

28th January, 1999

MINUTES OF SPECIAL CONVOCATION

Thursday, 28th January, 1999  
9:30 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Armstrong, Backhouse, Banack, Carey, Carpenter-Gunn, R. Cass, Chahbar, Cole, Cronk, Crowe, Curtis, Eberts, Feinstein, Furlong, Gottlieb, Krishna, Lawrence, MacKenzie, Marrocco, Millar, Murphy, Orved, Puccini, Swaye, Topp (by conference call), Wardlaw and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

DISCIPLINE

Re: David Mark MARCOVITCH - Toronto

The matter was stood down until the solicitor arrived.

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Professional Regulation Committee  
January 28, 1999

---

Special Report to Convocation on  
By-laws and Rules of Practice and Procedure  
Pursuant to the *Law Society Act*

Purpose of Report: Decision

## INTRODUCTION

1. The *Law Society Amendment Act, 1998* ("the Act") received royal assent in December 1998 and will come into force on February 1, 1999. The Act makes substantive and important amendments to the *Law Society Act*, including a restructured scheme of professional governance based on the authority in the statute.
2. Under the current legislation, the Law Society has the power to make regulations and rules to govern the affairs of the Society. The Act now authorizes the Law Society to make regulations, by-laws and rules of practice and procedure. Certain regulations<sup>1</sup>, by-laws and rules of practice and procedure must be made by Convocation, to be effective February 1, 1999, to govern the affairs of the Society pursuant to the authority in the Act, given that:
  - the Act replaces those sections of the *Law Society Act* which give the Society its current regulation-making authority. The new authority permits the Society to make regulations on subjects that, in large part, are all new;
  - the current rule-making authority is replaced by a by-law making authority. The by-laws will include much of what appears in current Regulation 708 and new matters flowing from various statutory provisions; and
  - rules of practice and procedure are necessary as they will govern all proceedings described in the Act.
3. Over the past three months, the Professional Regulation Committee ("the Committee") has been reviewing drafts of regulations, by-laws and rules of practice and procedure prepared by staff<sup>2</sup>, and has discussed and amended the drafts as it saw appropriate. In addition, consultation sessions have been held with various Bar organizations concerning the draft rules of practice and procedure, and their comments have been taken into account. This report presents those new by-laws dealing with professional regulation issues and the rules of practice and procedure for proceedings under the Act.
4. The by-laws and rules are presented in separate bound documents with this report. While all by-laws which have been drafted are included in the bound document, this report, as indicated earlier, focuses on by-laws related to the mandate of the Committee, including those dealing with Filing Requirements, Record Keeping Requirements, Handling of Money and Other Property, Review of Complaints and the Proceedings Authorization Committee.
5. The remaining by-laws are also scheduled for Convocation's review and approval on January 28, 1999.

## DECISION FOR CONVOCAION

6. Accordingly, Convocation must approve and make:
  - a. The by-laws presented herewith, as may be amended by Convocation; and
  - b. The rules of practice and procedure presented herewith, as may be amended by Convocation.

.....

---

<sup>1</sup>The first of the new governance provisions - new regulations under the Act - were made by Convocation on January 21, 1999, and will be in effect on February 1, 1999.

<sup>2</sup>Elliot Spears prepared drafts of the regulations and by-laws and Janet Brooks and Jonathan Batty prepared drafts of the rules of practice and procedure.

By-Laws made pursuant to Subsections 62(0.1) and (1) of the Law Society Act

Ms. Cronk presented the proposed By-laws for approval by Convocation.

Material for Convocation  
January 28, 1999

---

By-laws Made Pursuant to  
Subsections 62 (0.1) and (1) of the  
*Law Society Act*

INTRODUCTION

On February 1, 1999, the Law Society Amendment Act, 1998 will come into force. The Act will amend the Law Society Act in a number of ways, including the following:

1. It will repeal certain provisions of the Law Society Act and give Convocation the authority to make by-laws with respect to the subject matter of those provisions.
2. It will repeal Convocation's authority to make regulations with respect to certain subject matters and substitute an authority to make by-laws with respect to those subject matters.
3. It will repeal Convocation's authority to make rules and substitute an authority to make by-laws.

As a result of these changes, unless the action proposed below is taken by the Society before February 1, 1999, on that day, there will be no legislation addressing certain subject matters currently addressed in the Law Society Act and in Regulation 708, and there will be no legislation addressing the subject matters currently addressed in the rules made under the Law Society Act.

It is proposed that, to ensure that all subject matters, which are currently addressed in the Law Society Act, in Regulation 708 and in the rules made under the Law Society Act, continue to be addressed in legislation, Convocation make the attached by-laws.

(Note: The attached package of by-laws does not include By-Law 5 [Election of Benchers], By-Law 21 [Proceedings Authorization Committee], Form 17A, Form 17B, Form 18A or Form 18B. These materials will be provided under separate cover)

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 1

BY-LAWS

EXPLANATORY NOTE

The By-Law sets out a procedure for making, amending and revoking by-laws which reflects, in part, the Society's current procedure for making, amending and revoking rules.

Currently, a rule may be made, amended or revoked in two ways: either by a motion made immediately after a committee's proposal to make, amend or revoke a rule is adopted by Convocation; or, by a motion made at any time during a meeting of Convocation provided that notice of the motion was given at the immediately preceding meeting of Convocation.

The By-Law permits any benchner entitled to vote in Convocation to make a motion to make, amend or revoke a by-law and requires Convocation to vote on the motion at the meeting of Convocation at which it is made, unless a benchner objects to Convocation so doing. Where a benchner objects to Convocation voting on the motion at the same meeting of Convocation at which it is made, the motion shall not be voted on at the meeting, but may be debated at the meeting and shall be voted on at the next meeting of Convocation.

1-AES

BY-LAW 1

BY-LAWS

Making, amending and revoking by-law

1. (1) Convocation shall not make, amend or revoke a by-law unless a motion to make, amend or revoke a by-law is made in accordance with this By-Law.

Procedure for making, amending and revoking by-law

- (2) At any meeting of Convocation, a benchner who is entitled to vote in Convocation may make a motion to make, amend or revoke a by-law and, subject to subsection (3), Convocation shall vote on a motion to make, amend or revoke a by-law at the meeting of Convocation at which it is made.

- (3) If a benchner, who is entitled to vote in Convocation and who is present at a meeting of Convocation at which a motion is made to make, amend or revoke a by-law, objects to a motion to make, amend or revoke a by-law being voted on at the meeting at which the motion is made, the motion shall not be voted on at the meeting but may be debated at the meeting and shall be voted on at the next meeting of Convocation.

Time for commencement: by-law and amendment to by-law

2. Unless otherwise provided in a by-law, an amendment to a by-law or the revocation of a by-law, a by-law, an amendment to a by-law or the revocation of a by-law comes into force on the day on which the motion making the by-law, amending the by-law or revoking the by-law is carried at a meeting of Convocation.

Commencement

3. This By-Law comes into force on February 1, 1999.



THE LAW SOCIETY OF UPPER CANADA

BY-LAW 2

GENERAL

EXPLANATORY NOTE

The By-Law deals with the Society as a corporation.

The By-Law provides for the seal and coat of arms of the Society, which is the seal and coat of arms currently in use.

The By-Law identifies the officers of the Society who have authority to sign documents that require the seal of the Society and those who have authority to sign documents that do not require the seal of the Society. The By-Law contains current signing authority.

The By-Law provides for the financial year of the Society. There is no change from the current financial year.

The By-Law continues the requirement that the Society's accounts and transactions be examined and certified annually by a public accountant. The By-Law also provides for the appointment of the public accountant.

The By-Law sets out the Society's budget process. There is no change from the current budget process.

The By-Law will replace existing rules made under the *Law Society Act*.

2-AES

BY-LAW 2

GENERAL

SEAL

1. The seal of the Society in use immediately before the day this By-Law comes into force shall continue to be the seal of the Society, that is, a shield in the centre whereof stands a Doric column, surmounted by a beaver, on the dexter side of the shield the figure of Hercules, and on the sinister the figure of Justice, with scales in her right hand and the sword in the left, and the words "Magna Charta Angliae" inscribed on a ribbon floating round the column, together with the words "Law Society of Upper Canada" upon the exterior circle.

COAT OF ARMS

2. The coat of arms of the Society in use immediately before the day this By-Law comes into force shall continue to be the coat of arms of the Society, that is, a sable on a chevron between two stags trippant in chief and a rose in base argent barbed and seeded an open book proper bound azure edged and clasped or between two maple leaves gules and for the crest on a wreath of the colours upon a rocky mount proper a mantle ermine lined murrey thereon a beaver proper in the mouth a sprig of two maple leaves or, together with the following supporters: on the dexter side a figure representing Hercules holding with the exterior hand a club and on the sinister side a figure representing Justice holding in the exterior hand a sword erect proper pommel and hilt or and with a balance suspended from the blade.

