legal education services. She spoke about the South Asian legal community and the importance of collaboration to address access to justice barriers facing the most vulnerable within the community. She also spoke about the work of Access to Justice BC, as well as the work of Benchers and the Law Society in trying to address these barriers. She concluded her remarks with a call to action to shift to an individual mindset regarding what can be offered to those seeking justice, to strengthen the legal community as a whole through engagement with diverse communities, and to continue to lead in relation to transformations already underway to build a well-being centred legal system.

Discussion/Decision

12. Exploring Access to Justice Priorities for 2024

Claire Marchant, Director, Policy and Practice introduced the item and provided some background regarding the access to justice priorities for 2024. She reviewed with Benchers a number of access to justice initiatives already underway at the Law Society, as well as what the

profession has already been doing in this area. Ms. Marchant referenced the importance of continuing to seek out further opportunities to improve access to justice in the province, keeping in mind the role of the regulator and the areas in which the Law Society is positioned to create the most positive change.

Ms. Dhaliwal invited past members of the Access to Justice Advisory Committee to make some remarks, which focused on what the Law Society and the profession have done to help address access to justice barriers, including pro bono work, the use of triage hubs, and the permitting of alternative business models and multi-disciplinary structures; and importance of ensuring that the public interest was at the forefront of all of these different initiatives.

Benchers then engaged in discussions regarding the role of the Law Society in addressing access to justice issues, with the discussions focused on providing more information and resources to the public about what services exist, developing an information hub that is accessible to all in partnership with other organizations, and engaging in a policy review of the requirements for contingency fee agreements and examining the harms that can and have been caused with regard to Indigenous peoples.

Benchers then engaged in discussions regarding what, if anything, the Law Society should be doing to make policy makers and the public aware of what the profession does to support access to justice initiatives, with the discussions focused on increasing awareness of the access to justice work lawyers are currently doing and the initiatives the Law Society has adopted to provide greater access to justice and legal services, and reaching out to high schools to provide information and resources to help improve public knowledge of the rule of law.

Benchers then engaged in discussions regarding the position the Law Society should advance on access-related issues when engaging the provincial government and entities like the government's Standing Committee on Finance, with the discussions focused on advocating that PST charged on the provision of legal fees must be entirely allocated to support legal aid and exploring additional ways for the profession to give back to help increase legal aid and pro bono services.

Benchers then engaged in discussions regarding what access to justice issues the Law Society should prioritize, including advocating for judicial vacancies to be filled and for judicial diversity to continue to improve in order to better reflect the diverse population of the province and liaising with the courts to ensure that the delivery of virtual court services continues to help increase access for those across the province.

Mr. Avison indicated that these discussions would provide guidance in terms of what would be prioritized and brought back to Benchers for greater consideration at future meetings.

Updates

Before reviewing the updates, Mr. Avison informed Benchers that a prosecutor was attacked outside of the Vancouver Law Courts. He indicated that he was deeply concerned about the incident, and that further information would be provided once available.

13. Lawyers Indemnity Fund: Program Report for 2023

This item was rescheduled to a future meeting.

For Information

14. External Appointment: Law Foundation of BC

There was no discussion on this item.

15. 2024 Schedule of Bencher and Executive Committee Meetings

There was no discussion on this item.

16. 2025 Schedule of Bencher and Executive Committee Meetings

There was no discussion on this item.

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

AB
2024-02-27

Amendments to the *Code of Professional Conduct for BC* regarding technological competence

To: Benchers

Purpose: Approval (Consent Agenda)

From: Staff

Date: March 8, 2024

Issue

1. The effective use of technology has become an essential element of effective practice. Since the beginning of the COVID-19 pandemic, technology such as Microsoft Teams has allowed video hearings, email filing has been permitted,¹ the ability to e-file via Court Services Online² has increased, and virtual commissioning of affidavits has occurred.³ There have also been rapid changes to the abilities of generative artificial intelligence (“AI”).⁴
2. While the *Code of Professional Conduct for BC* (the “BC Code”) already provides extensive guidance on the standard of a competent lawyer, the pervasive impact of technology in the contemporary delivery of legal services merits specific guidance to lawyers on the competent use of technology.

Background

3. The BC Code is published under the authority of the Benchers of the Law Society of British Columbia for the guidance of lawyers in British Columbia. It is significantly related to the Federation of Law Societies of Canada (“Federation”) Model Code, though there are points of variance from the Model Code that the Benchers have considered to be appropriate for guiding practice in British Columbia.
4. In 2019, the Federation Council voted to incorporate commentary on the need for technological competence into the Model Code of Professional Conduct, specifically adding commentaries 4A and 4B (as set in the Resolution at para. 9 below) to Model Code rule 3.1-2. The first paragraph (4A) reminds lawyers that being a competent lawyer means being conversant in technology and the second paragraph (4B) acknowledges that there is a contextual nature to how conversant each lawyer must be.
5. The Law Society of British Columbia and the Law Society of Ontario abstained from voting on the resolution to add the commentaries to the Model Code. Both law societies were of the view that the competence provisions as drafted⁵ were sufficient to alert lawyers in British Columbia and Ontario to the need to be competent in their delivery of legal services, including the use of technology.
6. As of February 2024, all of the provincial and territorial law societies except for British Columbia and Prince Edward Island have adopted the Model Code amendments to support

¹ [Email Filing | Provincial Court of British Columbia](#)

² [CSO Notice JAN 2024 v2.pdf \(gov.bc.ca\)](#)

³ [Notice to the Public Re Affidavits - SC - March 27 2020.pdf \(bccourts.ca\)](#) and [M E M O R A N D U M \(provinciacourt.bc.ca\)](#)

⁴ The Law Society issued guidance for lawyers on professionally responsible use of generative AI, available online here: [Practice Resource: Guidance on Professional Responsibility and Generative AI](#)

⁵ BC version available online here: [Chapter 3 – Relationship to Clients | The Law Society of British Columbia](#)

the need for technological competence of their licensees.⁶ Ontario was the most recent province having adopted them in June 2022.⁷

Analysis & Recommendation

7. **Appendix “A”** to this report provides an analysis in regard to the range of factors that should be considered in amending the Rules and the Code of Professional Conduct.
8. Staff recommend incorporating the technological competence commentaries into the BC Code. While without the new commentaries lawyers are still required to provide legal services, including using technology, to the standard of a competent lawyer, adding the commentaries ensures that lawyers and the public have guidance specifically about technological competency.

Decision

9. The following resolution is offered for Benchers approval:

BE IT RESOLVED that the commentary to BC Code rule 3.1-2 be amended to include the following:

[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:

- (a) the lawyer's or law firm's practice areas;**
- (b) the geographic locations of the lawyer's or firm's practice; and**
- (c) the requirements of clients.**

⁶ Quebec has language that addresses competent use of information technology but differently than the Model Code language, see here: [CQLR c B-1, r 3.1 | Code of Professional Conduct of Lawyers | CanLII](#).

⁷ An Ontario court has also held that counsel and the court alike have a duty of technological competence: *Worsoff v. MTCC 1168*, [2021 ONSC 6493](#) (CanLII).

APPENDIX A: Factor Analysis for the proposed BC Code Amendments (Technological Competence)

<i>POLICY IMPACT</i>	Public Interest ⁸	Legality ⁹	Organizational Impact ¹⁰	Reconciliation with Indigenous Peoples ¹¹	Equity, Diversity, & Inclusion ¹²	Transparency & Disclosure ¹³
<i>No Action</i>	Lawyers will still be required to be competent.	Within the jurisdiction of the Law Society to determine contents of the BC Code.	Staff already have tools to assess competence.	N/A: The subject matter is lawyer technological competency.	N/A: The subject matter is lawyer technological competency.	N/A: The subject matter is lawyer technological competency.
<i>Recommendation</i>	Provide guidance to the profession, and to the public about the technological competency they can expect from their lawyer.	Within the jurisdiction of the Law Society to determine contents of the BC Code.	Amendments to the BC Code will require limited effort by staff to implement.	N/A: The subject matter is technological competency.	N/A: The subject matter is technological competency.	N/A: The subject matter is lawyer technological competency.

Continued on next page →

⁸ **Public Interest:** How does the option address the provision of legal services and the administration of justice; what harm or risk to the public this intends to ameliorate or prevent, or how it intends to improve, innovate and/or modernize a specific process or situation?

⁹ **Legality:** How will the option raise or affect any legal requirements placed on the Law Society, statutory or otherwise, or affect outstanding legal issues or litigation? Would the approval of the policy initiative or principle be expected to require rule changes? Will it require changes to the governing, or other, legislation?

¹⁰ **Organizational Impact:** What are the implications on staff, resources, cost, etc.

¹¹ **Reconciliation with Indigenous Peoples:** Does this option address reconciliation? If so, how?

¹² **Equity, Diversity & Inclusion:** How will the option affect the Law Society’s equitable treatment of diverse individuals? How will it advance the Law Society’s objectives in relation to equity, diversity and inclusion?

¹³ **Transparency & Disclosure:** Is the option expected to enhance or detract from current levels of transparency and disclosure?

APPENDIX A: Factor Analysis for the proposed BC Code Amendments (Technological Competence) (continued)

STAKEHOLDER IMPACT	Public Relations¹⁴	Government Relations¹⁵	Licensee Impact¹⁶	Privacy Impact¹⁷
<i>No Action</i>	Lawyers will still be required to be competent.	N/A: The subject matter lawyer competency, which is within the Law Society's mandate.	Will not have specific guidance in the BC Code for lawyers about technological competency.	N/A - No collection, use, storage, or disclosure by Law Society.
<i>Recommendation</i>	The amendments will provide guidance to the profession, and to the public about the technological competency they can expect from their lawyer.	N/A: The subject matter lawyer competency, which is within the Law Society's mandate.	The amendments will provide guidance to lawyers about technological competency.	N/A - No collection, use, storage, or disclosure by Law Society.

¹⁴ **Public Relations:** How will the option enhance or detract from the public perception of the Law Society or the legal profession generally?

¹⁵ **Government Relations:** How will the option impact the government perception of the legal profession?

¹⁶ **Licensee Impact:** How will the option enhance or detract from the perception of those who are licensed by the Law Society? How will it weaken or strengthen confidence in the regulator? Does it place an undue burden on licensees or on particular groups of licensees?

¹⁷ **Privacy Impact:** Does the option contemplate the collection, use, storage, or disclosure of personal information?

Terms of Reference: Equity, Diversity, and Inclusion Advisory Committee

To: Benchers

Purpose: Approval (Consent Agenda)

From: Staff

Date: March 8, 2024

Executive Summary

1. Amendments to Equity, Diversity and Inclusion Advisory Committee's (EDIAC) Terms of Reference are required to address the Mental Health Task Force's recommendation, adopted at the December 8, 2023 Bencher meeting, that EDIAC assume future responsibility for monitoring, reporting on, and making policy recommendations in respect of mental health-related issues. The Benchers' approval of the amendments, as set out in the proposed Resolution below, are now sought to implement this policy decision.

Proposed Resolution

2. The following Resolution is presented for the Benchers' consideration and decision:

BE IT RESOLVED THAT the Benchers adopt the following amendments to the Equity, Diversity and Inclusion Advisory Committee's Terms of Reference, pursuant to the recommendation of the Mental Health Task Force, as approved by the Benchers in December 2023:

Mandate

The Equity Diversity and Inclusion Advisory Committee monitors and advises the Benchers on developments and issues affecting equity, diversity, and inclusion **and mental health issues** in the legal profession and the justice system, and promotes equity, diversity, and inclusion **and well-being** in the legal profession.

Composition

1. Under Rule 1-47, the President may appoint any person as a member of a committee of the Benchers and may terminate the appointment.
2. The Committee must be chaired by a Bencher and must have at least one appointed Bencher.

Meeting Practices

1. The Committee operates in a manner that is consistent with the Benchers' Governance Policies.
2. The Committee meets as required.
3. Quorum consists of at least half of the members of the Committee (Rule 1-16(1)).

Accountability

The Committee is accountable to the Benchers.

Reporting Requirements

With respect to its general monitoring and advisory function, the Committee is to provide status reports to the Benchers twice a year.

Duties and Responsibilities

1. To fulfill responsibilities related to equity, diversity, and inclusion **and mental health issues** contemplated by the Strategic Plan, or specific tasks assigned by the Benchers;
2. To monitor issues affecting equity, diversity, and inclusion **and mental health** in the legal profession and the justice system in British Columbia;
3. To advise the Benchers on priority planning and respective issues affecting equity, diversity, and inclusion **and mental health** in the legal profession and the justice system – including the identification of matters that may require the immediate attention by the Benchers;
4. To develop recommendations, policy options, collaborations, and initiatives;
5. To analyze implications of Law Society initiatives as they relate to equity, diversity, and inclusion **and mental health issues**; and
6. To attend to such other matters as the Benchers may refer to the Committee.

Analysis & Recommendation

3. Recognizing the continued relevance of mental health issues to the Law Society’s public interest mandate, the Mental Health Task Force’s [final report](#) outlines a transition plan designed to support the Law Society’s ongoing engagement with mental health matters. The recommendations in the Mental Health Task Force’s final report, including that EDIAC assume primary responsibility for future policy and advisory functions in relation to mental health, were unanimously approved by the Benchers at the December 8, 2023 meeting.
4. Currently, the EDIAC Terms of Reference do not include responsibility for future policy and advisory functions in relation to mental health, and require amendment to reflect this responsibility.
5. Accordingly, staff have prepared the proposed amendments to the EDIAC Terms of Reference to implement the Task Force’s recommendation. The proposed amendments have been reviewed with EDIAC.

Next Steps

6. Following the adoption of the proposed Resolution, EDAIC will take on an expanded role in relation to addressing mental health issues as part of its monitoring and advisory functions.

Appointed Benchers and Tribunal Adjudicator Expenses

To: Benchers

Purpose: Approval (Consent Agenda)

From: Executive Committee

Date: March 8, 2024

Issue

1. There are inconsistencies between the current rates of remuneration for appointed Benchers for time spent as adjudicators under the Law Society Tribunal’s Appointee Adjudicator Expense and Reimbursement Policy (“Appointee Adjudicator policy”) and the Bencher Expense Reimbursement Policy (“Bencher policy”). For clarity and consistency, the amounts to be reimbursed to any person performing adjudicative functions should reside in one policy, and in order to achieve that goal, the two policies need to be amended.

