RESEARCH MEMORANDUM

TO: **Prospective Clients of LexOutsource**

FROM: **The Chief Executive Officer, LexOutsource**

DATE: **February 20, 2024**

SUBJECT: **Is LexOutsource engaged in the "practice of law"?**

I ISSUE

1. Whether the provision of legal research, writing, and analysis services by LexOutsource, exclusively to licensed and practising Canadian lawyers, constitutes the "practice of law"?

II BRIEF ANSWER

2. No. LexOutsource is not engaged in the "practice of law" as traditionally defined and understood within the legal and regulatory framework. The "practice of law" typically involves offering legal services directly to the public, which LexOutsource does not do. Instead, it supports practicing lawyers by providing research and drafting services, acting under the supervision and instruction of those lawyers. This distinction is critical and is supported by legal precedent, statutory definitions, and professional ethics opinions, which collectively confirm that services like those offered by LexOutsource fall outside the scope of practicing law. Therefore, LexOutsource operates within a legal and ethically acceptable boundary, providing valuable support to the legal profession without directly engaging in the practice of law.

III FACTUAL BACKGROUND

4. Since its establishment in 2012, LexOutsource has positioned itself as a pivotal resource for Canadian lawyers seeking to delegate legal research, writing, and analysis tasks. Operating distinctly outside the traditional law firm model, LexOutsource serves solely the legal profession, providing services on a contractual basis without directly engaging with or providing services to the public. This operational model ensures that LexOutsource maintains no direct interaction with the clients of the lawyers it serves, upholding a clear delineation between the service provider and the end recipient of legal services.

5. The team at LexOutsource comprises individuals who may hold legal qualifications and be licensed to practice in various jurisdictions. However, their role within LexOutsource is not to act as lawyers but rather to fulfill functions analogous to those of highly skilled paralegals, law clerks, or legal assistants. This distinction is crucial, as it underlines the company's commitment to not presenting its staff as practicing lawyers. The range of services LexOutsource offers includes conducting legal research, preparing legal research memoranda, and drafting legal documents such as pleadings, motions, and facta, all while explicitly refraining from providing legal advice or assistance directly to the public.

6. The responsibility for the utilization and verification of the work produced by LexOutsource rests firmly with the contracting lawyer. It is the lawyer's duty to ensure the accuracy, competence, and diligence of the output before it is employed in their legal practice, ensuring the maintenance of professional standards and the integrity of legal representation.

7. LexOutsource's marketing strategies and operational policies are meticulously designed to reflect and reinforce their operational ethos. The company engages exclusively with practicing lawyers, deliberately avoiding any interaction with the clients of these lawyers to prevent any misconceptions about their role and services. The Chief Executive Officer adopts the title of "CEO" rather than legal industry-specific titles to clearly communicate the nature of the business and its distinction from traditional law practices. Furthermore, LexOutsource consciously refrains from using the designation lawyer or referring to its team members as lawyers in any public-facing materials, including their website. This careful choice of language and presentation is complemented by explicit statements on their website, clarifying that LexOutsource is not a law firm, does not engage in the practice of law, and serves only practicing lawyers under a model that requires the contracting lawyer to supervise and approve all work products. This model not only underscores the non-legal practice nature of LexOutsource's services but also emphasizes the necessary oversight and ethical responsibility retained by the contracting lawyers in the use of outsourced legal support services.

8. Importantly, the legal industry is witnessing a significant shift towards the adoption of technology-driven solutions for legal research and drafting. Several platforms have emerged, offering services that closely mirror the offerings of traditional legal support

providers. These platforms utilize cutting-edge artificial intelligence to generate detailed legal memoranda and strategic arguments, directly competing with the services we provide. Notably, these competitors openly market their capabilities to produce comprehensive legal documents within minutes, targeting the same client base of law firms and legal professionals. Despite the direct overlap in services, there has been a notable absence of regulatory action against these providers. This lack of intervention from legal regulators highlights a tacit acknowledgment of the value and legitimacy of such services within the legal framework. The open advertisement and widespread use of these platforms, without any reported regulatory issues, underscore a broader acceptance of outsourced legal support services as a vital tool for enhancing the efficiency and effectiveness of legal practice.