## EXECUTION OF DOCUMENTS

### Documents requiring seal

3. (1) Documents requiring the seal of the Society shall be signed by the Treasurer and the Chief Executive Officer or by the Treasurer and the Secretary or, in any particular case, by two or more persons specified by Convocation.

### Documents not requiring seal

(2) Documents not requiring the seal of the Society shall be signed by the Chief Executive Officer or by the Secretary or, in any particular case, by one or more persons specified by Convocation.

## FINANCIAL YEAR

4. The financial year of the Society shall be from January 1 to December 31.

## AUDIT

### Accounts to be examined and certified by public accountant

5. (1) The accounts and transactions of the Society shall be examined and certified annually by a public accountant to be appointed by Convocation annually and not later than at its regular meeting in May.

### Same

(2) If Convocation fails to appoint a public accountant in any year, the accounts and transactions of the Society shall be examined and certified in that year by the public accountant most recently appointed by Convocation under subsection (1).

## BUDGET ESTIMATES

### Presentation of annual budget to Convocation

6. (1) The annual budget shall be presented to Convocation for final approval not later than November 30 each year.

### Budget to be consistent with planned activities

(2) The budget shall be consistent with the activities planned by Convocation for the next fiscal year.

### Projection of expenses and revenues

(3) The budget shall include a reasonable projection of all expenses and revenues.

### Use of reserve funds

(4) The use of reserve funds to supplement estimated revenues requires the express approval of Convocation.

### Cancellation of program, etc. included in budget approved by Convocation

(5) Where Convocation has approved a budget that provides for the continuation of a program, activity or service, any significant reduction or cancellation of that program, activity or service during the fiscal year requires the express approval of Convocation.

### Commencement

7. This By-Law comes into force on February 1, 1999.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 3

CHIEF EXECUTIVE OFFICER

EXPLANATORY NOTE

The By-Law provides for the appointment of a person as Chief Executive Officer of the Society and sets out the duties and functions of the Chief Executive Officer. The Chief Executive Officer is a new office that replaces the office of Under Treasurer. The Chief Executive Officer assumes the duties and functions of the Under Treasurer.

The By-Law will replace existing rules made under the *Law Society Act*.

1-AES

BY-LAW 3

CHIEF EXECUTIVE OFFICER

Appointment of C.E.O.

1. (1) Convocation may, on such terms as it considers appropriate, appoint a person as Chief Executive Officer of the Society.

Reporting

2. The Chief Executive Officer shall be responsible to Convocation.

Duties of C.E.O.

3. (1) The Chief Executive Officer shall be responsible for the management and co-ordination of all phases of the operation, administration, finances, organization, supervision and maintenance of all activities of the Society.

Same

- (2) In addition to the duties set out in subsection (1), the Chief Executive Officer shall perform all the functions and duties ordinarily associated with the office of chief executive officer including,

- (a) putting into effect all policies and procedures established by Convocation or a standing committee of Convocation;
- (b) counselling and assisting Convocation or any standing committee of Convocation in the development, adoption and implementation and advancement of the various functions of the Society; and
- (c) advising and assisting in the engaging of officers and employees of the Society and directing such personnel in the on-going administration of approved policies and programmes.

Same

- (3) In addition to the duties and functions set out in subsections (1) and (2), the Chief Executive Officer shall perform such functions and duties as may be assigned to him or her by Convocation.

Commencement

4. This By-Law comes into force on February 1, 1999.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 4

OFFICE OF SECRETARY

EXPLANATORY NOTE

The By-Law provides for the appointment of a person as Secretary of the Society and sets out the duties of the Secretary. There is no change to the current process for the appointment of the Secretary or to the current listing of the Secretary's duties.

The By-Law authorizes the holders of the offices of Director, Policy Secretariat and Manager, Advisory and Compliance Services to exercise the powers and perform the duties of the Secretary under the *Law Society Act*, the regulations, the by-laws and the rules of practice and procedure, subject to such terms and conditions as may be imposed by the Secretary. The delegation of the Secretary's powers and duties to the holders of these offices is new and replaces the current appointment of assistant and deputy secretaries.

The By-Law will replace existing rules made under the *Law Society Act*.

2-AES

BY-LAW 4

OFFICE OF SECRETARY

Appointment of Secretary

1. Convocation shall, on such terms as it considers appropriate, appoint a person as Secretary of the Society.

Secretary's duties

2. (1) The Secretary shall perform the duties imposed upon the Secretary by the Act, regulations, by-laws and rules of practice and procedure and such other duties as the Secretary may be instructed to undertake by the Chief Executive Officer.

Same

- (2) The Secretary shall also,
  - (a) perform all duties usual to the office of Secretary;
  - (b) be custodian of the seal, coat of arms and rolls and records of the Society; and
  - (c) enter on the rolls of the Society the names of members and student members.

Delegation of powers and duties of Secretary: Director, Policy Secretariat

3. (1) An officer or employee of the Society who holds the office of Director, Policy Secretariat may exercise the powers and perform the duties of the Secretary under the Act, the regulations, the by-laws and the rules of practice and procedure, subject to such terms and conditions as may be imposed by the Secretary.

Same: Manager, Advisory and Compliance Services

(2) An officer or employee of the Society who holds the office of Manager, Advisory and Compliance Services may exercise the powers and perform the duties of the Secretary under the Act, the regulations, the by-laws and the rules of practice and procedure, subject to such terms and conditions as may be imposed by the Secretary.

Commencement

4. This By-law comes into force on February 1, 1999.

## THE LAW SOCIETY OF UPPER CANADA

### BY-LAW 5

#### ELECTION OF BENCHERS

(To be provided under separate cover)

## THE LAW SOCIETY OF UPPER CANADA

### BY-LAW 6

#### ELECTION OF TREASURER

#### EXPLANATORY NOTE

The By-Law provides for the election of Treasurer, specifies the term of office of Treasurer, provides for the filling of a vacancy in the office of Treasurer and specifies who may exercise the powers and perform the duties of Treasurer when a Treasurer for any reason is temporarily unable to act.

The By-Law provides for a new time for the close of nominations of candidates for election as Treasurer in a year in which there is an election of benchers. Currently, in a year in which there is an election of benchers, the close of nominations of candidates for election as Treasurer is 5 p.m. on the second Thursday in May. Under the By-Law, in a year in which there is an election of benchers, the close of nominations will be 5 p.m. on the fourth Friday in May. The change in close of nominations will permit newly elected benchers, who do not take office until the fourth Friday in May, to stand for election as Treasurer and to nominate candidates for election as Treasurer.

The By-Law confirms the practice of payment of an honorarium to the Treasurer.

The By-Law will replace existing rules made under the *Law Society Act*.

BY-LAW 6

TREASURER

ELECTION OF TREASURER

Time of election

1. An election of Treasurer shall be held annually on the fourth Friday in June and shall be the first matter of business at the regular meeting of Convocation on that day.

Nomination of candidates

2. (1) A candidate for election as Treasurer shall be nominated by two benchers who are entitled to vote in Convocation.

Nomination to be in writing

- (2) The nomination of a candidate shall be in writing and signed by the candidate, to indicate his or her consent to the nomination, and the two benchers nominating the candidate.

Time for close of nominations

- (3) Subject to subsection (4), the close of nominations of candidates shall be 5 p.m. on the second Thursday in May.

Same: exception

- (4) In a year in which there is an election of benchers under section 3 of By-Law 5, the close of nominations of candidates shall be 5 p.m. on the fourth Friday in May.

Withdrawal of candidates

3. A candidate may withdraw from an election of Treasurer by giving the Secretary written notice of his or her withdrawal within four days after the close of nominations.

Election by acclamation

4. If after the close of nominations, or the time for the withdrawal of candidates from the election has passed, there is only one candidate, the Secretary shall declare that candidate to be elected as Treasurer.

Poll

5. (1) If after the time for the withdrawal of candidates from the election has passed, there are two or more candidates, a poll shall be conducted to elect a Treasurer.

Secret ballot

- (2) A poll to elect a Treasurer shall be conducted by secret ballot.

Treasurer is candidate in election

6. If the Treasurer is a candidate in an election of Treasurer, the Treasurer shall appoint a bencher who is a chair of a standing committee of Convocation and who is not a candidate in the election for the purpose of performing the duties and exercising the powers of the Treasurer under this By-Law.