Background

2. Following consultation with WATSON regarding Bencher compensation, Benchers approved changes to the Bencher compensation policies at the December 2022 meeting. The changes included an increase in the per diems paid to appointed Benchers attending hearings as public adjudicators and additional compensation for preparation time. The policy is included as **Appendix A**, and summarized below.
3. Under the Bencher policy, appointed Benchers are able to claim \$225 for 2.5 hours or less spent attending oral hearings or adjudicator training, and \$450 for a full day oral hearings, hearings in writing or adjudicator training. Time spent *preparing* for an oral or written hearing is also eligible for reimbursement, with \$112.50 provided for 2.5 hours or less for an oral hearing and \$225 provided for a full day of preparation for an oral hearing and any preparation for hearings in writing. In practice, this means appointed Benchers could be eligible under the Bencher policy to receive a maximum amount of \$337.50 for 2.5 hours or less of time spent preparing and attending a hearing, and a maximum amount of \$675 for time spent preparing and attending a full-day hearing, regardless of whether or not that time falls on the same or different calendar days.
4. At the November 2023 meeting, Benchers approved the revised Appointee Adjudicator policy, which included an increase to per diem rates for eligible adjudication activities. Eligible adjudication activities are defined in section 5 of the policy, which is attached as **Appendix B**, and the policy appears to apply to all adjudicators.
5. The Appointee Adjudicator policy provides for reimbursement of \$135 for an hour or less time, \$390 for more than an hour and up to and including three hours of time, and \$645 for more than three hours of time spent on any eligible adjudication activity. There is a maximum daily rate of \$645 that can be claimed for any calendar day, including travel time. The range of activities that qualify for reimbursement as eligible adjudicator activities is much broader than what is provided for under the Bencher policy. For example, time spent deliberating with fellow panelists and reviewing and commenting on reasons authored by a fellow panel member are activities that qualify for reimbursement under this policy.

6. Appointed Bencher Paul Barnett raised with staff the issue of the inconsistencies between the two policies in January 2024, and the Executive Committee reviewed this matter at its February 22, 2024 meeting.

Discussion

7. As noted above, there are inconsistencies between the two policies regarding the remuneration rates for appointed Benchers serving as adjudicators and appointee adjudicators. The key differences are as follows:
- The Bencher policy approaches reimbursement on a *per hearing* basis, with an amount for attendance at the hearing itself and an amount for preparation regardless of the calendar day this work occurs on. However, the Appointee Adjudicator policy remuneration rates focus on time spent on eligible adjudicator activities on a given calendar day, which allows for more flexibility and recognizes that these activities may be done on different calendar days.
 - The activities for which you can be reimbursed are limited under the Bencher policy and only include hearing time, preparation and training. Under the Appointee Adjudicator policy, a claim can be made for time spent on any eligible adjudicator activities, which is a much broader list of activities than what is provided for under the Bencher policy.
 - Under the Bencher policy, the full day rate for attending a hearing is \$450, which is lower than the full day rate for attending a hearing under the Appointee Adjudicator policy at \$645.
 - Under the Bencher policy, an appointed Bencher can only claim \$112.50 for preparation that is 2.5 hours or less for an oral hearing; whereas the amount for an hour of time or less for preparation for an oral hearing under the Appointee Adjudicator policy is higher at \$135.
 - Under the Bencher policy, an appointed Bencher would be eligible to claim up to a maximum of \$675 in respect of a full day hearing, regardless of whether or not that work occurred on the same or different calendar days (\$450 per diem and \$225 preparation). Under the Appointee Adjudicator policy, an adjudicator can claim \$645 for time spent attending a full day hearing, but there is also the ability to claim additional amounts for any time spent in respect of those matters that take place on another calendar day. For example, Day 1: \$390 preparation + Day 2: \$645 full day hearing = \$1,035, which could result in a higher overall reimbursement amount.

- Only one situation was identified where the appointed Bencher policy is more generous than the Appointee Adjudicator policy. Attendance at a one hour hearing qualifies for reimbursement of \$225 under the Bencher policy, whereas an adjudicator would only be able to claim \$135 for that same hour under the Appointee Adjudicator policy. Additionally, the amount to be claimed for preparation for a full day hearing under the Appointee Adjudicator policy could range from between \$135 for an hour less, to \$390 for more than an hour and up to and including three hours, or \$645 for a full day of preparation; whereas under the Bencher policy, an appointed Bencher could only claim \$225 for preparation for a full day hearing. To address the potential discrepancy between these rates, it is recommended that the Appointee Adjudicator policy be amended so that the rate for an hour or less of time spent within a given calendar day be increased from \$135 to \$225.
8. The Executive Committee considered this matter at its February 22, 2024 meeting and agreed to recommend to Benchers that the Bencher expense reimbursement policy be revised, so that the Tribunal’s Appointee Adjudicator Policy would be the only policy in respect of time spent on adjudicative activities. In order to address any potential situations where an appointed Bencher would receive less compensation under the Appointee Adjudicator policy, the Committee agreed to recommend to Benchers that the policy be amended so that the rate for an hour or less of time spent within a given calendar day be increased from \$135 to \$225. The Committee was also of the view that the policy and rates should be reviewed in a year or so to gather some data on the amounts being claimed, and for which activities, to determine if any changes need to be made to the policy.

Decision

9. The Executive Committee recommends to the Benchers the following resolution:

BE IT RESOLVED that:

- a) **the Bencher expense reimbursement policy be revised to remove paragraph 5.09 *Per Diems for Appointed Benchers attending hearings as public adjudicators*;**
- b) **the LSBC Tribunal’s Appointee Adjudicator Remuneration and Expense Policy be amended so that the rate in paragraph 4.01(a) for an hour or less of time spent within a given calendar day be increased from \$135 to \$225; and**
- c) **the LSBC Tribunal’s Appointee Adjudicator Remuneration and Expense Policy will apply to appointed Benchers when acting as adjudicators.**

Policy

Bencher expense reimbursement

~~June 2022~~ February 2024

1 Policy

1.01 As a Bencher, you are entitled to be reimbursed by the Law Society for reasonable expenses incurred in conducting Law Society business.

2 Purpose

2.01 The purpose of this Policy is to:

- a) Provide guidelines for Benchers with respect to reimbursable expenses in conducting Law Society business,
- b) Reflect the obligation of the Law Society to be accountable for the expenditure of all funds,
- c) Assist the Law Society in overseeing Bencher expenses,
- d) Outline the required supporting documentation to ensure sufficient back-up is provided for annual audit and CRA compliance purposes.

3 Scope

3.01 This Policy applies to all current Benchers when conducting Law Society business.

4 Responsibility

4.01 Benchers are responsible for:

- a) Following the policy and guidelines for expenses.
- b) Retaining and submitting, in a timely manner, all original detailed receipts along with a completed Law Society Bencher Expense claim form (Appendix A) and the necessary information to allocate costs to the relevant Law Society business conducted. **Electronic submission is preferred.**
Please Note: Credit card receipts alone are not sufficient back-up for audit and CRA compliance purposes.
- c) When applicable, Benchers are expected to apportion expenses incurred between Law Society business and other business being conducted.

4.02 The Chief Financial Officer (CFO) or delegate is responsible for:

- a) Providing guidance to Benchers regarding appropriate types and levels of expenses.
- b) Reporting on Bencher expenses to the President and management as required.

4.03 The President and/or Executive Director/Chief Executive Officer (ED/CEO) is responsible for:

- a) Approving exceptions to the Bencher Expense Reimbursement Policy, where the policy guidelines are exceeded due to extenuating circumstances, and communicating those decisions to the CFO/Director of Finance.

5 Allowable Law Society business expenses

5.01 Travel

- a) The Law Society recognizes the following as reimbursable travel expenses related to Law Society business:
 - (i) Airfare
 - (ii) Ferries
 - (iii) Airport fees
 - (iv) Public transportation costs
 - (v) Parking
 - (vi) Taxi fares, including gratuity, to and from, airport, hotel or residence
 - (vii) Use of a Bencher's personal vehicle for business travel will be reimbursed on a per kilometer basis at the current automobile allowance rate prescribed by the Canada Revenue Agency.
- b) Flights under 4 hours should be booked as Economy Class. For flights more than 4 hours, if no coupons are available to upgrade to Executive Class, flights can be booked as Executive Class for the ED/CEO, the Executive Committee, and/or Benchers travelling on official Law Society business.

5.02 Accommodation

The Law Society recognizes the following as reimbursable accommodation expenses related to Law Society business:

- a) Where an overnight stay in Vancouver is necessary, hotel overnight accommodation will be reimbursed for a standard single room equivalent at one of the Law Society's

pre-approved hotels at the negotiated rates. Please follow the instructions on the corporate hotel listing to ensure the Law Society corporate rate is obtained.

- b) Appendix C contains further details on corporate hotel rate information and will be updated and published by the Law Society periodically.
- c) Hotel expenses will be covered for one night per meeting day, unless flight schedules or ground transportation do not permit earlier travel, or if the scheduled timing of the meeting or event requires arrival the night before the meeting.

5.03 Meals and Beverages

- a) The Law Society reimburses reasonable meals and beverage costs incurred while travelling or conducting Law Society business. If the Law Society is already providing a meal (breakfast, lunch or dinner), additional meal or beverage costs should not be claimed for these meals.
- b) Original detailed restaurant meal receipts including details on meals and beverages purchased, must be submitted along with the expense reimbursement claims. The names of all individuals in attendance, that are included in the reimbursable cost of the meal, must be listed on the expense claim or written on the back of the original receipt.
- c) Daily Limit for Bencher Meals and Beverages - You will be reimbursed up to a maximum of \$125 per day for meal and beverage costs, inclusive of tips and tax, which are incurred while travelling or conducting Law Society business. The daily limit amount includes breakfast, lunch and dinner. For all meals other than group meals, you must pay for your meals separately and submit individual meal and beverage expense receipts. Daily meals and beverages costs will be reimbursed only based on receipted amounts, up to the maximum daily limit.
- d) Group Meals - A group meal is defined as any meal or dinner at which there are six or more Bencher attendees. At group meals, reasonable meals and beverages costs will be reimbursed, and the President or the most senior Bencher in attendance should pay for the group meal. Group meals include Bencher dinners which occur after Thursday night committee meetings and after Executive Committee meetings, and any year end dinners organized by the Law Society, at a restaurant outside the Law Society building.
- e) Reimbursement for alcoholic beverages is not permitted on individual expense claims. Alcoholic beverages will be reimbursed for Group Meals.

5.04 Child Care and Dependent Adult Care

- a) Reasonable child care and/or dependent adult care expenses incurred by you will be reimbursed by the Law Society for those related expenses incurred during the hours of scheduled Law Society committee meetings or Law Society business and during the time taken to travel to and from such meetings, where they are in addition to what

would normally be incurred by you.

- b) If you are attending scheduled Law Society meetings away from your hometown, reasonable related child care and/or dependent adult care expenses will be reimbursed for any time spent overnight in order to attend a Law Society function, hearing or committee meeting, where they are in addition to what would normally be incurred by you. The caregiver should be a non-family member.
- c) You should indicate the number of hours and hourly rate and attach receipts to the Bencher Expense Claim Form.

5.05 Other Reimbursable Expenses

The Law Society will reimburse reasonable miscellaneous expenses incurred in conducting Law Society business such as:

- a) Communication costs such as fax, long distance telephone charges, teleconferences and cellular phone usage.
- b) Administration costs such as postage and courier.

In an effort to reduce the impact on the environment, we encourage the reduction of photocopying and printing wherever possible. If you are unable to view the meeting materials in an electronic format, a printed hard copy can be provided upon request.

5.06 Non-reimbursable Expenses

The Law Society does not reimburse expenses incurred for hospitality gifts, meals, accommodation or other expenses where you are hosted by family or friends or stay in your own secondary residence instead of a hotel.

5.07 Spousal/Guest Travel Expenses

The Law Society occasionally hosts functions that are designated by the President or ED/CEO as events to which a Bencher may bring a guest. Additional expenses that are incurred for a guest to travel to a designated event will be reimbursed in accordance with this policy, see Guest Travel Policy (Appendix B). For Benchers who receive remuneration, by honorarium or per diem, the amount that is reimbursed for guest travel will be considered a taxable benefit. For additional information please contact the CFO/Director of Finance.

5.08 Per Diems* for **Appointed Benchers attending Bencher Day, committee meetings, and other Law Society requested meetings and events**

- a) All Appointed Benchers are eligible to receive \$450 for every full day and \$225 for every half-day during which they attend any meeting or other event at the request of the Law Society. Meetings and events lasting more than 4 hours will be considered a full day event and less than 4 hours will be considered a half day event.

- b) In addition, any out-of-town Appointed Benchers are eligible to receive \$150 when they must travel for an extended period of time, for the purpose of attending a full day or half day event. Appointed Benchers are eligible for the travel per diem to and from home, on the day the travel takes place including when travel takes place the same day as the event.
- c) Time spent preparing for meetings or other events is eligible for half the per diem amount for each meeting.

5.09 Per Diems* for **Appointed Benchers** attending hearings as public adjudicators

The rates for remuneration, types of eligible expenses, and the maximum claimable amounts for appointed Benchers when acting as appointee adjudicators are set out in the Appointee Adjudicator Remuneration and Expense Policy.

Please note that per diems and expenses incurred when acting as appointee adjudicators must be submitted using the *Committee Member, Appointee Adjudicator & Volunteer Expense Claim Form* and submitted to TribunalRegistry@lsbc.org.

~~a) Oral Hearings~~

~~\$450 per diem and \$225 if 2.5 hours or less~~

~~\$225 for preparation for each day of oral hearing and \$112.50 if 2.5 hours or less~~

~~\$225 for a hearing cancelled less than 1 week before scheduled date and the hearing is either not rescheduled or the assigned public adjudicator is not available for the new hearing date~~

~~b) Hearings in Writing~~

~~\$450 for a hearing in writing~~

~~\$225 preparation fee~~

~~e) Adjudicator Training~~

~~\$450 per diem and \$225 if 2.5 hours or less~~

~~No preparation fee~~

- ~~d) In addition, any out of town public adjudicators in the hearing panel pool are eligible to receive \$150 when they must travel for an extended period of time, for the purpose of attending an event. Public adjudicators in the hearing panel pool are eligible for the per diem to and from home on the day the travel takes place including when travel takes place the same day as the event.~~

*T4's will be issued for all per diems that are paid during the year.

6 Submission of expense claims

6.01 Submission of Expense Claims

- a) Original detailed receipts and boarding passes must be submitted with either a completed Bencher Expense Claim Form, or a Committee Member, Public Adjudicator & Volunteer Expense Claim Form (if the claim is for an Appointed Bencher is attending a Hearing as a public adjudicator). Electronic submission of expense claims is preferred, by sending the scanned expense claim form and receipts to ap@lsbc.org, however paper expense reports and receipts are also accepted.
- b) The Bencher Expense Claim Form / Committee Member, Public Adjudicator & Volunteer Expense Claim Form should include the purpose for incurring the expense(s) such as attending a Committee, Call Ceremony, etc.
- c) Receipts supporting a business meal should indicate the reason for the business meeting and the names of those in attendance. Original detailed receipts must be submitted along with the expense reimbursement claims.
- d) Claims for reimbursement should be submitted on a monthly basis.

