



Agenda

Benchers

Date: Friday, November 4, 2022

Time: **9:00 am - Call to order**

Please join the meeting anytime from 8:30 am to allow enough time to resolve any video/audio issues before the meeting commences.

Location: Virtual Meeting: Zoom

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

VIRTUAL MEETING DETAILS

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

RECOGNITION

1	Presentation of Law Society Indigenous Scholarship Co-Recipients
2	Presentation of Law Society Scholarship for Graduate Legal Studies Recipient

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.

3	Minutes of September 23, 2022 meeting (regular session)
4	Minutes of September 23, 2022 meeting (<i>in camera</i> session)
5	2023 Fee Schedules
6	Retired Member Fee Waiver Request



Agenda

REPORTS			
7	President's Report	20 min	Lisa Hamilton, KC
8	CEO's Report	20 min	Don Avison, KC
UPDATES			
9	Financial Report - 2022 - Q3 and Forecast	10 min	Jeevyn Dhaliwal, KC Jeanette McPhee
10	Report on Outstanding Hearing & Review Decisions <i>(Materials to be circulated at the meeting)</i>	1 min	Christopher McPherson, KC
FOR INFORMATION			
11	Briefing by the Law Society's Member of the Federation Council		
12	2023 Executive Committee and Bencher Meeting Dates		
13	Three Month Bencher Calendar – November 2022 to January 2023		
IN CAMERA			
14	Other Business		



Minutes

Benchers

Date: Friday, September 23, 2022

Present:	<p>Lisa Hamilton KC, President Christopher McPherson, KC, 1st Vice-President Jeevyn Dhaliwal, KC, 2nd Vice-President Paul Barnett Tanya Chamberlain Jennifer Chow, KC Cheryl S. D'Sa Lisa Dumbrell Brian Dybwad Brook Greenberg, KC Katrina Harry Lindsay R. LeBlanc Geoffrey McDonald</p>	<p>Steven McKoen, KC Jacqueline McQueen, KC Paul Pearson Georges Rivard Michèle Ross Gurminder Sandhu Barbara Stanley, KC Natasha Tony Michael Welsh, KC Sarah Westwood Guangbin Yan Gaynor C. Yeung</p>
Unable to Attend:	<p>Kim Carter Sasha Hobbs Dr. Jan Lindsay</p>	<p>Kelly H. Russ Thomas L. Spraggs Kevin B. Westell</p>
Staff:	<p>Don Avison, KC Avalon Bourne Barbara Buchanan, KC Lance Cooke Natasha Dookie Jackie Drozdowski Su Forbes, KC Andrew Heinrichs Andrea Hilland, KC Kerryn Holt Jeffrey Hoskins, KC Michael Lucas, KC Alison Luke David Maclean</p>	<p>Meghan Maddigan Claire Marchant Tara McPhail Jeanette McPhee Cary Ann Moore Michael Mulhern Doug Munro Shalyn Norris Michelle Robertson Lesley Small Nick Wells Adam Whitcombe, KC Leanne Wood Charlene Yan</p>

Guests:	Katie Armitage	Legal Counsel, Ministry of Attorney General
	Dom Bautista	Executive Director & Managing Editor, Law Courts Center
	Aleem Bharmal, KC	President, Canadian Bar Association, BC Branch
	Laura Chapman	Communications & Media Coordinator, Canadian Bar Association, BC Branch
	Pinder K. Cheema, KC	Law Society of BC Representative on the Federation Council
	Christina Cook	Aboriginal Lawyers Forum
	Paul Craven	A/Assistant Deputy Minister
	Clare Jennings	Past President, Canadian Bar Association, BC Branch
	Derek LaCroix, KC	Executive Director, Lawyers Assistance Program of BC
	Robert Lapper, KC	Lam Chair in Law and Public Policy, University of Victoria
	Jamie Maclaren, KC	Executive Director, Access Pro Bono Society of BC
	Mark Meredith	Treasurer and Board Member, Mediate BC
	Daleen Millard	Dean of Law, Thompson Rivers University
	Caroline Nevin	CEO, Courthouse Libraries BC
	Josh Paterson	Executive Director, Law Foundation of BC
	Ngai Pindell	Dean of Law, Peter A. Allard School of Law
	Linda Russell	CEO, Continuing Legal Education Society of BC
	Shannon Salter	Deputy Attorney General of BC
	Kerry Simmons, KC	Executive Director, Canadian Bar Association, BC Branch
	Lana Walker	Assistant Dean, Thompson Rivers University
	Julien Yuen	Rule of Law Essay Contest Runner-Up

RECOGNITION

1. Presentation of Law Society Indigenous Scholarship to Co-Recipient

This item was rescheduled for the November 4, 2022 Bencher meeting.

2. 2022 Rule of Law Essay Contest: Presentation of Runner-Up

President Hamilton introduced the runner-up of the 2022 Rule of Law Essay Contest. This year's contest asked students to explain how the right to freedom of expression is used to justify demonstrations for or against various causes in our society; how the freedom of expression intersects with the rule of law; in what circumstances can courts prohibit or limit a protest or demonstration; and whether their answer was affected by the popularity or unpopularity of the cause. Julien Yuen is the runner-up of this year's contest, whose essay is posted on the Law Society website.

CONSENT AGENDA

3. Minutes of July 8, 2022, meeting (regular session)

The minutes of the meeting held on July 8, 2022 were approved unanimously and by consent as circulated, subject to minor wording corrections.

4. Minutes of July 8, 2022, meeting (*in camera* session)

The minutes of the *In Camera* meeting held on July 8, 2022 were approved unanimously and by consent as circulated.

5. Rule Amendments: Practitioners of Foreign Law

The following resolution was passed unanimously and by consent, subject to the removal of (1) from *Rule 2-29 (1) is rescinded and the following is substituted*:

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

1. ***In Rule 1, the definition of “practitioner of foreign law” is amended by striking “in British Columbia”.***

2. ***Rule 2-29 is rescinded and the following is substituted:***

2-29 (1) A person who qualifies under section 17 [*Practitioners of foreign law*] may apply to the Executive Director for a permit to provide foreign legal services by delivering to the Executive Director

- (a) a completed permit application in the prescribed form, including a written consent for the release of relevant information to the Society, and
 - (b) the application fee specified in Schedule 1.
- (2) The Executive Director may issue a permit to a person applying under subrule (1) if the Executive Director is satisfied that the person
- (a) is a member of the legal profession in one or more foreign jurisdictions,
 - (b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,
 - (c) is a person of good character and repute,
 - (d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to provide foreign legal services only under the supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years, and
 - (e) carries professional liability insurance or a bond, indemnity or other security
 - (i) in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*], and
 - (ii) that specifically extends to the activities of the practitioner of foreign law in providing foreign legal services.
- (2.1) In exceptional circumstances, the Executive Director may issue a permit to a person applying under subrule (1) who does not meet the requirements set out in subrule (2) if the Executive Director is satisfied that it is in the public interest to do so.
- (3) The Executive Director may attach conditions or limitations to a permit issued or renewed under this rule.
- (5) A permit issued under this rule is valid for one year from the issue date shown on it.
- (6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law
- (a) is suspended as a result of proceedings taken under Part 4 [*Discipline*], or
 - (b) ceases to comply with any of the requirements of this Part.

3. Rule 2-30 is amended as follows:

- (a) ***in subrule (1) by striking “a permit issued under Rule 2-29 (2)” and substituting “a permit issued under Rule 2-29”;***
- (b) ***in subrule (2) by striking “in British Columbia”.***

4. Rule 2-32 is rescinded and the following substituted:

2-32 A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may provide foreign legal services without obtaining a permit, provided the lawyer maintains professional liability insurance that

- (a) specifically extends to the lawyer's activities in providing foreign legal services, and
- (b) is in a form and amount at least reasonably comparable to the indemnity coverage required of lawyers under Rule 3-39 (1) [*Compulsory professional liability indemnification*].

5. Rule 2-34 (2) (b) is rescinded and the following substituted:

- (b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to meet the requirements set out in Rule 2-29 (2) [*Practitioners of foreign law*] or, in exceptional circumstances, that it is in the public interest to issue the permit under Rule 2-29 (2.1), and

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

6. Rule Amendments: Tribunal Chairs

Christopher McPherson, KC recused himself from this item.

The following resolution was passed unanimously and by consent:

BE IT RESOLVED to amend the Law Society Rules effective January 1, 2023, as follows:

1. In Rule 1, the definition of "Tribunal chair" is rescinded and the following substituted:
"Tribunal Chair" means the practising lawyer appointed under Rule 5-1.3 [*Tribunal Chair*];

2. Rule 5-1.3 is rescinded and the following substituted:

5-1.3(1) The Benchers must appoint a practising lawyer as Tribunal Chair.