Right to vote

7. Every bencher who is entitled to vote in Convocation, other than, subject to section 14, a bencher who holds office under subsection 25 (2) of the Act, is entitled to vote in an election of Treasurer.

Announcement of candidates

8. (1) Subject to subsection (3), if a poll is to be conducted to elect a Treasurer, the Secretary shall, at the regular meeting of Convocation in May, announce the candidates and the benchers who nominated each candidate.

List of candidates to be sent to benchers

(2) Subject to subsection (3), immediately after the regular meeting of Convocation in May, the Secretary shall send to each bencher entitled to vote in an election of Treasurer a list of the candidates.

Announcement of candidates in year in which there is election of benchers

(3) In a year in which there is an election of benchers, the Secretary shall, as soon as practicable after the close of nominations of candidates under subsection 2 (4), send to each bencher entitled to vote in an election of Treasurer a list of the candidates which identifies the benchers who nominated each candidate.

Advance poll

9. (1) For the purpose of receiving the votes of benchers entitled to vote in an election of Treasurer who expect to be unable to vote on election day, an advance poll shall be conducted on the second Thursday in June between the hours of 9 a.m. and 5 p.m.

Procedure at advance poll

(2) A bencher voting at the advance poll shall attend at the office of the Secretary to receive a ballot.

Marking a ballot

(3) If there are no more than two candidates, a bencher shall vote for one candidate only and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

Same

(4) If there are three or more candidates, a bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

Ballot box

(5) After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into a ballot box.

Ballots not to be opened

(6) Ballots received at the advance poll shall not be opened until the ballots cast on election day are opened.

Procedure for voting on election day: first ballot

10. (1) On election day, each bencher who is entitled to vote in an election of Treasurer and who has not voted at the advance poll shall receive a first ballot listing the names of all candidates.

Second ballot

(2) On election day, if a Treasurer is not elected as a result of the votes cast at the advance poll and on the first ballot, each bencher who is entitled to vote in an election of Treasurer and who has not voted at the advance poll shall receive a second ballot listing the names of the candidates remaining in the election at the time of that ballot.

Application of subs. (2) to second and further ballots

(3) Subsection (2) applies, with necessary modifications, to the second ballot and any further ballots in an election of Treasurer.

Marking ballot

(4) Each benchner shall vote for one candidate only on each ballot and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

Ballot box

(5) After a benchner has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the Secretary, put the ballot into the ballot box.

Adding ballots received at advance poll

11. Before counting the votes cast on a ballot on election day, the Secretary shall, in the absence of all persons but in the presence of the Treasurer, put all the ballots received at the advance poll into the ballot box used at the voting under section 10.

Counting votes

12. (1) After all ballots have been received under subsection 10 (5), and the ballots received at the advance poll have been put into the same ballot box under section 11, the Secretary shall, in the absence of all persons but in the presence of the Treasurer, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.

Counting votes cast at advance poll

(2) If at the advance poll votes were cast for candidates by rank of preference, in counting the votes cast for each candidate at the advance poll, the Secretary shall assume that a benchner's candidate of choice was the candidate on the ballot given the highest rank.

Declaration of results: two candidates

13. (1) If on any ballot there are no more than two candidates, immediately after counting the votes cast for each candidate, the Secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

Report of results: three or more candidates

(2) If on any ballot there are three or more candidates and, after counting the votes, the Secretary determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the Secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the largest number of votes.

Same

(3) If on any ballot there are three or more candidates and, after counting the votes, the Secretary determines that no candidate received more than 50 percent of all votes cast for all candidates, the Secretary shall report to Convocation that no candidate received more than 50 percent of all votes cast for all candidates and that a further ballot will be required in order to elect a Treasurer.

Further ballot required

(4) If a further ballot is required under subsection (3), the Secretary shall report to Convocation the candidate on the previous ballot who received the smallest number of votes and that candidate shall be removed as a candidate in the election.

Casting vote

14. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall give the casting vote.



Same

(2) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one or more of them to remain in the election, the Treasurer shall randomly select the candidate to be removed as a candidate from the election.

#### TERM OF OFFICE

Term of office

15. A bencher elected as Treasurer under section 1 shall take office immediately after his or her election and, subject to any by-laws providing for the removal of a Treasurer from office, shall remain in office until his or her successor takes office.

#### HONORARIUM

Treasurer's entitlement to receive honorarium

16. The Treasurer is entitled to receive from the Society an honorarium in an amount determined by Convocation from time to time.

#### VACANCY IN OFFICE

Vacancy

17. If a Treasurer resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect an elected bencher to fill the office of Treasurer until the next election of Treasurer under section 1.

#### ACTING TREASURER

Acting Treasurer

18. 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 16, the chair of the Finance and Audit Committee, or if he or she for any reason is unable to act, the chair of the Admissions and Equity 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 16 or 1.

Commencement

19. This By-Law comes into force on February 1, 1999.

#### THE LAW SOCIETY OF UPPER CANADA

#### BY-LAW 7

#### BENCHERS

#### EXPLANATORY NOTE

The By-Law confirms Convocation's current authority to make any person an honorary bencher.

The By-Law also confirms a bencher's current entitlement to be reimbursed by the Society for expenses incurred by him or her in the performance of a bencher's duties.

The By-Law will replace existing rules made under the *Law Society Act*.

1-AES

#### BY-LAW 7

#### BENCHERS

#### HONORARY BENCHERS

1. Convocation may make any person an honorary bencher.

#### DISBURSEMENTS

2. A bencher is entitled to be reimbursed by the Society for reasonable expenses incurred by him or her in the performance of his or her duties as a bencher.

#### Commencement

3. This By-Law comes into force on February 1, 1999.

#### THE LAW SOCIETY OF UPPER CANADA

#### BY-LAW 8

#### CONVOCATION

#### EXPLANATORY NOTE

The By-Law deals with various matters relating to meetings of Convocation, including the following:

1. The time of regular meetings of Convocation.
2. The authority of the Treasurer to call special meetings of Convocation
3. The place where meetings of Convocation may be held.
4. The procedure applicable to meetings of Convocation.
5. The removal from office of benchers who fail to attend six consecutive meetings of Convocation.

The By-Law clarifies that a meeting of Convocation that is held by telephone conference call is a valid meeting.

The By-Law will replace provisions currently contained in the *Law Society Act* and it will replace existing rules made under that Act.

BY-LAW 8

CONVOCATION

Regular meeting of Convocation

1. (1) A regular meeting of Convocation shall be held on the fourth Friday of each month, except the months of July, August and December, unless otherwise directed by the Treasurer.

Court apparel

- (2) A bencher shall attend the regular meeting of Convocation in June in court apparel.

Special meeting of Convocation

2. (1) The Treasurer may call a special meeting of Convocation at any time by giving at least twenty-four hours notice, or by directing the Secretary to give such notice, to each bencher.

Same

- (2) Upon the request of five benchers, the Secretary shall convene a special meeting of Convocation by giving at least twenty-four hours notice, or by directing the Secretary to give such notice, to each bencher.

Place of meeting

3. (1) Subject to subsections (2) and (3), all meetings of Convocation shall be held in Osgoode Hall.

Place of special meeting

- (2) The Treasurer may convene a special meeting of Convocation at any place.

Meetings by telephone conference call, etc.

- (3) Any meeting of Convocation may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Treasurer to preside

4. The Treasurer shall preside over every meeting of Convocation.

Procedure

5. The procedure at a meeting of Convocation shall be in accordance with the by-laws, but if the by-laws are silent with respect to any matter of procedure, the Standing Orders of the Legislative Assembly of Ontario shall be followed.

Order of business

6. (1) Unless otherwise directed by the Treasurer, the order of business at a regular meeting of Convocation shall be as follows:

1. Minutes of last regular meeting of Convocation and of all intervening special meetings of Convocation.
2. Election of benchers to fill vacancies.
3. Business carried forward from last regular meeting of Convocation or from any intervening special meeting of Convocation.
4. Reports of standing committees.

5. Reports of committees other than standing committees.
6. Calls to the bar.
7. Correspondence.
8. New business.

#### Minutes

(2) At each regular meeting of Convocation the minutes of the last regular meeting of Convocation and of any intervening special meeting of Convocation shall be confirmed by the benchers present at the meeting and shall be signed by the Treasurer or the bencher who presided at the meeting of Convocation to which the minutes relate.

#### Removal from office for non-attendance

7. (1) Convocation may remove from office a bencher who fails to attend six consecutive regular meetings of Convocation.

#### Failure to attend three meetings

(2) When a bencher fails to attend three consecutive regular meetings of Convocation, the Secretary shall immediately send to the bencher a notice of the failure and of Convocation's authority under subsection (1).