7 Reporting

7.01 Reporting

- a) In accordance with the Law Society's internal control and governance processes, reports on Bencher expenses will be produced as required.
- b) On an annual basis, a summary of reimbursed Bencher expenses by individual will be posted on the Members Only section of the Law Society website.

Policy

Bencher expense reimbursement

February 2024

1 Policy

1.01 As a Bencher, you are entitled to be reimbursed by the Law Society for reasonable expenses incurred in conducting Law Society business.

2 Purpose

2.01 The purpose of this Policy is to:

- a) Provide guidelines for Benchers with respect to reimbursable expenses in conducting Law Society business,
- b) Reflect the obligation of the Law Society to be accountable for the expenditure of all funds,
- c) Assist the Law Society in overseeing Bencher expenses,
- d) Outline the required supporting documentation to ensure sufficient back-up is provided for annual audit and CRA compliance purposes.

3 Scope

3.01 This Policy applies to all current Benchers when conducting Law Society business.

4 Responsibility

4.01 Benchers are responsible for:

- a) Following the policy and guidelines for expenses.
- b) Retaining and submitting, in a timely manner, all original detailed receipts along with a completed Law Society Bencher Expense claim form (Appendix A) and the necessary information to allocate costs to the relevant Law Society business conducted. **Electronic submission is preferred.** Please Note: Credit card receipts alone are not sufficient back-up for audit and CRA compliance purposes.
- c) When applicable, Benchers are expected to apportion expenses incurred between Law Society business and other business being conducted.

4.02 The Chief Financial Officer (CFO) or delegate is responsible for:

- a) Providing guidance to Benchers regarding appropriate types and levels of expenses.
- b) Reporting on Bencher expenses to the President and management as required.

4.03 The President and/or Executive Director/Chief Executive Officer (ED/CEO) is responsible for:

- a) Approving exceptions to the Bencher Expense Reimbursement Policy, where the policy guidelines are exceeded due to extenuating circumstances, and communicating those decisions to the CFO/Director of Finance.

5 Allowable Law Society business expenses

5.01 Travel

a) The Law Society recognizes the following as reimbursable travel expenses related to Law Society business:

- i. Airfare
- ii. Ferries
- iii. Airport fees
- iv. Public transportation costs
- v. Parking
- vi. Taxi fares, including gratuity, to and from, airport, hotel or residence
- vii. Use of a Bencher's personal vehicle for business travel will be reimbursed on a per kilometer basis at the current automobile allowance rate prescribed by the Canada Revenue Agency.

b) Flights under 4 hours should be booked as Economy Class. For flights more than 4 hours, if no coupons are available to upgrade to Executive Class, flights can be booked as Executive Class for the ED/CEO, the Executive Committee, and/or Benchers travelling on official Law Society business.

5.02 Accommodation

The Law Society recognizes the following as reimbursable accommodation expenses related to Law Society business:

- a) Where an overnight stay in Vancouver is necessary, hotel overnight accommodation will be reimbursed for a standard single room equivalent at one of the Law Society's pre-approved

hotels at the negotiated rates. Please follow the instructions on the corporate hotel listing to ensure the Law Society corporate rate is obtained.

- b) Appendix C contains further details on corporate hotel rate information and will be updated and published by the Law Society periodically.
- c) Hotel expenses will be covered for one night per meeting day, unless flight schedules or ground transportation do not permit earlier travel, or if the scheduled timing of the meeting or event requires arrival the night before the meeting.

5.03 Meals and Beverages

- a. The Law Society reimburses reasonable meals and beverage costs incurred while travelling or conducting Law Society business. If the Law Society is already providing a meal (breakfast, lunch or dinner), additional meal or beverage costs should not be claimed for these meals.
- b. Original detailed restaurant meal receipts including details on meals and beverages purchased, must be submitted along with the expense reimbursement claims. The names of all individuals in attendance, that are included in the reimbursable cost of the meal, must be listed on the expense claim or written on the back of the original receipt.
- c. Daily Limit for Bencher Meals and Beverages - You will be reimbursed up to a maximum of \$125 per day for meal and beverage costs, inclusive of tips and tax, which are incurred while travelling or conducting Law Society business. The daily limit amount includes breakfast, lunch and dinner. For all meals other than group meals, you must pay for your meals separately and submit individual meal and beverage expense receipts. Daily meals and beverages costs will be reimbursed only based on receipted amounts, up to the maximum daily limit.
- d. Group Meals - A group meal is defined as any meal or dinner at which there are six or more Bencher attendees. At group meals, reasonable meals and beverages costs will be reimbursed, and the President or the most senior Bencher in attendance should pay for the group meal. Group meals include Bencher dinners which occur after Thursday night committee meetings and after Executive Committee meetings, and any year end dinners organized by the Law Society, at a restaurant outside the Law Society building.
- e. Reimbursement for alcoholic beverages is not permitted on individual expense claims. Alcoholic beverages will be reimbursed for Group Meals.

5.04 Child Care and Dependent Adult Care

- a. Reasonable child care and/or dependent adult care expenses incurred by you will be reimbursed by the Law Society for those related expenses incurred during the hours of scheduled Law Society committee meetings or Law Society business and during the time taken to travel to and from such meetings, where they are in addition to what would normally be incurred by you.

- b. If you are attending scheduled Law Society meetings away from your hometown, reasonable related child care and/or dependent adult care expenses will be reimbursed for any time spent overnight in order to attend a Law Society function, hearing or committee meeting, where they are in addition to what would normally be incurred by you. The caregiver should be a non-family member.
- c. You should indicate the number of hours and hourly rate and attach receipts to the Bencher Expense Claim Form.

5.05 Other Reimbursable Expenses

The Law Society will reimburse reasonable miscellaneous expenses incurred in conducting Law Society business such as:

- a. Communication costs such as fax, long distance telephone charges, teleconferences and cellular phone usage.
- b. Administration costs such as postage and courier.

In an effort to reduce the impact on the environment, we encourage the reduction of photocopying and printing wherever possible. If you are unable to view the meeting materials in an electronic format, a printed hard copy can be provided upon request.

5.06 Non-reimbursable Expenses

The Law Society does not reimburse expenses incurred for hospitality gifts, meals, accommodation or other expenses where you are hosted by family or friends or stay in your own secondary residence instead of a hotel.

5.07 Spousal/Guest Travel Expenses

The Law Society occasionally hosts functions that are designated by the President or ED/CEO as events to which a Bencher may bring a guest. Additional expenses that are incurred for a guest to travel to a designated event will be reimbursed in accordance with this policy, see Guest Travel Policy (Appendix B). For Benchers who receive remuneration, by honorarium or per diem, the amount that is reimbursed for guest travel will be considered a taxable benefit. For additional information please contact the CFO/Director of Finance.

5.08 Per Diems* for **Appointed Benchers** attending Bencher Day, committee meetings, and other Law Society requested meetings and events

- a. All Appointed Benchers are eligible to receive \$450 for every full day and \$225 for every half-day during which they attend any meeting or other event at the request of the Law Society. Meetings and events lasting more than 4 hours will be considered a full day event and less than 4 hours will be considered a half day event.

- b. In addition, any out-of-town Appointed Benchers are eligible to receive \$150 when they must travel for an extended period of time, for the purpose of attending a full day or half day event. Appointed Benchers are eligible for the travel per diem to and from home, on the day the travel takes place including when travel takes place the same day as the event.
- c. Time spent preparing for meetings or other events is eligible for half the per diem amount for each meeting.

5.09 Per Diems* for **Appointed Benchers** attending hearings as public adjudicators

The rates for remuneration, types of eligible expenses, and the maximum claimable amounts for appointed Benchers when acting as appointee adjudicators are set out in the Appointee Adjudicator Remuneration and Expense Policy.

Please note that per diems and expenses incurred when acting as appointee adjudicators must be submitted using the *Committee Member, Appointee Adjudicator & Volunteer Expense Claim Form* and submitted to TribunalRegistry@lsbc.org.

*T4's will be issued for all per diems that are paid during the year.

6 Submission of expense claims

6.01 Submission of Expense Claims

- a) Original detailed receipts and boarding passes must be submitted with either a completed Bencher Expense Claim Form, or a Committee Member, Public Adjudicator & Volunteer Expense Claim Form (if the claim is for an Appointed Bencher is attending a Hearing as a public adjudicator). Electronic submission of expense claims is preferred, by sending the scanned expense claim form and receipts to ap@lsbc.org, however paper expense reports and receipts are also accepted.
- b) The Bencher Expense Claim Form / Committee Member, Public Adjudicator & Volunteer Expense Claim Form should include the purpose for incurring the expense(s) such as attending a Committee, Call Ceremony, etc.
- c) Receipts supporting a business meal should indicate the reason for the business meeting and the names of those in attendance. Original detailed receipts must be submitted along with the expense reimbursement claims.
- d) Claims for reimbursement should be submitted on a monthly basis.

7 Reporting

7.01 Reporting

- a) In accordance with the Law Society's internal control and governance processes, reports on Bencher expenses will be produced as required.
- b) On an annual basis, a summary of reimbursed Bencher expenses by individual will be posted on the Members Only section of the Law Society website.



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.

- 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~~ \$225 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.



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.

- 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) \$225 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.

CEO Report

March 8, 2024

Prepared for: Benchers

Prepared by: Don Avison, KC

1. Single Legal Regulator Update

Discussions with the Ministry of the Attorney General, and with the Attorney General directly, have continued over the course of the last month.

At this point, the Ministry continues to work towards completing legislation that they hope to have the Legislative Assembly consider during the spring session of the Assembly, which commenced on February 20th and is expected to conclude in mid-May.

The position of the Law Society remains focused on concerns about both process and substance. On the process side, discussions regarding the proposed legislative framework continue to take place behind closed doors, with non-disclosure requirements limiting the capacity for meaningful discourse with the profession(s) and with the public on core changes that have profound significant public policy implications. Together with the Canadian Bar Association - BC Branch, and others, we continue to assert that there needs to be a much greater degree of openness and transparency. Several other organizations have been expressing similar concerns. This includes the Lawyers' Rights Watch Canada (LRWC) who, in recent correspondence with the Attorney General said this:

“We have become aware of concerns about draft legislation that has now been developed but has not yet been circulated for consultation with either the legal profession or the public. We draw your attention to international law and standards requiring public participation in the development of any proposed laws that affect peoples’ rights and freedoms. Democratic promulgation of laws includes “broad consultation with individuals and civil society organizations”. Full public consultation is essential to address significant concerns and controversy about the surmised intrusion of legislation on the independence of the legal profession and the right of individuals to legal representation of their choosing. There are potentially interprovincial and international issues to be canvas as well. LRWC’s experience in countries where the rule of law is weak or nonexistent has made us aware of the importance that Canada set a solid example of adherence to the rule of law and of the independence of the legal profession.”

The Law Society shares that view.

On the substance side, we continue to advise government that, based on the content of the consultation drafts that we have seen to date, the planned legislation continues to fall short on what we see as the fundamental imperative of preserving the independence of the legal profession. We have been clear that any legislation that fails to ensure that necessary independence will inevitably result in litigation.

However, it is also important to note that we have had a number of discussions with the Attorney General over the course of the last month, the most recent of which has been more encouraging. Benchers will be briefed on those discussions during the *in camera* portion of the March 8th Bencher meeting.

2. “Through the Looking Glass: Independence and Regulation in BC”

This half-day conference on lawyer independence and regulation of lawyers will be held in-person (Vancouver) and virtually on April 12, 2024. Attorney General Sharma, President Dhaliwal and President Scott Morishita have been invited to speak on the topic of “A New Regulatory Framework”.

The Honourable Chief Justice Christopher E. Hinkson, The Honourable Beverley McLachlin (Former Chief Justice of Canada) and The Honourable Judge David St. Pierre from the Provincial Court are also invited to speak regarding Judicial Independence. The panel on the Independence of the Bar includes Marilyn Sandford, KC and David Layton, KC.

Registration information is available through CBABC’s website for those who are interested in attending.

3. Regional Sessions

A number of sessions on Law Society initiatives and on the implications of the anticipated Single Legal Regulator legislation are planned for the first half of 2024.

President Dhaliwal and I attended the winter meetings of the Kootenay Bar Association recently in Fernie, along with President Scott Morishita and Kerry Simmons, KC of the CBABC. A similar discussion will take place at the Prince George “Law Talks” in May.

We anticipate there will be other sessions on Vancouver Island, in the Thompson – Okanagan regions, and in the lower mainland.

4. Towards the 2024 Bencher Retreat

This year’s retreat will take place on May 30 – June 1.

First Vice-President Brook Greenberg, KC has confirmed that the focus of the retreat will be on the issue of bullying, harassment and discrimination in the legal profession. The aim will be to explore where people are reluctant to use the full discipline process, whether there are

alternative processes the Law Society could create to help address these issues. Mr. Greenberg will provide more detail about what is envisaged at the March 8 Benchers meeting.

Planning is well underway for the event and further information, such as details about the venue, schedule and associated logistics, will be provided in the coming weeks.

5. Model Code Consultations

Benchers will recall that the Federation of Law Societies of Canada has provided a consultation paper on proposed amendments to the Model Code in response to call to Action 27 and that a copy of the paper was provided to Benchers. The consultation paper is being considered by the Truth & Reconciliation Advisory Committee and will be subsequently considered by the Equity, Diversity, and Inclusion Advisory Committee. The original deadline for responses was May 31st but the Federation has extended the deadline to November 29th to ensure there is sufficient time for meaningful consideration and discussion. A draft submission will be shared with the Benchers and non-Benchers Advisory Committee members in advance of the revised deadline.

While our advisory committees will be considering the proposed amendments, Benchers are also encouraged to bring the proposed amendments to the attention of lawyers in their communities when the opportunity arises. Any feedback can be directed to Claire Marchant, Director of Policy & Practice.

6. Law Society Selected as One of BC's Top 100 Employers for Third Year in a Row

I am pleased to announce the Law Society of BC has been named one of BC's Top 100 Employers for the third year in a row. This recognition reflects our commitment to fostering a positive and inclusive work culture, investing in employee development, and maintaining high standards of workplace excellence.

I am incredibly grateful to our staff, who prioritize our mandate to protect the public, show a high degree of integrity every day and who continually step up to help one another, making the Law Society such a wonderful place to work. Our staff's dedication and hard work are proof that our strength lies in our people.

Don Avison, KC
Chief Executive Officer

Rule Amendments: Client Identification and Verification

To: Benchers

Purpose: Discussion and Decision

From: Executive Committee

Date: March 8, 2024

Issue

1. While electronic documents and virtual processes have not to date been sufficiently reliable for use in our client verification process, identification technology has improved sufficiently to permit its use when technological tools fit for the purpose are used properly. Additionally, the requirements regarding use of an agent when a client is outside Canada do not adequately respond to situations where a lawyer could utilize a method of verification that does not require the client and lawyer to be face-to-face. The Federation of Law Societies Model Rule was amended in March 2023 to address these issues and the Law Society Rules should be revised to reflect the changes.