- (2) The Tribunal Chair must not be a Bencher or a member of the Discipline, Credentials or Practice Standards Committee.
- (3) The term of office of the Tribunal Chair is two years.
- (4) If the office of Tribunal Chair becomes vacant for any reason, the Benchers must promptly appoint a practising lawyer to complete the term of office.
- (5) The functions of the Tribunal Chair may be exercised by another practising lawyer designated by the Tribunal Chair.
 - (a) if the Tribunal Chair is absent or otherwise unable to act, or

(b) with the authorization of the Tribunal Chair.

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT

7. External Appointment: Federation of Law Societies of Canada Council

Brook Greenberg, KC recused himself from this item.

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers confirm Brook Greenberg, KC as the Law Society's nominee for the position of Director on the Federation of Law Societies of Canada Council for a three year term commencing on November 15, 2022.

8. Code of Professional Conduct Rule 3.4-1 & Commentaries

The following resolution was passed unanimously and by consent:

BE IT RESOLVED the Benchers adopt the amendments to the commentaries to rules 3.4-1 and 3.4-2 of the *Code of Professional Conduct for British Columbia*, as recommended by the Ethics and Lawyer Independence Advisory Committee, and set out in the red-lined version of those Provisions included in the Committee's memorandum to the Benchers dated July 6, 2022.

REPORTS

9. President's Report

President Lisa Hamilton, KC confirmed that no further conflicts of interest had been declared, beyond Mr. McPherson and Mr. Greenberg's recusals from items 6 and 7, respectively.

Ms. Hamilton began her report by congratulating Sasha Hobbs on her new role as Chief Strategy Officer for the Métis Nation and congratulating Aleem Bharmal, KC, for starting his term as President of the Canadian Bar Association of BC.

Ms. Hamilton then provided an overview of recent events she had attended, including regional engagement sessions in Kelowna and Kamloops, welcoming ceremonies in Williams Lake and Smithers for newly appointed judges, and witnessing Justice Michelle O'Bonsawin being sworn into the Supreme Court of Canada.

Ms. Hamilton informed Benchers that the majority of her time is being spent on single legal regulator matters. She indicated that her areas of focus have included engaging with the Society of Notaries Public of BC, the BC Paralegals Association, and the Deputy Attorney General on this matter and inviting feedback from the profession and from the public to incorporate into the Law Society's response to Ministry's Intentions Paper. She noted that a common theme of the

feedback has been the importance of preserving the independence of the profession and of the regulator.

Ms. Hamilton then spoke about the importance of the Law Society's truth and reconciliation initiatives. She provided an overview of the recent summit organized by the Indigenous Engagement in Regulatory Matters Task Force, and the important recommendations that will be brought forward later this year as a result of this engagement. Ms. Hamilton concluded her report by speaking to the importance of the National Day for Truth and Reconciliation taking place on September 30, and provided Benchers with a copy of the book *First Nations 101*, by Lynda Gray, as well as a resource guide on how to become a great ally for reconciliation. She commented on the essential and informative content of the book and resource guide, and encouraged Benchers to make use of both.

10. CEO's Report

Don Avison, KC began his report by thanking Deputy Attorney General Shannon Salter for attending the meeting to discuss the Ministry's Intentions Paper. He indicated that the Law Society would be providing a response to the Paper. He also spoke about the regional sessions he had taken part in with Ms. Hamilton in Kelowna, Kamloops, and Prince George and noted that additional sessions would take place in the fall. Mr. Avison emphasized the importance of providing these opportunities to engage with the profession on the implications of a single legal regulator model.

Mr. Avison spoke about the upcoming Federation meetings taking place in October. He indicated there would be a session during the meetings regarding the implications for the profession and for the public of the Ministry's intent to establish a single legal regulator in BC.

Mr. Avison informed Benchers there would be some delay in the finalizing of the Indigenous Engagement in Regulatory Matters Task Force's final report. Mr. McPherson indicated that following the significant amount of feedback received following the Task Force's summit in August, the Task Force decided that, considering the importance of this initiative, further consultation should be done prior to determining the recommendations of the Task Force's final report.

Mr. Avison informed Benchers that a great deal of work was being done in response to the recommendations made in the Cullen Commission Report, including communicating to the profession about the recommendations, their significance, and the Law Society's plans to address some of the matters raised within the recommendations. He spoke about his participation in a webinar hosted by the Peter A. Allard School of Law's Anti-Corruption Law Program to discuss the Report, and indicated that CLEBC would be holding a session on the Report as well. He indicated that he would also be participating on a panel on anti-money laundering regulation at the International Conference of Legal Regulators in October.

Mr. Avison informed Benchers that he would be speaking about the Innovation Sandbox on an international panel with Justice Deno Himonas, formerly of the Utah Supreme Court, who spearheaded Utah's regulatory Sandbox.

Mr. Avison concluded his report by informing Benchers that the Law Society offices would be closed on September 30 in recognition of the National Day of Truth and Reconciliation. He indicated that he would provide some updates regarding the Law Society building at a later meeting.

DISCUSSION/DECISION

11.2023 Initiatives, Finances, and Fees

Jeevyn Dhaliwal, KC introduced the item, followed by a presentation to Benchers on the proposed 2023 initiatives, finances, and fees delivered by Mr. Avison and Jeanette McPhee.

Mr. Avison began by informing Benchers there would be no increase in 2023 to practice fees or indemnity fees, except for a very modest increase to the contribution to the Lawyers Assistance Program, due to increased usage. He then highlighted some of the Law Society's key operational priorities for 2023, including the establishment of a single legal regulator, lawyer development and alternate pathways to licensing, anti-money laundering initiatives, the implementation of alternate process programs, enhanced practice support, the innovation sandbox, and the Law Society's Diversity Action Plan.

Ms. McPhee informed Benchers that the Law Society would likely avoid a projected deficit for 2022 and break even, due to a higher number of practice fees and electronic filing revenue than expected. She then reviewed expense highlights for 2023, including market-based salary increases, modest increases in staff resources, increased technology costs to support the digitization of the workplace, and strategic projects.

Mr. Avison reviewed the funding for external organizations, noting that the majority of the funding would remain the same for 2023, with the exception of the contribution to the Lawyers Assistance Program, as previously indicated. He then provided an overview of the Lawyers Indemnity Fund, detailing the number of reports and severity of claim payments.

The following resolution was passed unanimously:

BE IT RESOLVED:

- Effective January 1, 2023, the practice fee be set at \$2,303.00, pursuant to section 23(1)(a) of the Legal Profession Act.

The following resolution was passed unanimously:

BE IT RESOLVED:

- the indemnity fee for 2023 pursuant to section 30(3) of the Legal Profession Act be set at \$1,800;
- the part-time indemnity fee for 2023 pursuant to Rule 3-40(2) be set at \$900; and
- the indemnity surcharge for 2023 pursuant to Rule 3-44(2) be set at \$1,000.

12. Indigenous Framework Report

Mr. McPherson introduced the item and provided some background to the recommendation to endorse the principles set out in the report from the Truth and Reconciliation Advisory Committee. He spoke about the importance of taking meaningful action in regard to truth and reconciliation and provided a detailed overview of each of the principles included within the report.

The following resolution was passed unanimously.

BE IT RESOLVED the Benchers endorse the principles set out below in this report as a framework to guide the Law Society's application of the *Act*, Rules, *Code*, policies, procedures, and practices.

13. A Competence Framework for Lawyer Licensing

Steven McKoen, KC introduced the item and provided some background to the recommendation to develop a competence framework for lawyer licensing in BC. He spoke about the work conducted by Jordan Furlong, a legal sector analyst and consultant who had been retained by the Lawyer Development Task Force, in particular Mr. Furlong's summary report, which was presented to Benchers at the May 2022 Bencher Retreat. Mr. McKoen noted that if the Task Force's recommendation was approved by Benchers, it would be the first step in a series of changes towards a new lawyer licensing system.

Benchers discussed the timing of the proposed resolution and the possible next steps indicated within the report. Mr. McKoen stated that the process to establish a competence framework for lawyer licensing would take time, but emphasized the importance of moving forward and not delaying making these changes. He further indicated that the proposed resolution should be seen as a preliminary step to gauge what competency means and it is not suggesting what should come after developing the framework.