IV DISCUSSION

A THE PHRASE "PRACTICE OF LAW" DOES NOT INCLUDE THE PROVISION OF LEGAL SERVICES TO PRACTICING LAWYERS

9. In short, when a licensed and practicing lawyer engages a person or entity on a contractual basis for the purpose of conducting legal research and writing, this arrangement does not constitute an engagement in the "practice of law," so long as the services are rendered under the supervision of the contracting lawyer. This distinction arises from a broadly accepted definition of the "practice of law," which traditionally encompasses the provision of legal services directly to, for, and on behalf of the public, rather than services provided to practicing lawyers. Despite the presence of statutory restrictions across various provinces aimed at delineating the boundaries of the "practice of law," there is a consistent legal consensus that these restrictions do not apply to entities offering legal support services to lawyers. This understanding ensures that such contractual engagements, designed to support lawyers in their professional capacities without directly serving the public, operate outside the regulatory confines traditionally reserved for the direct provision of legal services to clients.

10. In this regard, some of the relevant statutes themselves contain a direct exception to the "unauthorized practice of law" provisions for persons "employed by" practicing lawyers, legal counsel or law firms. These sorts of exceptions have been held to include independent contractors who perform legal research and writing tasks for multiple lawyers or law firms.

11. For example, in British Columbia, there is an explicit provision in the *Legal Profession Act* stating that a person who is "employed by" a practicing lawyer, a law firm, a law corporation or the government and who acts under their supervision does not contravene the prohibition against the "unauthorized practice of law".

Section 15(2) of the *Legal Profession Act*, SBC 1998, c 9.

12. This exception has been found to include outsourcing providers employed by a practicing lawyer (and not just employees of the practicing lawyer). Indeed, the Court of Appeal for British Columbia found in a 2023 decision, that a person does not need to be a practicing lawyer to provide legal services under the "employment" of a practicing lawyer (the "exemption"). The court accepted that the concept of "employment" could also apply to an independent contractor. In particular, the court noted that where "the twin requirements of employment and supervision" are found, the performance of legal services by a non-lawyer would not be considered the unauthorized practice of law. For instance, the court noted that the exemption "contemplates that the practicing or supervising lawyer, or law firm or the government, has the ability to ensure that the non-lawyer's work meets a certain standard" but "it was not the formal or legal nature of the relationship between the supervising lawyer and non-lawyer service provider that was determinative" of the requirement of "employment" under the exemption. In this regard, it was accepted that the exemption "might well extend to situations where a non-lawyer worked as an independent contractor, as opposed to an "employee" for a supervising lawyer, law firm or the government" and "that there was no need" "for a non-lawyer to be engaged exclusively or as a permanent employee by a lawyer, a law firm or the government" for the exemption to apply. Therefore, "what is important is that the relationship between the non-lawyer and the lawyer, law firm or government is one that allows for accountability and oversight and that there is, in fact, such accountability and oversight between the two parties." Consequently, where the independent contractor "periodically did contract-based work for a practising lawyer" such that he would "assist him with legal research and drafting", the exemption applied. This is because the practicing lawyer "acted for a client" and merely "retained the [independent contractor] to assist him on behalf of that client", albeit "as an independent contractor". However, because the practicing lawyer "was in a position to oversee the quality of the [independent

contractor's] work" and "would be responsible to both the client and the Law Society for the [independent contractor's] work product" the exemption applied.

***Maddock v. Law Society of British Columbia*, 2023 BCCA 53 (CanLII) at paras 42-49.**

13. The above is consistent with earlier case-law from the Court of Appeal for British Columbia. For example, in a 1977 decision, in interpreting the word "employed" (as used in another part of same legislation), the Court of Appeal for British Columbia concluded that it "does not necessarily mean employ as a servant but it may mean "acted" or "engaged" without reference to a master and servant relationship".