Background

2. In March 2023, the Council of the Federation of Law Societies of Canada (the “Federation”) approved two amendments to its Model Rule regarding Client Identification and Verification (“CIV Model Rule”), as presented by the Anti-Money Laundering and Terrorist Financing Working Group (“AMLTFWG”).¹ The amendment changes “original” to “authentic” to remove the prohibition on use of an electronic image of a document. With this change, if they so choose, legal professionals will be able to rely on scanned or photocopied documents provided they have access to a process to authenticate the document. The amendment also allows lawyers to verify an individual’s identity using the government-issued photo identification method in the individual’s virtual presence, so long as the lawyer has a process in place to authenticate the government-issued photo identification document and to determine that it is valid and current. A further amendment clarifies and simplifies the circumstances for the use of an agent for identity verification. The Executive Committee has reviewed and recommends amendments to the Law Society Rules (the “Rules”) to reflect these changes.
3. Client identification and verification are important steps for lawyers to take to mitigate fraud and money laundering. Until recently, the CIV Model Rule had required that identification and verification documents must be “valid, original and current.” The Rules, at current, do not permit the use of electronic documents for verification of an individual’s identity.² There is an exception for the use of electronic documents to verify an organization, but it is limited.³ While virtual verification was deemed acceptable in very limited circumstances to respond to the peak of the COVID-19 pandemic, it is not permitted under the Rules.

¹AMLTFWG, as it was known of the time of the report to the Federation Council is now called the “Standing Committee on Anti-Money Laundering and Terrorist Financing”. Law Society staff members Jeanette McPhee and Gurprit Bains were part of the AMLTFWG and are part of the Standing Committee.

² Rule 3-102(3).

³ Rule 3-102(3.1).

4. The Federation Council considered Model Rule amendments in March 2023. The meeting materials outlined the rationale for the proposed amendments (listed below) that were proposed by the AMLTFWG⁴ in response to certain changes in the regulations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*:⁵
 - a. The first proposed amendment revised the requirement to verify a client’s identification. The amendment replaced the word “original” with the word “authentic”, and removed the prohibition on using an electronic image of a document in client verification; and
 - b. The second proposed amendment removed what was considered to be a superfluous and confusing requirement in Model Rule section 6(3) with respect to the use of an agent to verify the identity of clients located outside of Canada. The amended Rule continues to permit the use of an agent, but also allows for verification through authentication of documents through the processes contemplated by the first amendment or as otherwise contemplated by permissible non-face-to-face verification methods.
5. The Federation Council unanimously approved a resolution resulting in these amendments being made to the Model Rules.⁶
6. As of February 12, 2024 the Law Societies of Manitoba, Ontario, New Brunswick, and Newfoundland & Labrador have adopted the amendments to the Model Rule into their respective Rules. The Law Societies of Alberta, Saskatchewan, Prince Edward Island, Yukon, Nunavut, Northwest Territories, the Barreau de Quebec,⁷ the Nova Scotia Barristers’ Society, and Chambre des notaires du Quebec are yet to incorporate the changes.

Analysis, Drafting Notes and Recommendation

7. The Executive Committee recommends substantially implementing the Federation’s Model Rule amendments. **Appendix “A”** to this report provides an analysis in regard to the range of factors that should be considered in amending the Rules and the Code of Professional Conduct. **Appendix “B”** to this document sets out redline and clean versions of the proposed

⁴ Summary of the proposed rules is taken from November 21, 2022 Memorandum from AMLTFWG to Council of the Federation.

⁵Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, 2019: SOR/2019-240: removing a prohibition on relying on scanned or photocopied documents to verify identity.

⁶ As the Law Society of British Columbia’s member, Brook Greenberg provided this update to Benchers at the April 2023 meeting: [2023-04-28agenda.pdf \(lawsociety.bc.ca\)](#).

⁷ The Barreau du Quebec rules require “reliable” government-issued photo ID, while the others require “original” documents.

amendments to the Rules.

8. The draft amendments largely reflect the amendments that were made to the Model Rule, with one exception in regard to the government-issued photo identification method of verification to add clarity in regard to the parameters for use of electronic documents.
9. The Model Rule leaves to guidance what “authentic” means for the purposes of different documents. There was concern this approach had the potential to be too vague, but attempts to define “authentic” in manner that worked for the different methods of verification proved challenging. In the face of creating a definition with unintended consequences, a more specific wording in the context of using electronic documents for the government-issued photo ID method has been included (the method that is likely to be the most popular and requiring of the most safeguards), and what “authentic” means for the dual process method, credit file method, and verification for organizations will be addressed in guidance.⁸
10. As part of implementing these revisions an opportunity was taken to address a few housekeeping items. Amendments to Rule 3-102(2)(a)(iii) and Rule 3-102(2)(b) were made so to clarify that lawyers (or their staff, as permitted under Rule 3-99(3)⁹) must obtain any documents used for these verification methods rather than receiving them from the client. It has never been considered acceptable to have one’s client give them to the lawyer, and the amendments are intended to make that point clearer. In addition, the language “from a reliable source” was added to Rule 3-102(2)(a)(iii)(C) so that it mirrored the requirements in (A) and (B).¹⁰ References to “client” were also amended to be “individual” in Rule 3-102(2)(a)(i)(B) for consistency.

Decision

11. The Executive Committee proposes the following resolution for Bencher consideration and decision:

BE IT RESOLVED THAT the Law Society of British Columbia adopt amendments to the Law Society Rules as set out in Appendix “C” to this document.

⁸ Resources will be made available to the profession on all aspects of the amendments if accepted.

⁹ Rule 3-99(3) states: “In this division, the responsibilities of a lawyer may be fulfilled by the lawyer’s firm, including members or employees of the firm wherever located.”

¹⁰ As the language of “obtained by the lawyer from a reliable source” would as proposed be applicable to all three subsections to Rule 3-102(2)(a)(iii), the language was moved up to Rule 3-102(2)(a)(iii) to streamline the drafting.
DM4335225

APPENDIX “A”: Factor Analysis for Proposed Rule Change (Client Verification)

POLICY IMPACT	Public Interest¹¹	Legality¹²	Organizational Impact¹³	Reconciliation with Indigenous Peoples¹⁴	Equity, Diversity, & Inclusion¹⁵	Transparency & Disclosure¹⁶
<i>No Action</i>	Denies clients and lawyers a modernizing option for client verification, leaves agent requirements unclear.	Within rulemaking authority to amend the Rules and within jurisdiction to determine if BC Rules will align with Federation Model Rules.	Calls to the Practice Advisors with confusion about why amendments have not been incorporated, potential non-compliance in misimpression that amendments have been made or confusion regarding current agent requirements.	Denies clients a modernizing option for client verification.	N/A: Subject matter is verification Rule compliance.	N/A: Subject matter is verification Rule compliance.
<i>Amendment</i>	Improves and modernizes the process of client verification, clarifies and simplifies requirements regarding use of an agent.	Within rulemaking authority to amend and align with Federation Model Rules.	Guidance materials and a communication strategy will need to be undertaken, but not extensive effort.	Allows flexibility to accept electronic documents through authentication.	N/A: Subject matter is verification Rule compliance.	N/A: Subject matter is verification Rule compliance.

Continued on next page →

¹¹ **Public Interest:** How does the option address the provision of legal services and the administration of justice; what harm or risk to the public this intends to ameliorate or prevent, or how it intends to improve, innovate and/or modernize a specific process or situation?

¹² **Legality:** How will the option raise or affect any legal requirements placed on the Law Society, statutory or otherwise, or affect outstanding legal issues or litigation? Would the approval of the policy initiative or principle be expected to require rule changes? Will it require changes to the governing, or other, legislation?

¹³ **Organizational Impact:** What are the implications on staff, resources, cost, etc.

¹⁴ **Reconciliation with Indigenous Peoples:** Does this option address reconciliation? If so, how?

¹⁵ **Equity, Diversity & Inclusion:** How will the option affect the Law Society’s equitable treatment of diverse individuals? How will it advance the Law Society’s objectives in relation to equity, diversity and inclusion?

¹⁶ **Transparency & Disclosure:** Is the option expected to enhance or detract from current levels of transparency and disclosure?

APPENDIX “A”: Factor Analysis for Proposed Rule Change (Client Verification) (continued)

STAKEHOLDER IMPACT	Public Relations¹⁷	Government Relations¹⁸	Licensee Impact¹⁹	Privacy Impact²⁰
<i>No Action</i>	May look unfavourable due to not aligning with Federation and other jurisdictions.	May be seen as outdated, unclear, and unaligned to other jurisdictions and the Federation.	Limits or delays processing due to only “original” document requirements, potential non-compliance in mis-impression that amendments have been made or confusion regarding current agent requirements.	N/A - No collection, use, storage, or disclosure by Law Society.
<i>Amendment</i>	Substantially in line with Federation and other jurisdictions, keeping up with emerging technology and client needs.	Demonstrating substantial alignment with the Federation Model Rules and maintaining consistency across jurisdictions, keeping up with emerging technology and client needs, rule clarity.	Allows flexibility to accept electronic documents through authentication, provides clarity on use of an agent.	N/A - No collection, use, storage, or disclosure by Law Society. May have privacy implications for licensees if use authentication tools, up to licensees to navigate.

¹⁷ **Public Relations:** How will the option enhance or detract from the public perception of the Law Society or the legal profession generally?

¹⁸ **Government Relations:** How will the option impact the government perception of the legal profession?

¹⁹ **Licensee Impact:** How will the option enhance or detract from the perception of those who are licensed by the Law Society? How will it weaken or strengthen confidence in the regulator? Does it place an undue burden on licensees or on particular groups of licensees?

²⁰ **Privacy Impact:** Does the option contemplate the collection, use, storage, or disclosure of personal information?

LAW SOCIETY RULES

Division 11 – Client Identification and Verification

Definitions

3-98 (1) In this division,

“**client**” includes

- (a) another party that a lawyer’s client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and
- (b) in Rules 3-102 to 3-105, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction;

“**disbursements**” has the same meaning as in Rule 3-53 [*Definitions*];

“**expenses**” has the same meaning as in Rule 3-53;

“**financial institution**” has the same meaning as in Rule 3-53;

“**financial transaction**” means the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money;

“**interjurisdictional lawyer**” means a member of a governing body who is authorized to practise law in another Canadian jurisdiction;

“**money**” includes cash, currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person’s title or right to or interest in them, and electronic transfer of deposits at financial institutions;

“**organization**” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

“**professional fees**” has the same meaning as in Rule 3-53;

“**public body**” has the same meaning as in Rule 3-53;

“**reporting issuer**” means an organization that is

- (a) a reporting issuer within the meaning of the securities law of any province or territory of Canada,
- (b) a corporation whose shares are traded on a stock exchange that is prescribed by the *Income Tax Act* (Canada) and operates in a country that is a member of the Financial Action Task Force on Money Laundering, or
- (c) controlled by a reporting issuer;

“**securities dealer**” means an entity that is authorized under federal, provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than an entity that acts exclusively on behalf of an entity so authorized.

(2) In this division, a person controls an organization if the person, directly or indirectly, has the power to elect a majority of the directors or equivalent body of the organization by virtue of

DM4302972

LAW SOCIETY RULES

- (a) ownership or direction over voting securities of the organization,
- (b) being or controlling the general partner of a limited partnership, or
- (c) being a trustee of or occupying a similar position in the organization.

Application

3-99 (1) Subject to subrule (2), this division applies to a lawyer who is retained by a client to provide legal services.

(1.1) The requirements of this division are in keeping with a lawyer's obligation to know the lawyer's client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

(2) Rules 3-100 to 3-108 and 3-110 do not apply when a lawyer provides legal services

- (a) on behalf of the lawyer's employer, or
- (b) in the following circumstances if no financial transaction is involved:
 - (i) as part of a duty counsel program sponsored by a non-profit organization;
 - (ii) in the form of pro bono summary advice.

(2.1) A lawyer is not required to repeat compliance with Rules 3-100 to 3-106 when another lawyer or an interjurisdictional lawyer who has complied with those rules or the equivalent provisions of a governing body

- (a) engages the lawyer to provide legal services to the client as an agent, or
- (b) refers a matter to the lawyer for the provision of legal services.

(3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm wherever located.

Requirement to verify client identity

3-102 (1) When a lawyer provides legal services in respect of a financial transaction, the lawyer must

- (a) obtain from the client and record, with the applicable date, information about the source of money, and
- (b) verify the identity of the client using documents or information described in subrule (2).

(2) For the purposes of subrule (1), the client's identity must be verified by means of the following documents and information, provided that documents are valid, ~~original~~-authentic and current and information is valid and current:

- (a) if the client is an individual
 - (i) an identification document issued by the government of Canada, a province or territory or a foreign government, other than a municipal government, that
 - (A) contains the individual's name and photograph, and

DM4302972

LAW SOCIETY RULES

- (B) is used in the ~~physical~~ presence of the client individual to verify that the name and photograph are those of the client individual,
- (ii) information in the individual's credit file that is used to verify that the name, address and date of birth in the credit file are those of the individual, if that file is located in Canada and has been in existence for at least three years, or
- (iii) any two of the following obtained by the lawyer from a reliable source with respect to the individual:
- (A) information ~~from a reliable source~~ that contains the individual's name and address that is used to verify that the name and address are of those of the individual;
- (B) information ~~from a reliable source~~ that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual;
- (C) information that contains the individual's name and confirms that the individual has a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information;
- (b) if the client is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation obtained by the lawyer from a government registry as to the existence, name and address of the organization, including the names of its directors where applicable, such as
- (i) a certificate of corporate status issued by a public body,
- (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
- (iii) a copy of a similar record obtained from a public body that confirms the organization's existence;
- (c) if the client is an organization that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.
- (2.1) For the purposes of subrule (2) (a) (i), an electronic image of a document issued by the government of Canada, a province or a territory or a foreign government, other than a municipal government, may be treated as authentic provided the lawyer has used reliable technology to confirm that the identification document is genuine, and has confirmed that the name and photograph are those of the individual in the identification document.
- (3) ~~An electronic image of a document is not a document or information for the purposes of this rule.—[rescinded]~~
- (3.1) ~~Despite subrule (3), an electronic image of a document that is created by and obtained directly from a registry maintained by the government of Canada, a province or a territory or~~

DM4302972

LAW SOCIETY RULES

~~a foreign government, other than a municipal government, may be treated as a document or information for the purposes of subrule (2) (b) [rescinded]~~

- (4) For the purposes of subrule (2) (a) (iii)
 - (a) the information referred to must be from different sources, and
 - (b) the individual, the lawyer or an agent is not a source.
- (5) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of a parent or guardian of the individual.
- (6) To verify the identity of an individual who is 12 years of age or over but less than 15 years of age, the lawyer may refer to information referred to in subrule (2) (a) (iii) (A) that contains the name and address of a parent or guardian of the individual and verifying that the address is that of the individual.