Some Benchers were of the view that additional information and analysis would be needed prior to making a decision on this matter, though some Benchers were of the view that further data

would be gathered through the actual development of a competence framework. Some Benchers also expressed concerns regarding whether the establishment of a single legal regulator would have an impact on the development of a competence framework. Mr. McKoen indicated that the Law Society does not currently have a system of measurement by which to determine if the current path to licensure is adequate. The development of a competence framework would be the first step in establishing a set of criteria by which to measure the current system and new pathways to licensure, and he spoke about the extensive consultation process that would take place to help the Task Force in its work on this initiative. Mr. McKoen also spoke about how establishing standards to ensure the competency of the profession was an essential component of the Law Society's mandate to protect the public interest.

Benchers discussed the need to identify what competencies are needed for licensing as an important first step in determining alternate pathways to licensure. Benchers also discussed how having alternate pathways could address barriers to practice.

The following resolution was passed by the majority of Benchers with one abstention.

BE IT RESOLVED the Law Society develop a competence based system for lawyer licensing in British Columbia beginning with the development of a Competence Framework that identifies the knowledge, skills, and other attributes necessary to perform the essential duties expected of, and entrusted to, lawyers in BC, as well as the threshold levels at which these competencies should be performed at the point of licensure.

14. Ministry of the Attorney General Intentions Paper

Ms. Hamilton welcomed Deputy Attorney General Shannon Salter to the meeting. She then provided a brief summary of the discussions that had taken place to date regarding the Ministry's intention to establish a single legal regulator leading up to the release of the Ministry's Intentions Paper. Ms. Hamilton indicated that the Law Society would be providing a response to the Paper.

Ms. Salter thanked Ms. Hamilton for the opportunity to join the meeting and discuss the Paper. Ms. Salter then provided a brief overview of the Paper and the Ministry's current engagement initiatives to seek feedback on the Paper. She encouraged Benchers to share the engagement survey link with their lawyer and public networks. Ms. Salter indicated that the Ministry's goal in establishing a single legal regulator is to ensure that the people of BC have access to a wide range of regulated providers of legal services. She informed Benchers that the Ministry was interested in hearing input from the Law Society on these matters.

Benchers engaged in discussions with Ms. Salter on a number of matters related to the Paper, including how standards of practice for the three professions would be established, monitored, and enforced; the importance of preserving diversity and Indigenous representation on the regulator's board; the value of licensing paralegals from a competency perspective; not limiting

the scopes of practice for the three professions in the statute; and the importance of preserving the independence of the profession and of the regulator.

Ms. Hamilton thanked Ms. Salter for attending the meeting and for engaging with Benchers on their questions and concerns related to the Paper.

UPDATES

15. Report on Outstanding Hearing & Review Decisions

Christopher McPherson, KC, as Tribunal Chair, provided an update on outstanding hearing and review decisions and thanked Benchers for their efforts to get decisions in on time, as timeliness is important to the public and those involved in proceedings.

FOR INFORMATION

16. Three Month Bencher Calendar – September to November 2022

There was no discussion on this item.

The Benchers then commenced the *In Camera* portion of the meeting.

AB
2022-10-19



Memo

To: Benchers
From: Jeffrey G. Hoskins, KC
Date: October 13, 2022
Subject: **2023 Fee Schedules**

1. Before the end of each calendar year, the Benchers must revise the fee schedules, which appear as schedules to the Law Society Rules, to reflect changes taking effect on the following January 1.
2. Under section 23(1)(a) of the *Legal Profession Act*, the Benchers have approved a practice fee of \$2,303 for 2023.
3. The indemnity fee was also approved at \$1,800 for lawyers in full-time practice, \$900 for those in part-time practice, and a liability indemnity surcharge of \$1,000. These represent no change from the 2022 fees.
4. I attach a suggested resolution that will give effect to the change.

JGH

Attachments: resolution

2023 FEE SCHEDULES**SUGGESTED RESOLUTION:**

BE IT RESOLVED to amend the Law Society Rules, effective January 1, 2023, as follows:

- 1. In Schedule 1, by striking “\$2,289.00” at the end of item A 1 and substituting “\$2,303.00”;*
- 2. In Schedule 2, by revising the prorated figures in the columns headed “Practice fee” accordingly; and*
- 3. In the headings of schedules 1, 2 and 3, by striking the year “2022” and substituting “2023”.*

REQUIRES 2/3 MAJORITY OF BENCHERS PRESENT



Memo

To: Benchers
From: Executive Committee
Date: November 4, 2022
Subject: Retired Member Fee Waiver Request

Purpose

This memorandum seeks the Benchers' approval of a resolution proposing how to proceed with a request from a retired member to waive their fee on the basis of financial hardship.

Background

In accordance with section 14(1) of the *Legal Profession Act* and Law Society Rule 2-1 one category of membership established by the Benchers is retired members. The Society charges a fee for retired lawyers based on Schedule 3 of the Law Society Rules. The fee is \$125 for the whole year (and it will remain the same for 2023), and it reduces on a prorated basis each month.

In 2020 and 2021, the Law Society received a request from a retired lawyer asking that the Benchers exercise their authority under Rule 2-4(4)¹ to waive the retired member fee on the basis of financial hardship. This request is the only such request under this Rule the Law Society has received in a number of years. In 2020 and 2021, the Benchers approved the retired member's request for waiver of the retired member fee for 2021 and 2022. The retired member has again requested a waiver of the retired member fees for 2023. The letters from the lawyer are not included in the agenda materials in order to protect the retired lawyer's privacy.

When this issue was last before the Executive Committee in November 2021, the Committee asked staff to give the policy considerations further contemplation and bring the matter back to the Committee for consideration. Since that time, the Ministry of the Attorney General announced its intention to create a single legal regulator for all legal professionals in British Columbia. The establishment of a single legal regulator would necessarily involve consideration of the different categories of membership (or licensee) to be regulated by any new entity,

¹ Law Society Rule 2-4(4) was rescinded in December 2020 and replaced with Rule 2-105.1, which provides an avenue for Benchers to, by resolution, waive payment of the annual fee by a retired member or group of retired members.

including the fees to be paid by each category of licensee and any rules regarding the waiver of those fees. For this reason, staff delayed consideration of the policy issues related to the retired member category and fees until a later date so that the issues could be considered as part of the broader project of looking at what would be required to prepare for and transition to a single legal regulator in BC.

Request

The retired lawyer who made the request in 2020 and in 2021 provided limited information beyond indicating they had been retired for 20 years and had been paying the fee, but stated that they found themselves in increasingly strained financial circumstances with no realistic prospect of things improving. The retired lawyer wrote to the Law Society on September 15, 2022 again requesting the retired member fee for 2023 be waived based on financial hardship.

At its October 20, 2022 meeting, the Executive Committee resolved to recommend to Benchers that the retired lawyer's fee for 2023 be waived.

Decision

The Benchers are asked to approve the following resolution:

BE IT RESOLVED that the retired member's request for a waiver of the retired member fee be approved for 2023.



CEO Report

November 4, 2022

Prepared for: **Benchers**

Prepared by: **Don Avison, KC**

1. Annual Federation Conference and Council Meeting

The Federation of Law Societies of Canada was finally able to hold its annual conference, in person in Saskatoon last month.

The focus of the conference was competency-based learning for legal professionals and we heard about professional learning programs in other professions and work being undertaken at other Canadian law societies. Our Federation Council member, Pinder Cheema, KC, will provide a more comprehensive report on the proceedings.

President Hamilton and I led a session for presidents, council members and senior staff on recent developments in BC focused on the provincial government's proposed establishment of a single legal regulator for lawyers, notaries and licensed paralegals.

The Federation Council is considering providing a submission about the importance of self-governance and on the independence of both the profession and its regulator.

President Hamilton and I will be meeting again with Federation President Nicolas Plourde and with CEO Jonathan Herman in early November.

2. Provincial Government Update

As Benchers will have seen, former Attorney General David Eby, KC has now been confirmed as the Premier of British Columbia and that he has named Shannon Salter as Deputy Minister to the Premier and Head of Public Service.

I expect there will be ministerial changes but they will likely not happen until sometime after the end of the current session on November 24. I will have more to say at the meeting.

3. Western CEOs Meeting

Prior to the COVID pandemic, the CEOs and Deputy CEOs from Manitoba, Saskatchewan, Alberta and BC had been holding an in-person meeting at least once a year to discuss issues of common concern.

With the resumption of in-person conferences and meetings, we will be hosting the next meeting in January next year. Preliminary discussions are under way with respect to a possible western collaboration on the development of a common competency framework for the four provinces.



4. Tribunal Chair – Position Posted

A posting for the position of Tribunal Chair is now public. A potential appointee will be presented to the Benchers for decision at the December meeting.

5. Vancouver Bencher By-Election

The call for nominations came to a close on October 17 with four candidates putting their names forward for consideration. Candidate biographies and election statements can be found on the [Law Society website](#).

