MINUTES OF CONVOCATION

Thursday, 26th February, 2009
9:00 a.m.

PRESENT:

The Treasurer (W. A. Derry Millar), Aaron, Anand, Backhouse, Banack, Boyd, Braithwaite, Bredt, Campion, Caskey, Chahbar, Conway, Crowe, Daud (by telephone), Dickson, Dray, Elliott, Epstein, Furlong, Go, Gold, Gottlieb, Hainey (by telephone), Halajian, Hare, Heintzman, Henderson, Krishna, Lawrie, Lewis, MacKenzie, McGrath, Marmur (by telephone), Minor, Murphy, Murray, Pawlitza, Porter, Potter, Pustina, Rabinovitch, Robins, Rothstein, Sandler, Schabas, Sikand, Silverstein, Simpson, C. Strosberg, Swaye, Symes, Tough, Wardlaw and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer and benchers welcomed former Treasurer, Gavin MacKenzie, back to Convocation.

The Treasurer, on behalf of Convocation, congratulated Joanne St. Lewis who has been named an *Honoured Champion* by the United Nations Association in Canada as part of their United Nations International Women's Day celebration.

Congratulations were also extended to Mark Sandler who became the Chair of the Law Foundation of Ontario in January. On behalf of Convocation and the profession the Treasurer thanked Larry Banack for his dedication, efforts and contributions over the past seven years as Chair of the Law Foundation of Ontario.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of January 28 and 29, 2009 were confirmed.

MOTION – APPOINTMENT TO CANLII BOARD OF DIRECTORS

It was moved by Ms. Minor, seconded by Mr. Banack, –

THAT Diana Miles be appointed as the Law Society's representative on the CanLII Board of Directors for a term of three years.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with subsection 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, February 26, 2009.

ALL OF WHICH is respectfully submitted

DATED this 26th day of February, 2009

CANDIDATES FOR CALL TO THE BAR

February 26th, 2009

Peter Courtney Drake
Margaret Suzanne Loda
Daniel Evan Luxat
Johanna Elizabeth Macdonald

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that the Report of the Director of Professional Development and Competence listing the names of the deemed Call to the Bar candidates be adopted.

Carried

GOVERNANCE TASK FORCE REPORT

Mr. Heintzman presented the Report for information.

Governance Task Force
February 26, 2009

Fourth Report to Convocation

Task Force Members
Thomas Heintzman (Chair)
Vern Krishna (Vice-Chair)
Raj Anand
Larry Banack
Christopher Bredt
Abraham Feinstein
Janet Minor
Linda Rothstein

Purposes of Report: Information

Prepared by the Policy Secretariat
(Jim Varro – 416-947-3434)

GOVERNANCE TASK FORCE
FOURTH REPORT TO CONVOCATION

Introduction

1. On September 25, 2008, Convocation approved consultations by the Governance Task Force (and the related budget) on principles of governance for the Law Society[1] with benchers and with lawyers and paralegals.

[1] See Appendix 1 for the chart containing the principles and commentary.

2. The two-phase process of consultations began with a November 28, 2008 workshop for benchers on governance to seek their preliminary views on whether changes to the Law Society's governance structure are warranted. The second phase of the consultation is to engage a limited number of lawyers and paralegals, including leaders in the profession and other informed stakeholders, in discussions on Law Society governance.

3. The consultation process will conclude with a meeting of benchers when the results of these meetings will be provided. These consultations will assist the Task Force in preparing material for Convocation's consideration on whether changes to governance at the Society should be considered, and if so, in what areas.[2]

The Bencher Workshop

4. The bencher workshop was designed to obtain the views of benchers about the governance principles noted above, how Convocation is performing in respect of each of the principles and issues that arose from the views benchers expressed about Convocation's performance in respect of the principles.

5. The Task Force engaged Tim Plumptre, an expert in governance reform, to facilitate the discussion with his colleague, Manon Abud. The workshop was designed to encourage listening as well as talking, drawing out a diversity of views and promoting conversation.

6. The format involved benchers' use of key pads to electronically respond anonymously to a series of statements based on the governance principles. The questions related to the importance of the governance principles to Law Society governance and their practical application at the Law Society. The responses for discussion among benchers were tabulated electronically on a screen.

7. Thirty-five benchers attended the session.[3] Most of the workshop was taken up with discussion, either in small groups around tables of seven or eight persons, or in plenary. The workshop was well-received by the benchers who participated.[4]

8. The workshop indicated that there is a wide spectrum of views related to governance reform among benchers. Some are satisfied with the *status quo* or see that only minor changes are needed. Others see a need for more significant reform. One of the most-frequently mentioned major areas for reform was the size and composition of Convocation.

9. The workshop also provided the Task Force with advice regarding several major themes or topics[5] , which include a number of sub-issues, for further analysis and reflection. These topics and issues will inform the external consultations.

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[2] The Task Force's terms of reference are at Appendix 2.

[3] The breakdown is as follows: 27 elected benchers, two paralegal benchers, four appointed benchers, one former Treasurer and one life bencher.

[4] A report on the workshop, prepared by Tim Plumptre and Manon Abud, was sent to all benchers.

[5] Convocation's: size, composition, responsiveness and diversity; Convocation's strategic focus ; discipline; member relations & external communication.

Consultations with Lawyers and Paralegals

10. With the benefit of the input from benchers, the Task Force is ready to engage in the second phase of consultations with a small cross-section of lawyers and paralegals on Law Society governance. This will involve a series of meetings to obtain views and opinions on governance issues.

11. As reported to Convocation last September, the Task Force is proposing a series of approximately eight meetings. Up to two meetings would be arranged in Toronto with leaders of various legal organizations, many of which the Law Society has consulted with on past initiatives. The remaining meetings would be held in Toronto, Ottawa, London and a northern community (e.g. Thunder Bay). Approximately10 lawyers and paralegals from a cross-section of practice and geographic areas would be scheduled for each meeting. Tim Plumptre will facilitate the discussion and up to two Task Force members will also attend. The Toronto meetings with legal organization representatives will be the last meetings arranged, to allow more time for the representatives to consult within their organizations on the issues for discussion, if they wish to do so.

12. The Task Force has prepared a lengthy list of lawyers and paralegals from which individuals will be selected and to whom a written invitation to attend the sessions will be sent by the Task Force's Chair. The list includes those in sole practices, small to large firms, a cross-section of practice areas, the leaders of a number of legal organizations, in-house counsel, academics and those whose profiles indicate some expertise in corporate governance.[6]

Consultation Document

13. The Task Force has prepared a document for the consultations, at Appendix 3, for Convocation's review.[7] This document will be sent in advance to those who participate in the meetings.

14. The document begins with background information on the Law Society's current governance structure. It then describes the general areas and related concerns and issues that were the focus of the benchers at their workshop. The document ends with a series of questions, based on these areas, which are intended to prompt discussion. The letter of invitation will indicate that invitees should feel free to consult with colleagues or others on the issues in advance of the meeting if they wish to do so.

Schedule for the Consultations

15. It is anticipated that the meetings will begin in late March and conclude by early May 2009. Summaries of the discussion at the meetings will be prepared.

[6] The list and the text of the letter of invitation has been distributed in confidence to all benchers.

[7] At September 2008 Convocation, the Treasurer, in putting the motion for approval of the consultation, said: "Mr. Heintzman has undertaken to bring back to Convocation, after the consultation with the Benchers, the consultation document, including the list of who is going to be consulted with before that takes place."

Post-Consultation Assessment

16. The results of the bencher workshop and the external discussions will be assessed by the Task Force and reported back to Convocation, with a summary of the input received and the governance issues identified.

17. This information will assist the Task Force in deciding whether further consultation is desirable and ultimately in preparing its report to Convocation on options for possible governance reforms.

APPENDIX 1

PRINCIPLES OF GOVERNANCE FOR THE
LAW SOCIETY OF UPPER CANADA

Legitimacy and voice	Governance process inspires confidence, provides adequate voice to members and other stakeholders and to the public at large. The process encourages participation. Decisions are based on a consensus orientation.
Performance	Yields results of value both to society and to members; governance processes are efficient (as required by the *Law Society Act*) as are the programs and activities of the Society.
Direction	Delivers sustained and clear strategic purpose, apparent both to members and to the public at large.
Accountability and transparency	Decision-makers can be held to account through recognized governance processes and standards, these are open and understandable. Failure to observe standards has known and enforceable consequences. Information is widely available to the public and the profession and is actively shared.
Fairness and balance	Members and other stakeholders are fairly treated; there is an absence of special deals for 'insiders' or conflicts of interest. Interests of the general public are taken into account in the process of decision-making.

APPENDIX 2

GOVERNANCE TASK FORCE TERMS OF REFERENCE
(Approved May 25, 2006)

1. The Task Force will consider and recommend to Convocation improvements to the corporate governance of the Law Society to fulfill its mandate through:

   a. efficient and effective corporate governance;
   b. co-ordination of corporate governance with the operational management of the Law Society, and
   c. effective priority setting, including budgetary considerations.

2. In addition, The Task Force will study the following two specific issues referred to it by Convocation:

   a. the Treasurer's election process, including certain provisions of By-Law 6, based on the Secretary's report to Convocation of March 23, 2006;
   b. procedural issues relating to Committee recommendations and motions before Convocation, arising from adoption of Rules of Procedure for Convocation (amendments to By-Law 8) on March 23, 2006.

APPENDIX 3

Material for Consultations
February 26, 2009

Governance Task Force

Task Force Members:
Thomas Heintzman (Chair)
Vern Krishna (Vice-Chair)
Raj Anand
Larry Banack
Christopher Bredt
Abraham Feinstein
Janet Minor
Linda Rothstein

Prepared by the Policy Secretariat
(Jim Varro 416-947-3434)

GOVERNANCE TASK FORCE

Issues for Discussion

INTRODUCTION

In May 2006, the Law Society's Governance Task Force was formed to consider improvements to the corporate governance of the Law Society by Convocation, the Law Society's board of directors. Following two reports to Convocation on specific governance issues[8] , the Task Force has entered a consultative phase and is seeking the views of lawyers and paralegals on governance issues.

The Task Force's governance review was considered necessary because lawyers, paralegals and the public are likely to increasingly scrutinize the way in which Convocation governs the Law Society's affairs. As a result of media attention to the affairs of governments, corporations and regulatory bodies, the public and relevant stakeholders have a heightened expectation that directors of corporations and other persons occupying fiduciary and regulatory positions will effectively and diligently discharge their responsibilities.

In the Task Force's view, good governance of the Law Society is a key factor in successful self-regulation. The expectation that the Society will exercise efficient and effective governance is heightened in light of the more explicit legislative mandate, added to the *Law Society Act* in 2006, to regulate "in the public interest."[9]

In the interests of obtaining relevant information to assist in formulating its recommendations, the Task Force is requesting comments from lawyers and paralegals on the subject of the Task Force's review.

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[8] Clarifying procedural issues for the election of the Treasurer and instituting a formalized priority-setting process for Convocation's policy agenda.

[9] The *Law Society Act* now states:

> 4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:
>
> 1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
> 2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
> 3. The Society has a duty to protect the public interest.
> 4. The Society has a duty to act in a timely, open and efficient manner.
> 5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

This paper has been developed to provide a framework for the consultation. It includes information about the Law Society's governance structure and processes, and highlights a number of areas for discussion. These areas relate to information from benchers who participated in a governance workshop at the Law Society in November 2008. The workshop provided a forum for those closest to the Law Society's governance to express their views and concerns on governance issues. These views and concerns are discussed below.

The Task Force is aware that fundamental change to the Law Society's governance structure will require amendments to the *Law Society Act*. The Task Force is also aware that Convocation will carefully consider the issues that arise whenever such change is contemplated.

As a final introductory comment, the Task Force refers only to lawyers in discussions in this document about the bencher election process because the first paralegal election is pending.

THE CURRENT GOVERNANCE STRUCTURE

The Law Society's Mandate

The Law Society's governance mandate is to ensure that lawyers and paralegals meet the requisite standards of competence and professional conduct. To fulfill this regulatory mandate, the Law Society operates with a budget of over $80 million and nearly 440 staff. The staff and day-to-day operations of the Law Society are overseen by the Chief Executive Officer (CEO). The CEO is accountable to Convocation for implementing Convocation's policy decisions. Assisting the CEO is a nine-member senior management team.

Convocation's Election Process and Convocation's Composition

The composition of Convocation is established by the *Law Society Act*. It provides for elected, appointed and *ex officio* benchers (who include former Treasurers, current and former Attorneys General of Ontario and life benchers). Currently, the total number of benchers is 83, as follows:

- The Treasurer
- 40 elected lawyer benchers
- Two paralegal benchers appointed by the Attorney General[10]
- Eight lay benchers appointed by the Attorney General
- 32 ex officio benchers (12 life benchers, 10 former Treasurers, the Attorney General of Ontario and nine former Attorneys General).

Benchers oversee the affairs of the Law Society in accordance with its mandate to govern lawyers and paralegals in the public interest.

A bencher, as a director of the Law Society, is a fiduciary. As neither the *Law Society Act* nor the *Corporations Act*, which applies to the Law Society as a corporation without share capital, describe the fiduciary duty of a director, reliance is placed on the common law to determine the nature of a bencher's fiduciary duty. In general terms, a director's common law fiduciary duty

[10] An election will replace the appointments by the Attorney General.

requires the director to act honestly, in good faith and with a view to the best interests of the corporation. But as benchers govern the affairs of the Law Society in the public interest, the relationship between the benchers and lawyers and paralegals is different from that between the directors and shareholders of a typical corporation.[11]

Elected benchers

Forty lawyer benchers, 20 from Toronto and 20 from outside Toronto, including a regional bencher from each of the eight electoral districts, are elected every four years to serve in Convocation. The eligible voters are the 39,000 lawyers of the Law Society. The election process is virtually free of limitations on who may run as a candidate.

The benchers elect the Treasurer, who is the chair of the board, every year. By tradition, the Treasurer usually serves for two years, and runs unopposed for the second year.

The following are some facts about Convocation's 40 elected benchers:

- The number of candidates for the bencher election has declined from a high of 122 in 1999. A similar number of candidates ran in the 2003 and 2007 elections (approximately 100);
- Since 1999, the vast majority of incumbents who ran were re-elected and made up at least 70% of elected benchers in Convocation. Correspondingly, since 1999, new candidates made up about 30% of elected benchers. The results of a 2007 survey of bencher election candidates[12] undertaken by the Equity and Aboriginal Issues Committee showed that among the sample of benchers who responded, incumbents were significantly more likely to be elected (85%) than non-incumbents (26%).
- The breakdown by firm size among elected benchers has been consistent over the last four elections. Roughly speaking, the number of benchers from large firms and sole practices is similar (between eight and 10 benchers in each category) and the number from small/medium-size firms is double that number (approximately 19);
- The number of women benchers has increased steadily since the 1999 election (from eight to 18);
- In recent elections, no Francophone benchers have been elected;
- Three benchers (7.5% of elected benchers) from racialized and Aboriginal communities were elected in each of the last two elections;

[11] In discussing the election, the role of benchers and their fiduciary duties, Vern Krishna as Treasurer in May 2003 said the following:

> We…are elected by various constituencies and by various regions. But when we arrive here, we are not here as spokespeople for those constituencies. We are not here to serve regional interest. We are here to serve the common interest of the entire profession of which you can take into account those regional constituencies. But you are not here to serve on one constituency. You are here to serve all…. We formally adhere to the rules of the legislative assembly, but we are not a legislature. We adhere to some rules of the corporate governance, and we are not completely a corporation in the sense of a traditional, private corporation.

[12] The survey may be accessed at http://www.lsuc.on.ca/media/convoct08_eaic.pdf.

- While candidates and elected benchers come from a wide range of practice areas, barristers have consistently outnumbered solicitors more than five to one among elected benchers in the last four elections, even though solicitors represent 30% of all lawyers;
- The elected benchers have become a progressively older group since 1999. From 1999 onward, an increasing number of individuals 50 and older were elected. Only one individual over 60 was elected in 1995. This number increased to 11 in 1999 and to 16 in 2007;
- There are very few younger members of the profession elected to Convocation.

Ex Officio benchers

Benchers attain *ex officio* status as *life benchers* when they have served as elected benchers for 16 years. These benchers may elect life bencher status or may run again to become an elected bencher. Life benchers may attend and speak in Convocation but do not have a vote in Convocation. They may attend and vote in committees. They may sit as a member of the Law Society's Hearing and Appeal Panel. All of the life benchers are male and the median age is 70. The oldest is 82 and the youngest is 56. Less than half of the current 12 life benchers participate regularly in Convocation. This number constitutes over 14% of all benchers. In the next term, if those benchers who qualify as life benchers elect to take life bencher status, there will be nine additional life benchers, for a total of 21.

The 10 *former Treasurers* who are *ex officio* benchers are permitted to vote in Convocation. This number constitutes 12% of all benchers. In the normal course, two new former Treasurers are added as ex officio benchers every term. Five former Treasurers attend Convocation regularly, but all vote on some occasions. The Treasurer's election is one such occasion. In the last seven years, all former Treasurers have voted in the Treasurer's election. Former Treasurers are effectively life benchers as they may remain in Convocation with a vote for life.

Life benchers and former Treasurers who are appointed to the bench regain their *ex officio* status once they retire from the bench and restore their license to practise law.

In total, there are 22 life benchers and former Treasurers who constitute over 26% of all benchers.

Of the nine *former Attorneys General,* who are also *ex officio* benchers, none regularly participates in Convocation.[13] Former Attorneys General may speak in Convocation but may not vote. They may vote in committees.

Assuming the addition of two former Treasurers and nine life benchers, by the end of the bencher term in 2011, the number of *ex officio* benchers will be 45, exceeding the number of elected benchers in Convocation. By that time, under existing governance provisions, Convocation may increase from 83 to 96 members. A further increase in size may take place at the end of the next bencher term in 2015.

[13] One of these individuals now serves as lay bencher.

The Work of Convocation

Convocation typically meets monthly nine months out of 12 to transact the business of the Law Society. The work of Convocation is supported through the deliberations of 13 committees active in a wide range of subjects. Most committee membership is confined to benchers. Task forces (such as the present one on Governance) may also be established for specific purposes.

Rules of procedure were adopted by Convocation in June 2006. They are intended to bring structure to the consideration of issues at Convocation, and provide guidance to the Treasurer and benchers on proper procedures in Convocation.

There is no Executive Committee of Convocation.

AREAS AND ISSUES FOR DISCUSSION

(Based on Information from the Bencher Workshop)

1. The Electoral System and the Law Society's Relationship with Lawyers and Paralegals

Despite increased efforts by the Law Society to encourage lawyers to vote in the bencher election, a significant number of lawyers do not vote, and the trend is down rather than up. In recent bencher elections, the benchers have been elected by less than 50% of the eligible voters.[14] Some benchers noted that the perception based on the numbers is that many lawyers appear to doubt the relevance of the Law Society, but it is not known whether the perception is reality. Alternatively, the numbers may indicate disengagement, apathy or complacency, or a response to an election process that is too complex, with too many candidates.

However, the fact that an election determines who serves as a governor arguably makes the vote significant to those who are governed, despite poor voter turnout. In the absence of an election, the Society might be criticized for failing to provide an opportunity for lawyers and paralegals to choose their governors, who may be drawn from all practice areas, lawyers in government, business or academia, lawyers ranging from sole practitioners to those in the large national firms, men, women, minorities (racial, linguistic, etc.) and those from the various regions of Ontario.[15] The election process has also been characterized by some benchers as encouraging motivated, qualified and committed people to run as bencher.

Some benchers expressed concerns about the disappointing voter turnout, suggesting that the high proportion of incumbents who are re-elected contributes to an aging Convocation and a dearth of "new blood." Elections were also said by some to be biased in favour of the large firms for at least two reasons: the greater ease for lawyers in big firms to recruit a cohort of

[14] The following indicates the declining participation of eligible voters: 1995 – 44%, 1999 – 42%, 2003 – 37%, 2007 - 29.75% .

[15] While the election process itself does not, apart from regional representation, ensure a particular complement of benchers, the candidates and those elected are gradually reflecting more of the diversity, or certain dimensions of it, within the profession. For example, since the 1999 bencher election, the number of women candidates and the number elected has steadily increased (currently, 16 women serve as elected benchers). Women accounted for 54% of the new lawyers in 2007.

supporters to vote for them, and the greater difficulties faced by lawyers in small firms or sole practices in shouldering the financial burdens associated with participation in Convocation.

A related concern was the lack of interest in the Law Society by lawyers and the inadequate understanding of it in the legal profession at large. Some benchers voiced the opinion that Convocation is not committed to an effective communications strategy.

2. The Size of Convocation

With 83 members, Convocation appears to be the largest board among professional regulatory organizations in Canada and is the largest among the Canadian law societies.[16] Some benchers consider the size a virtue. Others have characterized the nature of Convocation as a decision-making body as "difficult," expressing concerns about its large size. Some views were as follows:

- A large body can better represent the different facets of the profession, and the increased diversity among benchers in the past few elections is a positive development for the Law Society.
- The Society prides itself on being democratic. Convocation is sometimes characterized as a kind of "legislature" for the profession; its size enhances its democratic character and allows different voices to be heard.
- Convocation needs to be large to provide a pool of benchers to staff both the disciplinary panels of the Law Society and its many committees, where much of the most important work of the Society takes place. Life benchers are particularly valuable in staffing hearing and appeal panels as many are retired and have more time available than lawyers in active practice.
- Convocation is a board, not a legislature; it needs to be able to perform in line with accepted exemplary practices for board governance and cannot do so when it is so large.
- A decision-making body of this size is clumsy and hard to manage, and does not foster the kind of "to and fro" discourse that makes it possible to analyze issues in depth. As its size makes it unwieldy, Convocation is unable to move quickly when required.
- Convocation's "slowness" is not detrimental to its effectiveness. The deliberative nature of Convocation is the result of the complex issues before Convocation, and its slowness is reflective of that complexity.
- Because of its size, Convocation lacks focus, tends to get into too many issues and strays from the core mandate of the Law Society into activities only peripherally related to its role. As such, there continues to be a lack of focus on priorities, despite the recent creation of a Priority Planning Committee.
- Bringing together so many benchers about nine times every year and distributing lengthy meeting materials to so many benchers is too costly.[17] Convocation could meet less frequently.

[16] The other Canadian law societies' boards are as follows: British Columbia, 32; Alberta, 24+; Saskatchewan, 24; Manitoba, 23; Quebec (Barreau), 31; New Brunswick, 29; Nova Scotia, 26+; Prince Edward Island, 12; Newfoundland, 22+; Yukon, 6; Northwest Territories, 5.

[17] The cost of each Convocation, including travel and related expenses and remuneration for benchers, is approximately $50,000.

Considerations Related to the Size of Convocation

Elected benchers

While a reduction in the number of elected benchers might well improve the efficiency of Convocation, some benchers saw other consequences.