Use of an agent for client verification

- 3-104** (1) A lawyer may retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*], provided the lawyer and the agent have an agreement or arrangement in writing for this purpose in compliance with this rule.
- (2) to (4) [rescinded 12/2019, effective 01/2020]
- (5) ~~A lawyer must retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*] to verify the person's identity and must have an agreement or arrangement in writing with the agent for that purpose if the client~~
- ~~(a) is not present in Canada, and~~
- ~~(b) is not physically present before the lawyer. [rescinded]~~
- (6) A lawyer must not rely on information obtained by an agent under this rule unless the lawyer
- (a) obtains from the agent all of the information obtained by the agent under that agreement or arrangement, and
 - (b) is satisfied that the information is valid and current and that the agent verified identity in accordance with Rule 3-102 [*Requirement to verify client identity*].
- (7) A lawyer may rely on an agent's previous verification of an individual client if the agent was, at the time of the verification
- (a) acting in the agent's own capacity, whether or not the agent was acting under this rule, or
 - (b) acting as an agent under an agreement or arrangement in writing entered into with another lawyer required under this division to verify the identity of a client.

DM4302972

LAW SOCIETY RULES

Division 11 – Client Identification and Verification

Definitions

- 3-98** (1) In this division,
- “**client**” includes
- (a) another party that a lawyer’s client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and
 - (b) in Rules 3-102 to 3-105, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction;
- “**disbursements**” has the same meaning as in Rule 3-53 [*Definitions*];
- “**expenses**” has the same meaning as in Rule 3-53;
- “**financial institution**” has the same meaning as in Rule 3-53;
- “**financial transaction**” means the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money;
- “**interjurisdictional lawyer**” means a member of a governing body who is authorized to practise law in another Canadian jurisdiction;
- “**money**” includes cash, currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person’s title or right to or interest in them, and electronic transfer of deposits at financial institutions;
- “**organization**” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;
- “**professional fees**” has the same meaning as in Rule 3-53;
- “**public body**” has the same meaning as in Rule 3-53;
- “**reporting issuer**” means an organization that is
- (a) a reporting issuer within the meaning of the securities law of any province or territory of Canada,
 - (b) a corporation whose shares are traded on a stock exchange that is prescribed by the *Income Tax Act* (Canada) and operates in a country that is a member of the Financial Action Task Force on Money Laundering, or
 - (c) controlled by a reporting issuer;
- “**securities dealer**” means an entity that is authorized under federal, provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than an entity that acts exclusively on behalf of an entity so authorized.
- (2) In this division, a person controls an organization if the person, directly or indirectly, has the power to elect a majority of the directors or equivalent body of the organization by virtue of

DM4302972

LAW SOCIETY RULES

- (a) ownership or direction over voting securities of the organization,
- (b) being or controlling the general partner of a limited partnership, or
- (c) being a trustee of or occupying a similar position in the organization.

Application

3-99 (1) Subject to subrule (2), this division applies to a lawyer who is retained by a client to provide legal services.

(1.1) The requirements of this division are in keeping with a lawyer's obligation to know the lawyer's client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

(2) Rules 3-100 to 3-108 and 3-110 do not apply when a lawyer provides legal services

- (a) on behalf of the lawyer's employer, or
- (b) in the following circumstances if no financial transaction is involved:
 - (i) as part of a duty counsel program sponsored by a non-profit organization;
 - (ii) in the form of pro bono summary advice.

(2.1) A lawyer is not required to repeat compliance with Rules 3-100 to 3-106 when another lawyer or an interjurisdictional lawyer who has complied with those rules or the equivalent provisions of a governing body

- (a) engages the lawyer to provide legal services to the client as an agent, or
- (b) refers a matter to the lawyer for the provision of legal services.

(3) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm wherever located.

Requirement to verify client identity

3-102 (1) When a lawyer provides legal services in respect of a financial transaction, the lawyer must

- (a) obtain from the client and record, with the applicable date, information about the source of money, and
- (b) verify the identity of the client using documents or information described in subrule (2).

(2) For the purposes of subrule (1), the client's identity must be verified by means of the following documents and information, provided that documents are valid, authentic and current and information is valid and current:

- (a) if the client is an individual
 - (i) an identification document issued by the government of Canada, a province or territory or a foreign government, other than a municipal government, that
 - (A) contains the individual's name and photograph, and

DM4302972

LAW SOCIETY RULES

- (B) is used in the presence of the individual to verify that the name and photograph are those of the individual,
 - (ii) information in the individual's credit file that is used to verify that the name, address and date of birth in the credit file are those of the individual, if that file is located in Canada and has been in existence for at least three years, or
 - (iii) any two of the following obtained by the lawyer from a reliable source:
 - (A) information that contains the individual's name and address that is used to verify that the name and address are of those of the individual;
 - (B) information that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual;
 - (C) information that contains the individual's name and confirms that the individual has a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information;
 - (b) if the client is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation obtained by the lawyer from a government registry as to the existence, name and address of the organization, including the names of its directors where applicable, such as
 - (i) a certificate of corporate status issued by a public body,
 - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence;
 - (c) if the client is an organization that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.
- (2.1) For the purposes of subrule (2) (a) (i), an electronic image of a document issued by the government of Canada, a province or a territory or a foreign government, other than a municipal government, may be treated as authentic provided the lawyer has used reliable technology to confirm that the identification document is genuine, and has confirmed that the name and photograph are those of the individual in the identification document.
- (3) [rescinded](3.1) [rescinded]
- (4) For the purposes of subrule (2) (a) (iii)
- (a) the information referred to must be from different sources, and
 - (b) the individual, the lawyer or an agent is not a source.
- (5) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of a parent or guardian of the individual.

DM4302972

LAW SOCIETY RULES

- (6) To verify the identity of an individual who is 12 years of age or over but less than 15 years of age, the lawyer may refer to information referred to in subrule (2) (a) (iii) (A) that contains the name and address of a parent or guardian of the individual and verifying that the address is that of the individual.

Use of an agent for client verification

- 3-104** (1) A lawyer may retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*], provided the lawyer and the agent have an agreement or arrangement in writing for this purpose in compliance with this rule.
- (2) to (4) [rescinded 12/2019, effective 01/2020]
- (5) . [rescinded]
- (6) A lawyer must not rely on information obtained by an agent under this rule unless the lawyer
- (a) obtains from the agent all of the information obtained by the agent under that agreement or arrangement, and
 - (b) is satisfied that the information is valid and current and that the agent verified identity in accordance with Rule 3-102 [*Requirement to verify client identity*].
- (7) A lawyer may rely on an agent's previous verification of an individual client if the agent was, at the time of the verification
- (a) acting in the agent's own capacity, whether or not the agent was acting under this rule, or
 - (b) acting as an agent under an agreement or arrangement in writing entered into with another lawyer required under this division to verify the identity of a client.

TOPIC: Client Identification and Verification Rules

RESOLUTION:

BE IT RESOLVED to amend the Law Society Rules as follows:

1. Rule 3-102 is amended

- (a) *in subrule (2), by striking out the word “original” and substituting “authentic”;*
- (b) *in subrule (2) (a) (i) (B), by striking out the word “physical” and by striking out the word “client” each time it appears and by replacing it with “individual”;*
- (c) *in subrule (2) (a) (iii)*
 - (i) *by striking out “with respect to the individual” and by replacing it with “obtained by the lawyer from a reliable source”;*
 - (ii) *in subrules (A) and (B), by striking out “from a reliable source”;*
- (d) *in subrule (2) (b), by adding “obtained by the lawyer” between “a written confirmation” and “from a government registry”*
- (e) *by adding the following as subrule 2.1*

“For the purposes of subrule (2) (a) (i), an electronic image of a document issued by the government of Canada, a province or a territory or a foreign government, other than a municipal government, may be treated as authentic provided the lawyer has used reliable technology to confirm that the identification document is genuine, and has confirmed that the name and photograph are those of the individual in the identification document.”
- (f) *by rescinding subrules (3) and (3.1)*

2. Rule 3-104 (5) is rescinded.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Rule Amendments: Executive Committee Election Tie Votes

To: Benchers

Purpose: Discussion and Decision

From: Executive Committee

Date: March 8, 2024

Issue

1. Rule 1-41 provides for the election of three elected Benchers and the election of one appointed Bencher to the Executive Committee. However, when an election for the appointed Bencher position results in a tie vote, and subsequent elections also result in a tie vote, the Rule does not provide for a workable solution.

Background

2. Each year, the Benchers must elect one appointed Bencher to the Executive Committee. The Law Society Rules have long stipulated that the vote for the appointed Bencher is to be conducted amongst only the appointed Benchers. Until recently, only one appointed Bencher was nominated and no elections were required. However, over the last few years, there have been two or more candidates for the one position on the Executive Committee. With a pool of only six voters, the possibility of a tie vote is significant. Of the past five elections for the appointed Bencher position on the Executive Committee, three have resulted in a tie vote.¹
3. The Benchers last considered the issue of Executive Committee elections in July 2019. The Governance Committee reported that it had examined the issue on the basis that all Benchers, regardless of whether they are elected or appointed, have the same rights and duties. Consistent with that view, the Governance Committee concluded that the rules should not contain unnecessary distinctions with regard to the process for electing members of the Executive Committee. The Governance Committee therefore recommended the Benchers approve amendments to Rule 1-41 to reconcile the different voting methods, such that all Benchers would be eligible to vote for all four of the Bencher positions on the Executive Committee.
4. During the discussion on the recommendation at the Bencher meeting, several Benchers expressed concerns about allowing elected Benchers to vote for appointed Benchers as this might affect the independence of the appointed Benchers, or at least the public's perception of the election process. Ultimately, the recommendation of the Governance Committee was not adopted by the Benchers and it remained that only appointed Benchers could vote in the initial election for the appointed Bencher position on the Executive Committee and any subsequent elections in the event of a tie vote.
5. However, given the frequency of tie-votes in subsequent appointed Bencher elections, the Executive Committee discussed the issue and agreed to recommend rule amendments to

¹ Elections held in 2020, 2022 and 2023 for the appointed Bencher position resulted in a tie vote.

address the tie-vote situation. However, it was agreed that the appointed Benchers would first be consulted on the proposed rule amendments.

Discussion

6. A better balance can be struck to maintain the independence of the appointed Benchers in selecting the appointed Bencher to sit on the Executive Committee, while also allowing for a more effective way of resolving a tie-vote in an election.
7. In January 2024, the appointed Benchers were consulted in the proposal outlined below, and were in support of moving forward with this approach:
 - a) to maintain the initial election for the appointed Bencher position being a vote amongst the appointed Benchers only, which goes part way towards addressing the concerns expressed at the Bencher meeting in July 2019; and
 - b) if a second election is required to break a tie-vote in the initial election, the subsequent elections would be held with all Benchers (both elected and appointed) voting on the appointed Bencher position.
8. The Executive Committee considered the issue at its February 22, 2024 meeting, at which time the Committee resolved to recommend that Benchers approve the proposed revision to Rule 1-41.

Decision

9. The Executive Committee recommends that Benchers approve the following resolution:

BE IT RESOLVED that the Benchers approve the proposed revision to Rule 1-41, in the form attached.

LAW SOCIETY RULES

Election of Executive Committee

- 1-41** (1) The Benchers must elect 4 Benchers to serve as members of the Executive Committee for each calendar year as follows:
- (a) 3 elected Benchers;
 - (b) 1 appointed Bencher.
- (2) A person elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (a).
- (2.1) A Bencher reappointed as a Bencher, or eligible to be reappointed as a Bencher, for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (b).
- (3) A Bencher who is eligible for election under subrule (1) may become a candidate by notifying the Executive Director in writing by November 22.
- (4) If there are more candidates than there are positions to be elected, the Executive Director must conduct a ballot.
- (5) The Executive Director must specify a date no later than December 6 for the return of the ballots, and a ballot returned after that date is not valid.
- (6) Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee as follows:
- (a) all Benchers are eligible to vote for elected Benchers;
 - (b) appointed Benchers are eligible to vote for appointed Benchers.
- (7) to (9) [rescinded; (8) moved to (2.1)]
- (10) If a vote is required for an election under this rule,
- (a) it must be conducted by secret ballot,
 - (b) a ballot must be rejected if it contains votes for more candidates than there are positions to be filled, and
 - (c) when more than one Bencher is to be elected, the candidates with the most votes, up to the number of positions to be filled, are elected.
- (11) If, because of a tie vote or for any other reason, the Benchers fail to elect 4 members of the Executive Committee under subrule (1), or if a vacancy occurs on or before August 31 of any year, the Benchers or the appointed Benchers, as the case may be, must promptly hold an election to fill the vacancy.
- (11.1) When Despite subrule (3), when a tie vote causes an election under subrule (11)
- (a) despite subrule (3), the candidates who were tied are the only candidates, and
 - (b) despite subrule (6) (b), all Benchers are eligible to vote.

LAW SOCIETY RULES

- (12) The Executive Director may conduct an election for members of the Executive Committee partly or entirely by electronic means.
- (13) This rule applies, with the necessary changes and so far as applicable, to an election conducted partly or entirely by electronic means.

LAW SOCIETY RULES

Election of Executive Committee

- 1-41** (1) The Benchers must elect 4 Benchers to serve as members of the Executive Committee for each calendar year as follows:
- (a) 3 elected Benchers;
 - (b) 1 appointed Bencher.
- (2) A person elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (a).
- (2.1) A Bencher reappointed as a Bencher, or eligible to be reappointed as a Bencher, for a term that includes the calendar year for which members of the Executive Committee are to be elected is eligible for election under subrule (1) (b).
- (3) A Bencher who is eligible for election under subrule (1) may become a candidate by notifying the Executive Director in writing by November 22.
- (4) If there are more candidates than there are positions to be elected, the Executive Director must conduct a ballot.
- (5) The Executive Director must specify a date no later than December 6 for the return of the ballots, and a ballot returned after that date is not valid.
- (6) Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee as follows
- (a) all Benchers are eligible to vote for elected Benchers;
 - (b) appointed Benchers are eligible to vote for appointed Benchers.
- (7) to (9) [rescinded; (8) moved to (2.1)]
- (10) If a vote is required for an election under this rule,
- (a) it must be conducted by secret ballot,
 - (b) a ballot must be rejected if it contains votes for more candidates than there are positions to be filled, and
 - (c) when more than one Bencher is to be elected, the candidates with the most votes, up to the number of positions to be filled, are elected.
- (11) If, because of a tie vote or for any other reason, the Benchers fail to elect 4 members of the Executive Committee under subrule (1), or if a vacancy occurs on or before August 31 of any year, the Benchers or the appointed Benchers, as the case may be, must promptly hold an election to fill the vacancy.
- (11.1) When a tie vote causes an election under subrule (11)
- (a) despite subrule (3), the candidates who were tied are the only candidates, and
 - (b) despite subrule (6) (b), all Benchers are eligible to vote.