Don Avison, KC

Chief Executive Officer

The Law Society
of British Columbia



Quarterly Financial Report

YTD September 2022

Prepared for: Finance & Audit Committee Meeting – November 2, 2022
Bencher Meeting – November 4, 2022

Prepared by: The Finance Department

Quarterly Financial Report - End of September

Attached are the financial results and highlights to the end of September 2022.

General Fund

General Fund (excluding capital and TAF)

To the end of September 2022, the General Fund operations results ended with a positive variance to budget. This result was due to increased revenues, along with lower operating expenses due to a combination of permanent variances and timing differences.

Revenue

As noted on the attached financial highlights, total revenue for the period was \$24.3 million, \$1.5 million (7%) ahead of budget, with increases in revenue in all areas.

We are projecting 13,814 practicing lawyers for the year, compared to a budget of 13,545. Electronic filing revenue was ahead of budget \$328,000, with higher real estate unit sales earlier in the year plus additional LOTA transactions. PLTC revenue was ahead of budget by \$246,000, with 686 students this year, compared to a budget of 610. There were a number of waitlist students that have been placed into PLTC this year. Interest income was ahead of budget by \$235,000 due to higher interest rates. Credentials fees are ahead of budget primarily due to an increase in transfer application fees. Additionally, Trust and CPD late filing fees and Discipline fines are higher than budget.

Operating Expenses

Operating expenses for the period were \$22.1 million, \$1.1 million (5%) below budget, due to both permanent variances and timing differences.

As noted on the attached financial highlights, \$800,000 of the year to date variance is due to timing differences related mainly to external counsel fees and software maintenance costs which are expected to be incurred by year end.

There are permanent expense savings to date related to meeting and travel expenses, call ceremonies and staff vacancy savings. These savings are offset by higher external counsel fees with a number of complex files, a record number of reviews, appeals and applications, and the need for specialized expertise.

TAF-related Revenue and Expenses

TAF revenue to date is slightly ahead of budget, although we have only received receipts for the first two quarters of the year. It should be noted that the BCREA forecasts that real estate unit sales will decline 34 per cent from a record high in 2021. As TAF revenue is closely correlated with the real estate market, we are projecting that TAF revenues will decline from previous levels during the second half of 2022.

Trust assurance program costs are below budget with lower travel costs and staff vacancy savings.

Lawyers Indemnity Fund

LIF assessment revenues were \$13.2 million, \$511,000 over budget, with a higher number of indemnified lawyers.

LIF operating expenses were \$7.2 million, \$830,000 (10%) under budget, due to savings in compensation costs and external fees.

The investment markets to date have been very volatile, especially in global equities, and the market value of the LIF long term investment portfolio decreased \$14.5 million since December 2021. Most of the investment losses are unrealized at this time. The portfolio returns for the period were - 6.0%, ahead of the benchmark of - 7.6%.

Summary of Financial Highlights (\$000's)

2022 General Fund Results - YTD September 2022 (Excluding Capital Allocation & Depreciation)				
	<u>Actual</u>	<u>Budget</u>	<u>\$ Var</u>	<u>% Var</u>
Revenue (excluding capital)				
Practice fees	18,953	18,571	382	2%
PLTC and enrolment fees	1,517	1,271	246	19%
Electronic filing revenue	917	589	328	56%
Interest income	452	217	235	108%
Credentials & membership services	686	581	105	18%
Fines, penalties & recoveries	411	206	205	100%
Insurance Recoveries	12	-	12	0%
Other revenue	169	158	11	7%
Other cost recoveries	97	92	5	-
Building revenue & tenant cost recoveries	1,055	1,038	17	2%
	<u>24,269</u>	<u>22,723</u>	<u>1,546</u>	<u>7%</u>
Expenses (excluding depreciation)				
	<u>22,076</u>	<u>23,146</u>	<u>1,070</u>	<u>5%</u>
	<u>2,193</u>	<u>(423)</u>	<u>2,616</u>	

Summary of Variances to Date - Sept 2022

Revenue Variances:

Permanent Variances

Practice fees (Budget 13,545 Forecast 13,814)	382
PLTC and Enrollment Fees	229
Electronic Filing Revenue	328
Interest Income	235
Credentials & membership services	93
Fines, penalties & recoveries	140
Other miscellaneous permanent differences	38
	<u>1445</u>

Timing Differences

Other miscellaneous timing differences	101
	<u>1546</u>

Expense Variances:

Permanent Variances

Meetings and Travel savings	336
Call ceremonies deferred	144
Staff Vacancy savings	140
External Counsel fees overages	(322)
Other misc. permanent differences	(29)
	<u>269</u>

Timing Differences

Information Services - Timing of software maintenance	208
External counsel fees timing	281
Investigations, court reporting and medical reports	85
Other misc. timing differences	227
	<u>801</u>
	<u>1070</u>

Trust Assurance Program Actual

	<u>2022 Actual</u>	<u>2022 Budget</u>	<u>Variance</u>	<u>% Var</u>
TAF Revenue	2,326	2,028	298	14.7%
Trust Assurance Department	2,324	2,673	349	13.1%
Net Trust Assurance Program	<u>2</u>	<u>(645)</u>	<u>647</u>	

2022 Lawyers Indemnity Fund Long Term Investments - YTD September 2022 Before investment management fees

Performance	-6.01%
Benchmark Performance	-7.56%

The Law Society of British Columbia
General Fund
Results for the 9 Months ended September 30, 2022
(\$000's)

	2022 Actual	2022 Budget	\$ Variance	%
REVENUE				
Practice fees (1)	20,685	20,287	398	2%
PLTC and enrolment fees	1,517	1,271	246	19%
Electronic filing revenue	917	589	328	56%
Interest income	452	217	235	108%
Credentials and licensee services	686	581	105	18%
Fines, penalties and recoveries	411	206	205	100%
Program Cost Recoveries	84	92	(8)	-9%
Insurance Recoveries	12	-	12	0%
Other revenue	169	158	11	7%
Other Cost Recoveries	13	-	13	0%
Building Revenue & Recoveries	1,055	1,038	17	2%
Total Revenues	26,001	24,439	1,562	6.4%
EXPENSES				
Benchers Governance and Events				
Bencher Governance	475	572	97	17%
Board Relations and Events	220	229	9	4%
	695	801	106	13%
Corporate Services				
General Office	445	535	90	17%
CEO Department	570	572	2	0%
Finance	827	858	31	4%
Human Resources	498	583	85	15%
Records Management	214	204	(10)	-5%
	2,554	2,752	198	7%
Education and Practice				
Licensing and Admissions	1,310	1,675	365	22%
PLTC and Education	2,293	2,413	120	5%
Practice Standards	294	383	89	23%
	3,897	4,471	574	13%
Communications and Information Services				
Communications	501	435	(66)	-15%
Information Services	1,359	1,527	168	11%
	1,860	1,962	102	5%
Policy and Legal Services				
Policy and Legal Services	1,184	1,298	114	9%
Tribunal and Legislative Counsel	528	551	23	4%
External Litigation & Interventions	-	19	19	100%
Unauthorized Practice	237	251	14	6%
	1,949	2,119	170	8%
Regulation				
CLO Department	412	680	268	39%
Intake & Early Assessment	1,837	1,701	(136)	-8%
Discipline	2,561	2,112	(449)	-21%
Forensic Accounting	592	721	129	18%
Investigations, Monitoring & Enforcement	2,642	2,961	319	11%
Custodianships	1,481	1,326	(155)	-12%
	9,525	9,501	(24)	0%
Building Occupancy Costs				
Depreciation	1,596	1,537	(59)	-4%
	784	949	165	17%
Total Expenses	22,860	24,095	1,232	5.1%
General Fund Results before Trust Assurance Program	3,141	344	2,794	
Trust Assurance Program (TAP)				
TAF revenues	2,326	2,028	298	14.7%
TAP expenses	2,324	2,673	349	13.1%
TAP Results	2	(645)	647	100.3%
General Fund Results including Trust Assurance Program	3,143	(301)	3,441	

(1) Membership fees include capital allocation of 1732k (Capital allocation budget = 1716k)

The Law Society of British Columbia
General Fund - Balance Sheet
As at September 30, 2022
(\$000's)