Some think that reducing the number may impact the adequacy of representation of lawyers within and outside of Toronto and would create an imbalance between the number of elected benchers and the number of lay and paralegal benchers. It may also affect the functions that the benchers fulfill at the Law Society beyond participation in Convocation, such as committee work and adjudication.

Some benchers see the 40 seats for elected benchers as an opportunity for lawyers from various geographic and specialty areas to participate in the governance of lawyers and paralegals. This affects the diversity of the board and the prospect of a range of views to assist in decision-making. On the issue of diversity, it is arguable that a reduction in the number of benchers may affect the ability to ensure diversity.

As noted earlier, however, achieving these goals within the current structure may be affected by such things as poor voter turnout in elections and a consistently high proportion of incumbents who are re-elected.

Number of Terms and Ex Officio Status

The concept of a limit on the number of terms a bencher may serve was raised by some benchers, and some questioned whether *ex officio* benchers should continue to be part of Convocation.

Currently, there is no limit on the number of terms a person may serve as an elected bencher. Once a bencher has served 16 years, the bencher is entitled to adopt life bencher status, but is not required to do so. The bencher may continue to run in the bencher election and be elected. Limiting the number of terms a bencher may serve to less than four would effectively end the office of life bencher and prevent those who wish to continue to run for election from running. A limit on the number of terms would formalize and regularize the renewal process and over time reduce the *ex officio* complement of benchers.

Other methods to limit the increase in *ex officio* benchers include eliminating such status for former Treasurers and former Attorneys General. Former Treasurers become *ex officio* benchers for life.

The *Law Society Act* provides that the Attorney General is to "serve as the guardian of the public interest in all matters within the scope of this Act or having to do in any way with the practice of law in Ontario or the provision of legal services in Ontario,"[18] and is therefore a bencher. Including former Attorneys General as *ex officio* benchers may provide an opportunity for input from the political perspective, particularly in relation to the Society's government relations activities.

[18] *Law Society Act*, s. 13(1).

3. The Treasurer as Chair of Convocation

The Treasurer is expected to set Convocation's agenda for its monthly meetings, manage the debate at Convocation and, to the extent possible, see that Convocation's business is completed in a timely way. This is a challenge with a large board.

In determining the issues Convocation needs to address, the Treasurer often seeks advice from individual benchers on an issue by issue basis. Some benchers indicated that the challenge for the Treasurer is to engage in these discussions in a way that avoids the perception that a smaller group of benchers influences Convocation's agenda.

Other issues raised by benchers related to the Treasurer's responsibilities included the following:

- The need for more rigour or discipline to avoid involving the Law Society in issues and activities distant from its core mandate.
- The absence of an express process to address alleged misconduct by benchers.
- More attention to competencies in placing benchers on committees, coupled with more involvement of non-benchers.
- Reducing the number of committees in line with the objective of providing a clearer focus on core functions.

4. The Concept of an Executive Committee

Some benchers asked whether the Law Society should create an Executive Committee, noting the Treasurer's informal consultations with small groups of benchers on an issue by issue basis, discussed above. Reference has already been made to Convocation's Priority and Planning Committee, which reviews a range of issues and provides its recommendations for a priority agenda for Convocation's term. Some benchers were uncertain about whether this committee is an effective vehicle to help identify priorities.

As boards usually set the policy agenda for an organization, a large board could benefit from the work of a smaller group of its members. For the Law Society, an executive committee could add value by providing diverse viewpoints on key issues coming before Convocation and helping the Treasurer focus on the groundwork for advancing priorities on Convocation's policy agenda. The challenge would be to ensure that the structure does not appear to be or become a "mini-Convocation," which is a concern that has been expressed by some benchers.

5. Discipline - A Core Responsibility of the Law Society

Benchers acknowledge that the discipline of lawyers and paralegals is central to the Law Society's responsibilities. The current structure means that benchers act as both policy makers and adjudicators. They are members of a board elected by lawyers (including regional representation) to govern lawyers and paralegals. They are also members of tribunals for the Law Society's discipline function with respect to lawyers and paralegals. In both capacities, they are required to act in the interests of the public.

Many benchers believe that only benchers should act as adjudicators for Law Society hearings. Adopting this approach, the imposition of term limits on benchers, discussed above, could impact the discipline function. The limits may affect the number of benchers available to sit as members of the Hearing Panel.

Some benchers expressed support for a more "competency-based" approach to the appointment of members of tribunals, and for making more use of non-bencher lawyers as adjudicators. As noted earlier, Convocation recently approved the addition of four non-bencher lawyers to the Hearing Panel to increase its adjudicative expertise. Four non-lawyer panelists were also added.

With this approach, a reduction in the size of Convocation would not necessarily have a bearing on the availability of adjudicators for tribunals, since the Law Society could exercise its ability to recruit more non-bencher lawyers and non-lawyers to serve in this capacity.

QUESTIONS

The following questions, drawn from the above information and issues, are intended to prompt discussion and are not an exclusive list of the issues. The Task Force is interested in the reasons for "yes" or "no" answers, where applicable.

A. CONVOCATION'S ELECTION PROCESS AND LAW SOCIETY'S RELATIONSHIP WITH LAWYERS AND PARALEGALS

Does the Law Society's bencher election process result in a governing body able to discharge the Law Society's governance responsibilities effectively?

- Are the elected benchers adequately representative of the legal profession in Ontario?
- Should the majority of benchers be elected?
- Is the level of voter turnout a symptom of how the profession relates to the Law Society? If so, is that symptom related to the governance structure?

B. CONVOCATION/BENCHERS/THE TREASURER/EXECUTIVE COMMITTEE

Is there a need to address either the size or the composition of Convocation?

- Should the size of Convocation be reduced?
- Are there alternatives to reducing the size of Convocation that would be preferable?
- Should term limits be imposed on elected benchers?
- Should Convocation continue to have *ex officio* life benchers?
- Should former Treasurers continue to be *ex officio* benchers?
- Should former Treasurers continue to be voting benchers?
- Should former Attorneys General continue to be *ex officio* benchers?
- Should Convocation have an Executive Committee? If so, what role should such a committee play in the governance structure?

C. THE DISCIPLINE FUNCTION

Given that discipline is a key responsibility of the Law Society, would changes to the scheme for selection or appointment of hearing panel members strengthen the Law Society's ability to perform its discipline function?

- Should benchers continue to be adjudicators?
- Should the Law Society have more non-bencher lawyers and/or non-lawyers as hearing panel members? If so, to what extent?

It was moved by Mr. Swaye, seconded by Ms. Hare, that Convocation should debate the report before it goes out for consultation.

Lost

ROLL-CALL VOTE

Aaron	For	Krishna	For
Anand	Against	Lawrie	Against
Backhouse	For	Lewis	For
Banack	Against	MacKenzie	Against
Boyd	For	McGrath	For
Braithwaite	For	Marmur	Against
Bredt	Against	Minor	Against
Campion	Against	Pawlitza	Against
Caskey	Against	Porter	Against
Chahbar	For	Potter	For
Conway	Against	Pustina	For
Crowe	For	Rabinovitch	Against
Daud	For	Robins	Against
Dickson	For	Rothstein	Against
Dray	Against	Sandler	Against
Elliott	For	Schabas	Against
Epstein	For	Sikand	Against
Go	For	Silverstein	Against
Gottlieb	For	Simpson	For
Hainey	Against	C. Strosberg	For
Halajian	For	Swaye	For
Hare	For	Symes	For
Heintzman	Against	Tough	Against
Henderson	Against	Wright	For
		Millar (Treasurer)	Against

Vote: 24 for; 25 Against

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT

Ms. Pawlitza presented the Report.

Report to Convocation
February 26, 2009

Professional Development & Competence Committee

Committee Members
Laurie Pawlitza (Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)
Larry Banack
Jack Braithwaite
Thomas Conway
Marshall Crowe
Aslam Daud
Jennifer Halajian
Susan Hare
Paul Henderson
Laura Legge
Dow Marmur
Daniel Murphy
Judith Potter
Nicholas Pustina
Jack Rabinovitch
Heather Ross
Catherine Strosberg
Gerald Swaye

Purpose of Report: Decision
Information

Prepared by the Policy Secretariat
(Sophia Sperdakos 416-947-5209)

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COMMITTEE PROCESS

1. The Committee met on February 12, 2009. Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice Chair) Mary Louise Dickson (Vice Chair), Alan Silverstein (Vice Chair), Larry Banack, Jack Braithwaite, Thomas Conway, Marshall Crowe, Jennifer

Halajian, Laura Legge, Daniel Murphy, Judith Potter, Nicholas Pustina, Jack Rabinovitch, Catherine Strosberg and Gerald Swaye attended. Staff members Lisa Mallia, Diana Miles, Sophia Sperdakos, Arwen Tillman and Sybila Valdivieso also attended.

DECISION

REVISIONS TO FOREIGN LEGAL CONSULTANT REQUIREMENTS

MOTION

2. That Convocation remove the residency requirement for Foreign Legal Consultants (FLC).

3. That Convocation remove the requirement that FLCs have defalcation coverage.

Background

4. In October 1988, Convocation adopted the report of the Special Committee on Foreign Lawyers and agreed to permit Foreign Legal Consultants (FLCs) to provide advice on the law of their jurisdiction while residing in Ontario. There had not been an FLC policy prior to that date. The policy remained in effect until 2002, when Convocation approved changes, which it incorporated into a By-law (now By-law 14). The current By-law is set out at Appendix 1.

5. Lawyers from elsewhere in Canada seeking to "provide legal services in or with respect to the law of Ontario" do so under the National Mobility Agreement, not the FLC rules, which apply primarily to lawyers from outside of Canada.

6. To become an FLC a lawyer (whether or not a member of the Ontario bar) must,
   a. apply in writing for a permit;
   b. pay an application fee;
   c. provide information and consent to the disclosure of information from third parties in support of the application;
   d. renew the permit each year prior to expiration by completing the appropriate form; and
   e. pay a renewal fee.

7. To be eligible for an FLC permit a lawyer must,
   a. have been actively engaged in the practice of law in the foreign jurisdiction for three of the last five years or, if fewer years than that, be supervised by an approved FLC;
   b. be of good character;
   c. be in good standing in the jurisdiction or jurisdictions in which he or she is a member;
   d. maintain professional liability insurance for giving legal advice in Ontario respecting the law of the FLC's foreign jurisdiction, at least equivalent to that required of a member under the Society's insurance plan;

e. maintain defalcation coverage that specifically extends to money or other property that may be received by the person in respect of the giving of legal *advice in Ontario respecting the law of the FLC's foreign jurisdiction and have coverage at least equivalent to the coverage available to a member;(emphasis added)*

f. be resident in Ontario;(emphasis added)

g. agree not to accept, hold, transfer or in any other manner deal with funds that would, if accepted, held, transferred or dealt with by a member, constitute trust fund;(emphasis added)

h. submit to the Law Society's jurisdiction and comply with all acts, rules, bylaws, and regulations, and rules of professional conduct;

i. not in any way hold him/herself out as a member of the Ontario bar or qualified to act as a member of the Ontario bar (unless he or she is such a member);

j. state on all letterhead, advertising, and signs that he or she is an FLC and the name of the jurisdiction in which he or she is qualified to practise law;

k. not represent clients in any court or public administrative body and not participate in the preparation of documents or instruments governed by the laws Ontario or unless the client retains an Ontario lawyer to act as well; and

l. notify the Law Society promptly if he or she fails to complete, satisfactorily, any CLE requirements of the home jurisdiction.

8. The *Law Society Act*, the regulations, the by-laws, the rules of practice and procedure and the rules of professional conduct apply, with necessary modification, to an FLC. This would authorize the Law Society to pursue disciplinary proceedings or, where applicable, an unauthorized practice proceeding against an FLC.

9. All provincial law societies in common law jurisdictions in Canada now have FLC regimes. The three territorial law societies do not. Québec has recently introduced an FLC regime. The FLC provisions are similar across provinces, but not identical. Other than Ontario, British Columbia, and Alberta few jurisdictions receive applications for FLCs. Some have never received an application. Ontario currently has approximately 105 FLCs (the highest in the country). Most of these are from the United States.

Residency Requirement

10. When the original FLC policy was enacted in 1988 and when changes were introduced in 2002 the Law Society still required its members to be either Canadian citizens or permanent residents. A residency requirement was similarly applied to FLCs, providing that they be "resident in Ontario." No definition of the term was set out in the FLC provisions.

11. The FLC policy was originally enacted to enable foreign lawyers to provide legal advice on the law of their jurisdiction without being found to be engaged in unauthorized practice. Many were already living here. In that context the residency requirement was not so much a limiting prerequisite as an identifier of those to whom the policy applied.

12. As part of the changes to the *Law Society Act* in 2007 the Law Society deleted the citizenship and residency requirement for lawyer and paralegal licensees. Recent amendments to the Agreement on Internal Trade provide that no province or territory can require a worker certified elsewhere in the country to be resident in the new province as a condition of licensure. These moves away from residency requirements for

domestic lawyers reflect a prevailing world view that labour mobility is beneficial and that residency and citizenship are barriers to such mobility, with no connection to competence or standards. It is increasingly the case in the legal profession that lawyers can provide services without the necessity of establishing residence in a jurisdiction. This is equally true for lawyers from outside of Canada.

13. Other than the Barreau du Québec, which only introduced an FLC regime in 2008, no other law society except Ontario requires FLCs to be resident. The jurisdictions without a residency requirement have not experienced any difficulties arising out of this and none is of the view that the absence of a residency requirement places the public at risk.

14. Although the Law Society currently maintains a residency requirement it does not monitor FLC compliance beyond seeking confirmation of residence in the annual renewal form.

15. One possible reason for maintaining the residency requirement might be that it would make it easier for the Law Society to enforce its by-laws and Rules against foreign lawyers since they are in the province. However, even with a residency requirement there is nothing to prevent FLCs from simply returning to their home jurisdictions should they wish. There is nothing that requires them to reside only in Ontario. Moreover, given that the Law Society's own members may now reside outside the jurisdiction, enforcement does not rest on physical location in the province.

16. The Department of Foreign Affairs and International Trade (DFAIT) consults with the Federation of Law Societies of Canada regularly on issues related to trade in legal services and international negotiations under the WTO and GATS and other international bilateral and multilateral agreements. Currently, the scope of such trade in legal services is limited to FLC practice.

17. Over the years DFAIT has asked whether there is room to eliminate differences among FLC regimes in Canada. DFAIT has on occasion inquired whether Ontario would be willing to eliminate the residency requirement.

18. Regulatory bodies are increasingly considering the removal of barriers that have no link competency standards or protection of the public. Their willingness to do so strengthens their position to argue in favour of maintaining requirements that do reflect defensible standard and competency protection. The residency requirement appears to be a barrier that cannot be justified on the basis of standards or competence. No other common law province requires it. The Law Society does not monitor the requirement.

Defalcation Coverage

19. An FLC in Ontario is prohibited from receiving "money or other property in trust for a person or otherwise handle money or other property that is held in trust for a person." This prohibition is applied in all provinces.

20. Despite this prohibition, By-law 14 requires an FLC to have defalcation coverage that specifically extends to "money and or other property that may be received by the person in connection with the giving of legal advice in Ontario respecting the law of the foreign

jurisdiction and is at least equivalent to the coverage available to a licensee with respect to the licensee's practice of law in Ontario" (section 3(b) of By-law 14). An FLC must therefore obtain coverage to protect against an activity that is already prohibited in the by-law.

21. With the exception of British Columbia other provinces also require defalcation coverage. Although the Law Society of British Columbia originally included such a requirement, it amended its rules in 1997-98.

22. The defalcation coverage requirement has proven to be a significant barrier to individual lawyers seeking to become FLCs in Ontario and, in other jurisdictions as well. Many jurisdictions will not permit an individual to purchase coverage to protect against his or her own dishonesty. In contrast, firms with multiple members appear to be able to purchase a type of innocent partner coverage. Where coverage for individuals has been possible the cost has been prohibitive.

23. None of the jurisdictions in Canada appears to have experienced an FLC breach of the rules again holding trust monies. This includes British Columbia, which in the 10 years since it amended its bylaws has not apparently experienced any problems as a result of not having the requirement.

24. The experience of all provinces suggests that the risk of defalcation among FLCs is very low. On the other hand, the barrier to individual lawyers becoming FLCs is very high, based not on protection of competence or standards, but on the requirement for a defalcation bond.

25. The barrier this requirement raises is exacerbated further when the FLC is also a lawyer licensee of the Law Society of Upper Canada. These are members in good standing who are unable to become FLCs because they cannot purchase a separate defalcation bond to cover their foreign law services. A number of members have raised concerns about the artificiality of the requirement. A number of non-law society members, precluded from becoming FLCs, have also raised a suggestion that the requirement is intended solely to keep out foreign lawyers and is therefore subject to challenge.

26. With no evidence of risk to support the requirement it is increasingly difficult to justify its continuation. Other law societies are also aware of the difficulties of the defalcation bond requirement raises. Although none has removed the requirement to date, the issue is under discussion.

MONITORING /INFORMATION
REPORT OF WORKING GROUP ON SOLE AND SMALL FIRM LAWYERS

27. In March 2006 Convocation approved the Sole and Small Firm Task Force Report (having first considered it in April 2005). Convocation established a working group of the Professional Development & Competence Committee made up of two benchers, two representatives of the Ontario Bar Association (“OBA”) and two representatives of the County and District Law Presidents’ Association (CDLPA) to continue to work on issues related to sole practitioners and small firms, based on the recommendations.

28. The benefit of a group made up of the three organizations was that each would bring unique perspectives on the recommendations and address them within the context of their own resources and structures, assessing the most effective way to proceed for the benefit of sole and small firm practitioners.

29. The working group has met regularly over approximately two and a half years. The membership of the working group has changed over the period. The current members are benchers Judith Potter and Doug Lewis, Bonnie Patrick and Brian Howe for the Ontario Bar Association and Randall Bocock (also Chair of CDLPA) and Orme Murphy for the County and District Law Presidents' Association. The Treasurer, Malcolm Heins and Diana Miles have also participated and assisted in the discussions. Jamie Trimble also participated toward the end of the discussions as President of the OBA.

30. The Working Group considered each recommendation and discussed how each organization could assist in implementation. In certain instances, for example, it was clear that one organization might be better positioned to undertake a particular support that another. Some initiatives would be most effective if there were component parts across organizations. If, for example, the group considered that a recommendation would be better received if coming from the OBA or CDLPA, rather than the Law Society as the regulator, or that OBA or CDLPA membership requirements for access to resources might limit the scope of an initiative, the working group developed ways to address these issues.

31. The end result is a compendium of resources, some already developed and some in development, addressing the breadth of the original Task Force recommendations.

32. The working group has prepared a detailed analysis of the resources now in place that implement the Task Force's recommendations. It is set out at Appendix 2 with letters from each of CLDPA and the OBA endorsing the report. In some instances the passage of time or experience in implementing a recommendation has resulted in a different approach being taken to provide support to practitioners. The report notes these.

33. The working group's report illustrates the significant work that organizations have undertaken to focus attention on sole and small firm practice and the importance of providing assistance and supportive resources to these lawyers, particularly in the current economic environment. While the working group's task is now complete, it is clear that sole and small firm practitioner issues are priorities for the three organizations that participated in the review.

34. The Committee thanks the working group for its tremendous dedication to its task and applauds the organizations' commitment to ongoing resource development activities for sole and small firm lawyers.

35. The Professional Development & Competence Committee is the Law Society standing committee charged with responsibility for review of issues pertaining to sole and small firm practice structures and support systems. Its work in this area continues.

36. Once Convocation has received the working group report, the Law Society will provide the information set out in the review of resources to the profession in a variety of communication pieces and activities designed to ensure that sole and small firm practitioners are fully aware of the many products and resources available to them from a variety of sources.

PROFESSIONAL DEVELOPMENT AND COMPETENCE BENCHMARK REPORT (YEAR END 2008)

37. The Professional Development and Competence Department's Benchmark Report for the year end 2008 is set out at Appendix 3 for the Committee's information.

Appendix 2

SOLE PRACTITIONER AND SMALL FIRM RESOURCES AND SUPPORTS

A REVIEW OF SERVICES PROVIDED BY:

THE LAW SOCIETY OF UPPER CANADA
THE COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION
THE ONTARIO BAR ASSOCIATION

January 2009

Executive Summary

This report summarizes the actions that have been taken by the Law Society of Upper Canada ("LSUC"), the Ontario Bar Association ("OBA") and the County and District Law Presidents' Association ("CDLPA") to support the recommendations of the Final Report of the Sole Practitioner and Small Firm Task Force (the "Report") since Convocation considered it on April 28, 2005.

The members of the Working Group are representatives of the Law Society, the OBA and CDLPA.

Through efforts in each representative organization and/or combined efforts over the course of the past two years, this Working Group is pleased to report that resources and supports for sole practitioners and small firm lawyers have been developed or expanded considerably and continue to be a top priority for each organization going forward.

The Working Group has prepared the attached review of resources for information to Convocation and broader dissemination to the profession.

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Recommendation #1: Create a position for a Practice Management and Technology Advisor.	In 2006, the position of Counsel, Sole and Small Firm Practice Management was created and filled. It became apparent that one individual would not be able to adequately support the variety of resources and activities that would be developed for the target group. As a result, the LSUC currently has the equivalent of 3FTE staff (utilizing existing staff lawyers) focusing their time entirely on sole and small issues and projects. The majority of all products and resources developed in PD&C are targeted to sole and small practitioners. Large firms do not use or require these services.		
Provide products and services, such as: A hot-line whose staff is dedicated to practice management advice for the target group.	The Practice Management Helpline serves approximately 500 callers a month of which 50% are sole and small practitioners.		

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Practice management templates that can be downloaded for use.	Precedents and templates are available on the website in the Practice Management Guidelines and Knowledge Tree – both accessible from the Sole and Small Firm Practitioner webpage (see below). In addition, links to a variety of LawPRO's practice management templates are accessible from the Resource Centre website.	CBA Practice Link on the CBA web site.	
Enhanced Law Society webpage dedicated to sole and small firm practitioners.	The LSUC has created a homepage for Sole and Small Firm Practitioners on the Resource Centre website to enable lawyers to go directly to the resources that have been developed for their use.	A significant online presence and specific web pages are devoted to sole and small firm practice issues. List Serves provide online information and the ability to exchange ideas and useful information. Web site templates are available to members to assist them in easily establishing an internet presence.	An Information Exchange Portal (IEP) including information and services devoted to sole and small firm practice issues is in development. The IEP is to be launched in May 2009.