#### Failure to attend six meetings: report to Convocation

(2) When a bencher fails to attend six consecutive regular meetings of Convocation, the Secretary shall report the failure at the first regular meeting of Convocation thereafter.

#### Commencement

8. This By-Law comes into force on February 1, 1999.

### THE LAW SOCIETY OF UPPER CANADA

#### BY-LAW 9

#### COMMITTEES

#### EXPLANATORY NOTE

The By-Law establishes seven standing committees and defines their mandate. The By-Law also deals with the following matters relating to standing committees:

1. The composition of a standing committee.
2. The appointment of persons to serve as members of a standing committee.
3. The appointment of a chair and one or more vice-chairs of a standing committee.
4. The removal of members from standing committee.
5. The term of office of the members, chair and vice-chairs of a standing committee.

6. The quorum of a standing committee.

The By-Law expands on the mandate of the Professional Development and Competence Committee: It authorizes the Committee, subject to the approval of Convocation, to prepare guidelines for professional competence.

The By-Law continues the Legal Aid Committee with its function of supervising the Ontario Legal Aid Plan under the *Legal Aid Act*. The membership of the Legal Aid Committee, including its chair and vice-chairs, is also continued. The By-Law dissolves the Legal Aid Committee on April 1, 1999.

The By-Law will replace existing rules made under the *Law Society Act*.

3-AES

BY-LAW 9

COMMITTEES

GENERAL

Powers of committees

1. Unless a by-law expressly authorizes a standing committee to exercise a power, the exercise of a power by a standing committee is subject to the approval of Convocation.

STANDING COMMITTEES

Establishment of standing committees

2. The following standing committees are hereby established:

1. Admissions and Equity Committee.
2. Finance and Audit Committee.
3. Lawyers Fund for Client Compensation Committee.
4. Litigation Committee.
5. Professional Development and Competence Committee.
6. Professional Regulation Committee.
7. Public Affairs Committee.

Composition

3. (1) Each standing committee shall consist of at least six persons appointed by Convocation.

Benchers

- (2) Each standing committee must include at least five benchers.

Appointment of persons to standing committees

- (3) Convocation may appoint persons to a standing committee at any time.

**Treasurer's recommendations for appointment**

- (4) The Treasurer shall recommend to Convocation all persons for appointment to standing committees.

**Treasurer**

4. The Treasurer is a member of every standing committee.

**Term of office**

5. Subject to section 6, a person appointed to a standing committee under section 3 shall hold office until his or her successor is appointed.

**Removal from office**

6. (1) The Treasurer may remove from a standing committee any member of the committee who fails to attend three consecutive meetings of the committee.

**Appointment of replacement**

- (2) If the Treasurer removes a member of a standing committee under subsection (1), or if a member of a standing committee for any reason is unable to act, the Treasurer may appoint a person to the committee to take the member's place on the committee.

**Minimum number of members and benchers**

- (3) In determining whether to appoint a person to take a member's place on a standing committee, and in determining the person to appoint, under subsection (2), the Treasurer shall have regard to the requirements set out in subsections 3 (1) and (2).

**Ratification of removal from office and appointment of replacement**

- (4) The removal from office of a member of a standing committee under subsection (1) and the appointment of a person to take a member's place on a standing committee under subsection (2) are subject to ratification by Convocation at its first regular meeting following the removal or appointment

**Chairs and vice-chairs**

7. (1) For each standing committee, Convocation shall appoint,
- (a) one bencher, who is a member of the standing committee, as chair of the standing committee; and
- (b) one or more benchers, who are members of the standing committee, as vice-chairs of the standing committee.

**Term of office**

- (2) Subject to subsection (3), the chair and vice-chairs of a standing committee hold office until their successors are appointed.

**Appointment at pleasure**

- (3) The chair and vice-chairs of a standing committee hold office at the pleasure of Convocation.

**Vacancy**

- (4) If the chair or a vice-chair of a standing committee for any reason is unable to act, the Treasurer may appoint another member of the standing committee as the chair or a vice-chair and, subject to subsection (3), that member shall hold office as chair or vice-chair until his or her successor is appointed.

**Appointment under subs. (4) subject to ratification**

- (5) The appointment of a member of a standing committee as the chair or a vice-chair of the committee under subsection (4) is subject to ratification by Convocation at its first regular meeting following the appointment.

**Quorum**

7. Four members of a standing committee who are benchers constitute a quorum for the purposes of the transaction of business.

**Benchers' right to attend**

8. A bencher may attend any meeting of any standing committee.

**Voting rights**

9. Only members of a standing committee may vote at meetings of the committee.

**ADMISSIONS AND EQUITY COMMITTEE**

**Mandate**

10. The mandate of the Admissions and Equity Committee is to develop for Convocation's approval,
- (a) requirements for admission to the Bar Admission Course of persons who have not been called to the bar or admitted and enrolled as solicitors elsewhere;
  - (b) listings of courses and universities recognized by the Society as meeting the requirements for admission to the Bar Admission Course;
  - (c) policies to govern the transfer to the Society of persons who are members of other governing bodies of the legal profession within Canada and elsewhere;
  - (d) policies to ensure that the accreditation process operates in a reliable, fair, open and equitable manner; and
  - (e) policies to promote equity in legal education and practice.

**FINANCE AND AUDIT COMMITTEE**

**Mandate**

11. The mandate of the Finance and Audit Committee is,
- (a) to receive and review interim and annual financial statements for the Society and the Lawyers' Professional Indemnity Company;
  - (b) to review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Society;
  - (c) to recommend the appointment of the external auditor and to review the proposed audit scope, audit fees and the annual auditor's management letter; and
  - (d) to review budget plans and projections, to provide comments and advice to Convocation thereon, and to recommend approval of a budget by Convocation.

**LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE**

**Mandate**

12. (1) The Lawyers Fund for Client Compensation Committee is responsible to Convocation for the administration of the Lawyers Fund for Client Compensation.

Powers

(2) The Lawyers Fund for Client Compensation Committee may make such arrangements and take such steps as it considers advisable to carry out its responsibilities.

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Mandate

13. (1) The mandate of the Professional Development and Competence Committee is to develop for Convocation's approval policy options and strategic objectives for those Society programs and services which are designed to assist lawyers to enhance their professional competence and professional growth.

Guidelines for professional competence

(2) Subject to the approval of Convocation, the Professional Development and Competence Committee may prepare guidelines for professional competence.

Functions of Libraries and Reporting Committee

(3) The Professional Development and Competence Committee shall perform the functions assigned to the Libraries and Reporting Committee under Regulation 708 of the Revised Regulations of Ontario, 1990.

PROFESSIONAL REGULATION COMMITTEE

14. The mandate of the Professional Regulation Committee is to develop for Convocation's approval,
- (a) policy options on all matters relating to regulation of the profession in the areas of professional conduct and fitness to practise; and
  - (b) policies and guidelines for the prosecution of unauthorized practice.

PUBLIC AFFAIRS COMMITTEE

Mandate

15. The mandate of the Public Affairs Committee is,
- (a) to develop and maintain an effective working relationship with the Government of Ontario, the Attorney General of Ontario, the Ontario Public Service and all elected officials of the Ontario Legislature for the purpose of ensuring that the Society's policies and positions on matters affecting the interests of the public and the profession are understood before decisions affecting those matters are made;
  - (b) to ensure that the Society's legislative agenda is effectively presented to the Government of Ontario for its consideration and approval;
  - (c) to develop and maintain an effective working relationship with the Government of Canada and the Attorney General of Canada with respect to federal initiatives affecting matters within the Society's jurisdiction;
  - (d) to develop, for Convocation's approval, a public affairs mandate for the Society, which identifies the constituencies that the Society should address and sets out the outcomes that should be achieved with each constituency; and
  - (e) to develop a long range and comprehensive public affairs strategy consistent with the Society's public affairs mandate approved by Convocation.



Transition: membership on Admissions and Equity Committee

16. (1) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Admissions and Equity Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Admissions and Equity Committee as established by this By-Law.

Same: membership on Finance and Audit Committee

(2) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Finance and Audit Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Finance and Audit Committee as established by this By-Law.

Same: membership on Lawyers Fund for Client Compensation Committee

(3) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Lawyers Fund for Client Compensation Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Lawyers Fund for Client Compensation Committee as established by this By-Law.

Same: membership on Litigation Committee

(4) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Litigation Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Litigation Committee as established by this By-Law.

Same: membership on Professional Development and Competence Committee.

(5) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Professional Development and Competence Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Professional Development and Competence Committee as established by this By-Law.

Same: membership on Professional Regulation Committee

(6) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Professional Regulation Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Professional Regulation Committee as established by this By-Law.