LAW SOCIETY RULES

- (12) The Executive Director may conduct an election for members of the Executive Committee partly or entirely by electronic means.
- (13) This rule applies, with the necessary changes and so far as applicable, to an election conducted partly or entirely by electronic means.

TOPIC: Election of Appointed Bencher to Executive Committee**RESOLUTION:**

BE IT RESOLVED to amend the Law Society Rules as follows:

1. By rescinding Rule 1-41 (11.1) and substituting:

(11.1) When a tie vote causes an election under subrule (11)

(a) despite subrule (3), the candidates who were tied are the only candidates, and

(b) despite subrule (6) (b), all Benchers are eligible to vote.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Rule Amendments: Call Ceremonies

To: Benchers

Purpose: Discussion and Decision

From: Executive Committee

Date: March 8, 2024

Issue

1. Rule 2-84(2.1) permits a lawyer who has been called and admitted in another Canadian jurisdiction to choose whether or not to be presented in open court and allows the Executive Director to exempt a lawyer, or a category of lawyers, from the requirement to be presented in open court. Given the current level of engagement from lawyers attending call and admission ceremonies, it is recommended that the rules be amended to make presentation in open court optional for all lawyers.

Background

2. As a result of the pandemic, call and admission ceremonies were postponed until late 2021. The result of that postponement meant that there were approximately 1,700 – 1,900 candidates through to the end of 2021 who would be required to be presented in open court under the rules at that time. Given the sheer number of candidates to be called, the Benchers approved an amendment to Rule 2-84 to provide that transfers from other Canadian jurisdictions may choose to be called and, for the period of time necessary to eliminate the backlog of those waiting to be called, that articulated students seeking first call and admission may also choose whether to be called in accordance with Rule 2-84.

Discussion

3. The total number of eligible candidates for call and admission between September 1, 2019 and December 31, 2023 was 3,703 of which 2,617 were articulated students and 1,086 were transfer candidates.
4. Out of the 1,086 eligible transfer candidates, 170 chose to attend a ceremony, 593 opted out of attending, 102 indicated that they would like to attend but have not responded to the invitations to any of the ceremonies that have been held, and 221 have not responded at all.
5. Out of the 2,617 eligible articulated students, 1,178 have attended a ceremony, 598 opted out of attending a ceremony, 663 indicated that they would like to attend but have not responded to the invitations to any of the ceremonies that have been held, and 178 have not responded at all.
6. Overall, while 85% of the eligible transfer candidates and 55% of the eligible articulated students have not actually attended a call ceremony between September 1, 2019 and December 31, 2023, it is also clear that for some transfer candidates and articulated students attendance at a call ceremony is meaningful.

7. The Executive Committee considered the issue at its February 22, 2024 meeting, at which time the Committee resolved to recommend that Benchers approve an amendment to Rule 2-84 to make participation in a call ceremony optional for all eligible transfer candidates and articulated students.

Decision

8. The Executive Committee recommends that Benchers approve the following resolution:

BE IT RESOLVED that the Benchers approve the proposed revision to Rule 2-84, in the form attached.

LAW SOCIETY RULES

Barristers and solicitors' oath and presentation in court

2-84 (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.

(2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court ~~must,~~

(a) must, before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and

(b) may be presented in open court before one or more of the judges of the Supreme Court.

(2.1) ~~Despite subrule (2)~~

~~(a) a lawyer who has been called and admitted in another Canadian jurisdiction before taking the barristers' and solicitors' oath under subrule (2) (a) is permitted but not required to be presented in open court under subrule (2) (b), and~~

~~(b) the Executive Director may exempt a lawyer or a category of lawyers from the requirement to be presented in open court under subrule (2) (b). [rescinded]~~

(3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.

(4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2) (a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.

~~(5) The Executive Director must not renew a practising certificate issued under subrule (4) unless the lawyer has been presented in open court if required under this rule. [rescinded]~~

(6) ~~Despite subrule (5)~~

~~(a) the Executive Director may renew a certificate issued under subrule (4) on or after September 1 of the same year as its expiry, and~~

~~(b) the Benchers may, by resolution, extend the time for a lawyer or a category of lawyers to be presented in open court. [rescinded]~~

DM4330807
DM4330807

LAW SOCIETY RULES

Barristers and solicitors' oath and presentation in court

- 2-84** (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.
- (2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court
- (a) must, before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and
 - (b) may be presented in open court before one or more of the judges of the Supreme Court.
- (2.1) [rescinded]
- (3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.
- (4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2) (a), the Executive Director must issue to the applicant a practising certificate, a non-practising certificate or a Canadian legal advisor certificate, as the case may be.
- (5) [rescinded]
- (6) [rescinded]

Call Ceremonies

RESOLUTION:

BE IT RESOLVED that Law Society Rule 2-84 is amended as follows:

- 1. By deleting the word “must” in subrule (2):*
- 2. By adding the word “must” at the beginning of subrule (2) (a);*
- 3. By adding the word “may” at the beginning of subrule (2) (b);*
- 4. Subrules (2.1), (5) and (6) are rescinded.*

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

Disclosure and Privacy Review

To: Benchers

Purpose: Discussion and Decision (in principle)

From: Staff

Date: March 8, 2024

Issue

1. There is a compelling case for reviewing the Law Society’s disclosure and privacy practices, including any Law Society Rules (“Rules”) that prescribe what the Executive Director *must*, *may* and *must not* disclose, to determine whether the current approach remains relevant in 2024. It has been more than 15 years since the Disclosure and Privacy Task Force completed a comprehensive review of the Law Society’s disclosure and privacy practices and Rules. Since the Task Force presented its final report in 2006, the law on disclosure and privacy, as well as technology, has evolved along with public expectations of the Law Society and its handling of information.
2. More recently, situations have arisen that highlight various ways in which the Law Society’s current practices and Rules hamper the Law Society’s ability to disclose information even when transparency is overwhelmingly in the public interest. A review of the Law Society’s disclosure and privacy practices and Rules is not only timely but necessary, in order to achieve the Law Society’s goal of greater public confidence in the Law Society’s ability to regulate the legal profession in the public interest.

Background

3. An initial review by staff identified over 60 instances in the Rules that address what *must*, *may*, and *must not* be disclosed.
4. An update of disclosure and privacy policies relating to Law Society processes was identified in the Strategic Plan¹ in furtherance of the Law Society’s goal of greater public confidence in its ability to regulate in the public interest. Circumstances have also arisen in the context of disciplinary matters where the current processes have yielded unreasonable results, which further underscores the need for a timely and comprehensive review. The following section of this report provides some examples that have been identified thus far as in need of re-evaluation.

Analysis & Recommendation

5. The following are just four examples of where the current approach should be re-validated to better balance transparency and privacy.
 - a) **Rule 3-3 (Confidentiality of complaints):** The Law Society must treat complaints confidentially, except in limited circumstances. One exception provides the Executive Director *may* disclose information about a complaint where the complaint has become

¹ Available here: [Strategic Plan 21-25 \(lawsociety.bc.ca\)](https://lawsociety.bc.ca/strategic-plan-21-25)
DM4316313

“known to the public”. This test focuses on whether the complaint itself, not the original conduct giving rise to the complaint, has become widely known (e.g. in the media). As a result, the Law Society is put in a position of being reactive rather than proactive. Situations have arisen where the originating conduct might be very well known to the public but the existence of a complaint may not be, and the focus of the test is on whether the complaint is ‘known’, rather than whether or not disclosure would be in the public interest. This Rule requires reconsideration to strike a better balance between privacy and disclosures that are in the public interest.

- b) Rule 3-10 (Interim suspension or practice conditions):** Where extraordinary action is necessary to protect the public with respect to a lawyer or articled student who is the subject of ongoing professional conduct processes, and interim action is ordered, the circumstances in which the Executive Director is permitted to disclose information to the public is limited. Rule 3-12.2 provides the Executive Director *may* disclose the fact of a Rule 3-10 order (or the refusal to make one) and the reasons for it only *upon request*. Rule 3-10(4) also provides that the Executive Director *may* disclose the fact that a condition or limitation applies and the nature of that condition or limitation. However, Rule 4-48(2) provides the Executive Director *must not* make public any decision, reasons, or action taken under Rule 3-10 before the matter is concluded and any prescribed period to initiate an appeal or review has expired. While caution is certainly warranted in formulating a decision to publish information in these cases, there may be circumstances where it is in the public interest to make limited information publicly available in the absence of a specific request, or it is clearly in the public interest to publish a decision on an interim action order in its entirety (for example, when the lawyer’s conduct has been the subject of media coverage).
- c) Rule 4-29 (Conditional Admission):** Rule 4-48(1.1) and (3) address what *must* and *may* be published in regard to a conditional admission of a discipline violation. The Executive Director *must* publish a summary of the circumstances of the admission, and *may* also publish generally other materials, but there is no mechanism to provide these materials upon request or to an individual (rather than generally). Rule 5-9 (Hearings and Exhibits) provides an avenue for any person to obtain copies of certain materials on request and at their own expense where there has been a hearing, but this Rule does not apply to Rule 4-29 as no hearing has occurred. It is not clear why information may be published generally but no provision has been made to make that same information available upon request, and this should be considered further.
- d) Former lawyers who have given undertakings to resign and not return to practice in the face of discipline:** While a lawyer who is disbarred remains listed as such in the Lawyer Directory, in the normal course when a lawyer ceases to be a member they are removed from the Lawyer Directory after two years. While this is reasonable for many

lawyers, it presents issues with lawyers who have undertaken to resign and not return to practice in the face of discipline. These former lawyers disappear from the Lawyer Directory in the normal course, making them unsearchable by the public in the Lawyer Directory despite the undertaking and the circumstances that lead to that undertaking. If the lawyer had been cited some materials would remain on the Tribunal website, but unless a member of the public was to independently search for documentation on the Tribunal website, the circumstances of a lawyer's resignation would not be clear and could leave a member of the public with the impression that a lawyer who had been cited faced no penalty. The Law Society's practices in relation to the information listed on the Lawyer Directory require review to ensure consistency, fairness and transparency, and that the public has access to the information they may be seeking.

6. It is important to note that what has been identified in this report are merely examples of the types of issues with the current Rules. Staff recommends undertaking a comprehensive review of the Law Society's disclosure and privacy practices and Rules, with a view to assuring a modern balance of privacy and transparency throughout the Rules. Undertaking an overall review of the practices and Rules will allow issues to be identified and addressed globally with a mind to how the Rules interact and interconnect, rather than addressing one amendment at a time in isolation.

Decision

7. Staff propose the following resolution for the Benchers consideration and decision:

BE IT RESOLVED that the Benchers approve, in principle, staff conducting a review of the Law Society's disclosure and privacy practices and Rules, and developing specific proposals regarding Rule amendments for consideration by the Benchers at future meetings.

Bencher Election Rule Revisions

To: Benchers

Purpose: Discussion and Decision (in principle)

From: Executive Committee

Date: March 8, 2024

Issue

1. The Bencher election rules have not been reviewed in some time. While another general election is not due to occur until fall 2025, a by-election will take place in fall 2024 to replace the outgoing 2024 President, and other by-elections can also be triggered when a Bencher resigns or is appointed to the Bench, for which the same election rules apply. It would be preferable to make any changes to the election rules well in advance of the next general election to allow sufficient time for the changes to be operationalized.

Background & Discussion

2. Some rule amendments could be made to modernize the election rules without needing to seek membership approval pursuant to section 12 of the *Legal Profession Act*.¹ These revisions would modernize the rules related to the format of elections, the length of the voting period, and voter eligibility. The below paragraphs provide background and discussion of each of these issues, including recommendations for consideration.

Election Format

3. Bencher elections have been conducted entirely by electronic means since 2019. However, many of the current election rules, which are considerable and complicated, reflect a time when the Law Society's elections were conducted via paper mail-in ballots. Given elections are now conducted exclusively electronically and have been for the past five years, the rules setting out paper-based elections are unnecessarily prescriptive, complicated, and do not reflect current practice.
4. While Rule [1-27\(1\)](#) provides for the Executive Committee to authorize the Executive Director to conduct a Bencher election partly or entirely by electronic means, this is not the

¹ Section 12 of the *Legal Profession Act* requires that the enacting of any Rules, or amendments to said Rules, regarding the following require membership approval:

- the offices of president, first vice-president or second vice-president;
- the term of office of benchers;
- the removal of the president, first vice-president, second vice-president or a bencher;
- the electoral districts for the election of benchers;
- the eligibility to be elected and to serve as a bencher;
- the filling of vacancies among elected benchers;
- the general meetings of the society, including the annual general meeting;
- the appointment, duties and powers of the auditor of the society;
- life benchers;
- the qualifications to act as auditor of the society when an audit is required under this Act.

default procedure in the rules. In order to hold an electronic election, permission is needed from the Executive Committee. This additional level of permission can create delays in the election timeline, particularly for by-elections, and does not seem to yield much benefit given the Executive Committee has to date always approved staff's request to conduct elections electronically.

5. It would be timely, administratively more efficient and would better assist with improving the readability and accuracy of the rules to simplify and modernize the election rules by updating the default election format to electronic elections and rescinding those rules that pertain specifically to paper-based elections and election processes. Should the need for a paper-based election be required in the future, the rules should authorize the Executive Director to establish all procedures, requirements, and specifications necessary to hold a paper-based election.

Recommendation: That the election rules be updated to provide for electronic elections as the default format, to revise or rescind those rules that pertain only to paper-based elections, and to authorize the Executive Director to establish election procedures should a paper-based election be required at any point in the future.

Length of Voting Period

6. In May of 2023, in the context of the by-election held to fill the vacancy left by Judge Jacqueline McQueen, then Second Vice-President Brook Greenberg, KC asked whether two full weeks of voting is required for an election, given the Law Society has held successful electronic-only voting for a few years. Voting data from the Law Society's electronic voting application shows that the majority of eligible voters cast their ballots on the first day and the last day of the voting period (57% in the 2023 Bencher General Elections), with other spikes in voting occurring immediately after a reminder notice has been sent out, which can occur at any time.
7. While the current two week voting period may have been necessary when ballots were distributed and returned by paper mail, two weeks of voting may not be required with voting being conducted electronically. With the majority of voting done on the first and last days of the election, shortening the voting period would allow for a more streamlined election process and would reduce the amount of time that candidates and voters would need to wait before receiving the election results.
8. In order to mitigate any risk of confusion over the voting period, should this change be approved, it would be communicated well in advance of the election and throughout. All voting communication and reminders would mention the closing date, which has been

effective in past elections to help ensure those who wish to vote have the opportunity to do so.