	Sep 30 2022	Sep 30 2021
Assets		
Current assets		
Cash and cash equivalents	20,869	16,905
Unclaimed trust funds	2,186	2,119
Accounts receivable and prepaid expenses	1,317	928
Due from Lawyers Insurance Fund	12,196	13,480
	<u>36,567</u>	<u>33,432</u>
Property, plant and equipment		
Cambie Street property	10,300	11,466
Other - net	2,213	1,733
	<u>12,513</u>	<u>13,199</u>
Long Term Loan	535	535
	<u>49,615</u>	<u>47,166</u>
Liabilities		
Current liabilities		
Accounts payable and accrued liabilities	2,945	3,035
Liability for unclaimed trust funds	2,186	2,119
Current portion of building loan payable		100
Deferred revenue	7,528	7,154
Deposits	89	87
	<u>12,749</u>	<u>12,495</u>
Net assets		
Capital Allocation	4,920	3,967
Unrestricted Net Assets	31,946	30,704
	<u>36,866</u>	<u>34,671</u>
	<u>49,615</u>	<u>47,166</u>

The Law Society of British Columbia
General Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2022
(\$000's)

	<i>Invested in Capital</i> \$	<i>Working Capital</i> \$	Unrestricted Net Assets \$	Trust Assurance \$	Capital Allocation \$	2022 Total \$	Year ended 2021 Total \$
Net assets - At Beginning of Year	12,844	15,072	27,916	1,841	3,967	33,723	29,998
Net (deficiency) excess of revenue over expense for the period	(1,109)	2,517	1,408	2	1,733	3,143	3,727
Contribution to LIF				-		-	
Repayment of building loan	100	-	100	-	(100)	-	-
Purchase of capital assets:							
LSBC Operations	563	-	563	-	(563)	-	-
845 Cambie	117	-	117	-	(117)	-	-
Net assets - At End of Period	12,515	17,589	30,104	1,843	4,920	36,866	33,723

The Law Society of British Columbia
Lawyers Indemnity Fund
Results for the 9 Months ended September 30, 2022
(\$000's)

	2022	2022	\$	%
	Actual	Budget	Variance	Variance
Revenue				
Annual assessment	13,236	12,725	511	4%
Investment income	(13,333)	8,276	(21,609)	-261%
Other income	75	49	26	53%
Total Revenues	(22)	21,050	(21,072)	-100.1%
Expenses				
Insurance Expense				
Provision for settlement of claims	13,223	13,223	-	0%
Salaries and benefits	2,386	2,784	398	14%
Contribution to program and administrative costs of General Fund	1,081	1,135	54	5%
Provision for ULAE	-	-	-	0%
Insurance	1,228	1,271	43	3%
Office	500	701	201	29%
Actuaries, consultants and investment brokers' fees	1,301	1,287	(14)	-1%
Special fund - external counsel fees	28	-	(28)	0%
	19,747	20,401	654	3%
Loss Prevention Expense				
Contribution to co-sponsored program costs of General Fund	763	939	176	19%
Total Expenses	20,510	21,340	830	3.9%
Lawyers Indemnity Fund Results before Contributions	(20,532)	(290)	(20,242)	
Contribution from Trust Assurance Program	-			
Lawyers Indemnity Fund Results	(20,532)	(290)	(20,242)	

The Law Society of British Columbia
Lawyers Indemnity Fund - Balance Sheet
As at September 30, 2022
(\$000's)

	Sep 30 2022	Sep 30 2021
Assets		
Cash and cash equivalents	1,375	1,878
Accounts receivable and prepaid expenses	1,567	1,164
Current portion General Fund building loan		100
Investments	226,195	227,925
	<u>229,137</u>	<u>231,067</u>
Liabilities		
Accounts payable and accrued liabilities	209	319
Deferred revenue	4,294	4,151
Due to General Fund	12,196	13,480
Provision for claims	77,842	80,416
Provision for ULAE	12,399	12,222
	<u>106,940</u>	<u>110,588</u>
Net assets		
Internally restricted net assets	17,500	17,500
Unrestricted net assets	104,697	102,979
	<u>122,197</u>	<u>120,479</u>
	<u>229,137</u>	<u>231,067</u>

The Law Society of British Columbia
Lawyers Indemnity Fund - Statement of Changes in Net Assets
Results for the 9 Months ended September 30, 2022

	Unrestricted \$	Internally Restricted \$	2022 Total \$	2021 Total \$
Net assets - At Beginning of Year	125,228	17,500	142,728	111,134
Net excess of revenue over expense for the period	(20,532)	-	(20,532)	31,595
Net assets - At End of Period	104,697	17,500	122,197	142,728

The Law Society
of British Columbia



2022 Forecast

As at September 2022

Prepared for: Finance & Audit Committee Meeting – November 2, 2022
Bencher Meeting – November 4, 2022

Prepared by: The Finance Department

2022 Forecast - as at September 2022

Attached is the General Fund forecast to the end of the fiscal year.

Overview

At this time, we are projecting a positive result of \$1 million for the 2022 year. As the 2022 budget was a deficit budget of \$825,000, this is a positive variance of \$1.8 million, mainly due to much higher than expected revenues.

Revenue Forecast

At this time, total revenue is projected at \$32 million, \$1.7 million (6%) ahead of budget, primarily due to a higher number of practicing lawyers, along with increased electronic filing revenues, PLTC fees and interest income.

Practice Fees: We are forecasting the number of practicing lawyers at 13,814, compared to a budget of 13,545, 269 lawyers ahead of budget. Practice fees are projected at \$25.3 million, \$573,000 more than budget.

Electronic Filing Revenue (EFR): Currently, EFR is \$330,000 ahead of budget at this time which the forecast takes into account. In the first quarter of the year, the real estate market was very active, increasing EFR. In addition, new LOTA filing fees were received. As the BC Real Estate Association anticipates a 34% decline in unit sales in 2022, it is difficult to forecast any additional excess EFR at this time. Electronic filing revenue is forecasted at \$1.115 million, \$330,000 more than budget.

PLTC Revenue: We are projecting 686 PLTC students this year, 76 students ahead of budget, as waitlist students were placed into PLTC. PLTC revenue is projected at \$2 million, \$229,000 over budget.

Interest income: With interest rates rising, interest revenue is ahead of budget to date, and we expect this will continue to year end. The forecast is \$642,000 for the year, \$352,000 over budget.

Credentials fees, Trust and CPD late filing fees and Discipline fines are ahead of budget \$233,000 to date, and we expect this overage to continue to year end.

Operating Expenses Forecast

At this time, operating expenses are projected at \$31.0 million, slightly under budget.

With increases in the number and complexity of files, a record number of reviews, appeals and applications, and specialized expertise needs on IME files, we are projecting that external counsel costs will be over budget \$530,000. These overages will be offset by savings in meeting and travel expenses, staff vacancy savings, the deferral of call ceremonies to the subsequent year and savings related to the PLTC program being delivered on-line.

The Law Society of British Columbia
General Fund
For the 12 Months ending December 31, 2022
(\$000's)

	Q3		Forecast vs Budget	
	Forecast	Budget	\$	%
	<u>Variance</u>			
REVENUE				
Practice fees	25,335	24,762	573	2%
PLTC and enrolment fees	2,008	1,779	229	13%
Electronic filing revenue	1,115	785	330	42%
Interest income	642	290	352	121%
Credentials and licensee services	868	775	93	12%
Fines, penalties and recoveries	415	275	140	51%
Program Cost Recoveries	122	122	-	0%
Other revenue	207	187	20	11%
Building Revenue & Recoveries	1,346	1,384	(38)	-3%
Total Revenues	<u>32,080</u>	<u>30,359</u>	<u>1,699</u>	<u>6%</u>
EXPENSES				
Benchers Governance and Events				
Bencher Governance	546	653	107	16%
Board Relations and Events	315	312	(3)	-1%
	<u>861</u>	<u>965</u>	<u>104</u>	<u>11%</u>
Corporate Services				
General Office	702	749	47	6%
CEO Department	833	821	(12)	-1%
Finance	1,170	1,189	19	2%
Human Resources	762	802	40	5%
Records Management	281	275	(6)	-2%
	<u>3,748</u>	<u>3,836</u>	<u>88</u>	<u>2%</u>
Education and Practice				
Licensing and Admissions	2,096	2,305	209	9%
PLTC and Education	3,158	3,229	71	2%
Practice Standards	518	518	-	0%
	<u>5,772</u>	<u>6,052</u>	<u>280</u>	<u>5%</u>
Communications and Information Services				
Communications	637	590	(47)	-8%
Information Services	1,937	1,936	(1)	0%
	<u>2,574</u>	<u>2,526</u>	<u>(48)</u>	<u>-2%</u>
Policy and Legal Services				
Policy and Legal Services	1,816	1,771	(45)	-3%
Tribunal and Legislative Counsel	790	748	(42)	-6%
External Litigation & Interventions	18	25	7	28%
Unauthorized Practice	341	337	(4)	-1%
	<u>2,964</u>	<u>2,881</u>	<u>(83)</u>	<u>-3%</u>
Regulation				
CLO Department	619	945	326	35%
Intake & Early Assessment	2,526	2,318	(208)	-9%
Discipline	3,225	2,857	(368)	-13%
Forensic Accounting	691	984	293	30%
Investigations, Monitoring & Enforcement	3,974	3,987	13	0%
Custodianships	1,999	1,802	(197)	-11%
	<u>13,034</u>	<u>12,893</u>	<u>(141)</u>	<u>-1%</u>
Building Occupancy Costs	2,090	2,030	(60)	-3%
Total Expenses	<u>31,043</u>	<u>31,184</u>	<u>140</u>	<u>0%</u>
General Fund Results	<u><u>1,037</u></u>	<u><u>(825)</u></u>	<u><u>1,839</u></u>	



Memo

To: Benchers
From: Pinder K. Cheema, KC, Law Society Representative on the Federation Council
Date: November 4, 2022
Subject: Briefing by the Law Society's Member of the Federation Council

Purpose

This memorandum is to provide the Benchers with an update on the Federation's Annual Conference, which took place October 12 and 13, 2022, and the Federation Council meeting, which took place on October 14, 2022.