Same: membership on Public Affairs Committee

(7) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Public Affairs Committee as it was constituted immediately before that day, shall be deemed to be a member, the chair or a vice-chair of the Public Affairs Committee as established by this By-Law.

Legal Aid Committee continued

17. (1) The Legal Aid Committee established before the day this By-Law comes into force is continued as the Legal Aid Committee.

Function

(2) The Legal Aid Committee continued under subsection (1) is responsible to Convocation for the supervision of the Ontario Legal Aid Plan under the *Legal Aid Act*.

Membership

(3) A person who, immediately before the day this By-Law comes into force, was a member, the chair or a vice-chair of the Legal Aid Committee as it was constituted immediately before that day, shall continue as a member, the chair or a vice-chair of the Legal Aid Committee continued under subsection (1).

Application of By-Law

(4) Section 1, subsections 3 (2) and (3), section 5 and subsection 7 (2) apply, with necessary modifications, to the Legal Aid Committee continued under subsection (1) and to the members, chair and vice-chair thereof.

Quorum

(5) Four members of the Legal Aid Committee continued under subsection (1) constitute a quorum for the purposes of the transaction of business.

Legal Aid Committee dissolved

(6) The Legal Aid Committee continued under subsection (1) is dissolved on April 1, 1999.

Commencement

18. This By-Law comes into force on February 1, 1999.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 10

MEETINGS OF MEMBERS

EXPLANATORY NOTE

The By-Law provides for an annual general meeting of members, as required under the *Law Society Act*, and it provides for the rules of procedure applicable to meetings of members. The By-Law will replace existing rules made under the *Law Society Act*.

1-AES

BY-LAW 10

MEETINGS OF MEMBERS

ANNUAL GENERAL MEETING

Meeting of members to be held annually

1. A meeting of members shall be held annually at a time and place determined by Convocation.

Notice of meeting

2. Notice of the annual general meeting, stating the date, time and place of the meeting, shall be given by publication in an issue of the Ontario Reports dated at least sixty days before the day fixed for the meeting.

Agenda for meeting

3. The annual general meeting shall consider the following matters:

1. Minutes of the previous annual general meeting.
2. Reports on the work of the Society and of the committees of Convocation.
3. Financial statements.

4. Matters of professional interest that are related to the work of the Society.

## RULES OF PROCEDURE

### GENERAL

#### Interpretation: "meeting"

4. (1) In this section and in sections 5 to 37, "meeting" means any meeting of members.

#### Same: "Treasurer"

- (2) In this By-Law, except in section 6, "Treasurer" includes a benchner who presides at a meeting in accordance with section 6.

#### Reference text

5. Where a matter of order or procedure is not settled by this By-Law, it shall be settled in accordance with the rules of order set out in the third edition of *Bourinot's Rules of Order*.

#### Presiding benchner

6. The Treasurer shall preside at each meeting, but if the Treasurer for any reason is unable to preside at a meeting, one of the following benchners shall preside, in the following order of precedence:

1. The chair of the Finance and Audit Committee.
2. The chair of the Admissions and Equity Committee.
3. A benchner selected from among and by the benchners present at the meeting.

#### Secretary to prepare agenda for meeting

7. For each meeting, the Secretary shall prepare an agenda showing the order of business.

### QUORUM

#### Quorum at a meeting

8. Fifty members whose rights and privileges are not suspended constitute a quorum at a meeting.

#### Quorum not present

9. If within one hour after the time appointed for a meeting a quorum is not present, the Treasurer shall adjourn the meeting.

#### Quorum lost during meeting

10. (1) If a quorum is lost during a meeting, the Treasurer shall, subject to subsection (2), adjourn the meeting.

#### Same

- (2) If a quorum is lost during a meeting, the Treasurer may permit the members remaining to continue to debate a motion, an amendment to a motion or an appeal of a ruling already put to the meeting but not yet disposed of if no member remaining objects.

#### No voting when quorum not present

- (3) Even though debate on a motion, an amendment or an appeal may continue if a quorum is lost during a meeting, no motion, amendment or appeal shall be voted on when a quorum is not present.

Quorum regained

(4) If a quorum, having been lost during a meeting, is regained before the meeting is adjourned, the meeting shall continue as if the quorum had not been lost.

MOTIONS

Subject matter

11. All motions made at a meeting shall relate to the work of the Society.

Procedure for making motions

12. (1) Subject to subsection (2), a motion to be made at a meeting shall be,
- (a) in writing and signed by at least ten members whose rights and privileges are not suspended at the time of signature; and
  - (b) delivered to the Secretary at least forty days prior to the day fixed for the meeting.

Same

(2) A motion may be made at any time during a meeting, even though the requirements set out in subsection (1) have not been complied with, if the motion relates to a matter then being debated.

Notice to profession

13. The Secretary shall arrange for publication to the profession of the text of all motions delivered to him or her under section 12.

Introduction at meeting

14. (1) At a meeting, a motion made under subsection 12 (1) shall be,
- (a) proposed by one of the ten members who signed the motion; and
  - (b) seconded by any other member whose rights and privileges are not suspended.

Same

- (2) At a meeting, a motion made under subsection 12 (2) shall be,
- (a) proposed by one member whose rights and privileges are not suspended; and
  - (b) seconded by another member whose rights and privileges are not suspended.

Permitted amendments

15. (1) A motion made at a meeting may be amended by,
- (a) adding or deleting words;
  - (b) varying minor details; or
  - (c) rephrasing sentences.

Amendment not to alter substance of motion

- (2) An amendment to a motion shall not alter the substance of the motion.

Introduction of amendments

16. An amendment to a motion shall be,

- (a) proposed by one member whose rights and privileges are not suspended; and
- (b) seconded by another member whose rights and privileges are not suspended.

Limit on number of amendments

17. No more than two amendments to a motion shall be before the meeting for debate at the same time.

Withdrawal

18. A motion or an amendment to a motion made at a meeting may be withdrawn if,

- (a) the member who proposed the motion or amendment consents to the withdrawal;
- (b) the member who seconded the motion or amendment consents to the withdrawal; and
- (c) no member present at the meeting objects to the withdrawal.

DEBATE

Debate on motions and amendments

19. (1) Subject to subsection (2), a motion and an amendment to a motion may be debated by the members present at the meeting.

Debate prohibited

(2) The following motions shall not be debated:

- 1. A motion to adjourn a debate.
- 2. A motion to proceed to the next business.

Order of speaking

20. (1) In a debate, members are entitled to speak to a motion or an amendment to a motion in the following order:

- 1. The member who proposed the motion or amendment.
- 2. The member who seconded the motion or amendment.
- 3. Any other member present at the meeting when recognized by the Treasurer.

Reserving right to speak

(2) The member who seconds a motion or an amendment to a motion may reserve the right to speak until a later time in the debate.

Limits on speaking

21. Subject to subsection (2), a member is entitled to speak to a motion or an amendment to a motion only once.

Exception

- (2) A member may speak to a motion or an amendment a second time if,
  - (a) all members present at the meeting have exercised, or declined to exercise, their right to speak to the motion or amendment; and
  - (b) the member does not repeat anything already said by any other member.

RULING OF TREASURER

Treasurer may make rulings

22. The Treasurer may make rulings as to the conduct of the meeting and, without limiting the generality of the foregoing, the Treasurer may rule upon the propriety, acceptability, form and substance of any motion or amendment to a motion proposed at a meeting.

Appeal of ruling of Treasurer

23. (1) Subject to subsection (2), a ruling of the Treasurer may be appealed by any member present at the meeting.

Appeal prohibited

(2) No member is entitled to appeal a ruling of the Treasurer that a matter may not be made the subject of debate or motion by the meeting because,

- (a) it is a matter in respect of which a hearing may be conducted under the Act, regulations, by-laws or rules of practice and procedure; or
- (b) it is a matter that is pending before a tribunal for determination.

Time for making appeal

24. Where a member wishes to appeal a ruling of the Treasurer, the appeal shall be made immediately after the ruling.

Debate permitted

25. (1) Subject to subsection (2), an appeal of a ruling of the Treasurer may be debated by the members present at the meeting.

Debate prohibited

(2) An appeal of a ruling of the Treasurer relating to inappropriate language or behaviour shall not be debated.

Application of ss. 20 and 21

26. Sections 20 and 21 apply, with necessary modifications, to a debate of an appeal of a ruling of the Treasurer.

Treasurer's reasons for ruling

27. (1) After an appeal of a ruling of the Treasurer has been made, and before commencement of debate of the appeal, if permitted, the Treasurer is entitled to give the reasons, including any authority, for the ruling.

Same

- (2) After debate of an appeal of a ruling of the Treasurer concludes, the Treasurer is entitled,
  - (a) to answer any points raised during the debate; and
  - (b) to give, or to repeat, the reasons, including any authority, for the ruling.