***Fan (Re)*, 1977 CanLII 383 (BC CA).**

14. Notably, the Ethics Committee of the Law Society of British Columbia took the same approach in 2005 (namely, finding that a law firm may engage a non-lawyer on a contract basis, to perform services which would otherwise amount to the practice of law). For instance, the Ethics Committee of the Law Society of British Columbia confirmed that "the real issue is not whether work is to be performed by an employee or an independent contractor, but whether the lawyer can properly supervise the work that is to be performed, including ensuring the confidentiality of information entrusted to the employee or contractor." Ultimately, the Ethics Committee of the Law Society of British Columbia concluded that provided supervision and confidentiality were maintained "it is proper for a lawyer to engage such a contractor to do work that is the practice of law", even though the latter are not entitled to practice law for their own account.

Ethics Committee of the Law Society of British Columbia, Opinion Dated March 3, 2005.

15. Therefore, the situation in jurisdictions such as British Columbia (where there is an explicit exemption from the prohibition on the "unauthorized practice of law" where a person is "employed" by a supervising lawyer) is clear: An entity providing legal services to and under the supervision of a practicing lawyer is not engaged in the practice of law, regardless of the nature of the services they render to the supervising lawyer.

16. Moreover, despite the absence of explicit statutory language in some provinces clearly stating that individuals working under the supervision of a practicing lawyer do not

engage in the "unauthorized practice of law," the prevailing legal stance remains consistent. This uniform interpretation underscores that when services are provided under the auspices of a licensed attorney's supervision, such arrangements do not breach the legal boundaries set to prevent the unauthorized practice of law. This perspective harmonizes with the broader legal framework, reinforcing the principle that as long as there is a supervisory relationship where a licensed legal professional assumes responsibility for the work, these services contribute to the legal profession's support mechanisms without contravening existing legal prohibitions.

17. Indeed, the phrase "practice of law" inherently connotes a requirement that there be direct provision of legal services to clients (in other words, members of the public). Therefore, in a notable case from the United Kingdom it was stated that "practising as a solicitor connotes a person who is acting as a principal; it connotes a person who has clients; it connotes a person in short who has a practice; and the words are not apt words to describe the position of a person who is acting as the servant of another who is practising as a solicitor."

Way v Bishop **[1928] Ch 647 at 660.**

18. The principle that the delegation of tasks to non-lawyers under the supervision of a solicitor does not amount to the unauthorized practice of law is well-established. Indeed, when legal work is assigned to a non-lawyer, the practising lawyer remains the responsible party for the work conducted, effectively maintaining the professional standards and integrity of the legal services provided. In such a case, "the work was always being done by an individual solicitor although it might be through a managing clerk working on his behalf."

Hudgell Yeates & Co v Watson **[1978] 2 All ER 363 (CA).**

19. This approach would apply in Canada as well. For example, the Alberta Court of King's Bench has accepted the position of the Law Society of Alberta that someone not admitted to practice law in any Canadian jurisdiction was not prohibited from "participating 'behind the scenes,' such that they would assist the Plaintiffs' counsel of record in the conduct of research and preparation of briefs, provided any documents that the Plaintiffs place before the court are under the signature of the Plaintiffs' counsel of record." The court further accepted that the person or entity not admitted to practice law in Canada could assist an Alberta lawyer by "providing support to [the Alberta

lawyer] through research and drafting, provided [the Alberta lawyer], as counsel of record, assumes ultimate responsibility for the work product." Perhaps most importantly, the case also confirmed that outsourcing such tasks to persons outside of Canada was permissible.

***Lameman v. Alberta*, 2011 ABQB 396 (CanLII) at paras 4 and 34.**

20. The above is also consistent with the guidance issued by the Law Society of Alberta to Inactive Lawyers, namely, that they may provide legal research and writing services to practising lawyers anywhere in Canada, without restriction, despite the fact that "inactive lawyers cannot hold themselves out as active lawyers or provide legal services or legal advice to a client or member of the public." In particular, the Law Society of Alberta concluded that "inactive lawyers are permitted to provide legal research services to active lawyers", provided that, inter alia, (a) "inactive lawyers must have no contact with any of the active lawyer's clients, including during the billing process", and (b) "any legal advice resulting from research may only be provided to the active lawyer for review and the active lawyer must understand that they may not provide legal advice to a client based on your research without review".

Legal Research: Guidance for Inactive Lawyers, Law Society of Alberta.