The conference opened with a welcome from Federation President Nicolas Plourde, Ad. E and Vice President Jill Perry, KC. The land acknowledgment was provided by Elder Joseph Naytowhow, a member of the Sturgeon Lake Band, and inter-disciplinary artist, who shared his cultural knowledge with the attendees.

The theme of the conference was "Exploring Competency Based Learning for Legal Professionals" or CBE-competency based education. Jill Perry, KC, Vice President and President-elect chaired the program. She stated that the objective of the conference was to explore the elements and the opportunities of a competency based education ("CBE") for legal professionals from law school and throughout a legal career. She emphasized that CBE focuses on learning outcomes, and clearly defined parameters for what learners should know and be able to do at specific stages in their development. The CBE method is different from traditional law school, bar admission and CPD programs in that it allows for a flexible approach to when and how competencies are acquired. Attendees also heard from other medical and engineering representatives that have moved to competency-based education and qualification, and from law societies that have adopted CBE frameworks for entry-level and ongoing competence.

Overview of Conference Sessions

1. Competencies 101 - What is a Competency Based Approach to Education?

Presenter [Dr. Jason R. Frank](#), Clinician-Educator in the Department of Emergency Medicine at the University of Ottawa. Dr. Frank is recognized nationally and internationally for his expertise

in CBE design and competency-based medical education specifically. He provided an overview of the CBE approach, what it is and why the medical profession has embraced it.

In his presentation entitled “Competency 101”, Dr. Frank addressed a number of issues including what competency means and how to train a professional to be competent. He stressed that competency was more than assessment. Traditionally, in the 20th century, competency was assessed following time spent on task, followed by an exam. A major driver of change in the medical field was the conclusion that variable time spent on training produced varying levels of competency. In medicine, that meant patient safety was at risk. He defined a competency based approach as one that included the following: a list of outcomes; learning tailored to the individual; and teaching which focused on the outcomes. He stressed that an integral part of the assessment was assessing how well the professional performed a particular task and not time spent on the task.

He also highlighted the separation between assessing a student’s task performance and student advancement. Task performance comprised pixelated assessments, to assess actual competence. Advancement took place following a review by an assessment panel, separate from the onsite assessors whose role is to provide feedback to the student.

In summary, he emphasized that the “mass cookie cutter type training is out”, that societal needs require a different system to train professionals which focuses on outcomes, that time is a resource to acquire competence, and not the marker of competence itself, and that task performance rather than time, is an efficient way to acquire competence. Further drivers of this change are the following: teachers are at the end of their resources; the learner arrives with fixed mentalities; and universities are not made to assess competence.

2. The View From Other Regulators

This session continued the theme of Dr. Frank’s opening presentation about the use of CBE in medical training. The engineering profession described how it applies competency-based assessment of engineering experience for professional licensure. Panelists from the Solicitors Regulation Authority (“SRA”) in the U.K., and the Institute for the Advancement of the American Legal System (“IAALS”) also shared their experiences with CBE as a tool for modernizing legal education and qualification.

Presenters:

- [Logan Cornett](#), Director of Research, Institute for the Advancement of the American Legal System, University of Denver
- [Julie Swan](#), Director of Education and Training, Solicitors Regulation Authority
- [Jason Ong](#), Director, Registration, Engineers and Geoscientists BC
- [Kate MacLachlan](#), Ph.D., P.Geo., Director of Registration, Association of Professional Engineers and Geoscientists of Saskatchewan

Logan Cornett began this session by describing the results of their national survey in which they asked the question ‘what do new lawyers need to be successful on graduation?’; they received over 2500 responses from lawyers in 50 states and determined that 76 foundations were necessary for success out of law school. Those 76 foundations were organized into model learning outcomes, and provided to law schools and employers. Workshops were conducted to refine the model learning outcomes into a flexible model. The final set of learning outcomes were distilled into the following 5 areas: the lawyer as a problem solver; as a self-starter; as a professional; law school and ongoing legal education; and hiring practices focused on competency based training rather than credentials. She emphasized that CBE can help improve objectivity, and reduce socio-economic barriers.

Jason Ong described the issues which led to the shift to a competency based assessment in their profession and provided an overview of their assessment method. Drivers of change included pressure from the Fairness Commissioner and significant numbers of internationally trained graduates wanting to practice in Canada. He summarized that their assessments are now focused on how well the candidate can perform a task rather than how much time the candidate has spent on it. The candidate must demonstrate all 34 competencies to succeed. Finally, he stated that assessment happens by way of a rating scale, and not a grade. The ultimate question to be answered is whether the ratings show that the professional is competent to practice.

Julie Swan of the SRA outlined the reasons for changing from an assessment based approach to one of competency including uncertainty about standards across providers, barriers to entry by being prescriptive, and increasing costs limiting entry. She agreed that there was some resistance to the competency based model and so work was being done to socialize their model.

3. Competency-Based Learning and the Canadian Landscape

This session provided a snapshot of competency-based learning approaches used by law societies and CLASSIC, the legal clinic affiliated with the University of Saskatchewan’s College of Law.

Presenters:

- [Catherine Ouimet](#), Executive Director, Barreau du Québec
- [Chantelle Johnson](#), Executive Director, Community Legal Assistance Service for Saskatoon Inner City Inc. (CLASSIC)
- [Jacqueline Mullenger](#), Senior Director, Operations and Governance, Nova Scotia Barristers Society
- [Barbra Bailey](#), Manager, Education, Law Society of Alberta

Catherine Ouimet discussed the competency based approach in Québec, borne out of a concern that gaps existed in certain areas of practice, notably in research and writing. Their program combines both competencies and theory. It consists of 3 stages: a diagnostic evaluation of 12

areas of law to test knowledge; an educational plan of study which is adapted to the individual student; and concludes with an exam and evaluation. The student advances at their own pace. Their legal clinic program comprises 3 stages: 6 weeks of theory, ethics and applied law; 16 weeks of experiential learning; and an internship of 6 months.

Barbra Bailey described their professional development profile initiative to support continuing competency, post call. It is a self-directed approach, with no minimum hourly requirement and encompasses 9 areas: cultural competence and EDI; lawyer client relations; practice management; professional conduct; contributions; TRC; wellbeing; continuous improvement; and legal practice. She also discussed their 6 level proficiency scale from beginner, aka 'pre-discovery', to leader.

Chantelle Johnson discussed the benefits of their legal clinic for students. She described it as 'on the ground learning', that they do more than just help clients. They teach competencies to the students and who also gain real life skills, and in addition, deal with a full panoply of legal issues. Evaluations occur at the beginning, at the mid-point and at the end of the internship. It was noted that students benefitted from ongoing feedback.

4. Competencies and Wellness

In 2019, Dr. Nathalie Cadieux of the Université de Sherbrooke gave a presentation on the results of the study she conducted on the psychological health of lawyers in Québec. Following that presentation, the Federation, on behalf of the 14 law societies, and the Canadian Bar Association ("CBA") asked Dr. Cadieux to conduct a similar study on a national scale.

Dr. Nathalie Cadieux presented her findings from Phase I of the National Wellness Study, and discussed the competencies legal professionals need for wellness. Over 7300 responses were received during the course of her study. Not surprisingly, psychological distress was higher for professionals in the north, and for articulated students, women, early career professionals and those with handicaps. The proportion of legal professionals impacted was higher than that of the general population.