Disposition by vote

28. (1) An appeal of a ruling of the Treasurer shall be disposed of by a vote on the question: "Should the ruling of the Treasurer be upheld?"

Call for vote on appeal where debate on appeal prohibited

(2) Where debate on an appeal of a ruling of the Treasurer is prohibited, the Treasurer shall call for a vote on the appeal after exercising, or declining to exercise, the rights given to the Treasurer in subsection 27 (1).

Call for vote on appeal where debate on appeal permitted

(3) Where debate on an appeal of a ruling of the Treasurer is permitted, the Treasurer shall call for a vote on the appeal after debate has concluded and the Treasurer has exercised, or declined to exercise, the rights given to the Treasurer in subsection 27 (2).

VOTING

No appeal from call for vote

29. No member is entitled to appeal a call by the Treasurer for a vote on a motion, an amendment to a motion or an appeal of a ruling.

Order of voting on motions and amendments to motions

30. (1) All amendments to a motion shall be put to a vote before the motion is put to a vote.

Order of voting on amendments to motions

- (2) Amendments to a motion shall be put to a vote in the following order:
  - 1. The second amendment proposed.
  - 2. The first amendment proposed.

Entitlement to vote

31. Every member present at a meeting, whose rights and privileges are not suspended, is entitled to one vote on each question put to the meeting.

Treasurer may not vote

32. Subject to section 36, the Treasurer shall not vote on any motion, amendment to a motion or appeal of a ruling.

Proxy voting prohibited

33. Votes may not be cast by proxy.

Manner of voting

34. (1) Voting shall be by a show of hands unless a poll is required by the Treasurer or called for by a member.

Poll

35. (1) A poll may be required by the Treasurer or called for by a member either before a question is put to a vote or immediately after the question has been voted on by a show of hands.

Manner of conducting poll

- (2) A poll shall be conducted either by ballot or by division, as determined by the Treasurer.

No appeal

- (3) No member is entitled to appeal a determination by the Treasurer as to the manner of conducting a poll.

Resolution of question

36. (1) Subject to subsection (3), each question put to the meeting shall be determined by the majority of the votes cast.

Treasurer may exercise casting vote

- (2) In the case of a tied vote, except on a vote of an appeal of a ruling of the Treasurer, the Treasurer shall have a casting vote.

Resolution of question: appeal of ruling of Treasurer

- (3) A ruling of the Treasurer shall be upheld on appeal when,
- (a) the majority of votes cast are in favour of upholding the ruling of the Treasurer; or
  - (b) the vote on the appeal results in a tie.

Entry in minutes

37. Whenever voting has been by a show of hands, unless immediately following the vote a poll on the same question is required by the Treasurer or called for by a member, an entry in the minutes of the meeting to the effect that the Treasurer declared a motion carried, an amendment to a motion approved or a ruling upheld is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the motion, amendment or ruling.

Communication of resolutions to Convocation

38. (1) All motions carried at a meeting of members shall be,
- (a) communicated to Convocation at its first regular meeting after the meeting of members; and
  - (b) considered by Convocation within six months of the meeting of members.

Convocation not bound by resolutions of meeting

- (2) A motion carried at a meeting of members is not binding on Convocation.

Commencement

39. This By-Law comes into force on February 1, 1999.



THE LAW SOCIETY OF UPPER CANADA

BY-LAW 11

EXPLANATORY NOTE

The By-Law deals with various aspects of a person's call to the bar and admission and enrolment as a solicitor, including the following:

1. The requirement that an applicant for admission to membership in the Society qualify for both call to the bar and admission and enrolment as a solicitor.
2. The ways in which a person may qualify for call to the bar and admission and enrolment as a solicitor (*e.g.*, successful completion of the Bar Admission Course, transfer from a Canadian jurisdiction outside Ontario, holding a position as a law dean or a law teacher in a law school in Ontario).
3. The approval by Convocation of persons applying to the Society to be called to the bar and admitted and enrolled as solicitors.
4. The procedures to be followed on the day that a person is called to the bar and admitted and enrolled as a solicitor.
5. The administration of the Barristers Oath, the Solicitors Oath and the Oath of Allegiance.

The By-Law will replace provisions currently contained in Regulation 708 and it will replace existing rules made under the *Law Society Act*.

2-AES

BY-LAW 11

CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR

Requirement to qualify both for call to bar and admission and enrolment as solicitor

1. Every applicant for admission to membership in the Society, other than student membership in the Society, shall qualify both for call to the bar and admission and enrolment as a solicitor.

Application

2. (1) A person who qualifies under this By-Law to be called to the bar and admitted and enrolled as a solicitor shall apply to the Society to be called and admitted and enrolled.

Application fee

- (2) Every application made under subsection (1) shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Approval of application

- (3) A person is not entitled to be called to the bar and admitted and enrolled as a solicitor, even though the person qualifies under this By-Law to be called and admitted and enrolled, until the person's application to be called and admitted and enrolled is approved by Convocation.

### QUALIFYING THROUGH BAR ADMISSION COURSE

3. A person who has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership, and who presents a certificate of successful completion of the Bar Admission Course may be called to the bar and admitted and enrolled as a solicitor.

### TRANSFER FROM JURISDICTION OUTSIDE ONTARIO

Transfer applicants: qualifying for call to bar and admission and enrolment as solicitor

4. (1) A person who is qualified to practise law in any province or territory of Canada outside Ontario and who has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership, may be called to the bar and admitted and enrolled as a solicitor if he or she satisfies the following conditions:

1. The person is a graduate of a law course that is offered by a university in Canada and is approved by Convocation, or has a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans.
2. The person has passed a transfer examination prescribed by Convocation.
3. The person has filed a certificate of good standing that was issued during the three-month period immediately before the applicant passed the transfer examination mentioned in paragraph 2.
4. At the time of his or her call to the bar and admission and enrolment as a solicitor, the person continues to be in good standing with the law society or equivalent body that issued the certificate of good standing mentioned in paragraph 3.
5. For a period or periods totalling at least seventeen months within the three-year period immediately before the person passed the transfer examination mentioned in paragraph 2, the person was engaged in one of the following activities, or any combination of them:
  - i. the active practice of law as a member of a law society or equivalent body of any province or territory of Canada outside Ontario,
  - ii. the pre-call education program of a law society or equivalent body of any province or territory of Canada outside Ontario,
  - iii. service under articles of clerkship in Ontario.

Application for determination as to whether conditions in s. 5 satisfied

- (2) Every person who wishes to qualify under subsection (1) for call to the bar and admission and enrolment as a solicitor shall apply to the Society for a determination as to whether he or she satisfies the conditions mentioned in that subsection.

Application fee

- (3) Every application made under subsection (2) shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Other fees

(4) A person who makes an application under subsection (2) shall pay any other fees required to be paid by the Society in relation to the assessment of his or her application, including examination fees, preparatory course fees and course materials fees.

Interpretation: certificate of good standing

(5) In subsection (1), "certificate of good standing" means a certificate of the law society or equivalent body having the power to make such a certificate in the jurisdiction in which a person claims the right to practise at the time of his or her application under subsection (2),

- (a) stating that the person is in good standing with that law society or equivalent body,
- (b) stating that no proceedings are pending against the person in respect of alleged conduct for which the law society or equivalent body could take any disciplinary action, and
- (c) stating whether the law society or equivalent body has ever taken disciplinary action against the person and providing details of any disciplinary action taken by the law society or equivalent body against the person.

Interpretation: active practice of law

(6) In subsection (1), "active practice of law" in a province or territory of Canada includes service in a legal capacity with a department or agency of the Government of Canada and in any part of Canada or with the Judge Advocate General's Branch of the Canadian Armed Forces.

Interpretation: pre-call education program

(7) For the purposes of subsection (1), a person is engaged in the pre-call education program of a law society or equivalent body of any province or territory of Canada outside Ontario when he or she,

- (a) is enrolled and participates in a teaching or education program prescribed by that law society or equivalent body and distinct from a law course offered in a university; or
- (b) serves under articles of clerkship to a member of that law society or equivalent body in accordance with its rules, regulations or by-laws.

LAW TEACHERS

Dean of law school in Ontario

6. (1) The dean of a law school in Ontario that is approved by Convocation may, after he or she has entered upon the second consecutive year in that position, and provided he or she has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership, be called to the bar and admitted and enrolled as a solicitor without examination.

Faculty members of law school in Ontario

(2) A full-time member of the faculty of a law school in Ontario that is approved by Convocation may, after he or she has entered upon the third consecutive year in that position, and provided he or she has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership, be called to the bar and admitted and enrolled as a solicitor without examination.