21. Given the guidance from the Law Society of Alberta regarding inactive lawyers, it stands to reason, by common sense, that outsourced legal service providers should be regarded in a similar light. Both inactive lawyers and outsourced providers offer their services exclusively to practicing lawyers, not directly to the public, operating under a model that ensures all legal advice and work product are ultimately reviewed and approved by a practicing lawyer before being utilized. This model inherently provides a layer of supervision and quality control that aligns with the ethical standards and responsibilities expected within the legal profession. Moreover, the principle of not having direct contact with the client ensures that the responsibility for legal advice remains squarely with the supervising lawyer, who is in the best position to contextualize and apply the research or draft documents to the specific needs of their clients. Treating outsourced legal service providers identically to inactive lawyers in this context is a logical extension of the regulatory framework designed to safeguard the interests of the public while enabling practicing lawyers to leverage specialized services for the efficient delivery of legal services. This approach not only maintains

the integrity of the legal profession but also enhances the quality and accessibility of legal support services within the bounds of professional responsibility and ethics.

22. Moreover, and quite notably, in 1997, the Law Society of Ontario was also approached for an opinion on the outsourcing of legal tasks to non-lawyers. The Law Society of Ontario confirmed unequivocally that this was a "very useful service" and "no unauthorized practice" concerns could be identified. This endorsement by the Law Society of Ontario underscores the legitimacy and value of outsourcing legal tasks to non-lawyers, affirming its place within the ethical and professional landscape of legal practice.

    Letter from Law Society of Upper Canada, May 9, 1997 (available on request).

23. Moreover, the Law Society of British Columbia also recently addressed a more novel form of outsourcing to an outside entity, namely, the use of an Artificial Intelligence platform to generate legal work (such as arguably, legal research and legal documents, such as pleadings). The Law Society of British Columbia referred loosely to the use of Artificial Intelligence in connection with "legal research, analysis, and problem solving" and noted that "generative AI tools have been marketed as helpful assistants that can perform tasks on your behalf." Thereafter, the Law Society of British Columbia explained that "lawyers are required to supervise staff and assistants to whom the lawyer delegates particular tasks and functions", which "also requires a lawyer to review the non-lawyer's work at sufficiently frequent intervals and to ensure its proper completion." Tellingly, the Law Society of British Columbia went on to note that while this "was intended to cover human-to-human supervision, it provides an important reminder that lawyers are ultimately responsible for all work product they oversee, whether it be produced by non-lawyer staff or technology-based solutions." Ultimately, the Law Society of British Columbia concluded that "lawyers can harness the power of generative AI in a responsible and ethical manner while upholding the integrity of the legal profession".

    Practice Resource, Guidance on Professional Responsibility and Generative AI, Law Society of British Columbia, October 2023.

24. Drawing on the Law Society of British Columbia's acceptance and guidance on the use of Artificial Intelligence platforms for generating legal work, it logically extends that employing outsourced contractors to perform similar tasks should be viewed under a

comparable framework. When Artificial Intelligence can be harnessed to undertake tasks such as legal research and drafting of legal documents, it underscores a fundamental principle: what is paramount is the contracting lawyer's ability to ensure the work's accuracy, confidentiality, and adherence to professional standards, not the nature of the service provider. In this regard, outsourced contractors, like Artificial Intelligence tools, operate under the direction and supervision of a practicing lawyer who retains ultimate responsibility for the legal services provided. This arrangement ensures that the requisite oversight and quality control, essential for upholding the integrity of the legal profession, are maintained. Therefore, if the profession recognizes the utility and ethical compliance of Artificial Intelligence in legal work, there stands no common-sense rationale to preclude the use of outsourced contractors for analogous purposes. Indeed, both Artificial Intelligence and human contractors serve as instrumental resources, enabling lawyers to efficiently and effectively manage their workload while ensuring that the provision of legal services remains within the bounds of professional responsibility and ethics. This perspective not only aligns with the evolving nature of legal practice but also embraces innovation in a way that enhances the legal profession's capacity to serve its clients without compromising on the quality or ethics of the service provided.