A number of risk factors were identified including: traumatic experiences; mental health issues and addiction; violence; isolation; and lack of support during articles/practice. Suicidal thoughts and burnout were prevalent. In addition, almost 60% of the respondents between 0-9 years of practise said they would leave the profession if they could.

The most significant stressors cited were billable hours, stress related to practice, a lack of work life balance, emotional demands of the work, techno stress, tele travail, as well as individual factors such as discrimination, and negative coping strategies. Other stressors arose from the stress of being in a regulated profession, the possibility of committing an error, the possibility of

an inspection or audit, keeping up to date, and professional isolation. Her findings will be released to the law societies shortly.

5. What Competency-Based Education means for Experiential Training

During this debate, representatives of the legal academy and law societies shared their views on which experiential learning avenue is best for the development of core competencies needed for legal practice, whether law schools/legal clinics, the bar admission course or articling.

Benjamin Ries (Ontario) cited the benefits and advantages of a clinical experience, Erin Kleisinger, KC (Saskatchewan) argued in favor of the Bar Admission Program, followed by the bar exams, and Brook Greenberg, KC, took the opposing view that articling programs were the best approach to providing students with the necessary skills to be practice ready.

6. Presentation by Lisa Hamilton KC, President of the Law Society of BC (LSBC) and Don Avison KC, CEO of LSBC to the Federation regarding Government of BC Intentions Paper and Single Legal Regulator

Both our President and CEO addressed the Conference attendees about the Government of BC announcement in January, what prompted it, and the implications of the proposal both in BC and elsewhere for the profession and the public.

Our CEO set out the background to the Intentions Paper, including the Law Society's efforts, spanning almost three decades to include the Notaries within our governance structure. He also referenced the government's approach to regulation of the health professions, including the College of Dentists. He gave a detailed summary of the key issues and considerations of the Intentions Paper, including the streamlined statutory framework, the role of the independence of the Bar, the authority to recognize licensed paralegals, and board size and composition.

Our President highlighted and emphasized the importance of the fundamental principle of the independence of the Bar, in the context of a reduced Board comprised of 'legal professionals'. Both reminded the attendees and members of Federation Council that the date for response set by the Government was November 18, 2022.

Overview of Federation Council Meeting

The meeting began with a welcome and introduction by President Nicolas Plourde, Ad. E. The President welcomed everyone to his last meeting as President. He remarked on the number of in person meetings he had had with law society leaders and groups across the country, which contrasted with last year's meetings.

He also thanked the members of Federation Council whose terms have concluded and warmly welcomed the new members, including our Brook Greenberg, KC.

Below, I have summarized some of the items on the Agenda:

- a. Election of Executive Officers:** The following were elected unanimously: Jill Perry, KC (Nova Scotia) as President, Jacqueline Horvat (Ontario) as Vice President and Erin Kleisinger, KC (Saskatchewan) as second Vice President.

- b. Update on the National Well-Being Study:** This is a project of the Federation and the Université de Sherbrooke, in collaboration with Canada's law societies and the CBA. The Study addresses the glaring gap in data on the mental health of legal professionals in Canada. With national data, law societies will better understand the issues, and any recommendations to address them will be evidence based. The Study includes a national survey on the well-being of legal professionals in Canada ("Phase I"), and a second phase that explores differences by province and territory through qualitative interviews ("Phase II").

Dr. Natalie Cadieux, the project leader, presented her findings of Phase I at the Conference on Oct 12, 2022, which are set out earlier in my report. The findings confirmed anecdotal accounts of the extent to which the legal profession was not immune to wellness challenges faced by its members across Canada.

Phase II interviews took place in six jurisdictions between the end of May and early July: Northwest Territories; Nunavut; Yukon; Alberta; Saskatchewan; and British Columbia. Interest in 4 of the interviews was generally high. The highest number of requests for interviews was in British Columbia (157) and the lowest was in the Northwest Territories (3). Interviews were conducted with between 3 and 10 participants per law society, and included some articling students.

The issues of interest to interviewees varied by individual and by law society from among the ten themes included in Phase II (e.g. billable hours, coping strategies and lifestyle, EDI in legal practice, technostress, practice reviews and regulation, return to work after a prolonged medical leave, remote work (telework), training and mentorship, work-life balance, and working conditions and cognitive demands).

- c. Indigenous Advisory Council update:** Council approved the membership of the Indigenous Advisory Council ("IAC") at its June 2022 meeting. Plans are now underway for the IAC's first meeting.

The creation of an IAC was unanimously approved in October 2021. The IAC's Terms of Reference are linked [here](#). Pursuant to its Terms of Reference, the IAC is to be comprised of 8-10 members from different regions of the country. IAC membership is to be regionally, culturally, age and gender diverse to ensure a range of First Nations, Métis and Inuit voices and perspectives are represented.

Federation staff reached out to members to explore possible approaches to the IAC's first meeting. There was a consensus that the first meeting be held on the land and that it be informed, in structure and format, by the legal traditions and cultural practices of the Nation(s) on whose land we meet. It was also suggested that the first meeting be held in the National Capital Region. Discussions are currently underway with Claudette Commanda, an Algonquin Anishinabe from Kitigan Zibi Anishinabeg First Nation, just north of Ottawa, about the possibility of hosting the IAC's first meeting on their territory.

- d. The National Committee on Accreditation (“NCA”):** This committee is responsible for assessing the credentials of internationally trained lawyers and graduates. While operational changes over the past decade led to significantly increased satisfaction with the service provided by the NCA, in recent years concerns have been expressed about whether NCA applicants possess the competencies necessary for success in bar admission programs and in legal practice. To address these concerns in 2016 the Federation undertook a comprehensive review of the mandate, structure, policies and activities of the NCA (“NCA Program Review”).

A volunteer Task Force of 13 lawyers with diverse perspectives worked with the consultants over the spring and summer of 2021 to develop draft competency profile statements for Level 1 (entry to bar for admission), to develop the competency statements for Level 2 (entry to practice) then go over and refine all the competency statements.

To gather feedback on the draft competency profile, “ACT” (the private contracting firm hired to complete the competency profile) held facilitated focus group discussions that included a review of the draft competency profile and discussion of a standard set of questions. The groups were: (a) Supervisors of articling students and entry level lawyers (b) Internationally educated lawyers (c) NCA examiners (d) Members of the academic community. Law societies were also invited to provide written feedback on the draft profile. This aspect of the review was launched in late November 2021. Over the course of the focus group discussions, members of the legal academy expressed concern about the extent of engagement with the academy on the project. Discussions about how to increase consultation with the academy have been underway since December 2021.

The NCA Assessment Modernization Committee (“NCA AMC”) agreed to pause work on the competency profile development pending further consideration of these issues within the Federation.

It has now been clarified that the Competency Profile is intended to underpin changes in the way NCA candidates are assessed. It will inform but not determine the content of any changes to the National Requirement. During the joint meeting of the NCA AMC with the National Requirement Review Committee (“NRRC”), consensus was that high-level dialogue with stakeholders is required and that the modernization of the NCA assessment must move forward. Federation staff took these comments away and are working with the consultants to propose options to restart the project. Included in that work is a review of the draft Competency Profile project to propose that it focus more on competencies required for entry to bar admission.

Next steps will include a meeting of the NCA AMC, likely in mid-November, to have the committee discuss these proposed options and provide guidance on stakeholder consultation activities.

- e. **National Requirement Review (“NRR”)**: The National Requirement sets the competencies that graduates of Canadian common law programs must have before entering a bar admission course and the learning resources those programs must provide. Adopted in 2012, the National Requirement was developed by the Federation’s Task Force on the Canadian Common Law Degree (“Task Force”) and subsequently refined by the Common Law Degree Implementation Committee (“Implementation Committee”). It applies to graduates of all Canadian common law programs and to assessment by the NCA of the qualifications of internationally trained applicants, and graduates of Canadian civil law degree programs who wish to be admitted to a law society in a common law jurisdiction. It also applies to applications for the approval of new Canadian common law degree programs. The National Requirement came into force in 2015. It is to be reviewed every 5 years. The current review commenced in 2022.

The NRRC met in January 2022 and in April 2022 met jointly with the NCA AMC. Discussions at both meetings focused on the NCA AMC’s competency development work and its impact on the National Requirement. Members of both committees recognized the importance of moving forward with the competency development work as it will be the foundation of a modernized NCA assessment process. At the same time, committee members stressed the importance of allowing for open dialogue with the legal academy about the scope of the National Requirement. Committee members agreed that these goals would be best accomplished by recognizing that the competencies developed by the NCA AMC will apply only to NCA candidates.