### CALL DAY

When person may be called to bar and admitted and enrolled as solicitor

7. (1) A person who is entitled to be called to the bar and admitted and enrolled as a solicitor may be called and admitted and enrolled on any day on which there is a meeting of Convocation.

Procedures on call day: appearance before Convocation

(2) A person who is entitled to be called to the bar and admitted and enrolled as a solicitor shall appear before Convocation in the court apparel of a barrister.

Same: order of presentation to Convocation

(3) At a meeting of Convocation, persons who are entitled to be called to the bar and admitted and enrolled as solicitors shall be presented to Convocation by the Secretary in the following order:

1. Persons who were awarded honours, medals, scholarships or prizes in the Bar Admission Course shall be presented with precedence in order of merit over all other persons.
2. Subject to paragraph 1, persons shall be presented in the alphabetical order of their surnames.
3. Persons who qualified for call to the bar and admission and enrolment as solicitors under section 5 shall be presented after all other persons have been presented and in the alphabetical order of their surnames.

Same: conferring degree of barrister-at-law and call to bar

(4) At a meeting of Convocation, after a person is presented to Convocation under subsection (3), the Treasurer shall confer the degree of barrister-at-law upon him or her and shall call him or her to the bar.

Same: admission and enrolment as solicitor

(5) Immediately after a person is called to the bar under subsection (4), he or she shall be presented to the Court of Appeal for Ontario or the Ontario Court of Justice by a benchler present in court and the court may cause the person to be admitted and his or her name to be enrolled as a solicitor on the rolls of the Society.

Same: administration of oaths

(6) Immediately after the court has caused a person to be admitted and his or her name to be enrolled as a solicitor on the rolls of the Society under subsection (5), the presiding judge shall administer in either the English or French language the Barristers Oath, the Solicitors Oath and, if the person so wishes, the Oath of Allegiance as follows:

1. Barristers Oath: You are called to the Degree of Barrister-at-law to protect and defend the rights and interest of such citizens as may employ you. You shall conduct all cases faithfully and to the best of your ability. You shall neglect no one's interest nor seek to destroy any one's property. You shall not be guilty of champerty or maintenance. You shall not refuse causes of complaint reasonably founded, nor shall you promote suits upon frivolous pretences. You shall not pervert the law to favour or prejudice any one, but in all things shall conduct yourself truly and with integrity. In fine, the Queen's interest and the interest of citizens you shall uphold and maintain according to the constitution and law of this Province. All this you do swear to observe and perform to the best of your knowledge and ability. So help you God.

2. Serment de l'avocat-plaideur/l'avocate-plaideuse: Le diplôme d'avocat-plaideur/l'avocate-plaideuse vous est conféré pour que vous protégiez et défendiez les droits et intérêts de vos concitoyens et concitoyennes qui font appel à vos services. Dans toutes les causes qui vous seront confiées, vous agirez loyalement et de votre mieux. Vous ne négligerez les intérêts de qui que ce soit ni ne chercherez à détruire ses biens. Vous ne participerez à aucun pacte de *quota litis* ni ne soutiendrez une partie sans intérêt légitime. Vous ne refuserez pas de défendre des causes raisonnablement fondées ni n'intenterez d'actions frivoles. Vous ne tournerez pas la loi pour favoriser ou défavoriser qui que ce soit, mais, en toutes choses, vous agirez avec loyauté et intégrité. En bref, vous respecterez et défendrez les intérêts de la Reine et de vos concitoyens et concitoyennes conformément à la constitution et aux lois de cette province. Vous jurez d'observer et d'appliquer toutes ces règles en votre âme et conscience. Ainsi Dieu vous soit en aide.
3. Solicitors Oath: You also do sincerely promise and swear that you will truly and honestly conduct yourself in the practice of a solicitor according to the best of your knowledge and ability. So help you God.
4. Serment du procureur/ de la procureure: Vous promettez de même sincèrement et jurez d'exercer avec loyauté et honnêteté votre profession de procureur/procureure, en votre âme et conscience. Ainsi Dieu vous soit en aide.
5. Oath of Allegiance: You do swear that you will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), Her heirs and successors according to law. So help you God.
6. Serment d'allégeance: Vous jurez fidélité et allégeance à Sa Majesté la Reine Élisabeth II (ou le souverain régnant), à ses héritiers, héritières, successeurs et successeuses conformément à la loi. Ainsi Dieu vous soit en aide.

Commencement

8. This By-Law comes into force on February 1, 1999.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 12

BAR ADMSSION COURSE

EXPLANATORY NOTE

The By-Law continues the Bar Admission Course which is currently conducted by the Society. The By-Law sets out the following:

1. The contents of the Bar Admission Course.
2. The authority of the director of the Bar Admission Course, and of the Admissions and Equity Committee, to modify the contents of the Course in individual circumstances.
3. The requirements for admission to the Bar Admission Course as a student-at-law.

The By-Law introduces the authority of the Admissions and Equity Committee to remove a student-at-law from the Bar Admission Course in specified circumstances (*e.g.*, the student-at-law does not meet the academic requirements for admission to the Course, the student-at-law fails to file a document required to be filed under the By-Law, the student-at-law fails to pay a tuition fee). The By-Law provides that a person ceases to be a student member of the Society immediately upon being removed from the Course as a student-at-law. Previously, in the specified circumstances, Convocation had the authority to revoke the student membership of a student-at-law.

The By-Law will replace provisions currently contained in Regulation 708.

2-AES

## BY-LAW 12

### BAR ADMISSION COURSE

#### Bar Admission Course continued

1. (1) The Bar Admission Course that was conducted by the Society immediately before the day this By-Law comes into force is continued as the Bar Admission Course.

#### Bar Admission Course to be conducted by Society

- (2) The Society shall conduct the Bar Admission Course.

#### Exercise of powers by Admissions and Equity Committee

- (3) The performance of any duty, or the exercise of any power, given to the Admissions and Equity Committee under this By-Law is not subject to the approval of Convocation.

#### Faculty

- (4) The Bar Admission Course shall have a faculty consisting of a director, one or more assistant or deputy directors and such lecturers, instructors and tutors as, in the opinion of the director, are required.

#### Staff

- (5) The Bar Admission Course shall have a staff consisting of the faculty and such demonstrators, administrative officers and clerical assistants as are appointed from time to time.

#### Content of Bar Admission Course

2. (1) The Bar Admission Course consists of,
  - (a) a teaching term of approximately one month, attended before the commencement of service under the articles of clerkship referred to in clause (b);
  - (b) articles of clerkship served for a period of twelve months before entry into the teaching term referred to in clause (c); and
  - (c) a teaching term of approximately three months.

#### Modification of contents of Bar Admission Course

- (2) The director, in accordance with policies established by the Admissions and Equity Committee, or the Admissions and Equity Committee in circumstances not covered by a policy established by the Committee, may, for an individual student-at-law, modify the contents of the Course,

- (a) if the student-at-law has graduated from a law course that was conducted under a co-operative education system and that is approved by Convocation; or
- (b) if the student-at-law establishes, to the satisfaction of the director or the Committee, exceptional circumstances.

Same

(3) When establishing policies to be followed by the director in modifying the contents of the Bar Admission Course, or when determining whether to modify the contents of the Course, under clause (2) (a), the Admissions and Equity Committee shall consider the particular experience or education in a co-operative system that is equivalent to the requirements or part of the requirements in subsection (1).

Academic requirements for admission to Bar Admission Course

3. A person may be admitted to the Bar Admission Course as a student-at-law if he or she has,

- (a) graduated from a law course that is offered by a university in Canada and is approved by Convocation; or
- (b) received a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans.

Procedure for admission to Bar Admission Course

4. (1) A person who wishes to be admitted to the Bar Admission Course as a student-at-law shall apply to the Society.

Application form

(2) An applicant for admission to the Bar Admission Course as a student-at-law shall complete an application form provided by the Society.

Application fee

(3) Every application made under subsection (1) shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Admission to Bar Admission Course

(4) An applicant who meets the academic requirements for admission to the Bar Admission Course, completes an application form to the satisfaction of the director and pays the application fee shall be admitted to the Bar Admission Course as a student-at-law.

Supporting documents

(5) A student-at-law shall file with the director, on or before the last business day in August in the year in which the student-at-law is admitted to the Bar Admission Course,

- (a) a certificate of graduation from a law course that is offered by a university in Canada and is approved by Convocation or a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;
- (b) a certified copy of all university records of the student-at-law;
- (c) articles of clerkship; and
- (d) any other evidence of compliance with this By-Law that the director requires.