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
More mentoring for sole and small firm practitioners, which may include lawyers being connected to mentors from similar practice structures.	The mentorship initiative includes a practice mentor program for lawyers who need advice with respect to substantive law issues.		
Further practical tips on topics such as changing practice areas.	Practice Tips has been published weekly in the *Ontario Reports* since September 2006. This information is also available online in the Knowledge Tree section of the Resource Centre. The New Lawyer Practice Series caters to lawyers who are changing practice area and require practical advice on how to manage their new career path.	Newsletters, programs and web site resources available for sole practitioners and small firms.	
Self-assessment questionnaire that lawyers may use to assess whether they have the personal competences to be a sole practitioner, particularly one who practices alone.	The *Guide to Opening Your Practice* outlines the steps involved in opening a law practice and includes a self-assessment checklist to enable lawyers to consider and decide whether they have the personal competencies to be a sole practitioner.		

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Regularly timed e-mails to target group lawyers.	Since October 2004, the monthly e-Bulletin has been delivered to lawyers and includes practical information and tips, links and references to resources available.	The Practice Management and Sole, Small Firm and General Practice sections communicate regularly with members.	Updates on typical sole and small firm practitioner issues are proposed as part of the IEP.

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Offer technology resource support, including conferences and additional sessions customized to practice areas.	The annual Solo and Small Firm Conference and Expo focuses on the practices of the target group. The New Lawyer Series – CLE programming introduced in 2007 to assist lawyers who are entering into practice or changing their practice area. The Simplify Your Litigation Practice with Technology program was offered in 2008 in Teleseminar Plus format. The new "Guide to Commonly Used Software and Other Online Resources" is posted on the Knowledge Tree, with access from the Sole and Small Firm Practitioner webpage. A series of short "podcasts", available at no charge, on practice management and law office technology topics is in development for early 2009.	The Sole, Small Firm and General Practice section offers section meeting programs specifically for sole and small firm practitioners. See references to web site templates above. The Young Lawyers Division Section provides numerous professional development programs for new lawyers and those planning to change practice areas, most of which are useful for sole and small firm practitioners.	

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Recommendation #2 Develop practical tools and supports that address key success factors for target group lawyers, in particular, • Planning and launching the practice (business and marketing plans) • Developing strategies for - Client development and retention - Use of technology - Finances, resource and staff management • Choosing practice location; and • Determining the number of practice areas (specialist versus general practice)	The *Guide to Opening Your Practice* provides advice, sample documents and a list of resources pertaining to the topics listed in this Recommendation. The Practice Management Guidelines include eight areas of practice management and are provided in a "checklist" format that allows lawyers to develop their practices by moving through the suggested best practices. Sample agreements, model business plans, marketing plans, only some of over 100 precedents, are attached and can be downloaded for immediate use.	The Sole, Small Firm and General Practice sections hold information sessions. CBA Practice Link web portal provides practice tips and information about trends in the profession. The OBA website contains suggestions for members as well as useful articles dealing with managing a practice, workload, managing stress and researching tips.	It is proposed that CDLPA will solicit and place information on practice opportunities on the IEP. It is proposed that CDLPA will approach major financial institutions and promote to them the benefits of having sole and small firm practitioners as clients.
Recommendation #3 Investigate active and passive matching to connect target group lawyers with others with whom they might share resources, provide coverage for temporary work absences, network, etc. Consider offering a list serve of target group lawyers to connect them with one another.		List serve for members of its Sole, Small and General Practice.	

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
The possible linking of sole and small firms with other firms for mentoring.	The Solo and Small Firm Conference and Expo includes social events such as dinner with the Treasurer and networking opportunities. A Succession Planning Toolkit is in development and it is anticipated that it will be available in 2009. Links to both the CDLPA Information Exchange Portal and relevant OBA programming will be posted on the LSUC's Sole Practitioner and Small Firm webpage.	A CLE program on succession planning entitled "Sole, Small Firm and General Practice: Planning the Next Strategy: Finding the Success in Succession" has been presented on two occasions very successfully and the OBA will develop a "roadshow" for this content.	An Information Exchange Platform is in development that will be tested in March of 2009 and fully launched by the end of May 2009. A list of lawyers who have made the transition from practice to retirement is in development to recruit them to provide testimonials and "how-to" tips on making this type of practice transition. Networking and mentoring at local succession planning sessions will be encouraged and members of identifiable new lawyers will be informed of these opportunities. A special visitor section under the developing CDLPA Information Exchange Platform will be dedicated to Succession Planning and Small Practice mentoring.

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Free of charge advertising on the Law Society website, in the *Ontario Reports* or *Ontario Lawyers Gazette* for target group lawyers to seek shared staff, services, resources, articling students, short-term coverage, etc.	A locum registry for sole and small firm lawyers who are either looking for short-term contract work or who need someone to take over their practice while they take a leave is in development (as per the Retention of Women in Private Practice Working Group Report). An articling placement registry to match law graduates who are looking for articling positions with potential articling principals is in development (as per the Task Force on Licensing and Accreditation Report).	Hosts a "help wanted" page on its member website which could be enhanced to meet the needs of target group lawyers who are seeking articling students or short-term coverage. The "help wanted" page has recently been augmented to include an articling-matching service allowing sole and small firm members to find articling students at no cost and permitting student members to find articling opportunities throughout the Province.	The IEP will be the conduit for posting and responding to these issues.
CLE networking lunches for target group participants.		Section meetings provide an opportunity for target group members to meet for both CLE and networking purposes.	
Legal organization coordination of mentoring and other programs.	The Law Society provides a mentoring program for the provision of substantive assistance to lawyers calling the Practice Management Helpline.		There is interest in establishing a regional and local mentoring system for young lawyers and articling students.

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Recommendation #4 (this recommendation was not approved) Require all lawyers intending to practice as sole practitioners to take a mandatory Law Society start-up workshop.	Although a mandatory course was not approved by Convocation, the new Private Practice Re-entry Requirement addresses the original intention of the recommendation. This new process requires lawyers who are returning to private practice as sole practitioners, or in a firm of five or fewer lawyers, after an absence of 48 months over the past five years, to undergo a practice management review within 12 months of establishing their practice. Practice Management Reviews are remedial in nature and provide constructive feedback on practice improvements. LSUC holds an annual "Opening Your Practice" workshop. Beginning June 2010, new lawyers are required to attend 24 hours of accredited professional development programs during the first 24 months of their entry into a practice category.		

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Recommendation #5 Develop an ongoing communications strategy to inform and educate lawyers, law students and articling students on the opportunities, challenges, and key success factors of sole and small firm practice. Consider incorporating the following components: Provide information to any lawyer who notifies the Law Society of a change in practice status to sole or small firm practice, in particular sole practitioner status.	Any lawyer changing his or her status to "sole practitioner" in each quarter of the year receives a package of materials from the Law Society, without charge, that includes the various Guides and other materials already mentioned in this report that are relevant to establishing a successful practice. Lawyers who are subject to the Law Society's Private Practice Re-entry Requirement receive the package of materials described above under Recommendation #4.		
Address sole and small firm practice considerations where relevant in CLE programs and start-up workshops.	Sole and small firm practice issues are addressed in the Opening Your Practice and New Lawyer Series programs, among others, described above under Recommendation #4.	These topics are covered in programs for lawyers in the Sole, Small and General Practice Section, the Young Lawyers Division, Law Practice Management Section and the Technology Section.	

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Develop regular opportunities to speak on the issues at law schools and during the course of the Licensing Process.	Law Society visits law schools on an annual basis to inform law school students about the Licensing Process and practice issues. PD&C Liaison Counsel, along with other LSUC representatives, will commence law school visits in Fall 2009 specifically for the purpose of presenting practice options to the student body. Panelists will be recruited from local legal communities and will include sole and small firm practitioners and others. The Law Society is engaged in discussions with Law School Deans to consider a "job fair" for small firms seeking articling students and junior associates.	Over 2,000 student members at Ontario law schools. "Student Ambassador" at each law school to facilitate and encourage colleagues to participate in events. Through these opportunities, encourage law school students to consider all recruitment options for future career placements, including smaller firm environments located outside of GTA. The OBA participates in the career fairs held by all law schools in the province and provides advice on practice options. See comments above regarding web-based articling-matching service.	The CDLPA Executive and local law associations propose that they will partner with local Chambers of Commerce and other local organizations to develop student information packages that would outline the financial and lifestyle advantages of practising in smaller firm environments located outside of GTA. CDLPA representatives will be attending the career fairs that are held at the six Ontario law schools in March of each year to promote law practice in counties.

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Enlist legal organizations and successful sole and small firm practitioners to speak about the opportunities and educate about the challenges of sole and small firm practice.	See the activities described above.	See the activities described above.	CDLPA, through its monthly executive meetings, regional conference calls and bi-annual plenary sessions involving all Ontario Law Presidents has initiated a standing agenda item devoted exclusively to the discussion of issues related to, and assistance for, those engaged in sole and small firm practice.
Develop a strategy for keeping benchers informed on the challenges and opportunities of sole and small firm practice so they are able and encouraged to speak with practitioners within the legal community on these issues.	A Lawyer Liaison Counsel within PD&C will begin in 2009 to develop a network of contacts in law firms, law associations and law schools around the province for the purpose of promoting and facilitating the initiatives recommended by the Task Force on Licensing and Accreditation, the Retention of Women in Private Practice initiatives, and the Sole Practitioner and Small Firm Working Group.		CDLPA's historical and statutory role under the *Law Society Act* is to provide a conduit for information between the Treasurer, on behalf of Convocation, and the Presidents of local law county and district associations. By continuing to include sole and small firms as a standing agenda item at those meetings, CDLPA will raise for consideration and information ongoing issues and challenges confronting sole and small firm practitioners.

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Recommendation #6 Pursue initiatives designed to enhance the public's access to lawyer services both independently and where appropriate with other legal organizations, such as • Increasing the availability of legal aid, enhancing the tariff and increasing administrative effectiveness • Recognizing the target group's overwhelming representation on the legal aid panel and issues regarding access to justice and to lawyer services • Expanding the income tax deductibility for legal fees incurred by individuals • Addressing the systemic barriers within legal system, including those related to costs, time delays, complexity of court structures • Encouraging greater liaison between Ontario government and Law Society to address issues regarding the cost and accessibility of the legal system.	The Government Relations Committee and the Access to Justice Committee were asked to consider these matters further.	The OBA has established communication networks at both the political and staff levels to effectively advocate on behalf of its members and the profession generally. Two areas of focus of its advocacy activities over the past several years have been legal aid and improving the level of total resources directed to the Justice System. OBA's Town Halls and its Justice Summit in 2007 were designed to bring to the attention of politicians from all parties, the significant need for better access to the Justice System. The OBA's annual Law Week activities include the opportunity for members of the public to speak to a lawyer at no cost.	There is a keen interest in continuing to address the issues of legal aid tariffs, the scope of eligible legal aid work covered by the tariffs, and working toward freezing the number of Legal Aid Clinics in predominantly smaller communities along with an increase in the availability of certificates.

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Recommendation #7 Investigate the issues of shortages of lawyer services and options for addressing any such shortages, particularly in certain geographic communities, demographic and cultural communities or practice areas, and if so, address the causes and possible solutions. The Task Force recommends that the following be considered: • A statistical study of the issues • Enhanced communication of regional opportunities to establish practices • Possible incentives to practice in under-serviced regions or practice areas.	The Access to Justice Committee was asked to consider this issue. The Law Society is now involved in a Needs Survey along with partners LAO, PBLO and LFO which will assess the legal needs of low and middle income Ontarians. It is anticipated that this survey will provide vital information that will inform the issue of lawyer location and potential opportunities for practice. The Sole Practitioner and Small Firm Working Group considered an incentive program to encourage lawyers to practise in underserved areas of the province for a period of time in exchange for a time-limited payment free startup up loan. This proposal will be reconsidered based on the results of the needs survey which will provide information on potential practice opportunities and public need.	The Life After Law School series identifies all available options for graduating law students. The OBA participates in the career fairs held by all law schools in the province and provides advice on all available options.	

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Recommendation #8 Continue to educate the public about the integral and valuable role lawyers play in ensuring that the public's needs are met.	The Access to Justice Committee was asked to consider this issue.	Law Day (week) activities provide many opportunities for interaction between lawyers and the public to assist in achieving this objective.	
Recommendation #9 Equity and Aboriginal Issues Committee ("EAIC") to consider the Report on Sole Practitioners and Employee/Associates from Equality Seeking Communities in the context of its mandate and make recommendations it considers appropriate, after liaising with the other standing committees that are responsible for other recommendations.	Through the Retention of Women in Private Practice Working Group and Report, the Equity Department and PD&C Department are currently working to implement projects which include a benefits support system, locum registry, web-enabled resources, educational programming, the Justicia Project for varying law firm sizes, and other activities.		
Recommendation #10 Draw the attention of other legal organizations to aspects of the survey report and focus group reports that discuss issues regarding financing practices and maintaining affordable health, dental and other coverage, and encourage them to continue their efforts to assist lawyers.		In partnership with the CBA and CBIA, OBA offers access to preferred rates on benefit packages for partners and staff in small firms, home and auto insurance, and term life insurance to name a few.	CDLPA proposes to make an approach to one or more financial institutions to establish pre-packaged, start-up credit facilities.

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Recommendation #11 Continue to track target group demographics and experience in the following ways: • Conduct follow-up surveys of the target group every 2 years for the sole and small firm practitioner unit's use • Trace the impact of each of the previous 10 recommendations • Undertake a project to adopt consistent terminology within the Law Society and LawPRO for identifying membership status according to practice structure and firm size (i.e. to differentiate between a sole practitioner who practises alone; one who practices with other lawyers he/she employs, etc.) • Investigate collecting information from members regarding indicia of isolation, number of practice areas and other practice management factors that would be useful in designing and offering the tools, supports and matching referred to in Recommendations 1, 2 and 3.	The LSUC is now monitoring sole and small practitioner issues through a variety of projects. Included in those: the activities of the organizations set out in this Report, the Retention of Women initiatives, and through Access to Justice, needs surveys, and other projects (see other Recommendations for particulars). The PD&C Committee was asked to provide a proposed design for a follow-up survey. This survey has not yet been undertaken as the Working Group was still engaged in discussions and focused on actual development of the initiatives outlined in this report. Such a survey would have been premature. The PD&C Committee will continue to monitor the target group and these initiatives and will consider potential future activities. The Law Society and LawPRO statistical information and capabilities have been compared for consistency and usage and are appropriate. The information can be, and is, compared when referring to demographic data and using it for respective purposes.	Section specific member surveys.	

Sole Practitioner and Small Firm Task Force Recommendations	Law Society of Upper Canada	Ontario Bar Association	County and District Law Presidents' Association
Refine the capability to collect and provide information according to practice description (structure) and firm size on and through the Law Society database.	Information regarding members' practice areas is gathered via the Member Annual Report. Various improvements have been made to the MAR to improve the type and scope of information that is being gathered from lawyer members.	Such information is gathered on a regular basis when members first join the Association or renew on an annual basis. It forms part of our membership records and is maintained in the CBA's iMIS database. Both OBA and CBA have in-house capability to mine this data and develop reports to assist in targeting the appropriate groups for various purposes.	

Attached to the original Report in Convocation file, copies of:

(1) Copy of the current By-Law 14.

(Appendix 1, pages 10 – 16)

(2) Copy of a letter from Jamie K. Trimble, President, Ontario Bar Association dated February 3, 2009 to Judith Potter, Chair, Sole Practitioner and Small Firm Working Group. Copy of a letter from Randall Bocock, Chair, County & District Law Presidents' Association dated February 4, 2009 to Judith Potter.

(Appendix 2, pages 19 – 20)

(3) Copy of the Professional Development & Competence Department Resource and Program Benchmarking Report as at December 31, 2008.

(Appendix 3, pages 40 – 56)

Re: Proposed Amendments to the Policy on Foreign Legal Consultant Provisions

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation remove the residency requirement for Foreign Legal Consultants (FLC).

That Convocation remove the requirement that FLCs have defalcation coverage.

Carried

Re: Working Group on Sole and Small Firm Lawyers

Ms. Potter presented the Report for information.

Item for Information

- Professional Development and Competence Benchmark Report – Year End 2008

FINANCE COMMITTEE REPORT

Mr. Bredt presented the Report.

Re: J. Shirley Denison Fund Applications (in camera)

It was moved by Mr. Bredt, seconded by Mr. Wright, that Convocation approve:

- a $6,000 grant from the J.S. Denison Trust Fund to Applicant 2008 – 33. $1,000 has already paid under the administrative provisions of the Fund.
- a $7,000 grant from the J.S. Denison Trust Fund to Applicant 2009 – 2. $1,000 has already been paid under the administrative provisions of the Fund.
- a $900 grant from the J.S. Denison Trust Fund to Applicant 2009 – 3, already paid under the administrative provisions of the Fund.

Carried

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Re: Banking Resolution

Report to Convocation
February 26, 2009

Finance Committee

Committee Members
Carol Hartman, Chair
Chris Bredt, Vice-Chair
Raj Anand
Jack Braithwaite
Mary Louise Dickson
Jack Ground
Susan Hare
Janet Minor
Ross Murray
Judith Potter
Jack Rabinovitch
Paul Schabas
Gerald Swaye
Brad Wright

Purpose of Report: Decision

Prepared by Wendy Tysall,
Chief Financial Officer – 416-947-3322

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COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on February 12, 2009. Committee members in attendance were: Carol Hartman Chair, Chris Bredt, Vice Chair, Jack Braithwaite, Mary Louise Dickson, Janet Minor, Ross Murray, Judith Potter, Jack Rabinovitch, Gerald Swaye and Brad Wright.

2. Staff attending were: Wendy Tysall, Brenda Albuquerque-Boutilier and Andrew Cawse.

FOR DECISION

TRUSTEE SERVICES BANKING

25. Motion
That Convocation approve the changes to the Schedule to Incorporated Company Certificate and Agreement (LF327).

Background

26. For more than 10 years, the Law Society's Trustee Services (a department within the Professional Regulation division) has used the services of the Bank of Nova Scotia for its banking and investing needs in managing the trust accounts that they assume temporary responsibility for in transferring or winding up a member's practice.

27. Trustee Services has operated using three bank accounts:
- Canadian Dollar Trust Account
- US Dollar Trust Account
- Petty Cash Bank Account

28. The first two accounts listed are set up with the Bank of Nova Scotia with the same instructions that are applied to a member's trust account and with all cheques requiring the signature of two authorized individuals. The authorized individuals are the Manager of Trustee Services and the two Counsel that work in the department. Responsibility for signing cheques drawn on the two Trustee Services trust accounts was delegated to these Law Society employees due to the nature of the work performed by Trustee Services where transactions related to a member's practice may need to be settled within a few hours. With bank balances sometimes as high as $1 million, some of the internal controls in place to oversee the banking function are:

- Monthly bank reconciliations are completed by an individual who does not have signing authority
- The bank reconciliation is reviewed on a monthly basis by the Chief Financial Officer
- Managerial reporting on activity in the department is provided to the Director, Professional Regulation
- Staff members responsible for signing Trustee Services related cheques are all lawyers who are required to operate the trust accounts under the rules set out in the *Law Society Act* and its by-laws.

29. The petty cash bank account holds a balance of $1,000 or less and is used for searches and other similar transactions, where the only means of payment is cash.

30. To ensure that funds that may be held by Trustee Services for a longer period of time are responsibly managed, the department has also invested in GIC's through the Bank of Nova Scotia.

Banking Changes

31. Through discussions, Trustee Services and Finance have both agreed that it would be preferable to have the banking and investing services moved to the Law Society's financial institution, the Bank of Montreal (BMO). Shifting to BMO will allow Trustee Services to leverage the relationship that the Law Society already has with BMO to obtain better service and pricing. The move will also improve internal controls as Finance staff will be able to view account transactions and balances on a daily basis.

32. In order to proceed with transferring the funds to BMO from the current bank accounts and GIC's held at the Bank of Nova Scotia, a supporting schedule to the Law Society's banking resolution needs to be updated to reflect the new bank accounts and signing officers. In addition to the Chief Executive Officer, the Chief Financial Officer and the Manager, Finance as signing officers on all Law Society bank accounts, the title of

    - Director, Professional Regulation,
    - Manager, Trustee Services,
    - Senior Legal Counsel/Assistant Manager, Trustee Services,
    - Counsel, Trustee Services, and
    - Unclaimed Trust Officer

    have been added to the Schedule to Incorporated Company Certificate and Agreement (LF327) with their signing authority limited to bank accounts used in the operation of Trustee Services. The Unclaimed Trust Officer is further limited to only being able to sign cheques for the petty cash bank account.

33. Convocation is requested to approve the changes to the Schedule to Incorporated Company Certificate and Agreement (LF327).

SCHEDULE TO INCORPORATED COMPANY CERTIFICATE AND AGREEMENT (LF 327)

Effective Date: February 26, 2009

Schedule Dated: September 25, 2008

Account Number(s): 1301-224 (General Fund - General Bank Account)
1301-232 (Compensation Fund - Compensation Bank Account)
1301-291 (General Fund - Payroll Bank Account)
1301-750 (General Fund - Accounts Payable Bank Account)
1392-701 (General Fund - Unclaimed Trust Fund Bank Account)
1454-984 (General Fund - Online Payments Bank Account)
4679-555 (General Fund - US Dollar Bank Account)
1532-460 (Osgoode Society in trust- McMurtry Fellowship Bank Account)

Please Refer to Certificate and Agreement (LF327) dated: September 25, 2008

Title

Treasurer	Chief Executive Officer
Chair, Finance Committee	Vice Chair, Finance Committee
Chair, Audit Committee	Vice Chair, Audit Committee
Director, Policy & Tribunals	Chief Financial Officer
Designated Bencher (s)	Manager, Finance

Signing Instructions:

All Law Society cheques, for the bank accounts identified above, require two signatures from the above noted list of positions. Cheques in excess of $150,000.00 require that the first signature be that of the Treasurer, the Chair of Finance Committee, the vice Chair of Finance Committee, the Chair of the Audit Committee or a designated bencher with the second signature being that of the Chief Executive Officer, Chief Financial Officer, the Manager or the Director, Policy & Tribunals.

SCHEDULE TO INCORPORATED COMPANY CERTIFICATE AND AGREEMENT (LF 327)

Account Number(s): 1585-116 (General Fund – Trustee Services)
4610-873 (General Fund - Trustee Services USD)

Title

Chief Executive Officer	Chief Financial Officer
Manager, Finance	Director, Professional Regulation
Manager, Trustee Services	Counsel, Trustee Services
	Senior Legal Counsel/Assistant Manager, Trustee Services

Signing Instructions

All Law Society cheques for account numbers 1585-116 and 4610-873 require two signatures from the above noted list of positions.

Account Number: 1585-124 (General Fund – Trustee Services Petty Cash)

Title

Chief Executive Officer	Chief Financial Officer
Manager, Finance	Director, Professional Regulation
Manager, Trustee Services	Counsel, Trustee Services
Unclaimed Trust Officer	Senior Legal Counsel/Assistant Manager, Trustee Services

Signing Instructions

All Law Society cheques for account number 1585-124 require one signature from the above noted list of positions.