At meetings in July 2022 and August 2022 committee members discussed a preliminary list of issues, and reviewed and approved draft communications and work plans. An initial communiqué was sent to a broad range of stakeholders in late September, providing background on the National Requirement and the review process, and seeking input from the recipients on their experience with the National Requirement, issues they would like the committee to consider, components that they think are missing from the National Requirement, and any other aspects of the National Requirement that they think should be revised. The deadline for input is November 30, 2022.

- f. Anti-Money Laundering (“AML”):** Work on an online educational program consisting of five modules is well underway. The expected launch date has been revised to early 2023. Work is continuing on new discipline standards addressing identification of breaches of the anti-money laundering rules, the tracking of breaches, the ability to make referrals for breaches, and staff training. The joint Federation-Government of Canada AML Working Group will meet next in early November.

The final report of the Cullen Commission was released to the public on June 15, 2022. The report applauds the work done by the Federation and the law societies to address the risks of money laundering that can occur in the practice of law. The findings of Commissioner Austin Cullen vindicate the position taken by the Federation and the law societies for more than two decades: Canadian law societies are best placed to implement and enforce regulations addressing the risks of money laundering that arise in the practice of law. Commissioner Cullen rejected the view that the lack of government regulation of money laundering risks in legal practice means there is no incentive for lawyers or law firms to adopt and comply with AML measures. He recognized the value of the law society rules, based on the Federation’s Cash Transactions, Client Identification and Verification, and Trust Accounting model rules. While his specific comments and recommendations are addressed to the Law Society of British Columbia (LSBC), they are equally relevant to the other law societies and to the Federation.

- g. Standing Committee on the Model Code: Amendments to discrimination and harassment and ex parte proceedings:** Council was asked to approve amendments to the Model Code concerning discrimination and harassment provisions and ex parte proceedings.

As mentioned in my June report, our Ethics committee of the Law Society of BC reviewed both issues, and consulted extensively as to the discrimination and harassment provisions before providing its response. Both amendments passed, with BC abstaining as to both.

BC's position was that the proposed ex parte amendments prohibiting communications with the tribunal, were covered by our Rules of Court and, secondly, that the scope of the proposed discrimination and harassment provisions addressed behaviour which was outside the practise setting of a lawyer which in turn, raised questions of enforceability. It was noted however, that other provinces relied on the Model Code in governing their professionals, and, in that context, BC abstained.

- h. Mobility for Federal Government lawyers:** Council was asked to approve the draft memorandum of understanding ("MOU") with the Government of Canada for submission to the provincial law societies for consideration and execution. This motion passed unanimously.

The proposed memorandum would apply only in the common law provinces and would have no impact on the provisions of the earlier Territorial Mobility Agreement or the Territorial Mobility Agreement 2013. The signatories to the agreement would be the law societies in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, and the federal government.

The MOU, which would apply to all legal counsel in the exclusive employ of the federal government, contemplates two significant changes to the application of the NMA and the NMA 2013. The first would exempt legal counsel who provide legal services exclusively to the federal government from the temporary mobility provisions. The second would exempt federal government advisory, policy, and legislative counsel (those who do not engage in litigation) from the obligation to be licensed in any jurisdiction in which they establish an economic nexus, and, instead require such counsel to be and remain a practicing lawyer in good standing of a law society. The proposed agreement will thus resolve an issue of advisory counsel wishing to remain licensed in their "home" jurisdiction when they transfer to another jurisdiction without requiring them to be licensed in multiple jurisdictions.

- i. Governance:** Council was provided with an update of the Annual Activity Plan which confirmed that work continued on the following strategic goals:
- i. Information sharing: ongoing by discussions among the law societies on their initiatives, with law society counterpart groups and through national forums;
 - ii. Collaboration: ongoing by responding to national issues such as wellbeing of the profession, developing a national good character standard, and supporting law societies in the development of AML processes and guidelines, the development of a competency based system to assess internationally trained lawyers, and reviewing the National Requirement (which sets out the skills and competencies

that each graduate of a Canadian common law degree program is expected to have); and

- iii. In the area of advocacy and stakeholder engagement, the Federation continues to engage with the Indigenous Bar, the legal academy, with the federal government and intervenes when appropriate on issues of national importance.

j. Report of the Finance and Audit Committee: Council received the 4th quarter operating statements for 2021-22 and approved the audited statement for the year ending June 30, 2022.

The Q4 Operating Statements reflect a year end surplus in the general operating fund of \$88,000 and a surplus in the NCA fund of \$361,000 for a consolidated year end surplus for those two funds of \$449,000 compared to budget, before adjustments for amortization and drawdowns of the Special Projects Reserve.

The new auditors (RCGT) advised that they were able to provide a clean audit. They stated that there were no issues with respect to the completion of the audit, that management was very cooperative and knowledgeable and that there were no recommendations for any changes in financial controls, policies or procedures.

k. Other Reports:

- i. **National Committee on Accreditation:** this committee assesses the credentials of internationally trained lawyers who wish to come to Canada to practice. In 2021-22, the NCA issued 1730 Certificates of Qualification (“CQ’s”) compared to 561 for the previous year.

The NCA is experiencing a significant increase in requests for accommodation to reduce or remove barriers. It is anticipated that this will have cost implications going forward.

- ii. **Common Law Approval Committee:** this committee determines law school program compliance with the national requirement for the purpose of entry of Canadian common law school graduates to Canadian law society admission programs. The Approval Committee, created in February 2012, evaluates both the programs of established Canadian law schools and those of new Canadian law schools.

In January 2015, the Approval Committee evaluated, and took decisions on all J.D. programs in existence in the fall of 2014. The information on the Federation website on Canadian programs has been revised and enhanced to reflect the 21

law schools with approved programs and the two programs that have received preliminary approval (Ryerson University and Trinity Western University). The full list of programs is set out [here](#). Nunavut Arctic College with the University of Saskatchewan received full approval in 2021. This one-time, four-year program, graduated 23 people, 16 of whom are Inuit.

Trinity Western University's law school program was awarded preliminary approval status in 2013. The program advised the Federation in 2022 that it has withdrawn its request to the provincial government to start a law program.

- iii. **CAN Lii and Lexum Report:** Both CEO's reported that the organizations continued to expand their businesses. CAN Lii is conducting a pilot project with the Canadian Judicial Council and Lexum has acquired the Ontario Court of Appeal as a client.

In addition, Lexum has been recognized as for its workplace culture and as one of the most inspiring work places in North America.



2023 Bencher & Executive Committee Meetings

Executive Committee	Bencher	Other Dates
Thursday, January 19 Hybrid	Friday, February 3 Hybrid	Jan 1: New Year's Day Jan 2: Public Holiday (in lieu of New Years' Day) Jan 22: Lunar New Year Feb 1: New Bencher Orientation Feb 3: Welcome/Farewell Dinner
Thursday, February 23 Virtual	Friday, March 10 Virtual	<i>TBD</i> : CBABC Provincial Council Meeting <i>TBD</i> : CBA Annual General Meeting Feb 20: Family Day Mar 13-24: Spring Break Mar 22 (sundown)-Apr 21 (sundown): Ramadan
Thursday, April 13 Hybrid	Friday, April 28 Virtual	Apr 7-10: Easter April 14: Vaisakhi Apr 21 (sundown) – 22 (sundown) Eid
Thursday, May 18 Virtual	Saturday, June 3 Hybrid	May 22: Victoria Day June 1-3: LSBC Bencher Retreat June 7-11: LSA Bencher Retreat <i>TBD</i> : Federation Council Meeting
Thursday, June 29 Hybrid	Friday, July 14 Virtual	June 21: National Indigenous Peoples Day June 27: AGM July 1: Canada Day July 3: Public Holiday (in lieu of Canada Day) Aug 7: BC Day <i>TBD</i> : IILACE Conference
Thursday, September 7 Virtual	Friday, September 22 Hybrid	Sept 4: Labour Day Sept 15 (sundown) - 17 (sundown): Rosh Hashanah Sept 24 (sundown) - 25 (sundown): Yom Kippur Sept 30: Truth and Reconciliation Day Oct 9: Thanksgiving Day
Thursday, October 19 Virtual	Friday, November 3 Virtual	<i>TBD</i> : IBA Annual Conference Nov 8: National Indigenous Veterans Day Nov 11: Remembrance Day Nov 12: Diwali Nov 13: Public Holiday (in lieu of Remembrance Day) Nov 15: Bencher General Election <i>TBD</i> : Federation Fall Meetings
Thursday, November 23 Hybrid	Friday, December 8 Hybrid	Dec 7 (sundown) - 15 (sundown): Hanukkah Dec 25: Christmas Day Dec 26: Boxing Day Dec 26 – Jan 1: Kwanzaa