25. The above is consistent with the approach adopted in the United States. For example, the Supreme Court of Ohio, Board of Commissioners of Grievances and Discipline, has issued two instructive opinions on the provision of legal research and writing services to practising lawyers. In this regard:

    a. The first opinion found that "providing legal research and writing services exclusively for lawyers and law firms is not considered engaging in the practice of law" and that "a person who conducts such a service exclusively for lawyer and law firms is not engaged in the practice of law."

       Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 1988-018 (1988).

    b. The second opinion found that "an attorney who performs research and writing on a contract basis to other attorneys, but who is not engaged by, does not meet with, and does not offer advice to clients is not considered to be engaged in the practice of law".

       Ohio Sup.Ct., Bd. Commrs. Grievances & Discipline, Op. 2005-1 (2005).

26. US case-law has adopted a similar approach. For instance, one case noted that where an outsourced legal services provider is engaged, "the entire matter was handled in the identical way that it would have been handled had [the outsourced legal service provider] been a paralegal employed by the" the law firm which engaged him." Indeed, the court explained that "the only difference, which has no substantive impact, is that [the outsourced legal service provider] was an outsourced paralegal who was employed by" a non-professional corporation. The court concluded that "to construe that this procedure is the unauthorized practice of law would place form over substance. The use of paralegal employees, whether outsourced or "in house," reduces the time that must be devoted by a licensed [lawyer], and, in turn, reduces the costs to all parties."

***In re Thorne* 471 B.R. 496.**

27. Further, US regulators have noted that even offshore outsourcing of legal work that is otherwise the "practice of law" is ethical, provided there is adequate supervision. Implicit in these findings is the reasoning that where legal services are provided solely to lawyers, "unauthorized practice of law" concerns do not arise. For example, one ethics opinion stated that "a New York lawyer may ethically outsource legal support services overseas to a nonlawyer, if the New York lawyer (a) rigorously supervises the non-lawyer, so as to avoid aiding the non-lawyer in the unauthorized practice of law and to ensure that the nonlawyer's work contributes to the lawyer's competent representation of the client; (b) preserves the client's confidences and secrets when outsourcing; (c) avoids conflicts of interest when outsourcing; (d) bills for outsourcing appropriately; and (e) when necessary, obtains advance client consent to outsourcing."

The Association of the Bar of the City of New York Commission on Professional & Judicial Ethics, Formal Opinion 2006-3 (2006).

28. Importantly, in the thorough research and preparation of this memorandum, it is noteworthy that an exhaustive search revealed no statutory, case-law, or ethical opinions that contravene the stance taken here. Specifically, there were no findings to suggest that the outsourcing of legal tasks to non-lawyers is deemed improper, impermissible, or unlawful. This absence of contrary authority, despite diligent efforts to uncover any, significantly bolsters the position that outsourcing legal services to non-lawyers, under the frameworks discussed, is a legitimate and legally sound practice within the profession.

29. Furthermore, given the penal nature of statutes that prohibit the "unauthorized practice of law," it is imperative that they are construed with a degree of caution, necessitating a restrictive interpretation that inherently favours a rationale aimed at circumventing criminal liability. This principle of statutory interpretation ensures that only clear and unequivocal violations are actionable, safeguarding against overly broad or unjust applications that could otherwise ensnare legitimate practices within the legal profession.

***Regina v. McIntosh*, [1995] 1 S.C.R. No. 16; *Regina v. Poulin*, 1973 CanLII 829 (ON SC).**

30. There are also policy considerations behind not casting the net too widely, so as to include legal outsourcing providers within the ambit of what is considered the "practice of law". In this regard, there has been a general acceptance that there is no need to regulate persons providing legal services under the supervision of a lawyer. For example, in the Law Society of British Columbia has noted in a Task Force Report, that "non-lawyers who provide legal services under the supervision of a lawyer (or a regulated legal service provider such as a notary public) need not be regulated, as the regulation of the person responsible for supervising the non-lawyer provides adequate protection to the public" and "that regulation of individuals" "who are acting strictly under supervision of a regulated professional is unnecessary and could add needless expense to the cost of the legal services provided."

The Law Society of British Columbia, Final Report of the Legal Service Providers Task Force, Report Dated December 6, 2013.