Corporation Name: The Law Society of Upper Canada

Per: _____	Per: _____
Name:	Name:
Title	Title:

The Law Society of Upper Canada
Banking Resolution
Update of Signing Officers

The schedule below provides the names of the individuals associated with the Schedule to the Incorporated Company Certificate and Authorization (LF327) form signed on September 25, 2008 and supported by the signatures on file with the Bank of Montreal.

Signing Officer	Title
W.A. Derry Millar	Treasurer
Malcolm Heins	Chief Executive Officer
Carol Hartman	Chair, Finance Committee
Chris Bredt	Vice Chair, Finance Committee
Beth Symes	Chair, Audit Committee
Ab Chahbar	Vice Chair, Audit Committee
Katherine Corrick	Director, Policy & Tribunals

Wendy Tysall	Chief Financial Officer
Paul Schabas	Designated Bencher
Janet Minor	Designated Bencher
Fred Grady	Manager, Finance
Zeynep Onen	Director, Professional Regulation
Margaret Cowtan	Manager, Trustee Services
Larry Hadbavny	Senior Legal Counsel/Assistant Manager, Trustee Services
Guy Paquin	Counsel, Trustee Services
Pam Morgan	Unclaimed Trust Officer

It was moved by Mr. Bredt, seconded by Mr. Wright, that Convocation approve the changes to the Schedule to Incorporated Company Certificate and Agreement (LF327).

Carried

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TRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Report.

Report to Convocation
February 26, 2009

Tribunals Committee

Committee Members
Mark Sandler (Chair)
Alan Gold (Vice-Chair)
Raj Anand
Thomas Conway
Jennifer Halajian
Tom Heintzman
Paul Schabas
Joanne St. Lewis
William J. Simpson

Purposes of Report: Decision
Information

Prepared by the Policy Secretariat
(Sophia Sperdakos 416-947-5209)

COMMITTEE PROCESS

1. The Committee met on February 12, 2009. Committee members Alan Gold (Vice-Chair), Raj Anand, Thomas Conway, Jennifer Halajian, Thomas Heintzman, Paul Schabas and William Simpson attended. Alan Gold chaired the meeting. Staff members Lesley Cameron, Katherine Corrick, A.K. Dionne, Lisa Mallia, Elliot Spears, Sophia Sperdakos, Arwen Tillman and Sybila Valdivieso also attended.

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Tribunals Quarterly Statistics 4th Quarter 2008

FOR DECISION

NEW RULES OF PRACTICE AND PROCEDURE (FOR HEARING PANELS)

MOTION

2. That pursuant to section 61.2 of the *Law Society Act* Convocation make the Rules of Practice and Procedure set out in Appendix 1.

Introduction and Background

3. In May 2005 the Tribunals Task Force made recommendations to Convocation to enhance the Law Society's adjudicative procedures and the Rules of Practice and Procedure ('the Rules') that govern them. The Rules, which Convocation had adopted in January 1999, had been amended piecemeal over the years, but the Task Force's recommendations pointed to the need for more substantial revision and improvement.

4. In September 2005 Convocation approved the mandate of the newly created Tribunals Committee to include the following:

> Subject to the approval of Convocation, the Tribunals Committee may prepare rules of practice and procedure.

5. In defining its approach to the Rules project the Committee agreed that it should concentrate first on the Hearing Panel Rules and only after Convocation approved these, develop new Appeal Panel Rules. In addition, it would then prepare a new set of rules applicable to the making of orders under sections 46, 47, 47.1, 48 and 49 of the *Law Society Act.*

6. It also agreed that the new Rules should reflect the following:

   a. They should continue the Law Society's commitment to an open and transparent adjudicative process.

   b. They should correct the limitations and practical problems that had been identified over the years with the current Rules. At the same time, they should preserve those procedures that have worked effectively.

   c. They should be as comprehensive as possible to avoid the need for,

      i. guidelines or practice directions; and
      ii. reference to the *Statutory Powers Procedure Act.*

   d. They should include an appropriate mix of formality (for integrity of process) and flexibility (where consensual); not all matters must proceed by formal motion where consent exists.

e. They should integrate the Society of Ontario Adjudicators and Regulators (SOAR) provisions where applicable and relevant to the Law Society process.

7. The Committee has worked over the last three years to bring the new rules to Convocation for consideration, as follows:

a. A staff working group was established with representatives from the professional regulation, professional development and competence, administrative compliance and equity initiatives departments and from the Tribunals Office. The Committee decided that this "initial involvement of a broad spectrum of knowledgeable Law Society staff [would] allow the first draft of the Rules to include the widest possible perspective of needs" to assist Ms. Spears in drafting a comprehensive first draft. The staff and Committee considered the rules of a number of other administrative tribunals, the Society of Ontario Adjudicators and Regulators (SOAR) rules, the Rules of Civil Procedure and the Society's own current rules.

b. Certain regulatory policy issues that could be addressed in the Rules were referred to the Professional Regulation Committee for its assessment and recommendations. That Committee provided ongoing input on a number of issues over several years.

c. To facilitate the development process the Professional Regulation Committee was invited to send representatives to the Tribunals Committee to provide input on the Rules development. In that capacity, Heather Ross participated over many months in the Rules discussions and review of drafts.

d. The Committee reviewed numerous drafts of the Rules, commented and provided input and direction for changes. A revised draft was prepared. In September 2007 a working group of the Committee made up of Derry Millar, Carole Curtis (until her appointment to the bench) and Jennifer Halajian ("the Millar working group") considered the revised draft for consistency, clarity, completeness, conformity with the Committee's goals and to advise on any outstanding issues.

e. The further revised draft was provided to the Professional Regulation Committee ("PRC") for its review. PRC completed its review in March 2008. The Millar working group considered the PRC comments and the Committee discussed them in April 2008 implementing a number of the suggestions, including the recommendation for the introduction of a procedure for requesting a party to admit the truth of a fact or authenticity of a document.

f. The draft rules were completed in May 2008. Convocation approved a consultation process with the profession. The consultation period lasted until October 31, 2008.

g. In the first phase of the consultation process the Committee consulted with members of the defence bar who frequently appear as counsel before Hearing Panels.

h. The Law Society then took the following steps to bring the draft Rules to the attention of the profession:

i. Placed two Notices to the Profession in the *Ontario Reports* in English and French.
ii. Highlighted the Report and Notice to the Profession on its website.
iii. E-mailed approximately 29,000 lawyer and paralegal licensees for whom it has an e-mail address inviting input.
iv. Sent the draft Rules to over 50 legal organizations and representatives requesting input.

i. The draft rules were also provided to the Equity Advisor who reviewed them and provided comments, including on the rules respecting hearings in French.

j. The Committee received approximately 15 comments on the Rules. A working group of the Committee made up of Paul Schabas, Alan Gold, and Jennifer Halajian analyzed the comments for the Committee's assistance.

8. The Committee considered all the comments it received from the defence bar consultation group, legal organizations, individuals, the Equity Advisor and the Professional Regulation Committee and made a number of modifications to the proposed Rules.

9. The proposed new Hearing Panel Rules of Practice and Procedure and proposed Forms are set out at Appendix 1. For Convocation's assistance Elliot Spears has provided a memorandum on the more significant changes between the current Rules and the proposed new Rules. The memorandum is set out at Appendix 2.

10. The current Rules of Practice and Procedure and Regulation 167/07 (referred to in proposed Rule 23) are set out at Appendix 3 for Convocation's information.

11. A Table of Concordance will be provided to Convocation under separate cover.

12. If Convocation approves the Rules the Committee recommends that they be implemented commencing July 1, 2009. This period will provide the necessary time for the Rules to be translated and be appropriately communicated to the profession including, publishing a Notice to the Profession in the *Ontario Reports*, reporting on them in the *Ontario Lawyers Gazette,* sending an e-mail notification to lawyer and paralegal licensees for whom the Law Society has an e-mail address, and communicating information through the Tribunals Office.

13. To ensure fairness to licensees already engaged in the adjudicative process the current Rules will continue to apply to any proceedings commenced prior to July 1, 2009. The new Rules will apply to proceedings commenced on or after July 1, 2009.

INFORMATION/MONITORING
TRIBUNALS QUARTERLY STATISTICS – 4TH QUARTER 2008

14. The Tribunals Office's quarterly statistics for the 4th quarter of 2008 are set out at Appendix 4 for Convocation's information.

Appendix 1

HEARING PANEL RULES
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RULE 1

APPLICATION AND INTERPRETATION

Application

1.01 These Rules, and no other rules of practice and procedure applicable to proceedings before the Hearing Panel made under section 61.2 of the Act, apply to the following proceedings that are commenced on or after July 1, 2009:

1. A licensing proceeding.
2. A restoration proceeding.
3. A conduct proceeding.
4. A capacity proceeding.
5. A competence proceeding.
6. A non-compliance proceeding.
7. A reinstatement proceeding.
8. A terms dispute proceeding.

Definitions and interpretation

1.02 (1) In these Rules, unless the context requires otherwise,

"Act" means the *Law Society Act;*

"capacity proceeding" means a proceeding under section 38 of the Act;

"competence proceeding" means a proceeding under section 43 of the Act;

"conduct proceeding" means a proceeding under section 34 of the Act;

"deliver" means serve and file with the Tribunals Office with proof of service;

"document" includes a paper, book, record, account, sound recording, videotape, film, photograph, chart, graph, map, plan, survey and information recorded or stored by computer or by means of any other device;

"hearing" does not include a proceeding management conference or a pre-hearing conference;

"holiday" means,

(a) any Saturday or Sunday,

(b) New Year's Eve Day, and where New Year's Eve Day falls on a Saturday or Sunday, the preceding Friday,

(c) New Year's Day, and where New Year's Day falls on a Saturday or Sunday, the following Monday,

(d) Family Day,

(e) Good Friday,

(f) Easter Monday,

(g) Victoria Day,

(h) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday,

(i) Civic Holiday,

(j) Labour Day,

(k) Thanksgiving Day,

(l) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday,

(m) Christmas Eve Day, and where Christmas Eve Day falls on a Saturday or Sunday, the preceding Friday,

(n) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday,

(o) Boxing Day, and

(p) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

"licensing proceeding" means a proceeding under section 27 of the Act;

"moving party" means a person who makes a motion;

"non-compliance proceeding" means a proceeding under section 45 of the Act;

"non-party participant" means a person who is not a party to a proceeding who is permitted to participate in a proceeding or a part thereof;

"panel" means the panelist or, collectively, the panelists assigned to a hearing;

"panelist" means a member of the Hearing Panel;

"party" includes a moving party and a responding party;

"reinstatement proceeding" means a proceeding under section 49.42 of the Act;

"representative" means a person authorized under the Law Society Act to represent a person in a proceeding;

"responding party" means a person against whom a motion is made;

"restoration proceeding" means a proceeding under section 31 of the Act;

"subject of the proceeding" means,

(a) in a licensing proceeding, the person referred to, in subsection 27 (5) of the Act, as the applicant,

(b) in a restoration proceeding, the person referred to, in subsection 31 (4) of the Act, as the person whose licence is in abeyance,

(c) in a conduct proceeding, the person referred to, in subsection 34 (2) of the Act, as the licensee who is the subject of the application,

(d) in a capacity proceeding, the person referred to, in subsection 38 (2) of the Act, as the licensee who is the subject of the application,

(e) in a competence proceeding, the person referred to, in subsection 43 (2) of the Act, as the licensee who is the subject of the application,

(f) in a non-compliance proceeding, the person referred to, in subsection 45 (2) of the Act, as the licensee who is the subject of the application,

(g) in a reinstatement proceeding, the person referred to, in subsection 49.42 (4) of the Act, as the applicant, and

(h) in a terms dispute proceeding, the person referred to, in subsection 49.43 (3) of the Act, as the applicant;

"terms dispute proceeding" means a proceeding under section 49.43 of the Act.

(2) A word or phrase used in these Rules that is defined in the Act bears the definition contained in the Act.

Interpretation of Rules

1.03 (1) These Rules shall be liberally construed to secure the just and expeditious determination of every proceeding on its merits.

(2) Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

RULE 2

NON-COMPLIANCE WITH RULES

Effect of non-compliance

2.01 (1) A failure to comply with a procedural requirement in these Rules is an irregularity and does not render a proceeding or a step or document in a proceeding a nullity.

Orders on motion attacking irregularity

(2) On the motion of a party to attack a proceeding or a step or document in a proceeding for irregularity, an order may be made,

(a) granting any relief necessary to secure the just determination of the real matters in issue; or

(b) dismissing the proceeding or setting aside a step or document in the proceeding in whole or in part only where and as necessary in the interests of justice.

Attacking irregularity

(3) A motion to attack a proceeding or a step or document in a proceeding for irregularity shall not be made, except with leave of the Hearing Panel,

(a) after the expiry of a reasonable period of time after the moving party knows or ought reasonably to have known of the irregularity;

(b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity; or

(c) if the moving party has otherwise consented to the irregularity

Order dispensing with compliance

2.02 (1) On the motion of a party or a non-party participant, or on a panel's own motion, an order dispensing with compliance with any procedural requirement in these Rules may be made where it is necessary in the interests of justice.

Consent to non-compliance

(2) A party may dispense with compliance with any procedural requirement in these Rules with the consent of all other parties.

RULE 3

TIME

Computing time

3.01 In computing time under these Rules, or under an order made under these Rules,

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;

(b) where a period of less than seven days is prescribed, holidays shall not be counted;

(c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.

Extension or abridgment of time periods

3.02 (1) On the motion of a party or a non-party participant, an order extending or abridging any time prescribed by these Rules, or by an order made under these Rules, may be made where it is just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

RULE 4

REPRESENTATION

Change in representation

Notice of change of representative

4.01 (1) A party or a non-party participant who has a representative of record may change the representative of record by serving on the representative and every other party and non-party participant and filing with the Tribunals Office, with proof of service, a notice of change of representative giving the name, address, telephone number, fax number and e-mail address of the new representative.

Form 4A

(2) The notice mentioned in subrule (1) may be in Form 4A.

Notice of appointment of representative

(3) A party or a non-party participant acting in person may appoint a representative of record by delivering a notice of appointment of representative giving the name, address, telephone number, fax number and e-mail address of the representative.

Form 4B

(4) The notice mentioned in subrule (3) may be in Form 4B.

Notice of intention to act in person

(5) A party or a non-party participant who has a representative of record may elect to act in person by serving on the representative and every other party and non-party participant and filing with the Tribunals Office, with proof of service, a notice of intention to act in person that sets out the person's address for service, telephone number, fax number, if any, and e-mail address, if any.

Form 4C

(6) The notice mentioned in subrule (5) may be in Form 4C.

Removal of representative of record

4.02 On the motion of a representative, a party or another person, an order may be made removing the representative as the representative of record.

RULE 5

COMMUNICATION WITH HEARING PANEL

Communication with panel

5.01 No party, non-party participant, representative or other person who attends at or participates in a hearing shall communicate with a panel outside of the hearing with respect to the subject matter of the hearing except,

(a) in the presence of all parties and all non-party participants, who have been permitted to participate in the hearing with respect to the subject matter of the communication, or their representatives; or

(b) in writing by sending the written communication to the Tribunals Office and a copy of the written communication to all parties and all non-party participants, who have been permitted to participate in the hearing with respect to the subject matter of the communication, or their representatives.

RULE 6

ADDING PARTIES

Adding parties

6.01 (1) On the motion of a person, an order may be made adding a person as a party to a proceeding where the person is entitled under the *Law Society Act* or otherwise by law to be a party to the proceeding.

Time for bringing motion

(2) A motion under this Rule shall be made prior to the hearing on the merits of the proceeding.

RULE 7

JOINDER OR SEVERANCE OF PROCEEDINGS

Hearing proceedings together or consecutively

7.01 (1) On the motion of a party, an order may be made that the merits of two or more proceedings, in whole or in part, be heard at the same time or one immediately after the other if,

(a) the proceedings have a question of fact, law or mixed fact and law in common;

(b) the proceedings involve the same parties;

(c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or

(d) for any other reason an order ought to be made under this Rule.

Time for bringing motion

(2) A motion under this Rule shall be made,

(a) prior to the hearing on the merits of any affected proceeding; or

(b) at any time, with leave of the Hearing Panel.

Effect of hearing proceedings together or consecutively

(3) Where the Hearing Panel makes an order under subrule (1), the Hearing Panel shall determine the effects of hearing the merits of the proceedings together or one immediately after the other and may give such directions as it deems just with respect to those effects.

Separating proceedings

(4) Where the Hearing Panel makes an order under subrule (1), if hearing the merits of the proceedings together or one immediately after the other unduly complicates or delays the proceedings or causes prejudice to a party, on the motion of a party or on its own motion, the Hearing Panel may order separate hearings for all or any part of the proceedings.

Dividing proceeding

7.02 (1) On the motion of a party, or on a panel's own motion, an order may be made that a proceeding be divided into two or more proceedings.

Effect of order

(2) Where the Hearing Panel makes an order under subrule (1), the Hearing Panel shall determine the effects of making the order, including how the merits of the separate proceedings shall be heard, and may give such directions as it deems just with respect to the division of the proceeding.

RULE 8

NON-PARTY PARTICIPATION

Non-party participation

8.01 (1) On the motion of a person, an order may be made permitting a person who is not a party to a proceeding to participate in the proceeding or a part thereof if the participation of the person is in the interests of justice.

Extent of participation

(2) Where the Hearing Panel makes an order under subrule (1), the Hearing Panel shall determine the extent of the person's participation and may give such directions as it deems just with respect to the person's participation.

Intervening as "friend of the court"

8.02 A panel may invite a person, without becoming a party to a proceeding, to participate in the proceeding or a part thereof for the purpose of rendering assistance to the Hearing Panel by way of argument.

RULE 9

COMMENCEMENT, AMENDMENT AND ABANDONMENT OF PROCEEDINGS

How proceeding commenced

9.01 (1) A proceeding shall be commenced by the issuing of an originating process.

Notice of application

(2) The originating process for the following proceedings is a notice of application (Form 9A):

1. A conduct proceeding.

2. A capacity proceeding.

3. A competence proceeding.

4. A non-compliance proceeding.

5. A reinstatement proceeding.

6. A terms dispute proceeding.

Notice of referral for hearing

(3) The originating process for the following proceedings is a notice of referral for hearing (Form 9B):

1. A licensing proceeding.

2. A restoration proceeding.

How originating process issued

(4) An originating process is issued by the act of it being assigned a file number and being dated by the Tribunals Office.

Same

(5) An originating process may be issued,

(a) on personal attendance in the Tribunals Office by the party seeking to issue it or by someone on the party's behalf; or

(b) by mail or courier, by the party seeking to issue it,

(i) mailing an original of the originating process by regular lettermail or registered mail to the Tribunals Office,or

(ii) sending an original of the originating process by courier to the Tribunals Office.

Copy of originating process to be sent to party

(6) Where an originating process is issued by mail or courier, the Tribunals Office shall mail a copy of the originating process as issued by regular lettermail to the party that issued it.

File copy of originating process

(7) An original of the originating process as issued shall be filed in the Tribunals Office when it is issued.

Service of originating process

(8) A copy of the originating process as issued shall be served by the party that issued it on every other party and proof of service shall be filed with the Tribunals Office within thirty days after the originating process is issued.

Deemed abandonment

(9) Where a party that issued an originating process fails to file, within thirty days after the originating process is issued, proof of service of the originating process on every other party, the proceeding commenced by the issuing of the originating process is deemed to have been abandoned by that party.

Motion to set aside deemed abandonment

(10) On the motion of a person who was deemed to have abandoned a proceeding under subrule (9), an order may be made, as is just, setting aside the deemed abandonment.

Effect of deemed abandonment on subsequent proceeding

(11) Where a party is deemed to have abandoned a proceeding under subrule (9), the deemed abandonment is not a bar to a subsequent proceeding commenced by that party involving the same subject matter.

Amendment of originating process by party

9.02 (1) A party may amend its originating process,

(a) at any time prior to ten days before the hearing on the merits of the proceeding; and

(b) at any time after the time mentioned in clause (a), with leave of the Hearing Panel.

Leave to amend

(2) In considering whether to grant leave to a party to amend its originating process, the Hearing Panel may consider,

(a) prejudice to a person;

(b) timeliness of notice to the opposite party; and

(c) any other relevant factor.

No addition of party

(3) An amendment under this rule shall not include the addition of a party.

How amendment made

(4) A party amending its originating process shall file, with the Tribunals Office, a copy of the original originating process as amended, bearing the date of the original originating process and the title of the original originating process preceded by the word “amended”.

Amendments indicated

(5) A party amending its originating process shall indicate text added to the original originating process by underlining it and text deleted from the original originating process by striking it through.

Same

(6) Where an originating process is amended more than once, each subsequent amendment shall be underlined or struck through with an additional line.

Duties of Tribunals Office

(7) When an amended originating process is filed with the Tribunals Office, the Tribunals Office shall note on it the date on which it is filed and the authority by which the amendment was made.

Date of amendment

(8) The date on which an amended originating process is filed with the Tribunals Office shall be deemed to be the date on which the original originating process is amended.

Service of amended originating process

(9) A party that amends its originating process shall serve a copy of the amended originating process on every other party forthwith after it is filed with the Tribunals Office.

Same

(10) An amended originating process shall be served in accordance with subrule 10.01 (1).

Proof of service

(11) Proof of service of an amended originating process shall be filed with the Tribunals Office forthwith after it is served.

Amendment at hearing

(12) Where an originating process is amended at the hearing on the merits of the proceeding, the amendment shall be made on the face of the record and subrules (4) to (11) do not apply.

Abandonment of proceedings prior to hearing on the merits

Conduct, capacity, competence, non-compliance, reinstatement or terms dispute proceeding

9.03 (1) Prior to the hearing on the merits of the following proceedings, the applicant may abandon the proceeding by delivering a notice of abandonment (Form 9C):

1. A conduct proceeding.

2. A capacity proceeding.

3. A competence proceeding.

4. A non-compliance proceeding.

5. A reinstatement proceeding.

6. A terms dispute proceeding.

Abandonment of licensing or restoration proceeding by Society

(2) Prior to the hearing on the merits of a licensing or a restoration proceeding, the Society may abandon the proceeding by delivering a notice of abandonment (Form 9D).

Abandonment of licensing or restoration proceeding by applicant

(3) Prior to the hearing on the merits of a licensing or restoration proceeding, the applicant may abandon the application that has been referred for a hearing and the proceeding by delivering a notice of abandonment (Form 9E).

RULE 10

SERVICE OF DOCUMENTS

Manner of service: originating process

10.01 (1) An originating process shall be served by personal service or by an alternative to personal service.