Recommendation: That the Rules be revised to shorten the voting period from two weeks to one week.

Process for Changing Voting Districts

9. A lack of modernity and flexibility is also reflected in the rules governing voter eligibility and the process for changing from one electoral district to another for the purposes of voting. [Rule 1-25](#) outlines voter eligibility and entitlement to vote in Bencher elections. The way the Rule is currently drafted allows for the categorization of members into different electoral districts based on their practicing status, residency, and location of their employer, but does not take into account a situation in which a member may be working remotely in a different district from the district in which the member's employer is located.
10. While [Rule 1-25\(5\)](#) permits a member to apply to the Executive Committee² to have their name placed on the voter list for a district other than their district allocated to them under the rules; however, these applications are often received when the voting period is already underway, and require the preparation and circulation of materials to the Executive Committee for approval. With an increase in remote work since the COVID-19 pandemic, this issue occurred more frequently over the course of the 2023 Bencher General Election. Staff received correspondence from 11 lawyers in regard to electoral districts, including three submissions seeking to apply to the Executive Committee to have their name placed on the voter list for a different district.
11. Changing the granting authority from the Executive Committee to the Executive Director to determine electoral district change requests would be more consistent with the conception of the Executive Director's role as the "electoral officer" who has the responsibility to uphold and ensure the integrity of the elections. The change would also greatly increase response time to any future change requests and avoid the potential for a conflict of interest with Committee members who would otherwise be asked to vote on the eligibility of a person seeking to move into the district in which they may be an electoral candidate.
12. However, should an applicant not be satisfied with the decision of the Executive Director in response to a change request, the applicant would have the opportunity to appeal the Executive Director's decision to the Executive Committee. This would provide an additional

² The Executive Committee may also direct the Executive Director to make the change if it is satisfied that the member has a significantly greater connection to the District in which the member wishes to vote.

avenue for applicants and ensure that the process is fair and impartial, while still allowing for efficiencies.

Recommendation: That authority be granted to the Executive Director to determine the validity of any electoral district change requests, with the opportunity to appeal the decision of the Executive Director to the Executive Committee.

13. The Executive Committee considered the proposed revisions to the Bencher election rules at its February 22, 2024 meeting and was of the view that shortening the voting period would be beneficial to candidates and to voters, as the results would be available sooner. Since elections are held electronically, and have been for several years, the Committee was of the view that one week should be sufficient for voting and did not express any concerns with revising the Rules to provide for electronic elections to be the default election format. The Committee also discussed the challenges with the current Rules regarding electoral district changes and was of the view that authority to determine the validity of these requests should be granted to the Executive Director, but with a mechanism to provide for the opportunity to appeal the decision directly to the Executive Committee. Following these discussions the Committee resolved to put forward the below resolution for Bencher approval.

Decision

14. The Executive Committee recommends that Benchers approve the following resolution:

BE IT RESOLVED that the Benchers approve, in principle, revisions to the election rules to:

- a) **provide for electronic elections to be the default election format, revise or rescind those rules pertaining to paper-based elections, and authorize the Executive Director to establish election procedures should a paper-based election be required at any point in the future;**
- b) **shorten the voting period from two weeks to one week; and**
- c) **grant authority to the Executive Director to determine the validity of any electoral district change requests, with the opportunity to appeal the decision of the Executive Director to the Executive Committee.**

Law Society
of British Columbia

National Discipline Standards Report: Update and Implementation

To: Benchers

Purpose: Update

From: Staff

Date: March 8, 2024

Background

1. The National Discipline Standards were developed as a Federation of Law Societies of Canada (the “Federation”) initiative to create uniformly high standards for all stages of the processing of complaints and disciplinary matters. The Benchers approved the adoption and implementation of the National Discipline Standards (“NDS”) at their meeting on June 13, 2014. The standards were officially implemented across all Canadian law societies as of January 2, 2015.
2. The standards address many aspects of our regulatory processes including: timeliness, public participation, transparency, accessibility, and training of adjudicators and investigators. They are aspirational.
3. Standard 24¹ requires us to report to Benchers annually. This memorandum constitutes that report.

2022 Implementation Report

4. The Law Society’s 2022 NDS progress report was provided to the Benchers at their meeting in March 2023. We also reported our progress to the Federation’s National Discipline Standards Standing Committee, which we do on an annual basis. The Federation then collates, into an Implementation Report, the annual NDS data that it receives from all of the Canadian law societies. The Implementation Report provides a high-level comparison and analysis of all of the Canadian law societies’ performance on the NDS in the previous year.
5. The 2022 Implementation Report was prepared and distributed to the law societies in August 2023. As the report is prepared for internal law society use only, we have summarized the notable points herein.
6. In 2022, the national average for meeting the standards was 86%, which represented a 3% increase over the previous two years. This is consistent with an overall upward trajectory in meeting the standards since the standards were implemented.

¹ The standards are routinely revised. The standards currently in effect were approved by the Council of the Federation of Law Societies of Canada on June 7, 2021.

7. Our performance in 2022 as against the standards remained the same as the previous two years, and continued to exceed the national average:

	2020	2021	2022
Law Society of BC	92%	92%	92%
Average of all Law Societies	83%	83%	86%

8. No law society has ever met all the standards applicable to it. However, in 2022, the Nova Scotia Barristers' Society came the closest that any law society has in achieving this goal at 98%.

Report on Law Society Progress in 2023

9. The Law Society of BC's 2023 progress on each of the standards is set out at **Attachment 1**.
10. We met 24 of 26² standards, which is similar to our performance for the two years prior.
11. As was the case in 2022, we did not meet Standards 9 and 10 in 2023.
12. Standard 9 requires 75% of hearings to be commenced within 9 months of the citation being authorized and 90% of hearings be commenced within 12 months of the citation being authorized.

In 2023 our performance on this standard was as follows:

Year	75% of hearings commenced within 9 months	90% of hearings commenced within 12 months
2023	52%	61%

**Status percentages include facts & determination hearings, joint submission hearings, consent agreements and post-citation Rule 4-29 proposals*

² While there are 24 standards in total, Standard 4 is divided into three parts (a, b, and c) which means we provide 26 separate responses.

This was a marked improvement over our performance in 2022 (27% of hearings were commenced within 9 months and 42% of hearings were commenced within 12 months).

In 2023, we did not meet the second part of Standard 9 (90% of hearings commenced within 12 months) on 12 files, as follows:

- 3 files involved a respondent who has 8 open citation files, making scheduling extremely difficult;
- 7 files were adjourned or delayed for reasons outside the Law Society’s control, including because: a) respondent’s counsel was unable to schedule the hearing within NDS timelines (2 files); b) hearing had to be adjourned due to respondents’ multiple prehearing applications (1 file); c) parallel criminal proceedings resulted in adjournment or delay (2 files); d) respondent counsel had medical issues (1 file); hearing originally set within NDS timelines adjourned to date outside of timelines at respondent’s request (1 file); and
- 2 files did not meet Standard 9 due to staffing issues.

The Department has now completed 12 months with a full complement of in-house lawyers and continues to take advantage of the consent agreement process which significantly shortens timelines.

13. Standard 10 requires 90% of hearing panel decisions to be rendered within 90 days of the last submissions. In 2023, the Law Society Tribunal’s performance on this standard was at 77% of hearing decisions, which represents a fairly significant increase over the previous two years.

Year	Percentage of decisions rendered within 90 days
2023	77%
2022	61%
2021	58%

The Law Society Tribunal advises that of the 12/52 decisions that were late:

- 1 was issued two days after the 90 day deadline due to holidays;
- 2 first drafts were received prior to the 90 day deadline but not finalized until after the deadline had passed; and
- 9 first drafts were received after the 90 day deadline had already expired.

In 2022, the Tribunal implemented the following processes to address late decisions:

- (a) the hearing clerk sends out an email to the panel members at the conclusion of every hearing setting out the 60 and 90 day deadlines;
- (b) the Tribunal Office sends an automatic reminder of the decision deadlines to the panel at 30, 60, 75 and 90 days;
- (c) the Tribunal Chair personally contacts the panel at the 60 day mark if a draft decision has not been received by the Tribunal Office; and
- (d) if the decision is outstanding, it is added to a monthly report to all adjudicators.

In addition to the above, the Tribunal has implemented the following processes:

- (e) at the time of scheduling a hearing, the Tribunal Chair assigns writing responsibility to a panel member and that panel member is expected to schedule writing time in their calendar;
- (f) an item is now included on annual adjudicator training to remind adjudicators of the importance of timeliness and need to schedule writing time;
- (g) an annual survey of adjudicators is sent to canvass reasons for late decisions; and
- (h) a per diem now being paid to adjudicators for writing.

ATTACHMENT 1

NATIONAL DISCIPLINE STANDARDS

ANNUAL REPORT ON Law Society of BC STATUS FOR 2023

STANDARD		CURRENT STATUS
Timeliness		
1.	<p><i>Telephone inquiries:</i></p> <p>75% of telephone inquiries are acknowledged within one business day and 100% within two business days.</p>	MET
2.	<p><i>Written complaints:</i></p> <p>95% of written complaints are acknowledged in writing within three business days.</p>	MET
3.	<p><i>Early Resolution:</i></p> <p>There is a system in place for early resolution of appropriate complaints.</p>	MET
4.	<p><i>Timeline to resolve or refer complaint:</i></p> <p>(a) 80% of all complaints are resolved or referred for a disciplinary or remedial response within 12 months.</p> <p>90% of all complaints are resolved or referred for a disciplinary or remedial response within 18 months.</p>	MET
	<p>(b) Where a complaint is resolved and the complainant initiates an internal review or internal appeal process:</p> <p>80% of all internal reviews or internal appeals are decided within 90 days.</p> <p>90% of all internal reviews of internal appeals are decided within 120 days.</p>	MET

STANDARD		CURRENT STATUS
	<p>(c) Where a complainant has been referred back to the investigation stage from an internal review or internal appeal process:</p> <p>80% of those matters are resolved or referred for a disciplinary or remedial response within a further 12 months.</p> <p>90% of those matters are resolved or referred for a disciplinary or remedial response within a further 18 months.</p>	MET
5.	<p><i>Contact with complainant:</i></p> <p>For 90% of open complaints there is contact with the complainant at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 95% of open complaints there was contact with the complainant at least once every 90 days during the investigation stage.</p>
6.	<p><i>Contact with lawyer or Québec notary:</i></p> <p>For 90% of open complaints there is contact with the lawyer or Québec notary at least once every 90 days during the investigation stage.</p>	<p>MET</p> <p>For 94% of open complaints there was contact with the lawyer at least once every 90 days during the investigation stage.</p>
7.	<p><i>Interim Measures:</i></p> <p>There is authority and a process for the law society to obtain an interlocutory or interim suspension, restrictions or conditions on a member's practice of law, as the public interest may require.</p>	<p>MET</p> <p>Rule 3-10 or voluntary undertakings.</p>
Hearings		
8.	<p>75% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 60 days of authorization.</p> <p>95% of citations or notices of hearings are issued and served upon the lawyer or Québec notary within 90 days of authorization.</p>	MET

STANDARD		CURRENT STATUS
9.	<p>75% of all hearings commence within 9 months of authorization.</p> <p>90% of all hearings commence within 12 months of authorization.</p>	<p>NOT MET</p> <p>52% of hearings commenced within 9 months of authorization.</p> <p>61% of hearings commenced within 12 months of authorization.</p>
10.	Reasons for 90% of all decisions are rendered within 90 days from the last date the panel receives submissions.	<p>NOT MET</p> <p>77% of decisions were issued within 90 days.</p>
Public Participation		
11.	There is public participation at every stage of discipline; e.g. on all hearing panels of three or more; at least one public representative; on the charging committee, at least one public representative.	<p>MET</p> <p>There was one public representative on every disciplinary panel, at least one public representative on every review board and a public representative on our charging body (i.e., Discipline Committee).</p>
12.	There is a complaints review process in which there is public participation for complaints that are disposed of without going to a charging committee.	<p>MET</p> <p>There is a public representative on each of the two Complainants' Review Committees.</p>
Transparency		
13.	Hearings are open to the public.	<p>MET</p> <p>Hearings are open to the public unless the panel exercises its discretion under Rule 5-8 to exclude some or all members of the public.</p>
14.	Reasons are provided for any decision to close hearings.	<p>MET</p> <p>Rule 5-8(5) requires panels to give written reasons for orders to exclude the public or to require non-disclosure of information.</p>
15.	Notices of charge or citation are published promptly after a date for the hearing has been set.	<p>MET</p> <p>We publish the fact that a citation has been authorized once the respondent has been informed and the content of the citation after the respondent has been served.</p>

STANDARD		CURRENT STATUS
16.	Notices of hearing dates are published at least 60 days prior to the hearing, or such shorter time as the pre-hearing process allows.	MET In all cases, we publish dates of hearings as soon as they are set.
17.	A law society can share information about a lawyer or Québec notary, either upon request or at its own initiative, with any other law society, or can require a lawyer or Québec notary to disclose such information to all law societies to which they are a member. All information must be shared in a manner that protects solicitor-client privilege.	MET Rule 2-27.1 gives us discretion to share information when it is in the public interest to do so and to provide confidential or privileged information if the information will be adequately protected against disclosure.
18.	There is an ability to report to police about criminal activity in a manner that protects solicitor/client privilege.	MET Rule 3-3(5) allows the Discipline Committee to consent to delivery of such information to a law enforcement agency. Rule 3-3(6) indicates we cannot share privileged material.
Accessibility		
19.	A complaint help form is available to complainants.	MET There are online materials available on the Law Society website to assist the public in making complaints as well as printed brochures describing the complaint process and jurisdiction.
20.	There is a directory available with status information on each lawyer or Québec notary, including easily accessible information on discipline history.	MET
Qualification of Adjudicators and Volunteers		
21.	There is ongoing mandatory training for all adjudicators, with refresher training no less often than once a year, and the curriculum for mandatory training will comply with the national curriculum.	MET All benchers/ lawyer adjudicators are required to take Administrative Justice, Decision Writing and Hearings Skill courses offered by BC Council of Administrative Tribunals (in conjunction with the Law Society to provide specific training). All public representatives are required to take the Administrative Justice course and may take the two courses offered. All adjudicators are required to attend an annual refresher course.