31. Therefore, and considering these public policy considerations, adopting an overly broad and restrictive interpretation to encompass legal outsourcing providers within the definition of "practice of law" would not only undermine these public policy considerations, but also potentially stifle innovation and efficiency within the legal profession. The rationale for maintaining a delineated scope of regulation is to ensure that the legal profession can adapt to evolving demands while preserving the quality and integrity of legal services. It acknowledges the reality that legal outsourcing providers, operating under the direct supervision of licensed lawyers, add significant value by enhancing the capacity of lawyers to deliver comprehensive and timely legal services. Imposing unnecessary regulatory burdens on these providers could inhibit the

legal profession's ability to leverage specialized expertise and advanced technologies, ultimately disadvantaging both the profession and the public it serves. Thus, a pragmatic and measured approach to regulation—one that recognizes the critical role of oversight by practicing lawyers—is essential to support the continued evolution and effectiveness of legal service delivery.

B LEXOUTSOURCE DOES NOT ENGAGE IN THE "PRACTICE OF LAW"

32. LexOutsource carves out a distinct niche within the legal services sector by offering specialized legal research, writing, and analysis services tailored exclusively for practicing lawyers. This model mirrors established practices recognized in case law and ethics opinions, which delineate its operations from traditional legal practice. Unlike entities that directly serve end clients, LexOutsource adheres to a business-to-business model, engaging solely with licensed legal professionals.

33. This operational framework is pivotal, ensuring LexOutsource remains separate from the direct provision of legal advice, representation, or client engagement. Such a structure is fundamental in distinguishing LexOutsource's activities from the conventional "practice of law." It positions the company as an intermediary, providing vital support without direct involvement in the client-lawyer relationship.

34. LexOutsource's public declaration, prominently displayed on its website, underscores its role: "LexOutsource is not a law firm and does not practice law. While our team includes qualified lawyers, they are not employed in such capacity by LexOutsource. For this reason, only practicing lawyers may use our service. In order to fulfil the requirement of supervision, the contracting lawyer must take sole responsibility for the quality of legal services rendered to their clients and must thus approve of our work product before using it in connection with the representation of their clients." This clarification is vital, emphasizing LexOutsource's commitment to upholding the integrity of its operational boundaries within the legal ecosystem.

35. LexOutsource's model is akin to a paralegal's role, offering support services without engaging in client-facing activities. The responsibility for employing the work product within legal proceedings or advisory capacities rests solely with the contracting lawyer. This delineation ensures the professional standards and ethical obligations are met by those directly accountable to clients and regulatory bodies.

36. The absence of a direct "client" in the LexOutsource relationship underscores a significant point: the actual "client" remains the individual or entity seeking legal counsel or representation. LexOutsource serves as a conduit through which practicing lawyers access specialized support, maintaining the sanctity of the client-lawyer relationship.

37. By facilitating services under the supervision of licensed practitioners, LexOutsource reinforces a collaborative model that respects the legal profession's regulatory framework. This approach not only emphasizes the non-practicing nature of LexOutsource's business but also highlights the essential oversight provided by contracting lawyers, ensuring alignment with professional conduct and ethical standards.

38. In conclusion, LexOutsource's operational model, predicated on indirect service provision and stringent adherence to the legal profession's boundaries, effectively exempts it from being classified as engaged in the "practice of law." Its role as a provider of legal support services, exclusively to practicing lawyers, reaffirms its position outside the direct legal practice realm, underscoring its non-practicing status within the legal service landscape.

V CONCLUSION

39. In short, LexOutsource operates firmly outside the traditional confines of the "practice of law" by providing its specialized legal research, writing, and analysis services solely to practicing lawyers. It is clear from the legal precedents, statutory interpretations, and ethical guidelines reviewed that LexOutsource's business model—centred on supporting the legal profession without directly engaging with the end clients—does not constitute practicing law. The ultimate responsibility for the legal work's application and integrity rests with the supervising lawyers, ensuring that LexOutsource's innovative approach to legal support upholds the highest standards of professional responsibility and ethics. Thus, LexOutsource stands as a pivotal, non-practicing ally to the legal profession, enhancing the delivery of legal services while remaining well within the bounds of legal and ethical compliance.