Manner of service: all other documents

(2) A document other than an originating process may be served,

(a) by personal service or by an alternative to personal service,

(b) by sending a copy of the document by courier to the last known address of the person or the person's representative;

(c) by faxing a copy of the document to the last known fax number of the person or the person's representative, but if the person being served is a party, service under this clause is only effective if the recipient consents to the faxing prior thereto; or

(d) by e-mailing a copy of the document to the last known e-mail address of the person or the person's representative, but service under this clause is only effective,

(i) if the person being served is a party, if the recipient consents to the e-mailing prior thereto, and

(ii) if the recipient provides by e-mail an acceptance of service and the date of the acceptance.

Service by fax

(3) A document that is served by fax under clause (2) (c) shall include a cover page indicating,

(a) the sender's name, address and telephone number;

(b) the name of the person to be served;

(c) the date and time of transmission;

(d) the total number of pages, including the cover page, transmitted;

(e) the fax number of the sender; and

(f) the name and telephone number of a person to contact in the event of transmission problems.

Service by e-mail

(4) A document that is served by e-mail under clause (2) (d) shall be attached to an e-mail message that shall include,

(a) the sender's name, address, telephone number, fax number and e-mail address;

(b) the date and time of transmission; and

(c) the name and telephone number of a person to contact in the event of transmission problems.

Personal service

(5) Where a document is to be served by personal service, the service shall be made,

(a) on an individual, by leaving a copy of the document with the individual;

(b) on a person other than the Society, by leaving a copy of the document at the premises at which the person carries on business with an adult individual who appears to be in control or management of the place of business; and

(c) on the Society, by leaving a copy of the document with a Discipline Counsel of the Society.

Alternatives to personal service

(6) Where a document may be served by an alternative to personal service, the service shall be made,

(a) by leaving a copy of the document with a person's representative; or

(b) by mailing a copy of the document by regular lettermail or registered mail to the last known address of the person.

Substituted service or dispensing with service

(7) On the motion of a person, an order may be made permitting substituted service or dispensing with service where it appears that it is impractical for any reason to effect service as required under this rule or where it is necessary in the interests of justice.

Effective date of service

10.02 (1) Service under rule 10.01 is deemed to be effective,

(a) if a copy of the document is left with a person,

(i) before 4 p.m., on the day it is left with the person, or

(ii) after 4 p.m., on the day following the day it is left with the person;

(b) if a copy of the document is mailed to a person, on the fifth day after mailing;

(c) if a copy of the document is sent by courier to a person, on the second day after the document was provided to the courier;

(d) if a copy of the document is faxed to a person,

(i) before 4 p.m., on the day it is faxed to the person, or

(ii) after 4 p.m., on the day following the day it is faxed to the person; or

(e) if a copy of the document is e-mailed to a person,

(i) where the e-mail acceptance of service is received before 4 p.m. on any day, on that day,

(ii) where the e-mail acceptance of service is received after 4 p.m. but before midnight on any day, on the following day.

Effective date of service: substituted service

(2) If an order is made permitting substituted service, the order shall specify when service in accordance with the order is effective.

Effective date of service: service dispensed with

(3) If an order is made dispensing with service, the document shall be deemed to have been served on the effective date of the order for the purposes of the computation of time under these Rules.

Proof of Service

10.03 (1) Service of a document may be proved by,

(a) an affidavit of the person who served it; or

(b) where the document is served on a representative or on a Discipline Counsel of the Society, the written admission or acceptance of service of the representative or Discipline Counsel.

(2) The affidavit or written admission or acceptance of service may be printed on the back sheet or on a stamp or sticker affixed to the back sheet of the document served.

RULE 11

SCHEDULING

Hearing on merits of proceeding

Scheduling by panelist

11.01 (1) Subject to subrule (2), a panelist shall schedule every hearing on the merits of a proceeding.

Scheduling by Tribunals Office

(2) The Tribunals Office may schedule a hearing on the merits of a proceeding where,

(a) the hearing is to determine whether a licensee has contravened section 33 of the Act by one or more of the following means:

i. failing to maintain financial records as required by the by-laws,

ii. failing to respond to inquiries from the Society,

iii. failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act;

(b) the nature of the proceeding requires that the hearing be expedited; or

(c) the parties agree on the date of the hearing, which is not later than 90 days after the day the originating process is deemed to have been served on the respondent, and the parties notify the Tribunals Office in writing of their agreement.

Endorsement

(3) An endorsement of every scheduled hearing on the merits of a proceeding shall be made on the originating process by the panelist, if the hearing is scheduled by a panelist, or by the Tribunals Office, if the hearing is scheduled by the Tribunals Office.

Notice of hearing on merits of proceeding

11.02 (1) The Tribunals Office shall send to all parties and all non-party participants who have been permitted to participate in the hearing on the merits of a proceeding a notice of the hearing on the merits of the proceeding.

Oral hearing

(2) A notice of an oral hearing shall include,

(a) a statement of the date, time, place and purpose of the hearing; and

(b) a statement that if a person notified does not attend at the hearing, the panel may proceed in the person's absence and the person will not be entitled to any further notice in the proceeding.

Electronic hearing

(3) A notice of an electronic hearing shall include,

(a) a statement of the date, time and purpose of the hearing and details about the manner in which the hearing will be held; and

(b) a statement that if a person notified does not participate in the hearing in accordance with the notice, the panel may proceed without the person's participation and the person will not be entitled to any further notice in the proceeding.

Effect of non-attendance at or non-participation in hearing after due notice

(4) Where notice of a hearing has been given to a person in accordance with subrule (2) or (3), and the person does not attend at or does not participate in the hearing, the panel may proceed in the absence of the person or without the person's participation and the person is not entitled to any further notice in the proceeding.

Hearing of motion

11.03 A motion may be scheduled for hearing on,

(a) any day on which the merits of the proceeding to which the motion relates is scheduled to be heard; or

(b) a day obtained from the Tribunals Office.

RULE 12

PROCEEDINGS MANAGEMENT

Proceeding management conference

12.01 (1) A proceeding management conference shall be conducted by a panelist on the date specified in the originating process unless, by that date,

(a) a hearing on the merits of the proceeding has been scheduled by the Tribunals Office; and

(b) if a pre-hearing conference is required under clause 22.02 (a), the pre-hearing conference has been scheduled by the Tribunals Office.

Request for proceeding management conference

(2) A party to a proceeding may, at any time, request to attend before a panelist for a proceeding management conference.

Request to Tribunals Office

(3) A request to attend before a panelist for a proceeding management conference shall be made to the Tribunals Office.

Notice of proceeding management conference

(4) Where a request to attend before a panelist for a proceeding management conference has been made, the Tribunals Office shall send to all parties a notice of the date and time of the proceeding management conference.

Proceeding management conference: format

12.02 A proceeding management conference may be held in person, by telephone conference, by exchange of documents or by any combination of the aforementioned formats.

Attendance at proceeding management conference

12.03 (1) Unless otherwise directed by the panelist conducting the proceeding management conference, or the parties consent, all the parties to the proceeding, or their representatives, are required to attend at or participate in the proceeding management conference.

Failure to attend or participate

(2) Where a person who is required to attend at or participate in a proceeding management conference does not attend at or participate in the conference, the panelist conducting the conference may proceed in the absence of the person or without the person's participation.

Matters to be dealt with

12.04 (1) At a proceeding management conference, a panelist may,

(a) schedule a further proceeding management conference;

(b) direct the parties to attend at a pre-hearing conference;

(c) schedule or reschedule a pre-hearing conference;

(d) schedule or adjourn a hearing; and

(e) give directions.

Results of proceeding management conference

(2) At the conclusion of a proceeding management conference, the panelist who conducted the conference shall endorse on the originating process the results of the conference, including any future scheduled proceeding management conference and any directions given by the panelist.

RULE 13

MOTIONS

Making the motion

13.01 (1) The following motions shall be made by notice of motion (Form 13A):

1. A motion relating to the jurisdiction of the Hearing Panel.

2. A motion to stay or dismiss a proceeding.

3. A motion raising any constitutional issues, including issues raised under the *Canadian Charter of Rights and Freedoms.*

4. A motion relating to disclosure.

5. A motion that a hearing or a part of a hearing in a proceeding be held in the absence of the public.

6. A motion to prohibit a person from disclosing information disclosed in a hearing.

Same

(2) A motion not mentioned in subrule (1) shall be made by notice of motion (Form 13A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

Contents of notice of motion: motion for order for hearing in absence of public or for non-disclosure

(3) In a motion for an order that a hearing or a part of a hearing in a proceeding be held in the absence of the public or for an order prohibiting a person from disclosing information disclosed in a hearing, the moving party shall include in the notice of motion the grounds upon which the order is sought but shall not include in the notice of motion the specific matters, document or communication in respect of which the order is sought.

Moving party's obligations

Application of rule

13.02 (1) This rule applies where a motion is made by notice of motion.

Service of motion record

(2) The moving party shall serve on every responding party at least ten days before the hearing of the motion a motion record.

(3) The moving party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter;

(b) the notice of motion; and

(c) all affidavits and other material upon which the moving party intends to rely.

Service of factum and book of authorities

(4) The moving party shall serve on every responding party at least seven days before the hearing of the motion a factum, if any, and a book of authorities, if any.

Filing documents with Tribunals Office

(5) The moving party shall file with the Tribunals Office, with proof of service, at least seven days before the hearing of the motion any documents served on a responding party under this rule.

Same

(6) When filing a document with the Tribunals Office, the moving party shall file,

(a) two copies of the document where the motion is to be heard by a panel consisting of one panelist; and

(b) four copies of the document where the motion is to be heard by a panel consisting of three panelists.

Responding party's obligations

Application of rule

13.03 (1) This rule applies where a motion is made by notice of motion.

Service of motion record, factum and book of authorities

(2) A responding party shall serve on the moving party and every person served with the moving party's motion record, at least three days before the hearing of the motion, its motion record, if any, its factum, if any, and its book of authorities, if any.

Responding party's motion record

(3) The responding party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter; and

(b) any materials upon which the responding party intends to rely that are not contained in the moving party's motion record.

Filing documents with Tribunals Office

(4) A responding party shall file with the Tribunals Office, with proof of service, at least three days before the hearing of the motion any document served on a person under this rule.

Same

(5) When filing a document with the Tribunals Office, a responding party shall file,

(a) two copies of the document where the motion is to be heard by a panel consisting of one panelist; and

(b) four copies of the document where the motion is to be heard by a panel consisting of three panelists.

Abandoning a motion

13.04 (1) Prior to the hearing of a motion, the moving party may abandon the motion by delivering a notice of abandonment (Form 13B).

(2) Where a moving party serves a motion record but does not file it or appear at the hearing of the motion, the motion is deemed to have been abandoned by the moving party.

(3) Where a motion is abandoned or is deemed to have been abandoned, every responding party on whom the motion record was served is entitled to the costs of the motion.

Motion on consent

13.05 Where a motion is on consent, when filing the motion record with the Tribunals Office, the moving party shall also file the consent of every person served with the motion record and a draft of the formal order.

Disposition of motion

13.06 After hearing a motion, the panel may,

(a) make the order sought;

(b) dismiss the motion, in whole or in part;

(c) adjourn the hearing of the motion, in whole or in part; or

(d) if the motion is heard prior to the hearing on the merits of the proceeding in which the motion is made or to which the motion relates, adjourn the hearing of the motion to the panel presiding at the hearing on the merits of the proceeding.

RULE 14

ADJOURNMENTS

How to obtain

Before date of hearing

14.01 (1) Where a hearing is scheduled and prior to the date of the hearing a party wishes to adjourn the hearing to another date, the party shall,

(a) request the adjournment from a panelist at a proceeding management conference;

(b) if the Tribunals Office advises the party that a proceeding management conference cannot be scheduled prior to the date of the hearing, make a motion to the panel for an order adjourning the hearing; or

(c) in the case of a hearing of a motion, where all parties and all non-party participants who have been permitted to participate in the hearing consent to the adjournment, request the adjournment from the Tribunals Office.

On date of or during hearing

(2) Where a hearing is scheduled and on the date scheduled for the hearing or during the course of the hearing a party wishes to adjourn the hearing, or the remaining part of the hearing, to a future date, the party shall make a motion to the panel for an order adjourning the hearing, or the remaining part of the hearing, to a future date.

Adjournments by Tribunals Office

14.02 The Tribunals Office may grant a request for an adjournment of a hearing of a motion where,

(a) all parties and all non-party participants who have been permitted to participate in the hearing consent to the adjournment; and

(b) the parties and the non-party participants notify the Tribunals Office in writing of their consent.

Adjournments: Considerations

14.03 In considering whether to grant an adjournment, a panelist or a panel, as the case may be, may consider,

(a) prejudice to a person;

(b) the timing of the request or motion for the adjournment;

(c) the number of prior requests and motions for an adjournment;

(d) the number of adjournments already granted;

(e) the public interest;

(f) the costs of an adjournment;

(g) the availability of witnesses;

(h) the efforts made to avoid the adjournment;

(i) the requirement for a fair hearing; and

(j) any other relevant factor.

RULE 15

LANGUAGE OF HEARING

Hearing in English or French

15.01 (1) A hearing in a proceeding shall be conducted in the English or French language.

Hearing in English

(2) A hearing in a proceeding shall be conducted in the English language unless a party to the proceeding requires that the hearing be conducted in the French language.

Requiring hearing in French: Society

(3) Where the subject of the proceeding speaks French, the Society may require that every hearing in the following proceedings be conducted in the French language by filing with the Tribunals Office the originating process in the French language:

1. A licensing proceeding.

2. A restoration proceeding.

3. A conduct proceeding.

4. A capacity proceeding.

5. A competence proceeding.

6. A non-compliance proceeding.

Requiring hearing in French: subject of the proceeding

(4) The subject of the proceeding who speaks French may require that every hearing in the following proceedings be conducted in the French language by notifying the Tribunals Office of the requirement within thirty days after he or she is deemed to have been served with the originating process:

1. A licensing proceeding.

2. A restoration proceeding.

3. A conduct proceeding.

4. A capacity proceeding.

5. A competence proceeding.

6. A non-compliance proceeding.

Requiring hearing in French: subject of the proceeding

(5) The subject of the proceeding who speaks French may require that every hearing in the following proceedings be conducted in the French language by filing with the Tribunals Office the originating process in the French language:

1. A reinstatement proceeding.

2. A terms dispute proceeding.

Compliance with subrule (4) not required

(6) The subject of the proceeding is not required to comply with subrule (4) if he or she was served with the originating process in the French language.

Hearing in English

15.02 Where a hearing in a proceeding is conducted in the English language,

(a) evidence given at the hearing in a language other than the English language shall be interpreted into the English language; and

(b) a document with respect to the hearing filed with the Tribunals Office, or received by the panel presiding at the hearing, under these Rules shall be in the English language or shall be accompanied by a translation of the document into the English language certified by an affidavit of the translator.

Hearing in French

15.03 Where a hearing in a proceeding is conducted in the French language,

(a) evidence given and submissions made in the hearing in the English or French language shall be received, recorded and transcribed in the language in which they are given or made;

(b) a document with respect to the hearing filed with the Tribunals Office, or received by the panel presiding at the hearing, under these Rules may be in the French language and need not be accompanied by a translation of the document into the English language;

(c) on the request of the subject of the proceeding who speaks French but not French and English, the panel presiding at the hearing shall cause anything given orally at the hearing in a language other than the French language to be interpreted into the French language;

(d) on the request of the subject of the proceeding who speaks French but not French and English, the Tribunals Office or the panel presiding at the hearing may cause any document with respect to the hearing filed with the Tribunals Office, or received by the panel, in the English language to be translated into the French language; and

(e) the Tribunals Office shall cause an endorsement, a decision, an order or reasons for a decision or an order with respect to the hearing written in the English language to be translated into the French language, unless the parties to the proceeding agree otherwise.

RULE 16

FORM OF HEARING

Oral hearing

16.01 Subject to rules 16.02 and 16.03, a hearing shall be held as an oral hearing with the parties, non-party participants, if any, and their representatives, if any, appearing in person.

Electronic hearing
Motions

16.02 (1) The following motions may, without a motion or an order being made, be heard as an electronic hearing:

1. A motion on consent.

2. A motion for an adjournment.

Order for electronic hearing

(2) On the motion of a party, or on a panel's own motion, an order may be made that a hearing or a part of a hearing be held as an electronic hearing.

Matters to consider in making order

(3) In deciding whether to order that a hearing be held as an electronic hearing, a panel may consider,

(a) the suitability of an electronic hearing to the subject matter of the hearing;

(b) the nature of the evidence to be called at the hearing and whether credibility is in issue;

(c) whether the matters in dispute in the hearing are questions of law;

(d) the convenience of the parties;

(e) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;

(f) the avoidance of delay or unnecessary length;

(g) the fairness of the process;

(h) public accessibility to the hearing;

(i) the fulfilment of the Society's statutory mandate; and

(j) any other matter relevant in order to secure the just and expeditious determination of the subject matter of the hearing or of the proceeding in which the hearing is being held.

Conduct of electronic hearing

(4) An electronic hearing shall be conducted by telephone or other electronic means and all the parties and all the non-party participants who have been permitted to participate in the hearing and the panel must be able to hear one another and any witnesses throughout the hearing.

Arrangements for electronic hearing

(5) Where a hearing is to be held as an electronic hearing, the Tribunals Office shall make all the necessary arrangements for the hearing and shall give notice of those arrangements to all the persons participating in the hearing and their representatives, if any.

Written hearing

16.03 (1) Subject to subrule (3) and subrules 16.02 (1) and (2), the following hearings shall be held as a written hearing:

1. The hearing of a motion for an order that a hearing be held as an electronic hearing.

Written hearing of motions

(2) The following motions may be heard as a written hearing:

1. A motion on consent.

2. A motion for an adjournment.

Order for oral hearing

(3) On the motion of a party, or on a panel's own motion, an order may be made that a hearing mentioned in subrule (1) be held as an oral hearing.

Conduct of written hearing

(4) A written hearing shall be conducted by the exchange of documents and all the parties and all the non-party participants who have been permitted to participate in the hearing are entitled to receive every document that the panel receives in the hearing.

Arrangements for written hearing

(5) Where a hearing is to be held as a written hearing, the Tribunals Office shall make all the necessary arrangements for the hearing and shall give notice of those arrangements to all the persons participating in the hearing and their representatives, if any.

Motion under Rule 21

No notice required

16.04 The notice requirement in subrule 16.02 (5) and in subrule 16.03 (5) does not apply in the case of a hearing of a motion for an order mentioned in rule 21.01 where an order was made dispensing with service of the motion record.

RULE 17

LOCATION OF HEARING

Location of Hearings

17.01 (1) Subject to subrules (2) and (3), every hearing shall be held at the offices of the Society in Toronto.

(2) Where all parties consent to a hearing being held at a place other than the offices of the Society in Toronto, the hearing shall be held at that place.

(3) On the motion of a party, an order may be made that a hearing be held at a place other than the offices of the Society in Toronto.

(4) In deciding whether to order that a hearing be held at a place other than the offices of the Society in Toronto, a panel may consider,

(a) the convenience of the parties;

(b) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;

(c) the avoidance of delay or unnecessary length;

(d) the fairness of the process;

(e) public accessibility to the hearing;

(f) the fulfilment of the Society's statutory mandate; and

(g) any other matter relevant in order to secure the just and expeditious determination of the subject matter of the hearing or of the proceeding in which the hearing is being held.

(5) An order that a hearing be held at a place other than the offices of the Society in Toronto shall be made only after consultation with the Tribunals Office.

RULE 18

ACCESS TO HEARING

Hearing to be public

18.01 Subject to rule 18.02, every hearing in a proceeding shall be open to the public.

Hearing in the absence of the public

18.02 On the motion of a party, an order may be made that a hearing or a part of a hearing in a proceeding shall be held in the absence of the public where,

(a) matters involving public security may be disclosed;

(b) it is necessary to maintain the confidentiality of a privileged document or communication;

(c) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(d) in the case of a hearing or a part of a hearing that is to be held as an electronic hearing, it is not practical to hold the hearing or the part of the hearing in a manner that is open to the public.

Attendance at hearing held in the absence of the public

18.03 Where a hearing or a part of a hearing is held in the absence of the public, unless otherwise ordered by the Hearing Panel, the hearing may be attended by,

(a) subject to rule 24.01, any witness the nature of whose testimony gave rise to the order that the hearing or the part of the hearing be held in the absence of the public;

(b) the parties and their representatives;

(c) the non-party participants who have been permitted to participate in the hearing or the part of the hearing and their representatives; and

(d) such other persons as the panel considers appropriate.

Non-disclosure of information: hearing held in the absence of the public

18.04 (1) Subject to subrule (2), where a hearing or a part of a hearing is held in the absence of the public, no person shall disclose, except to his, her or its representative or to another person who attends at or participates in the hearing or the part of the hearing that is held in the absence of the public,

(a) any information disclosed in the hearing or the part of the hearing that is held in the absence of the public; and

(b) if and as specified by the panel, the panel's reasons for a decision or an order arising from the hearing or the part of the hearing that is held in the absence of the public, other than the panel's reasons for an order that a subsequent hearing or a part of the subsequent hearing be held in the absence of the public.

Order for disclosure: hearing held in the absence of the public

(2) On the motion of a person, an order may be made permitting a person to disclose any information mentioned in subrule (1).

Order for non-disclosure: hearing open to the public

18.05 On the motion of a party, or on a panel's own motion, if any of clauses 18.02 (a), (b) and (c) apply, an order may be made prohibiting a person who attends at or participates in a hearing or a part of a hearing that is open to the public from disclosing, except to his, her or its representative or to another person who attends at or participates in the hearing or the part of the hearing, any information disclosed in the hearing or the part of the hearing.

Review of order

18.06 If an order is made in respect of any matter dealt with in this Rule, on the motion of a person, the Hearing Panel may at any time review all or a part of the order and may confirm, vary, suspend or cancel the order.

RULE 19

DISCLOSURE

Obligations of the Society

19.01 (1) In a proceeding, the Society, as a party, shall make such disclosure to the subject of the proceeding as is required by law and, without limiting the generality of the foregoing, the Society shall provide to the subject of the proceeding, not later than ten days before the hearing on the merits of the proceeding,

(a) a copy of every document upon which the Society intends to rely as evidence and the opportunity to examine any other relevant document;

(b) a signed witness statement for every witness or, where there is no signed witness statement for a witness, a summary of the anticipated oral evidence of the witness; and

(c) a list of witnesses that the Society intends to call.

Obligations of subject of the proceeding

(2) In a licensing proceeding, a restoration proceeding, a reinstatement proceeding or a terms dispute proceeding, the subject of the proceeding shall provide to the Society, not later than ten days before the hearing on the merits of the proceeding,

(a) a copy of every document upon which the subject of the proceeding intends to rely as evidence;

(b) for every witness upon whose oral evidence the subject of the proceeding intends to rely, a signed witness statement or, where there is no signed witness statement for a witness, a summary of the anticipated oral evidence of the witness; and

(c) a list of witnesses that the subject of the proceeding intends to call.