STANDARD		CURRENT STATUS
22.	There is mandatory orientation for all volunteers involved in conducting investigations or in the charging process to ensure that they are equipped with the knowledge and skills to do the job.	MET Orientation was provided to all new members of the Discipline Committee. There are no volunteers involved in conducting investigations.
23.	There is ongoing training available for all staff and volunteers (where applicable) involved in law society complaint and discipline processes to ensure they are equipped with the relevant skills, knowledge, awareness and understanding of issues that can materially impact a lawyer or Quebec notary's conduct and/or competency.	MET Staff in the complaints and discipline process have access to training as appropriate, including in: relevant substantive areas of law, trauma informed practice, lawyer wellness, human rights, equity, diversion & inclusion, and Indigenous Cultural Competence.
Qualification of Adjudicators and Volunteers		
24.	Each law society will report annually to its governing body on the status of the standards.	MET

Alternative Discipline Process: Interim Program Update

To: Benchers

Purpose: Update

From: Staff

Date: March 8, 2024

Background

1. The Law Society’s Alternative Discipline Process was developed based on a report of the Law Society’s Mental Health Task Force entitled “Recommendation on the development of an Alternative Discipline Process”¹ (the “Report”), which recommended that:

No later than September 2022, the Law Society will implement an alternative discipline process (“ADP”) to address circumstances in which there is a connection between a health condition and a conduct issue that has resulted in a complaint investigation. The ADP will comport with the purpose, principles, design features and policy rationale described in the Mental Health Task Force’s September 2021 recommendation report and commence as a three year pilot project. Following an interim and final review of the pilot project in 2023 and 2025, respectively, the matter will return to the Benchers for a final determination as to whether to establish the ADP as a permanent regulatory program.

2. The Benchers approved this recommendation on October 16, 2021. On April 22, 2022 the Bencher’s approved the Rules that would allow for the creation of an alternative to discipline process for health (“ADP”). Once the Rules in support of ADP were approved by Benchers, the Law Society implemented the process as a pilot the following month in May 2022.
3. The Report required an update to Benchers in 2023. A brief update on the status of ADP was provided at the Bencher meeting on June 3, 2023. The purpose of this report is to provide Benchers with a more fulsome update regarding the operation of the ADP.

Operationalization of the Process

4. In implementing the ADP, staff ensured the principles articulated in the Report were integrated in the operationalization of the process. A helpful summary of the principles can be found in the Report as follows:

95. Deeply informed by the principles of voluntariness, confidentiality, no-risk and the protection of the public, the proposed ADP takes an innovative and proactive approach to professional regulation. The scheme is also comprehensive and complex, as evidenced by the volume of material in this report devoted to describing the design elements of, and policy rationale for, the alternative discipline process.

96. By creating a regulatory environment that promotes the disclosure of health conditions that have impacted on a lawyer’s conduct, and customizing the regulatory response in a manner that focuses on supporting the lawyer and the Law Society in addressing the underlying health issue, participation in the ADP reduces the likelihood

¹ [Recommendation on the development of an Alternative Discipline Process, Mental Health Task Force, Law Society of BC](#)], para 93

that the problematic conduct will escalate or recur in the future. This, in turn, enhances the protection of the public.

5. An example of how the ADP principles were operationalized is that ADP records are maintained in our records management systems in a way that ensures that they are not accessible to any Law Society staff other than those working in ADP. By maintaining strict confidentiality of information in ADP, lawyers can feel safe to share whatever information they wish to share about their health.
6. Another key ADP principle is voluntariness; in order to action this principle, ADP staff ensure that they provide clear information to lawyers interested in ADP such as the details of what the process entails and what will be expected of them. Accordingly, before they enter the ADP, lawyers sign a detailed consent, so that they are fully aware of what the process will require.
7. To ensure that the process poses “no risk” to the Law Society and the lawyers participating in the ADP, the Law Society requires lawyers to agree not to rely upon any delay created by their time in ADP in the event they choose to leave ADP and return to the investigation and discipline process, or if the Executive Director refers them back to the investigation and discipline process. In these circumstances there is no risk to the lawyer, because if their matter is referred out of ADP, the fact they were unsuccessful in completing the ADP process will not adversely impact them in the investigation and discipline processes.
8. A key principle of the ADP process is that the public interest is paramount and this principle threads through each stage of the process. ADP is a remedial program that provides a safe and flexible space for lawyers to take the steps they need to be healthy for practice. While ADP provides support, ultimately it is the courage, commitment and hard work of the lawyer that allows them to complete the ADP. We have found that the lawyers in ADP are deeply committed to their profession and clients, and they are often willing to put in the significant effort necessary to address their health issues. As such, ADP is truly a regulatory program where the public interest and the lawyer’s interest can overlap.

Overview of the Process

9. Once a lawyer with a complaint file is identified as a possible candidate for ADP, an eligibility assessment occurs. Per Rule 3-9.1(3), a lawyer is eligible for entry into ADP if:
 - a) the lawyer acknowledges the existence of a health issue that may have contributed to an alleged discipline violation by the lawyer;
 - b) the lawyer consents in writing to the Executive Director proceeding under this division; and

- c) the Executive Director is satisfied, in all the circumstances of the alleged discipline violation, including whether it involved substantial harm to the complainant or another person, that it is likely to be in the public interest to proceed under this division.
10. At this stage, in accordance with Rule 3-9.3(1), additional health information is often collected from the lawyer, to the satisfaction of the Executive Director, that: a health issue may have contributed to an alleged discipline violation by the lawyer, that the lawyer could benefit from the remedial initiatives offered through the ADP, and most importantly it is in the public interest for the lawyer to engage in remedial measures.
11. The extent of the medical information requested at this point will depend on the facts of each case. For instance, the Executive Director may rely entirely on the lawyer's representations about their health issue, may request information from a lawyer's personal care providers (like a physician or counsellor), or may request that the lawyer attend an independent medical examination ("IME") performed by a health care professional mutually agreed on by the parties.
12. Once sufficient information has been collected, eligibility can be assessed. Guidelines have been developed to assist the Executive Director in making this eligibility assessment, and specifically to assist in the assessment of whether proceeding with a matter through the ADP is likely to be in the public interest. Considerations include whether the lawyer's alleged discipline violation is sufficiently serious that the regulatory process warrants some level of public oversight through the investigation and discipline process; whether the available evidence supports a determination that access to treatment for the lawyer's health issue(s) will meaningfully address the underlying causes of the alleged discipline violation, such that the lawyer will be unlikely to commit a similar violation in the future; and whether the lawyer displays a sufficient level of insight and trustworthiness, based on their communications with the Law Society, such that the lawyer can be trusted to disclose relevant information to the Law Society and comply with the terms of their ADP agreement.
13. The public interest provides a good foundational principle for vetting files, and to assess eligibility throughout the lifecycle of the ADP. Generally speaking, referral to ADP is appropriate where the lawyer's interests and the public interest correspond. That is, where assisting a lawyer to treat or manage a health issue allows them to continue to provide legal services in conformity with their Law Society requirements. Where this is unlikely to be the case, or where the confidential nature of the ADP might prevent a just outcome, referral to ADP is inappropriate.
14. Once a lawyer meets the threshold eligibility for entrance into ADP, the ADP staff and the lawyer negotiate an ADP consent agreement that is tailored to the lawyer's specific circumstances. ADP is designed to provide the complainant with a role as well. Specifically, complainants have an opportunity to provide a statement regarding any impact that the

lawyer's alleged misconduct had on them. This statement may factor into the terms of any ADP agreement between the lawyer and the Law Society, including any terms related to remediation.

15. Once the ADP consent agreement is approved by the Executive Director, the ADP staff lawyer supports the lawyer in satisfying the terms of the agreement. That support can include regular check-ins, troubleshooting any potential compliance issues, and ensuring that progress is being made on the various terms of the agreement. When the lawyer successfully completes the terms of the agreement, they leave the ADP. The complainant is then informed generally about the outcome of the ADP process, i.e. that the lawyer successfully completed the process or was referred back to the regular investigation and discipline process.

Data & Observations

Statistics

16. Since the ADP began in May 2022, 17 lawyers have expressed an interest in participating in the process and have been considered for ADP:

Of that total:

- 10 lawyers met threshold eligibility;
- 6 lawyers were determined to be ineligible; and,
- 1 lawyer is currently under consideration for threshold eligibility.

Of the ten lawyers who met the threshold eligibility and participated in the ADP:

- 3 have successfully completed their ADP agreement and are no longer in the process;
- 5 are remain at various stages in the process; and,
- 2 lawyers have been referred back to the regular investigation and discipline process as their participation in the ADP was no longer in the public interest.

17. Some of the health issues that lawyers in ADP have disclosed include: addiction, anxiety, depression, psychotic disorder, eating disorder, burnout and ADHD.

ADP Staff Observations

18. Statistics only tell part of the story. The experience of working with lawyers in ADP has been profoundly impactful and humbling for ADP staff. Lawyers in the process have demonstrated themselves to be hard-working and caring individuals, who are excited for the opportunity to address health issues. Many have already started the work of addressing their health issues prior to their referral into ADP, including by attending in-patient addiction treatment, setting up medical monitoring with their employer or firm, or receiving treatment from health care providers.
19. Some of the ADP staff observations to date are:
 - a) The flexible nature of ADP allows the development of ADP Agreements that are not cookie-cutter or a one size fits all approach. As such, even when there are lawyers who have similar diagnoses, their ADP agreements can differ significantly based on individual circumstances;
 - b) Taking an individualized and collaborative approach with lawyers can result in less costly but equally effective treatment and monitoring plans for participants and the Law Society. A lawyer who is insightful and committed to their wellbeing and to their practice, is very helpful in crafting the terms of a successful ADP agreement. In one case, for example, a physician's IME concluded that the participating lawyer would require extensive medical monitoring for a substance use disorder. However, the cost of such a monitoring program was prohibitive. After discussions with the lawyer, the IME physician was consulted again and was asked to consider whether a narrower (and less costly) monitoring plan would suffice to monitor whether the lawyer was maintaining their sobriety. With the physician's approval, and given the lawyer's specific circumstances, an effective and tailored monitoring plan was created;
 - c) A lawyer is an expert in their own care, and they know what treatments work best for them. Coerced or forced medical care is less likely to be effective, and giving a lawyer autonomy over the care they receive can empower that lawyer to take more responsibility for their recovery, and help to rebuild some of the self-esteem they may have lost while they were experiencing a health issue and having a conduct concern or complaint brought to the attention the Law Society; and,
 - d) ADP has been transformational for lawyers engaged in the process. As a result of ADP, lawyers have left the process having more tools to support them in maintaining their health and well-being. Additionally, the insights gained from ADP have led lawyers to change areas of practice or employment setting to better align with their health needs.

Summary

20. As a remedial program, the ADP represents the convergence of the public and lawyer interests. The program's principles have operated appropriately to ensure that the lawyers who belong in ADP gain entry and those whose matters need investigation in the public interest stay in the regular process. By addressing health issues impacting practice sooner (than can be done in the investigation and discipline processes), it is our hope that lawyers who complete the ADP will be positioned in the long term to be healthy in the practice of law.

What We Heard – Access to Justice Priorities for the Law Society in 2024

To: Benchers

Purpose: Information

From: Staff

Date: March 8, 2024

Introduction

1. This report summarizes the key access to justice concepts and themes identified by the Benchers at their February 2, 2024 meeting that will inform policy priorities for the Law Society in 2024.

Background

2. In the meeting, Benchers were presented with a brief from staff regarding potential access to justice priorities in 2024 to facilitate the discussion.¹
3. In addition to reviewing material from staff, the Benchers heard from Tina Parbhakar, Co-Founder of the South Asian Legal Clinic of BC and Strategic Coordinator for Access to Justice BC. The presentation was wide-ranging and informative, covering many aspects of legal need, including the importance of engaging and listening to the diverse population of the province. The Law Society and the profession were encouraged to make three qualitative leaps in dealing with access to justice:
 - a. develop an individual-level mindset, and learn and adapt how services are delivered with a user-centered focus;
 - b. strengthen the legal community through inter-sectoral collaboration through collaborative, people-centered, evidence based and experimental reform; and
 - c. take a leading role to advance reform that is already underway, such as incorporating UNDRIP into provincial legislation and the work of the Transform the Family Justice System Collaborative.

Summary of Discussion

4. Several key concepts and themes were identified during the discussion:
 - a. Increasing awareness by the public, government and lawyers of the access to justice work lawyers are doing and the policies the Law Society has adopted to provide greater access to justice and legal services;
 - b. Exploring ways for lawyers to do more to support access to justice and legal services, recognizing that being a lawyer is a privilege and a profession, and many lawyers and law firms have very profitable practices;

¹ Available online at: [Exploring Access to Justice Priorities in 2024](#) (page 28 of the February 2, 2024 Agenda).

- c. Taking steps to advance the concept of a universal triage hub, as identified in the Law Society of British Columbia’s “Vision for Publicly Funded Legal Aid”, and subsequent policy review of the Access to Justice Advisory Committee;
- d. Advocating strongly that Provincial Sales Tax (“PST”) charged on legal fees must be entirely allocated to support legal aid (consistent with the historical purpose for the implementation of the PST on lawyers, a cost that is ultimately borne by clients);
- e. Engaging in a policy review of the requirements for contingency fee agreements and examining the harms that can and have been caused, particularly with regard to Indigenous peoples;
- f. Working with the courts to ensure the advances in delivery of court services that occurred during COVID-19 are maintained and improved upon, so the justice system does not revert to its historical in-person and paper-based approach to all matters;
- g. Improving public knowledge of the law, rights and responsibilities, including through education at school (potentially in concert with existing work related to the rule of law); and
- h. Advocating for judicial vacancies to be filled and for judicial diversity to continue to improve in order to better reflect the diverse population of British Columbia.

Priority Items

5. The Law Society’s Access to Justice Vision prioritizes work that the Law Society can undertake and implement on its own, but also recognizes the importance of work that requires others (e.g. government, the courts, the public, etc.) to develop.
6. Of the matters that fall to the Law Society to undertake and implement, the staff will pursue and report back on improving awareness of the profession’s contributions to access. Much of the discussion centered around the lack of knowledge amongst the public and the profession in relation to the contributions of lawyers towards access to justice, and the policies the Law Society has adopted in that regard. Efforts will be made to identify key messages and channels through which to better communicate this information to the public and the profession.
7. Of the matters that require the Law Society to work collaboratively with other justice system stakeholders, staff will pursue and report back on the current work that is ongoing regarding improving secondary education on the rule of law, which can be expanded upon to include education on basic rights and responsibilities. In addition to advocating for these topics to be added to the secondary curriculum, staff will also explore developing lesson plans that

Benchers (and lawyers generally) could use when volunteering to speak at secondary school classes in their area. Staff will also follow up and report on addressing the need to fill judicial vacancies and the palpable impact on people seeking access to the courts in British Columbia that necessitates the prioritization of this issue. The Law Society issued a news release² on this issue on February 14, 2024, and further options for advocacy will continue to be explored.

² Available online at: [Law Society of BC urges immediate action to fill judicial vacancies | The Law Society of British Columbia](#).