Summary of evidence

(3) A summary of the oral evidence of a witness shall be in writing and shall contain,

(a) the substance of the evidence of the witness;

(b) a list of documents or things, if any, to which the witness will refer; and

(c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness may be contacted.

Expert Reports

19.02 (1) Every party and non-party participant shall provide to every other party and non-party participant,

(a) not later than ninety days before the hearing on the merits of a proceeding,

(i) a list of the expert witnesses that the person intends to call,

(ii) a copy of the curriculum vitae of every expert witness included in the list mentioned in subclause (i), and

(iii) a summary of the anticipated oral evidence of every expert witness included in the list mentioned in subclause (i); and

(b) not later than thirty days before the hearing on the merits of a proceeding, a copy of the written report of every expert witness included in the list mentioned in subclause (a) (i), if the person intends to rely on the written report in the hearing.

Summary of evidence

(2) A summary of the oral evidence of an expert witness shall be in writing and shall contain,

(a) the substance of the evidence of the expert witness;

(b) a list of documents or things, if any, to which the expert witness will refer; and

(c) the expert witness's name and address.

Failure to disclose: consequences

Evidence may not be introduced

19.03 Evidence that is not disclosed as required under rule 19.01 or 19.02 may not be introduced as evidence in a proceeding, except with leave of the panel.

RULE 20

ADMISSIONS

Interpretation

20.01 In this Rule, "authenticity" includes the fact that,

(a) a document that is said to be an original was printed, written or otherwise produced and signed or executed as it purports to have been;

(b) a document that is said to be a copy is a true copy of the original; and

(c) where the document is a copy of a letter, telegram or telecommunication, the original was sent as it purports to have been sent and received by the person to whom it is addressed.

Request to admit fact or document

20.02 (1) In a proceeding, a party may, at any time but not later than thirty days before the hearing on the merits of the proceeding, request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document.

Form of request to admit

(2) A request to admit shall be in Form 20A.

Service of request to admit

(3) A party making a request to admit to another party shall serve on that other party,

(a) the request to admit; and

(b) a copy of any document mentioned in the request to admit, unless a copy is already in the possession of that other party.

Response to request to admit

20.03 (1) A party on whom a request to admit is served shall respond to it within twenty days after it is served by serving on the requesting party a response to the request to admit.

Form and content of response

(2) A response to a request to admit shall be in Form 20B and shall,

(a) admit the truth of a fact or the authenticity of a document mentioned in the request to admit;

(b) specifically deny the truth of a fact or the authenticity of a document mentioned in the request to admit; or

(c) refuse to admit the truth of a fact or the authenticity of a document mentioned in the request to admit and set out the reason for the refusal.

Effect of request to admit
Deemed admission where no response

20.04 (1) Where a party on whom a request to admit is served fails to serve a response as required by subrule 20.03 (1), the party shall be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

Deemed admission where insufficient response

(2) Subject to subrule (3), where a party on whom a request to admit is served serves a response as required by subrule 20.03 (1) but does not comply with subrule 20.03 (2) in respect of a fact or a document mentioned in the request to admit, the party shall be deemed, for the purposes of the proceeding only, to admit the truth of that fact or the authenticity of that document.

Deemed admission where non-attendance at or non-participation in hearing

(3) Where a party on whom a request to admit is served does not attend at or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party shall be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

Costs on denial or refusal to admit

20.05 Where a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved at a hearing in the proceeding, the Hearing Panel may take the denial or refusal into account in exercising its discretion respecting costs under section 49.28 of the Law Society Act and rule 25.01.

Withdrawal of admission

20.06 (1) On the motion of a party who admits or is deemed to admit the truth of a fact or the authenticity of a document, an order may be made withdrawing the admission.

Time for bringing motion

(2) A motion under this rule shall be made,

(a) prior to the hearing on the merits of the proceeding; or

(b) at any time, with leave of the Hearing Panel.

RULE 21

SUSPENSION OR RESTRICTION ORDER

Authority to make

21.01 On the motion of the Society, the Hearing Panel may make an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

General

21.02 (1) Subject to this Rule, Rule 13 applies with necessary modifications to a motion for an order mentioned in rule 21.01.

Authorization required in certain circumstances

(2) The Society shall obtain the authorization of the Proceedings Authorization Committee to make a motion for an order mentioned in rule 21.01 if the motion relates to a proceeding that has not been commenced or if the motion is being made in a proceeding where the Hearing Panel has not commenced a hearing on the merits of the proceeding.

Making the motion

21.03 A motion for an order mentioned in rule 21.01 shall be made by notice of motion (Form 13A).

Society's obligations

Service of motion record

21.04 (1) The Society shall serve a motion record on the licensee at least three days before the hearing of the motion.

Method of service

(2) The motion record shall be served in accordance with subrule 10.01 (1) as if it were an originating process.

Dispensing with service

(3) On the motion of the Society, an order may be made dispensing with service of the motion record where,

(a) the circumstances render the service of the motion record impracticable or unnecessary; or

(b) the delay necessary to effect service might entail serious consequences.

Service of factum and book of authorities

(4) Where the motion record has been served, the Society shall serve its factum and book of authorities, if any, on the licensee at least three days before the hearing of the motion.

Filing documents with Tribunals Office

(5) Where the motion record has been served, the Society shall file with the Tribunals Office, with proof of service, not later than 4 p.m. on the day before the hearing of the motion, any documents served on the licensee under this rule.

Filing documents with panel

(6) Where an order has been made dispensing with service of the motion record, the Society shall file a motion record, a factum and a book of authorities, if any, with the panel in the hearing of the motion.

Licensee's obligations

Service of motion record, factum and book of authorities

21.05 (1) Where a motion record has been served under rule 21.04, the licensee shall serve on the Society, not later than 2 p.m. on the day before the hearing of the motion, his or her motion record, if any, his or her factum, if any, and his or her book of authorities, if any.

Filing documents with Tribunals Office

(2) The licensee shall file with the Tribunals Office, with proof of service, not later than 4 p.m. on the day before the hearing of the motion, any document served on the Society under this rule.

What is admissible in evidence

21.06 (1) Despite rules 24.02, 24.06 and 24.07, and subject to subrule (2), the following may be admitted as evidence and may be acted on at the hearing of a motion for an order mentioned in rule 21.01, whether or not given or proven under oath or affirmation or admissible as evidence in a court:

1. Any oral testimony that is relevant to the subject-matter of the hearing.

2. Any document or other thing that is relevant to the subject-matter of the hearing.

What is inadmissible in evidence

(2) Unless permitted by the Act, nothing shall be admitted in evidence at the hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) that is inadmissible under any statute.

Order

21.07 (1) A panel making an order mentioned in rule 21.01 shall specify in the order that the order shall be in effect until the earliest of the following:

1. Where an order was made dispensing with service of the motion record, a panel varies or cancels the order on the basis of evidence that is brought by the licensee to the panel within thirty days of service of the order on the licensee.

2. A panel varies or cancels the order on the consent of the Society and the licensee prior to the hearing on the merits of the proceeding to which the motion relates.

3. A panel varies or cancels the order on the basis of fresh evidence or a material change in circumstances that is brought by the Society or the licensee to the panel prior to the hearing on the merits of the proceeding to which the motion relates.

3. The panel presiding at the hearing on the merits of the proceeding to which the motion relates, prior to disposing of the proceeding, varies or cancels the order.

4. The panel presiding at the hearing on the merits of the proceeding to which the motion relates disposes of the proceeding.

(2) Where an order was made dispensing with service of the motion record, the Society shall serve on the licensee any order made by the panel and a copy of the motion record and all other documents used in the hearing of the motion.

(3) On the motion of the Society, an order may be made dispensing with compliance with a requirement mentioned in subrule (2).

RULE 22

PRE-HEARING CONFERENCES

Purpose of pre-hearing conference

22.01 (1) The purpose of a pre-hearing conference is to facilitate the just and most expeditious disposition of a proceeding.

(2) Without limiting the generality of subrule (1), in a pre-hearing conference, the panelist or other person conducting the pre-hearing conference may discuss with the parties,

(a) the identification, limitation or simplification of the issues in the proceeding;

(b) the identification and limitation of evidence and witnesses;

(c) the possibility of settlement of any or all of the issues in the proceeding; and

(d) the possibility of the parties entering into an agreed statement of facts with respect to all or part of the facts in issue in the proceeding.

Pre-hearing conference to be conducted

22.02 A pre-hearing conference shall be conducted in a proceeding where,

(a) one party to the proceeding estimates that the hearing on the merits of the proceeding will be longer than two days;

(b) a panelist or panel directs the parties to a proceeding to attend at a pre-hearing conference; or

(c) the parties agree to attend at a pre-hearing conference.

Who presides at pre-hearing conference

22.03 A pre-hearing conference shall be conducted by a panelist or another person assigned by the chair of the Hearing Panel.

Timing of pre-hearing conferences

22.04 All pre-hearing conferences in a proceeding shall be conducted prior to the hearing on the merits of the proceeding.

Method of conducting pre-hearing conference

22.05 (1) Subject to subrule (2), a pre-hearing conference shall be conducted in person.

Pre-hearing conference by telephone conference

(2) A pre-hearing conference may be conducted by telephone conference,

(a) if the parties consent; or

(b) the panelist or other person conducting the pre-hearing conference permits it.

Scheduling of pre-hearing conference: by panelist

22.06 (1) Subject to subrule (2), a panelist shall schedule every pre-hearing conference at a proceeding management conference.

Scheduling of pre-hearing conference: by Tribunals Office

(2) The Tribunals Office may schedule a pre-hearing conference where,

(a) the parties agree on the date and time of the pre-hearing conference; and

(b) the parties notify the Tribunals Office in writing of their agreement.

Endorsement

(3) An endorsement of every scheduled pre-hearing conference shall be made on the originating process by the panelist, if the pre-hearing conference is scheduled by a panelist, or by the Tribunals Office, if the pre-hearing is scheduled by the Tribunals Office.

Notice of pre-hearing conference

(4) The Tribunals Office shall send to all parties a notice of the date and time of every pre-hearing conference in the proceeding, including the name of the panelist or other person conducting the pre-hearing conference.

Notice not required

(5) Subrule (4) does not apply if,

(a) a panel directs the parties to a proceeding to attend at a pre-hearing conference,

(b) a member of the panel that gave the direction will conduct the pre-hearing conference, and

(c) the pre-hearing conference will be conducted immediately after the direction has been given.

Preparation for pre-hearing conference

22.07 (1) The Law Society shall prepare a pre-hearing conference memorandum and provide a copy of the memorandum to the other parties and to the panelist or other person conducting the pre-hearing conference at least seven days before the pre-hearing conference.

Non-application of subrule (1)

(2) Subrule (1) does not apply if,

(a) a panel directs the parties to a proceeding to attend at a pre-hearing conference,

(b) a member of the panel that gave the direction will conduct the pre-hearing conference, and

(c) the pre-hearing conference will be conducted immediately after the direction has been given.

Attendance at pre-hearing conference

22.08 Unless otherwise directed by the panelist or other person conducting the pre-hearing conference, all parties to the proceeding, or their representatives, are required to attend at or participate in the pre-hearing conference.

Results of pre-hearing conference

22.09 (1) At the conclusion of the pre-hearing conference, the panelist or other person conducting the pre-hearing conference shall endorse on the originating process,

(a) who attended at or participated in, and who did not attend at or participate in, the pre-hearing conference; and

(b) any agreement reached.

(2) Any agreement reached at the pre-hearing conference, as endorsed on the originating process, is binding on the parties.

No disclosure to panel

22.10 (1) No communication shall be made to the panel presiding at the hearing on the merits of the proceeding or at the hearing of a motion in the proceeding with respect to any statement made at the pre-hearing conference, except as disclosed in the endorsement made under rule 22.09.

Pre-hearing conference panelist cannot preside at hearing

(2) A panelist conducting a pre-hearing conference in a proceeding shall not preside at the hearing on the merits of the proceeding, except with the consent of the parties to the proceeding.

RULE 23

CONDUCT OF HEARING

Consent to hearing by one panelist

23.01 For the purposes of paragraph 2 of subsection 2 (1) of Ontario Regulation 167/07, the parties to a conduct proceeding may consent to having one panelist preside at the hearing on the merits of the proceeding by filing a consent (Form 23A),

(a) with the Tribunals Office, as early as possible but not later than three days before the hearing on the merits of the proceeding; or

(b) with the panelist, immediately prior to the commencement of the hearing on the merits of the proceeding.

Transcripts

Production of transcript

23.02 (1) The Tribunals Office shall cause every oral and electronic hearing to be recorded by a reporting service to permit the production of a transcript of the hearing.

Ordering transcript

(2) A person wishing to have a copy of the transcript of a hearing shall order it from the reporting service that recorded the hearing.

Costs of transcript

(3) The costs of acquiring a transcript of a hearing shall be borne solely by the person wishing to have a copy of the transcript of the hearing.

Requirement to file transcript

(4) The first party to obtain a transcript of a hearing shall file a copy of the transcript with the Tribunals Office.

Interpreter

23.03 (1) Where a witness does not understand the language or languages in which an examination at a hearing is to be conducted, the Tribunals Office shall provide an interpreter.

Notice to Tribunals Office

(2) A person intending to call a witness who will require interpretation shall notify the Tribunals Office of the witness' requirement for an interpreter as early as possible and, in any event, not later than five days before the hearing at which the witness will be examined.

Interpreter to be competent

(3) An interpreter shall be competent and independent.

Interpreter to take oath or affirmation

(4) Where an interpreter is required under subrule (1), before the witness is called, the interpreter shall take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and the witness' answers.

Accommodation required

23.05 A party or a non-party participant shall notify the Tribunals Office as early as possible of any needs of the party or the non-party participant or his, her or its witnesses that may require accommodation.

Limitation on examination of witness

23.06 A panel may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

RULE 24

EVIDENCE

Exclusion of witness

24.01 (1) Subject to subrule (2), on the motion of a party, an order may be made excluding a witness from a hearing until the witness is called to give evidence.

Order not to apply to party or witness instructing representative of party

(2) An order under subrule (1) may not be made in respect of a party or a witness whose presence is essential to instruct the representative of the person calling the witness, but an order may be made requiring any such party or witness to give evidence before other witnesses are called to give evidence on behalf of the party or the person calling the witness.

No communication with excluded witness

(3) Subject to subrule (4), where an order is made excluding a witness from a hearing, there shall be no communication to the witness of any evidence given during the witness' absence from the hearing until after the witness has been called to give evidence and has given evidence.

Order permitting communication with excluded witness

(4) On the motion of the person calling a witness who has been excluded from a hearing, an order may be made permitting communication to the witness of any evidence given during the witness' absence from the hearing.

Rules of evidence

24.02 Subject to this Rule, at a hearing, the rules of evidence applicable in civil proceedings apply.

Evidence by affidavit: hearing on the merits of a proceeding

24.03 (1) At the hearing on the merits of a proceeding, the evidence of a witness or proof of a particular fact or document may be given by affidavit, subject to the Hearing Panel ordering otherwise.

Cross-Examination

(2) Where the evidence of a witness or proof of a particular fact or document is given by affidavit, if a party adverse to the party tendering the affidavit evidence wishes to cross-examine the deponent,

(a) the deponent shall attend at the hearing on the merits of the proceeding for the purposes of cross-examination; or

(b) the deponent shall attend before an official examiner for the purposes of cross-examination and the transcript of the cross-examination may be admitted in evidence at the hearing on the merits of the proceeding.

(3) A cross-examination conducted under clause (2) (b) shall be conducted in accordance with the Rules of Civil Procedure applicable to oral examinations and, where necessary, the parties may seek direction from the panel.

Agreed facts

24.04 At a hearing on the merits of a proceeding, the panel may receive and act on any facts agreed to by the parties without further proof or evidence.

Admissibility of evidence from former proceeding

Interpretation

24.05 (1) In this rule, "previously admitted evidence" means evidence that was admitted in a proceeding before a court or tribunal, whether in or outside Ontario, at a hearing that occurred before the hearing in which the evidence is now sought to be admitted.

When may be admitted

(2) At a hearing on the merits of a proceeding, previously admitted evidence may be admitted if,

(a) the parties to the proceeding consent to its admission; or

(b) (i) the panel is satisfied that there is a reasonably accurate transcript of the previous hearing,

(ii) the previously admitted evidence is relevant to the current proceeding,

(iii) the party against whose interest the evidence is sought to be admitted was or is a party to the other proceeding or was a witness at the previous hearing,

(iv) if the party against whose interest the evidence is sought to be admitted was not a witness at the previous hearing, the party had the opportunity to cross-examine the witness at the previous hearing, and

(v) a material issue in the other proceeding is substantially similar to a material issue in the current proceeding.

Proof of prior commission of offence

24.06 (1) Proof that a person has, in a proceeding before an adjudicative body in Canada, been found to have committed an offence is proof, in the absence of evidence to the contrary, that the offence was committed by the person if,

(a) no appeal of the finding was taken and the time for an appeal has expired; or

(b) an appeal of the finding was taken but was dismissed or abandoned and no further appeal is available.

(2) Subrule (1) applies whether or not the person is or was a party to the proceeding.

(3) For the purposes of subrule (1), a document certifying the finding, purporting to be signed by the official having custody of the records of the adjudicative body, is sufficient evidence of the finding.

Proof of prior facts

24.07 (1) Specific findings of fact contained in the reasons for decision of an adjudicative body in Canada are proof, in the absence of evidence to the contrary, of the facts so found if,

(a) no appeal of the decision was taken and the time for an appeal has expired; or

(b) an appeal of the decision was taken but was dismissed or abandoned and no further appeal was taken.

(2) If the findings of fact mentioned in subrule (1) are with respect to an individual, subrule (1) only applies if the individual is or was a party to the proceeding giving rise to the decision.

Transcript of proceeding

24.08 (1) At a hearing, a transcript of a hearing before an adjudicative body may be admitted as evidence.

Reasons

(2) At a hearing, the reasons for decision of an adjudicative body may be admitted as evidence

Taking official notice of facts

24.09 The Hearing Panel may,

(a) take notice of facts that may be judicially noticed; and

(b) take notice of any generally accepted technical facts, information or opinions within its specialized knowledge.

Bank and business records

24.10 Any proof that must be given or any requirement that must be met prior to a bank record or a business record being received or admitted in evidence under any common law or statutory rule may be given or met by the oral testimony or affidavit of an individual given to the best of the individual's knowledge and belief.

Documentary evidence

24.11 At a hearing, a party or a non-party participant tendering a document as evidence shall provide,

(a) a copy of the document to every other party and non-party participant; and

(b) four copies of the document to the panel, where the panel consists of three panelists, or two copies of the document to the panel, where the panel consists of one panelist.

Copies

24.12 Where the panel is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

Summonses

24.13 (1) The Hearing Panel may, by summons, require any person, including a party,

(a) to give evidence on oath or affirmation at a hearing; and

(b) to produce in evidence at a hearing specified documents and things.

Form of summons

(2) A summons shall be in Form 24A.

Signing of summons

(3) A summons may be signed by the Senior Counsel and Manager, Tribunals Office.

Summons may be issued in blank

(4) On the request of a person, the Tribunals Office shall issue to the person a blank summons and the person may complete the summons and insert the name of the witness to be summoned.

Service of summons

(5) Subject to subrule (7), the person who obtains a summons shall serve the summons on the witness to be summoned.

Attendance money

(6) Subject to subrule (7), the person who obtains a summons shall pay or tender to the witness to be summoned, at the same time that the person serves the summons on the witness, attendance money calculated in accordance with Tariff A under the Rules of Civil Procedure.

Service and attendance money not required

(7) If a witness is in attendance at a hearing, a person who obtains a summons is not required to serve the summons on the witness or to pay or tender to the witness attendance money in order to call the witness at the hearing.

Certain information not admissible

24.14 Despite any rule, information obtained by the Discrimination and Harassment Counsel as a result of the performance of his or her duties under clause 19 (1) (a) of By-Law 11 shall not be used and is inadmissible in a hearing.

RULE 25

COSTS

Costs

Costs against the Society

25.01 (1) Costs may only be awarded against the Society,

(a) in a licensing, conduct, capacity, competence or non-compliance proceeding,

(i) where the proceeding was unwarranted; or

(ii) where the Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default; and

(b) in a proceeding not mentioned in clause (a), where the Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Costs against the subject of a proceeding

(2) Costs may be awarded against the subject of a proceeding,

(a) where a determination adverse to the subject of the proceeding was made; or

(b) where the subject of the proceeding caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Costs against a non-party participant

(3) Costs may be awarded against a non-party participant where the non-party participant caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Security for costs

Application

25.02 (1) This rule applies to the following proceedings:

1. A licensing proceeding, if the subject of the proceeding was previously licensed to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario.

2. A restoration proceeding.

3. A reinstatement proceeding.

4. A terms dispute proceeding.

Where available

(2) On the motion of the Society, an order may be made for security for costs as is just where it appears that,

(a) the subject of the proceeding has an order against him or her for costs in the same or another proceeding under the Act that remain unpaid in whole or in part; or

(b) in the case of a reinstatement or terms dispute proceeding, there is good reason to believe that the proceeding is without merit and the subject of the proceeding has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made; or

(c) in the case of a licensing or restoration proceeding, there is good reason to believe that the subject of the proceeding has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made.

Effect of order

(3) Subject to subrule (4), the subject of the proceeding against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding.

Order permitting taking of step

(4) On the motion of a party, or on a panel's own motion, an order may be made permitting the subject of the proceeding to take a step in the proceeding.

Default of subject of the proceeding

(5) Where the subject of the proceeding defaults in giving the security required by an order for security for costs, on the motion of the Society, an order may be made dismissing the proceeding.

RULE 26

DECISIONS, ORDERS AND REASONS

Decisions

Effective date

26.01 (1) A decision is effective from the date on which it is made.

Endorsement

(2) An endorsement of every decision shall be made by the chair of the panel,

(a) on the originating process; or

(b) on a separate sheet of paper that is attached to the originating process.

Where written reasons delivered

(3) Where written reasons are delivered, the endorsement may consist of a reference to the reasons.

Orders

Orders issued by panel of one panelist

26.02 (1) A panel consisting of one panelist shall not make an order revoking a licensee's licence or permitting a licensee to surrender his or her licence.

Order for fine

(2) If a panel makes an order imposing a fine on the subject of the proceeding, the panel shall specify in the order,

(a) the principal sum; and

(b) if interest is payable, the rate of interest, which shall be the postjudgment interest rate within the meaning of the *Courts of Justice Act* in effect on the effective date of the order, and the date from which it is to be calculated.

Order for costs

(3) If a panel makes an order for costs, the panel shall specify in the order,

(a) the principal sum; and

(b) the rate of interest, which shall be the postjudgment interest rate within the meaning of the *Courts of Justice Act* in effect on the effective date of the order, and the date from which it is to be calculated.

Effective date

(4) An order is effective from the date on which it is made, unless it provides otherwise.

Endorsement

(5) An endorsement of every order shall be made by the chair of the panel making it,

(a) on the originating process or a separate sheet of paper that is attached to the originating process; or

(b) if the order relates to a motion, on the motion record or a separate sheet of paper that is attached to the motion record.

Where written reasons delivered

(6) Where written reasons are delivered, the endorsement may consist of a reference to the reasons.

Formal order or decision and order

Preparation of draft formal order or decision and order

26.03 (1) Any party affected by an order or decision and order may prepare a draft of the formal order or formal decision and order.

Form of formal order and decision and order

(2) A formal order shall be in Form 26A and a formal decision and order shall be in Form 26B.

Signing of formal order and decision and order

(3) A party that has prepared a draft of a formal order or decision and order may submit it to the panel that made the order or decision and order at the end of the hearing.

(4) The panel shall review all drafts submitted under subrule (3) and the chair of the panel shall, with or without amending it, sign one of the drafts.

(5) Where a formal order or decision and order is not prepared by any party, it shall be prepared by the Tribunals Office and the chair of the panel that made the order or decision and order shall sign it.

Written reasons

Where required

26.04 A panel shall give written reasons for,

(a) its decision and order in a capacity proceeding; and

(b) its order or decision and order if,

(i) an oral request for written reasons is made by a party immediately after the order is made, or

(ii) a written request for written reasons is made by a party to the Tribunals Office within sixty days after the order is made.

Correction of errors

26.05 The Tribunals Office or the panel may at any time correct a typographical error, error of calculation or similar minor error made in a decision, an order, a formal decision and order, a formal order or reasons of a panel.

Notice of decisions

26.06 (1) The Tribunals Office shall send to each party or to the representative of each party,

(a) who participated in a proceeding,

(i) a copy of the formal decision and order,

(ii) a copy of the written reasons, if any, for the decision, order or decision and order, and

(iii) a copy of a corrected decision, corrected order, corrected formal decision and order or corrected reasons; or

(b) who participated in a motion in a proceeding,

(i) a copy of the formal order,

(ii) a copy of the written reasons, if any, for the order, and

(iv) a copy of a corrected order, corrected formal order or corrected reasons.

Method of sending notice

(2) A document required to be sent under subrule (1) shall be sent by,

(a) regular lettermail to the last address of the party or the party's representative known to the Tribunal's Office;

(b) hand delivery to the Society; or

(b) with the prior consent of the recipient,

(i) by fax to the last fax number of the party or the party's representative known to the Tribunal's Office, or

(ii) by e-mail to the last e-mail address of the party or the party's representative known to the Tribunal's Office.

Same

(3) If a document required to be sent under subrule (1) is being sent to a licensee, a reference in subrule (2) to the last address, fax number or e-mail address known to the Tribunal's Office shall be read as a reference to the last address, fax number or e-mail address contained in the register that the Society is required to establish and maintain under section 27.1 of the Act.

Use of mail

(4) If a copy of a document is sent by regular lettermail, it shall be deemed to be received on the fifth day after mailing.

Use of fax or e-mail

(5) If a copy of a document is faxed or e-mailed, it shall be deemed to be received on the day following the day it is faxed or e-mailed.

RULE 27

RECORD OF PROCEEDING

Requirement to compile record

27.01 (1) The Tribunals Office shall compile a record of every proceeding.

Contents of record

(2) A record of a proceeding shall contain the following:

1. Every document filed with the Tribunals Office under these Rules in respect of the proceeding or a step in the proceeding.

2. Every document received by a panel under these Rules in respect of the proceeding or a step in the proceeding.

3. The notice of a hearing on the merits of a proceeding.

4. The endorsement of the decision and order in the proceeding and of the order in a motion in the proceeding.

5. The formal decision and order in the proceeding and the formal order in a motion in the proceeding.

6. The reasons, if any, for the decision or order in the proceeding and for the order in a motion in the proceeding.

7. The transcript of a hearing in the proceeding or in a motion in the proceeding that is obtained by the Tribunals Office.

Record is public record

(3) Subject to subrule (4), the record of a proceeding is a public record.

Documents not available for public inspection

(4) A document or a part of a document contained in the record of a proceeding that contains information that may not be disclosed under rule 18.04 or 18.05 is not available for public inspection.

RULE 28

REPRIMANDS

Time for administration

28.01 (1) A reprimand shall not be administered before the time for serving a notice of appeal has expired unless the parties have waived their rights of appeal.

Who may administer

(2) A reprimand may be administered by any panelist comprising the panel that ordered the reprimand.

Administration in hearing

(3) Subject to subrule (4), a reprimand shall be administered at a hearing that is open to the public.

Administration in writing

(4) A reprimand may be administered in writing.

(5) The document containing a written reprimand shall be considered to be part of the record of the proceeding in which the reprimand was ordered.

GENERAL HEADING (CONDUCT, CAPACITY, COMPETENCE, NON-COMPLIANCE, REINSTATEMENT, TERMS DISPUTE PROCEEDING)

(Law Society Hearing Panel file no.)

LAW SOCIETY HEARING PANEL

BETWEEN:

(name)

Applicant

and

(name)

Respondent

APPLICATION UNDER (statutory provision under which the application is made).

(Title of document)

(Text of document)

GENERAL HEADING (LICENSING, RESTORATION PROCEEDING)

(Law Society Hearing Panel file no.)

LAW SOCIETY HEARING PANEL

BETWEEN:

(name)

Applicant

and

The Law Society of Upper Canada

Respondent

APPLICATION UNDER (statutory provision under which the application is made) referred for hearing under (statutory provision under which application is required to be heard).

(Title of document)

(Text of document)

FORM 4A - NOTICE OF CHANGE OF REPRESENTATION

(General heading)

NOTICE OF CHANGE OF REPRESENTATION

(Name of party OR non-party participant), formerly represented by (*name of former representative*), has appointed (*name of new representative)* as representative of record.

(Date)

(*Name, address, telephone number, fax number and e-mail address of new representative*)

TO: (*Name and address of former representative*)

AND TO: *(Names and addresses of representatives for all other parties and non-party participants, or names and addresses of all other parties and all non-party participants)*

FORM 4B – NOTICE OF APPOINTMENT OF REPRESENTATIVE

(General heading)

NOTICE OF APPOINTMENT OF REPRESENTATIVE

(Name of the party OR non-party participant) has appointed (*name*) as representative of record.

(Date)

(Name, address, telephone number, fax number and e-mail address of representative of record)

TO: (*Names and addresses of representatives for all other parties and non-party participants or names and addresses of all parties and non-party participants*)

FORM 4C - NOTICE OF INTENTION TO ACT IN PERSON

(General heading)

NOTICE OF INTENTION TO ACT IN PERSON

(*Name of the party OR non-party participant*), formerly represented by (*name)* as representative of record, intends to act in person

(Date)

(Signature of party/non-party participant)
(Print name of party/non-party participant)

(Complete the following if filed by the representative of record)

I *(name of representative of record)* confirm that I have explained the purpose of this form to *(name of the party OR non-party participant)* and have confirmed (*his/her*) intention to act in person in place of me. (*Name of the party OR non-party participant*) signed this form at the time (*he/she*) consented to act in person.

(Date)

(Signature of representative of record)
(Print name of representative of record)

(Date)

(Name, address for service, telephone number, fax number and e-mail address of party/non-party participant intending to act in person)

TO: *(Name and address of former representative of record)*

AND TO: *(Names and addresses of representatives for all other parties and non-party participants, or names and addresses of all parties and non-party participants)*

FORM 9A - NOTICE OF APPLICATION

(General heading)

NOTICE OF APPLICATION

TO THE RESPONDENT:

A *(CONDUCT OR CAPACITY OR COMPETENCE OR NON-COMPLIANCE OR REINSTATEMENT OR TERMS DISPUTE*) PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

YOU ARE REQUIRED TO ATTEND at a proceeding management conference on *(day), (date)* at *(time)* at the offices of The Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto, Ontario. You may elect to attend by your representative.

IF YOU OR YOUR REPRESENTATIVE FAIL TO ATTEND AT THE PROCEEDING MANAGEMENT CONFERENCE, THE PANELIST CONDUCTING THE CONFERENCE MAY PROCEED IN YOUR ABSENCE.

(OR
THIS APPLICATION will come on for a hearing on (day), (date) at (time) at the offices of The Law Society Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto, Ontario.)

Date of issue:

TO: *(Name and address of respondent)*

APPLICATION

1. The applicant makes application for:

2. The grounds for the application are:

3. The particulars of the application are:

(Name, address for service, telephone number, fax number and e-mail address of applicant or applicant's representative)

FORM 9B - NOTICE OF REFERRAL FOR HEARING

(General heading)

NOTICE OF REFERRAL FOR HEARING

TO THE APPLICANT:

YOUR APPLICATION (*FOR A LICENCE OR TO HAVE YOUR LICENCE RESTORED*) HAS BEEN REFERRED FOR HEARING TO THE LAW SOCIETY HEARING PANEL, thereby resulting in the commencement of a (*licensing OR restoration*) proceeding.

YOU ARE REQUIRED TO ATTEND at a proceeding management conference on (*day)*, (*date)* at (*time)* at the offices of The Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto, Ontario. You may elect to attend by your representative.

IF YOU OR YOUR REPRESENTATIVE FAIL TO ATTEND AT THE PROCEEDING MANAGEMENT CONFERENCE, THE PANELIST CONDUCTING THE CONFERENCE MAY PROCEED IN YOUR ABSENCE.

Date of issue:

TO: (*Name and address of applicant*)

(Name, address for service, telephone number, fax number and e-mail address of the representative for The Law Society of Upper Canada)

FORM 9C - NOTICE OF ABANDONMENT (CONDUCT, CAPACITY, COMPETENCE, NON-COMPLIANCE, REINSTATEMENT, TERMS DISPUTE PROCEEDING)

(General heading)

NOTICE OF ABANDONMENT (CONDUCT, CAPACITY, COMPETENCE, NON-COMPLIANCE, REINSTATEMENT, TERMS DISPUTE PROCEEDING)

THE APPLICANT hereby abandons this *(conduct OR capacity OR competence OR non-compliance OR reinstatement OR terms dispute)* proceeding.

(Date)

(Name, address, telephone number, fax number and e-mail address of applicant's representative or applicant)

TO: *(Name and address of respondent's respresentative or respondent)*

FORM 9D - NOTICE OF ABANDONMENT (LICENSING OR RESTORATION PROCEEDING)

(General heading)

NOTICE OF ABANDONMENT (LICENSING OR RESTORATION PROCEEDING)

THE LAW SOCIETY OF UPPER CANADA hereby withdraws the referral for hearing of the applicant's application (*for a licence OR to have her/his licence restored)*, thereby abandoning this (*licensing OR restoration)* proceeding.

(Date)

(Name, address, telephone number, fax number and e-mail address of the representative for The Law Society of Upper Canada)

TO: *(Name and address of applicant's representative or applicant)*

FORM 9E - NOTICE OF ABANDONMENT (LICENSING OR RESTORATION PROCEEDING)

(General heading)

NOTICE OF ABANDONMENT (LICENSING OR RESTORATION PROCEEDING)

THE APPLICANT hereby abandons (*her OR his*) application (*for a licence OR to have her/his licence restored*), thereby abandoning this (*licensing OR restoration*) proceeding.

(Date)

(Name, address, telephone number, fax number and e-mail address of applicant's representative or applicant)

TO: *(Name and address of the representative of The Law Society of Upper Canada)*

FORM 13A - NOTICE OF MOTION

(General heading)

NOTICE OF MOTION

The *(identify moving party)* will make a motion to the Law Society Hearing Panel on (*day*), (*date*) at *(time)*, or as soon after that time as the motion can be heard, at the offices of The Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto, Ontario (*or name place*).

PROPOSED METHOD OF HEARING: The motion is to be heard (*choose appropriate option):*

☐ Electronically under subrule 16.02 (1) because it is (*on consent OR for an adjournment).*

☐ In writing under subrule 16.03 (1) because it is for an order that a hearing be held as an electronic hearing.

☐ In writing under subrule 16.03 (2) because it is (*on consent OR for an adjournment)*.

☐ Orally.

THE MOTION IS FOR: *(Set out precise relief sought).*

THE GROUNDS FOR THE MOTION ARE: *(Set out the grounds to be argued).*

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:
(List the affidavits or other documentary evidence to be relied on).

(Date)

(Name, address, telephone number, fax number and e-mail address of moving party's representative or moving party)

TO: *(Name and address of responding party's representative or responding party)*

FORM 13B - NOTICE OF ABANDONMENT (MOTION)

(General heading)

NOTICE OF ABANDONMENT (MOTION)

(Name of moving party) hereby abandons *(its/his/her)* motion for *(insert nature of motion).*

(Date)

(Name, address, telephone number, fax number and e-mail address of moving party's representative or moving party)

TO: *(Name, address and telephone number of responding party's representative or responding party)*

FORM 20A – REQUEST TO ADMIT

(General heading)

REQUEST TO ADMIT

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the truth of the following facts: *(Set out facts in consecutively numbered paragraphs.)*

YOU ARE REQUESTED TO ADMIT, for the purposes of this proceeding only, the authenticity (see Rule 20 of the Rules of Practice and Procedure of the Law Society Hearing Panel) of the following documents: *(Number each document and give particulars sufficient to identify each. Specify whether the document is an original or a copy and, where the document is a copy of a letter, telegram or telecommunication, state the nature of the document.)*

Attached to this request is a copy of each of the documents referred to above. *(Where it is not practicable to attach a copy or where the party already has a copy, state which documents are not attached and give the reason for not attaching them.)*

YOU MUST RESPOND TO THIS REQUEST by serving a response to the request to admit in Form 20B WITHIN TWENTY DAYS after this request is served on you. If you fail to do so, you will be deemed to admit, for the purposes of this proceeding only, the truth of the facts and the authenticity of the documents set out above. If you serve a response within these time limits but do not provide a response to each fact and document listed above, you will be deemed to admit, for the purposes of this proceeding only, the truth of the facts and the authenticity of the documents for which you have not provided a response.

(Date)

(Name, address, telephone number, fax number and e-mail address of representative of party or of party serving request)

TO: *(Name and address of representative of party or of party on whom request is served)*

FORM 20B – RESPONSE TO REQUEST TO ADMIT

(General heading)

RESPONSE TO REQUEST TO ADMIT

In response to your request to admit dated *(date), (name of party serving response):*

1. Admits the truth of facts numbers *(set out facts numbers)*

2. Admits the authenticity of documents numbers *(set out documents numbers).*

3. Denies the truth of facts numbers *(set out facts numbers).*

4. Denies the authenticity of documents numbers *(set out documents numbers).*

5. Refuses to admit the truth of facts numbers *(set out facts numbers)* for the following reasons: (*Set out reason for refusing to admit each fact.)*

6. Refuses to admit the authenticity of documents numbers *(set out the documents numbers)* for the following reasons: *(Set out reason for refusing to admit each document.)*

(Date)

(Name, address, telephone number, fax number and e-mail address of representative of party or of party serving response)

TO: *(Name and address of representative of party or of party on whom response is served)*

FORM 23A – CONSENT TO HEARING BY ONE PANELIST

(General heading)

CONSENT TO HEARING BEFORE ONE PANELIST

(Name of party other than The Law Society of Upper Canada) and The Law Society of Upper Canada hereby consent to the merits of this proceeding being heard and determined by one panelist.

(Date)

(Signature of party other than The Law Society of Upper Canada)
(Print name of party)

(Date)

(Signature of representative for The Law Society of Upper Canada)
(Print name of representative for The Law Society of Upper Canada)

FORM 24A – SUMMONS

(General heading)

SUMMONS TO A WITNESS BEFORE THE LAW SOCIETY HEARING PANEL

TO *(Name and address of witness)*

(For oral hearing)

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on (*day) , (date)* at *(time)* at the offices of The Law Society of Upper Canada, Osgoode Hall, 130 Queen Street West, Toronto, Ontario *(or name place)* and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce at the hearing the following documents and things: *(Set out the nature and date of each document and give particulars sufficient to identify each document and thing.)*

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT

(For electronic hearing)

YOU ARE REQUIRED TO PARTICIPATE IN AN ELECTRONIC HEARING on *(day), (date)* at *(time)* in the following manner: *(Give sufficient particulars to enable witness to participate.)*

IF YOU FAIL TO PARTICIPATE IN THE HEARING IN ACCORDANCE WITH THE SUMMONS, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

(Date)

Law Society Hearing Panel

_____

Senior Counsel and Manager, Tribunals Office

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice.

FORM 26A – FORMAL ORDER

(Law Society Hearing Panel file no.)

LAW SOCIETY HEARING PANEL

(Names of panelists comprising the panel)

(Day and date order made)

(Title of proceeding)

ORDER

(Order after hearing of application)

THIS APPLICATION was heard on *(date(s)), (at name place OR electronically), (in the presence of the representatives for all parties (and non-party participants) OR in the presence of the representative(s) for (name party(ies) and non-party participant(s)), (add as applicable: (name party(ies) and non-party participant(s)) appearing in person; no one appearing for (name party(ies) and non-party participant(s)) although properly notified as appears from (indicate proof of notice of hearing on the merits of the application)).*

ON READING *(THE NOTICE OF APPLICATION AND APPLICATION OR THE NOTICE OF REFERRAL FOR HEARING)* AND THE EVIDENCE FILED BY THE PARTIES *(and non-party participants), (on hearing the oral evidence presented by the parties (and non-party participants)*, and on hearing the submissions of *(the representatives of the parties (and non-party participants) OR the representative(s) for (name party(ies) and non-party participant(s)) and (name party(ies) and non-party participant(s) appearing in person)),*

(AND HAVING DETERMINED THAT (specify determination made giving rising to authority to make order),

(Order after hearing of motion)

THIS MOTION, made by *(name moving party)* for *(state the relief sought in the notice of motion)* was heard on *(date(s), (at name place OR electronically OR in writing).*

ON READING *(give particulars of the material filed on the motion)* and on hearing the submissions of representative(*s*) for *(name parties and non-party participants), (add as applicable: (name parties and non-party participants) appearing in person; no one appearing for (name parties and non-party participants), although properly served as appears from (indicate proof of service)),*

IT IS ORDERED THAT:

1. …

2. …

(Signature of chair of panel that made order)

FORM 26B - FORMAL DECISION AND ORDER

(Law Society Hearing Panel file no.)

LAW SOCIETY HEARING PANEL

(Names of panelists comprising the panel)

(Day and date order made)

(Title of proceeding)

DECISION AND ORDER

THIS APPLICATION was heard on *(date(s)), (at name place OR electronically), (in the presence of the representatives for all parties (and non-party participants) OR in the presence of the representative(s) for (name party(ies) and non-party participant(s)), (add as applicable: (name party(ies) and non-party participant(s)) appearing in person; no one appearing for (name party(ies) and non-party participant(s)) although properly notified as appears from (indicate proof of notice of hearing on the merits of the application)).*

ON READING *(THE NOTICE OF APPLICATION AND APPLICATION OR THE NOTICE OF REFERRAL FOR HEARING)* AND THE EVIDENCE FILED BY THE PARTIES *(and non-party participants), (on hearing the oral evidence presented by the parties (and non-party participants)*, and on hearing the submissions of *(the representatives of the parties (and non-party participants) OR the representative(s) for (name party(ies) and non-party participant(s)) and (name party(ies) and non-party participant(s) appearing in person)),*

IT IS DETERMINED THAT *(specify determination made giving rising to authority to make order).*

AND IT IS ORDERED THAT:

1. …

2. …

(Signature of chair of panel that made order)

MEMORANDUM

TO: Treasurer
Benchers

FROM: Tribunals Committee

RE: Corrections to Draft Rules of Practice and Procedure

DATE: February 26, 2009

Following a final review of the Rules some amendments have been made for Convocation's consideration as follows:

- Rule 11.01(1)(2) has been expanded to reflect the expansion of the summary hearings process that Convocation adopted on January 29, 2009.

- Rule 14.03 has been expanded to add an additional factor "prior directions or orders with respect to the scheduling of future hearings" that was inadvertently omitted. This was included in an education session given to adjudicators, so it makes sense to include it in the rules.

- Rule 22.04. The Committee intended that a panel could direct a conference mid-hearing as well, where it was deemed appropriate. As 22.04 was originally worded it would have precluded a mid-hearing conference. The proposed rule has been amended to reflect this.

- Rule 24.05 (2)(b)(iii) the words "or was a witness at the previous hearing" should be deleted, reflecting that such a person would have had no standing to challenge the evidence in the previous proceeding.

- Rule 24.13(1) the opening line should read, “The Hearing Panel may, by summons, require any person,” leaving the issue of whether a party may be summonsed to the jurisprudence. This should obviate a debate about whether a panel could compel a party to give evidence.

- Rule 26.03 (5) is amended to reflect current procedure.

The proposed amended sections are attached.

Thank you.

1. Strike out subrule 11.01 (2) and substitute the following:

(2) The Tribunals Office may schedule a hearing on the merits of the proceeding where,

(a) the hearing is to determine whether a licensee has contravened section 33 of the Act by one or more of the following means:

i. practising law in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may practise law in Ontario while his or her licence is suspended,

ii. providing legal services in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may provide legal services in Ontario while his or her licence is suspended,

iii. breaching an undertaking to the Society,

iv. failing to maintain financial records as required by the by-laws,

v. failing to respond to inquiries from the Society,

vi. failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act,

vii. failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel;

(b) the proceeding is a non-compliance proceeding;

(c) the nature of the proceeding requires that the hearing be expedited; or

(d) the parties agree on the date of the hearing, which is not later than 90 days after the day on which the originating process is deemed to have been served on the respondent, and the parties notify the Tribunals Office in writing of their agreement.

2. Strike out rule 14.03 and substitute the following:

14.03 In considering whether to grant an adjournment, a panelist or a panel, as the case may be, may consider,

(a) prejudice to a person;

(b) the timing of the request or motion for the adjournment;

(c) the number of prior requests and motions for an adjournment;

(d) the number of adjournments already granted;

(e) prior directions or orders with respect to the scheduling of future hearings;

(f) the public interest;

(g) the costs of an adjournment;

(h) the availability of witnesses;

(i) the efforts made to avoid the adjournment;

(j) the requirement for a fair hearing; and

(k) any other relevant factor.

3. Strike out rule 22.04 and substitute the following:

22.04 All pre-hearing conferences in a proceeding shall be conducted prior to the completion of the hearing on the merits of the proceeding and, unless otherwise directed by the Hearing Panel, prior to the commencement of the hearing on the merits of the proceeding.

4. Strike out subclause 24.05 (2) (b) (iii) and substitute the following:

the party against whose interest the evidence is sought to be admitted was or is a party to the other proceeding,

5. Strike out the part of subrule 24.13 (1) immediately before clause (a) and substitute the following:

The Hearing Panel may, by summons, require any person,

6. Strike out subrule 26.03 (5) and substitute the following:

(5) Where a formal order or decision and order is not prepared by any party, it shall be prepared by the Tribunals Office and a panelist on the panel that made the order or decision and order shall sign it.

Attached to the original Report in Convocation file, copies of:

(1) Copy of the current Rules of Practice and Procedure and Regulation 167/07 (referred to in proposed Rule 23).

(Appendix 3, pages 102 – 152)

(2) Copy of the Tribunals Quarterly Statistics (4th Quarter 2008).

(pages 153 – 170)

Re: New Rules of Practice and Procedure (For Hearing Panels)

It was moved by Mr. Sandler, seconded by Mr. Gold, that pursuant to section 61.2 of the *Law Society Act* Convocation make the Rules of Practice and Procedure set out in Appendix 1 as amended by the memorandum distributed under separate cover.

Carried

It was moved by Ms. Halajian, seconded by Mr. Aaron, that Rule 20 be deleted.

Lost

ROLL-CALL VOTE

Aaron	For	Lawrie	Against
Anand	Against	Lewis	Against
Backhouse	Against	MacKenzie	Against
Banack	Against	McGrath	Against
Boyd	Against	Marmur	Against
Braithwaite	Against	Minor	Against
Bredt	Against	Pawlitza	Against
Campion	Against	Porter	Against
Chahbar	Against	Potter	Abstain
Conway	Against	Pustina	Against
Crowe	Against	Rabinovitch	Against
Dickson	Against	Robins	Against
Dray	Against	Rothstein	Against
Elliott	Against	Sandler	Against
Epstein	Against	Sikand	Against
Go	Against	Silverstein	Against
Gold	Against	Simpson	Against
Gottlieb	Against	C. Strosberg	Against
Hainey	Against	Swaye	Against
Halajian	For	Symes	Against
Henderson	Against	Tough	Against
Krishna	Against	Wright	For

Vote: 3 For; 41 Against; 1 Abstention

Item for Information

- Public Education Equality Series Calendar 2009

HERITAGE COMMITTEE

On behalf of the Heritage Committee the Treasurer made a request for information about lawyers who were early representatives from a range of diverse communities for the purposes of a historical account being done by the Committee of early pioneers from different groups.

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Tough presented the Report.

Report to Convocation
February 26, 2009

Professional Regulation Committee

Committee Members
Linda Rothstein (Chair)
Julian Porter (Vice-Chair)
Bonnie Tough (Vice-Chair)
Bob Aaron
Melanie Aitken
Christopher Bredt
John Campion
Patrick Furlong
Gary Lloyd Gottlieb
Glenn Hainey
Brian Lawrie
Ross Murray
Sydney Robins
Baljit Sikand
Roger Yachetti

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat
(Jim Varro – 416-947-3434)

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For Decision

For Information

Use of the Word "Expert" in Relation to Rule 3.03(1) of the Rules of Professional Conduct.....TAB B

Professional Regulation Division Quarterly Report.....TAB C

COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on February 12, 2009. In attendance were Bonnie Tough (Vice-Chair and Acting Chair), Christopher Bredt, Patrick Furlong, Glenn Hainey, Brian Lawrie, Ross Murray, and Baljit Sikand. Staff attending were Naomi Bussin, Malcolm Heins, Zeynep Onen, Elliot Spears, Arwen Tillman, Sybila Valdivieso and Jim Varro.

AMENDMENTS TO THE POLICY FOR LAW SOCIETY INVESTIGATIONS OF LICENSEE BENCHERS AND STAFF AND PARALEGAL MEMBERS OF THE PARALEGAL STANDING COMMITTEE

Motion

2. That Convocation approve the amendments to the policy for the process for the investigation of regulatory complaints against licensee benchers and staff and paralegal members of the Paralegal Standing Committee. The amendments follow paragraph 7.

3. On January 29, 2009, Convocation approved the policy for a process for the investigation of regulatory complaints against licensee benchers and staff and paralegal members of the Paralegal Standing Committee. The policy is based on an informal procedural protocol for these investigations that was in place following repeal in 2006 of requirements in the *Law Society Act* for the investigation of complaints against benchers and staff.

4. At the request of the Treasurer, the Committee was asked to formalize the protocol, and it presented the policy, supported by the Paralegal Standing Committee, that was adopted by Convocation.

5. As a result of questions at Convocation about how the policy would apply if the Treasurer were the subject of the investigation (and a related issue with respect to the CEO), the Committee considered clarifying amendments with respect to these matters.

6. The Committee is proposing that Convocation adopt the amendments, set out below in the underlined text in the policy. These amendments have been reviewed by the Treasurer and the CEO and approved by the Paralegal Standing Committee.

7. The Committee considered whether amendments to the By-Laws should be made to incorporate the policy. The Committee, with input from Law Society counsel, concluded that the policy should exist as adopted by Convocation without amendments to the By-Laws.

POLICY FOR THE INVESTIGATION OF COMPLAINTS AGAINST LAWYER AND PARALEGAL BENCHERS AND EMPLOYEES AND PARALEGAL MEMBERS OF THE PARALEGAL STANDING COMMITTEE

1. All complaints against benchers and employees of the Law Society are transferred to Professional Regulation Intake for assessment.

2. Where the complaint is not serious and is unlikely to result in formal or informal sanction, with the Director's investigation instruction, the complaint should be transferred to Complaints Resolution for processing in the normal course.

3. Where in the course of resolution a less serious matter changes in character and may result in a "found"[1] complaint, the Director is to be consulted to determine whether outside counsel should be retained. The Director may decide to retain outside counsel to continue the investigation in consultation with the Treasurer.

4. Where it is determined that the complaint raises more serious allegations which, if supported by the evidence would lead to a "found"[2] complaint requiring formal proceedings, or a referral to the Proceedings Authorization Committee, the Director will retain an outside investigator in consultation with the Treasurer.

5. On completion of his or her investigation, the outside investigator is required to provide a report to the Treasurer and the Director of Professional Regulation. If the recommendation is that the matter should close without referral to the Proceedings Authorization Committee, and the Treasurer and the Director both agree, the case will be closed. Where any one of the investigator, the Treasurer or the Director are of the view that the case should be reported to the Proceedings Authorization Committee, the investigator is required to prepare and present a report to the PAC.

6. The Director will provide the Treasurer with a regular report on all ongoing bencher and staff investigations and their resolution.

7. In the appropriate case, the Director may also refer a complaint to the CRC for resolution where the matter concerns a complaint of a less serious nature.

8. All persons involved in application of this policy must be mindful of conflicts of interest and shall not act in the event of a conflict.

9. <u>If a complaint is received about the Director, Professional Regulation, the Chief Executive Officer will assume the role of the Director, Professional Regulation for the purpose of this policy.</u>[3]

[1] "Found" complaints are complaints in which a breach was found as a result of an investigation, and the file was closed by a disposition such as an undertaking or a caution letter.

[2] See above.

[3] This language was in the policy approved by Convocation in January 2009 but has been placed in a separate paragraph in the amended policy.

10. If a complaint is received about the Chief Executive Officer, the complaint will be referred to the Treasurer on receipt by the Director. The Treasurer will refer the complaint to an outside investigator for review, assessment, and or investigation as required. The Treasurer will provide direction to the Director as necessary for the purpose of the investigation.

11. If a complaint is received about the Treasurer, the Chair of the Finance Committee ("The Chair") will act as Treasurer, in accordance with the provisions of By-Law 3[4] , for the purpose of this policy only. The Chair will refer the complaint to an outside investigator for review, assessment, and or investigation as required and will provide direction to the Director as required for that purpose.

12. Notwithstanding the provisions of this policy, if a complaint is received about any of the Director, Professional Regulation, the Chief Executive Officer or the Treasurer, the complaint shall not be investigated by Law Society staff and shall be referred to an outside investigator for review, assessment and /or investigation as required.

INFORMATION

USE OF THE WORD "EXPERT" IN RELATION TO RULE 3.03(1) OF THE *RULES OF PROFESSIONAL CONDUCT*

Introduction

8. At October 2008 Convocation, during the discussion leading to approval of amendments to Rule 3 (Making Legal Services Available and Marketing), bencher Bob Aaron raised an issue about the word "expert" and how it would be misleading for a lawyer to use that term to advertise services in an area of law unless the lawyer was a certified specialist in that area.

9. The current rule and commentary read as follows:

3.03 ADVERTISING NATURE OF PRACTICE

Certified Specialist

3.03 (1) A lawyer may advertise that the lawyer is a specialist in a specified field only if the lawyer has been so certified by the Society.

[4] Section 73 of By-Law 3 reads:

Acting Treasurer

73. If a Treasurer for any reason is temporarily unable to perform the duties or exercise the powers of the Treasurer during his or her term in office, or if there is a vacancy in the office of Treasurer under section 72, the chair of the Finance Committee, or if he or she for any reason is unable to act, the chair of the Professional Development and Competence Committee, shall perform the duties and exercise the powers of the Treasurer until,

(a) the Treasurer is able to perform the duties or exercise the powers of the Treasurer; or

(b) a Treasurer is elected under section 72 or 54.

Commentary
Lawyer's advertisements may be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter.

In accordance with s. 27(1) of the Society's By-law 15 on Certified Specialists, the lawyer who is not a certified specialist is not permitted to use any designation from which a person might reasonably conclude that the lawyer is a certified specialist.

In a case where a firm practises in more than one jurisdiction, some of which certify or recognize specialization, an advertisement by such a firm which makes reference to the status of a firm member as a specialist, in media circulated concurrently in the other jurisdiction(s) and the certifying jurisdiction, shall not be considered as offending this rule if the certifying authority or organization is identified.

A lawyer may advertise areas of practice, including preferred areas of practice or that his or her practice is restricted to a certain area of law. An advertisement may also include a description of the lawyer's or law firm's proficiency or experience in an area of law. In all cases, the representations made must be accurate (that is, demonstrably true) and must not be misleading.

10. At October 2008 Convocation, Mr. Aaron and bencher Gary Gottlieb moved a motion to amend rule 3.03(1) to add the word "expert", as follows:

> Certified Specialist
>
> 3.03 (1) A lawyer may advertise that the lawyer is a specialist <u>or expert</u> in a specified field only if the lawyer has been so certified by the Society.

11. After discussing the merits of the amendment[5] and the issue it would create (i.e. the Society does not certify "experts"), Convocation deferred the motion to January 2009 Convocation[6] and referred this issue back to the Committee. The amendments to Rule 3 (not including the above motion) were then approved by Convocation.

[5] The Chair of the Committee advised Convocation of its views on the issue, as it had had a discussion about the issue at a previous Committee meeting. The Chair said: "We weren't persuaded that we should include a *per se* prohibition on the use of the word expert…The lawyer who really is every day working as a mail carrier and maintains…that he or she is an expert in securities legislation or securities litigation…would…very much be offside …these proposed rules…which would be marketing that is not demonstrably true, accurate or verifiable."

[6] The Committee considered this issue at its December 2008 meeting and was scheduled to continue the discussion at its January 2009 meeting. Mr. Aaron requested that the discussion continue at the February meeting, given his inability to attend the January meeting. The Treasurer agreed that the matter be dealt with in February.

The Committee's Review and Conclusions

12. The Committee reviewed the use of the word "expert" in the context of lawyer advertising and By-Law 15 on certified specialists.

13. The Committee noted that several years ago, in 1992, the Law Society addressed the circumstance where a criminal law lawyer sought permission to use the word "expert". The then Professional Conduct Committee, in its report to February 28, 1992 Convocation, said:

> REQUEST FOR ADVICE - ADVERTISING
>
> A lawyer practising in the criminal law field has asked if he could put under his name in an advertisement the words "expert defence of serious charges". He is not a certified specialist in criminal law. The only possible objection to the advertisement would be if the public would be misled by it and believe that he is a specialist.
>
> The Committee believes that the descriptive language proposed would be misleading and should not be used.
>
> The Committee asks Convocation to adopt its opinion.

[Convocation agreed]

14. In Canada, only the Law Society offers a specialist certification program for lawyers. The Law Society advertises its specialist program as a way for lawyers to be recognized in a particular field.[7] The Society's website includes the following statement:

[7] The following are the areas in which lawyers may currently qualify for a specialist designation:

- Bankruptcy and Insolvency Law
- Citizenship and Immigration Law (Immigration /Refugee Protection)
- Civil Litigation
- Construction Law
- Corporate and Commercial Law
- Criminal Law
- Environmental Law
- Estates and Trusts Law
- Family Law
- Health Law
- Intellectual Property Law (Patent/ Trademark /Copyright)
- Labour Law
- Municipal Law
- Real Estate Law
- Workplace Safety and Insurance Law

> Becoming a Certified Specialist gives you recognition as a leader in your field. The right combination of experience and education provides you with an opportunity to distinguish yourself. The Certified Specialist program will help lawyers acquire the requisite skills and knowledge to qualify for certification as a specialist in a given practice area.

15. The Committee noted that some jurisdictions in the United States have specialist programs and provide guidance to lawyers on use of the word "expert". Rules in some jurisdictions prohibit use of the word "expert" except in relation to the lawyer's qualification as a specialist.

16. The Committee noted that the information published by some Ontario law firms about their lawyers uses the word "expert" and describes the availability of expert legal advice in a *narrow* area within a larger specialty area of practice. Three examples are as follows:

    a. The website of a large Toronto law firm states that one of its senior partners, who is not a certified specialist, practicing corporate and securities law is "an internationally recognized expert in corporate governance";
    b. A large Toronto firm offers an online newsletter on employment law issues and states "Read our labour and employment law experts' case commentary", which is written by two lawyers who are not certified specialists;
    c. Information on the website of a large Toronto firm about a senior business law lawyer (not a certified specialist) includes "Named by Law Business Research's International Who's Who of Banking Lawyers and Who's Who Legal Series as a leading expert in Canadian banking law, corporate governance and mergers and acquisitions".

17. The Committee considered a number of options to address the "expert" issue, including the option in Mr. Aaron's motion. That option, however, in the Committee's view, would have implications for the specialist certification program, because of the wording of the amendment, and would require consultation with those responsible for it.

18. The other options included:
    a. making no amendments to the rule or commentary, relying on the provisions of the current rules to deal with any advertising using the word "expert" that can be shown to be untrue or misleading;[8]
    b. prohibiting use of the word "expert" in any area of law that is named as a certified specialty;
    c. requiring lawyers who are not certified specialists who wish to advertise their "expert" qualifications in an area to include a disclaimer that they are not certified specialists.

19. The Committee also considered a report from Clare Lewis, the Complaints Resolution Commissioner, who requested that the Committee review as a policy issue the use of the word "expert" by lawyers who are not certified in the area of law that is the subject of the advertising.

20. Mr. Lewis explained that this issue arose out of a complaint he reviewed about a lawyer who used the word in advertising and was not a certified specialist in the area of law advertised. Mr. Lewis agreed with the disposition of the Law Society's investigator to close the complaint file. In referring to the disposition of the complaint, he said that the Law Society's investigator "reasonably concluded that the advertisement was not misleading by its use of the word "expert(s)" because [the lawyer] had demonstrated his experience, qualifications and proficiency in the area of [law]," and that the investigator "reasonably concluded that each complaint would have to be assessed on its own individual merits to determined whether the advertisement in question was false and/or misleading".

21. However, Mr. Lewis requested that consideration be given to an amendment to rule 3.03(1) which is identical to that proposed by Mr. Aaron in his motion. Mr. Lewis's view was that while use of the term "expert" may not reasonably cause a person to conclude that a lawyer is a certified specialist, it may be false, deceptive or likely to mislead or deceive. He noted that public protection exists through the designation "certified specialist" because of the Law Society's authority to grant the designation only to those who meet the requirements of the program. He said: "Self-designation in advertising as an expert by a lawyer who has not been designated as a certified specialist grants the public no such protection and is capable of much public harm."

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[8] The general marketing rule reads:

3.02 (1) In this Rule, "marketing" includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.

(2) A lawyer may market legal services if the marketing

(a) is demonstrably true, accurate and verifiable,

(b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and

(c) is in the best interests of the public and is consistent with a high standard of professionalism.

22. His summary statement to the Committee explains his position:

> …While I do not accept that the use of the term "expert" in marketing and advertising by lawyers is a designation from which a person might reasonably conclude that the lawyer is a certified specialist, nonetheless, I do have concern that absent timely specific restriction such as is recommended herein, the use and abuse of the term "expert" will occur and increase in lawyer marketing and advertising with the potential to undermine the Society's Certified Specialist program in the regard of the profession with the potential to mislead the public.

23. The Committee considered all the above information. It appreciated receiving and respects the views of Mr. Lewis. However, the Committee concluded that the current rules and commentary, which prohibit false or misleading advertising, are sufficient to address any issues that might arise from use of the word "expert" in lawyer advertising. Subrule 3.02(2) reads:

> (2) A lawyer may market legal services if the marketing
> (a) is demonstrably true, accurate and verifiable,
> (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and
> (c) is in the best interests of the public and is consistent with a high standard of professionalism.

24. The Committee agrees with the option described in paragraph 18a. and is not recommending further amendments to the marketing rules.

PROFESSIONAL REGULATION DIVISION QUARTERLY REPORT

25. The Professional Regulation Division's Quarterly Report (fourth quarter 2008), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period October to December 2008.

Attached to the original Report in Convocation file, copy of:

Copy of the Professional Regulation Division's Quarterly Report (fourth quarter 2008).
(pages 14 – 99)

Re: Amendments to the Policy for Investigation of Licensee Benchers and Staff and Paralegal Members of the Paralegal Standing Committee

It was moved by Ms. Tough, seconded by Ms. Rothstein, that Convocation approve the amendments to the policy for the process for the investigation of regulatory complaints against licensee benchers and staff and paralegal members of the Paralegal Standing Committee set out following paragraph 7.

Carried

Re: Use of the Word "Expert" in Relation to Rule 3.03(1) of the *Rules of Professional Conduct*

This matter was deferred.

Item for Information

- Professional Regulation Division Quarterly Report

REPORT NOT REACHED

Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones Report

- Human Rights Monitoring Group Interventions (in camera)

For Information

- Public Education Equality Series Calendar 2009

Report to Convocation
February 26, 2009

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones

Committee Members
Janet Minor, Chair
Raj Anand, Vice-Chair
Paul Copeland
Mary Louise Dickson
Avvy Go
Susan Hare
Doug Lewis
Rabbi Dow Marmur
Judith Potter
Linda Rothstein
Beth Symes

Purposes of Report: Decision and Information

Prepared by the Equity Initiatives Department
(Josée Bouchard, Equity Advisor - 416-947-3984)

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COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on February 12, 2009. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson, Avvy Go, Judith Potter and Beth Symes participated. Nathalie Boutet, representative of the Association des juristes d'expression française de l'Ontario ("AJEFO") and Milé Komlen, Chair of the Equity Advisory Group ("EAG"), attended. Staff members Jewel Amoah, Josée Bouchard, Roy Thomas and Mark Wells attended.

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FOR INFORMATION

PUBLIC EDUCATION EQUALITY SERIES AND RULE OF LAW EDUCATION SERIES CALENDAR 2009

International Women's Day

In partnership with the Women's Law Association of Ontario, the Feminist Legal Analysis Section of the OBA, the Barbra Schlifer Commemorative Clinic, and the Legal Education Action Fund for Women

Topic: *Have Women Judges Really Made a Difference?*
Date: March 2, 2009
Time: Panel Discussion from 4 to 6 p.m.
Reception: 6 p.m.

Speakers:

The Honourable Madam Justice Geraldine Sparrow, Ontario Court of Justice, Chair
The Honourable Madam Justice Micheline A. Rawlins, Ontario Court of Justice
Jamie B. Cameron, Professor Osgoode Hall Law School, York University
Mary Anne Eberts, Barrister and Solicitor
Sonia Lawrence, Associate Professor, Osgoode Hall Law School, York University

A reception in honour of women Benchers of the Law Society of Upper Canada who have been appointed to the judiciary will be held after the panel discussion, featuring a keynote address by the Honourable Madam Justice Helen MacLeod-Beliveau of the Superior Court of Justice, and past Law Society Bencher with the longest years of service on the Bench.

Symposium Exploring the Government's Duty to Consult with the Métis

In partnership with the Métis Nation of Ontario

Date: March 27, 2009
Time: Presentations from 2 to 6 p.m.
Reception from 6 to 8 p.m.

National Holocaust Memorial Day

In partnership with B'nai Brith Canada

Topic: *Professionals as Perpetrators, Victims and Bystanders in the Holocaust – Lessons for the Future*
Date: April 21, 2009

Time: Panel Discussion from 4 to 6 p.m.
Reception: 6 p.m.

Asian Heritage Month

In partnership with the Federation of Asian Canadian Lawyers, the South Asian Legal Clinic of Ontario, and the South Asian Bar Association

Topic: *Professional Development Series: Perspectives in Interjurisdictional Family Law Issues*
Date: May 5, 2009
Time: Panel Discussion from 4 to 6 p.m.
Reception: 6 p.m.

National Access Awareness

In partnership with ARCH Disability Law Centre

Topic: *Access to Justice for Persons with Disabilities*
Date: May 25, 2009
Time: Panel Discussion from 4 to 6 p.m.
Reception: 6 p.m.

National Aboriginal Day

In partnership with the Toronto Aboriginal City Celebration Committee, Aboriginal Legal Services of Toronto, the Aboriginal Law Section of the Ontario Bar Association and Rotiio> taties Aboriginal Advisory Group

Topic: *Perspectives in the Indian Residential Schools Resolution Process*
Date: June 11, 2009
Time: Panel Discussion from 4 to 6 p.m.
Reception: 6 p.m.

Pride Week

In partnership with the Sexual Orientation and Gender Identity Section of the Ontario Bar Association

Topic: *Politics and Legal Rights: The Future of Gay, Lesbian, Bisexual, and Transgender Equality*
Date: June 25, 2009
Time: Panel Discussion from 4 to 6 p.m.
Reception: 6 p.m.

RULE OF LAW EDUCATION SERIES CALENDAR 2009

Inaugural Symposium of Rule of Law Series

Topic: *Reconciling State Sovereignty with the Global Responsibility to Protect*
Date: April 6, 2009
Time: Panel Discussion from 4 to 6 p.m.
Reception: 6 p.m.

Luncheons
Topic: TBD
Date: September and December 2009

CONVOCATION ROSE AT 12:50 P.M.

Confirmed in Convocation this 30th day of April, 2009

Treasurer