Tuition fee

5. (1) Every student-at-law shall pay a tuition fee for the teaching term mentioned in clause 2 (1) (a) and a tuition fee for the teaching term mentioned in clause 2 (1) (c), and each tuition fee shall be paid before the student-at-law commences the teaching term for which the tuition fee is required.

Amount of tuition fee

(2) The amount of the tuition fees mentioned in subsection (1) shall be determined by Convocation from time to time.

Removal from Bar Admission Course

6. (1) If a student-at-law does not meet the academic requirements for admission to the Bar Admission Course as a student-at-law, fails to file any document required to be filed under subsection 4 (5) or fails to pay a tuition fee required to be paid under section 5, the Admissions and Equity Committee may remove the student-at-law from the Course.

Same

(2) A person ceases to be a student-at-law in the Bar Admission Course immediately upon being removed from the Course by the Admissions and Equity Committee under subsection (1).

Commencement

7. This By-law comes into force on February 1, 1999.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 13

MEMBERS

EXPLANATORY NOTE

The By-Law continues the current authority of Convocation to make any person an honorary member.

The By-Law confirms a member's current right to become a life member once he or she has been entitled to practise law in Ontario for a continuous period of fifty years.

The By-Law will replace existing rules made under the *Law Society Act*.

1-AES

BY-LAW 13

MEMBERS

HONORARY MEMBERS

Authority to make persons honorary members

1. Convocation may make any person an honorary member.



## LIFE MEMBERS

### Life member: eligibility

2. (1) Every member of the Society who has been entitled to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor for a continuous period of fifty years becomes a life member.

### Interpretation: continuous period of fifty years

- (2) Where membership has been interrupted by a period of war service or abeyance under section 31 of the Act, such period shall be counted towards the continuous period of fifty years required by subsection (1).

### Same

- (3) Where a member's entitlement to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor has been interrupted by a period of time during which the member's rights and privileges were suspended for failure to pay a fee or levy, the question of whether such a period of time may be counted towards the continuous period of fifty years required by subsection (1) shall be determined in accordance with guidelines established by the Admissions and Equity Committee.

### Commencement

3. This By-Law comes into force on February 1, 1999.

## THE LAW SOCIETY OF UPPER CANADA

### BY-LAW 14

### RESIGNATION

### EXPLANATORY NOTE

The By-Law sets out a new process whereby a member may resign his or her membership in the Society.

The new process imposes on a member wishing to resign his or her membership in the Society the obligations that are currently imposed on such a member, namely, the requirement to apply and provide specific information to the Society in an affidavit or statutory declaration and the requirement to publish in the Ontario Reports notice of intention to resign. The new process introduces a different decision-making process. Currently, an application to resign is considered by the Administration and Equity Committee, a recommendation as to whether a member should be permitted to resign is made by the Committee to Convocation and Convocation determines whether a member should be permitted to resign. This is an inefficient process for what is essentially an administrative matter. Under the new process, an application to resign is considered by the Secretary and, if the Secretary is satisfied that specified requirements are met, the Secretary accepts the application. Under the *Law Society Act*, as it will read when the *Law Society Amendment Act, 1998* comes into force, a member's resignation will be effective when an application to resign is accepted. The By-Law prohibits the Secretary from considering an application to resign made by a member who is a party to a proceeding under Part II of the *Law Society Act*, as it will read when the *Law Society Amendment Act, 1998* comes into force. Where such a member (e.g., a member who is a party to a conduct proceeding, a capacity proceeding or a professional competence proceeding), wishes to resign, permission to resign will be in the discretion of the Hearing Panel.

The By-Law will replace provisions currently contained in Regulation 708.

BY-LAW 14

RESIGNATION

Procedure for resigning

1. (1) Subject to section 3, a member who wishes to resign his or her membership in the Society shall apply in writing to the Secretary.

Statutory declaration or affidavit

(2) An application under subsection (1) shall be accompanied by a statutory declaration or, if the applicant is not a resident of Canada, an affidavit, setting forth,

- (a) the applicant's age, the date of the applicant's call to the bar and admission and enrolment as a solicitor, the applicant's place of residence, the applicant's business address, if any, the number of years that the applicant has engaged in the practice of law, if any, and the reasons why the applicant wishes to resign his or her membership in the Society;
- (b) that all money or property held in trust for which the applicant was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the applicant has not been responsible for any money or property held in trust;
- (c) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other member, or, alternatively, that the applicant has not engaged in the practice of law;
- (d) that the applicant is not aware of any claim against him or her in his or her professional capacity or in respect of his or her practice; and
- (e) such additional information or explanation as may be relevant by way of amplification of the foregoing.

Same

(3) An accountant's certificate to the effect that all money and property held in trust for which the applicant was responsible have been accounted for and paid over or distributed to the persons entitled thereto shall be attached, and marked as an exhibit, to the statutory declaration or affidavit required under subsection (2).

Publication of notice of intention to resign

2. (1) A member who wishes to resign his or her membership in the Society shall, at least thirty days before the day on which he or she applies to the Secretary under subsection 1 (1), publish in the Ontario Reports a notice of intention to resign.

Notice of Intention to Resign

(2) The notice of intention to resign which a member is required to publish under subsection (1) shall be in Form 14A [Notice of Intention to Resign].

Proof of publication of notice of intention to resign

(3) An application under subsection 1 (1) shall be accompanied by proof of publication, in accordance with subsection (1), of a notice of intention to resign.

Application by member's representative

3. (1) The Secretary may permit any person on behalf of a member to make an application under subsection 1(1) if the Secretary is satisfied that the member for any reason is unable to make the application himself or herself.

Application of subss. 1 (2) and (3) and ss. 2, 4 and 5

(2) Subsections 1 (2) and (3) and sections 2, 4 and 5 apply, with necessary modifications, to an application made under subsection 1 (1) by a person on behalf of a member.

Secretary to consider application

4. (1) Subject to subsection (2), the Secretary shall consider every application made under subsection (1) in respect of which the requirements set out in subsections 1 (2), 1 (3) and 2 (3) have been complied with, and the Secretary may consider an application made under subsection (1) in respect of which the requirements set out in subsection 1 (2), 1 (3) and 2 (3) have not been complied with, and,

- (a) the Secretary shall accept an application if he or she is satisfied,
  - (i) that all money or property held in trust for which the applicant was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the applicant has not been responsible for any money or property in trust,
  - (ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other member, or, alternatively, that the applicant has not engaged in the practice of law,
  - (iii) that there are no claims against the applicant in his or her professional capacity or in respect of his or her practice, and
  - (iv) that the applicant has complied with subsection 2 (1); or
- (b) the Secretary shall reject an application if he or she is not satisfied of a matter mentioned in clause (a).

Secretary not to consider application

(2) The Secretary shall not consider an application made under subsection 1 (1) if the applicant is a party to proceeding under Part II of the Act.

Documents and explanations

(3) For the purposes of assisting the Secretary to consider application, the applicant shall provide to the Secretary such documents and explanations as the Secretary may require.

Rejection of application

5. If the Secretary rejects an application under clause 4 (1) (b), the Secretary may specify terms and conditions to be complied with by the applicant as a condition of his or her application being accepted, and if the applicant complies with the terms and conditions to the satisfaction of the Secretary, the Secretary shall accept the application.

Commencement

6. This By-Law comes into force on February 1, 1999.

Form 14A

Notice of Intention to Resign

*(Name of member applying to resign, in capital letters)*

Pursuant to section 30 of the *Law Society Act* and By-Law 14 made under subsection 62 (0.1) of the *Law Society Act*, the above named hereby gives notice of *(his/her)* intention to resign *(his/her)* membership in the Society.

The above named has carried on the practice of law at *(identify where the above named has carried on the practice of law)* *(or has not carried on the practice of law since (date))* *(or has never carried on the practice of law in Ontario)*.

Dated at *(place)*.

*(Date)*

*(Full name of member applying to resign)*

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 15

ANNUAL FEE

EXPLANATORY NOTE

The By-Law requires members to pay an annual fee, sets out the amount of an annual fee to be paid by individual members and provides for exemptions from payment of an annual fee.

The By-Law introduces a new process for the approval of applications from retired and incapacitated members to be exempt from payment of an annual fee. Currently, the authority to approve applications is vested in Convocation, which acts on the recommendation of the Admissions and Equity Committee. This is an inefficient process for what is essentially an administrative matter. Under the new process, an application is considered by the Secretary and, if the Secretary is satisfied that specified requirements are met, the Secretary approves the application.

Under subsection 46 (1) of the *Law Society Act*, as it will read when the *Law Society Amendment Act, 1998* comes into force, the Society will have the authority to suspend (without a hearing) the rights and privileges of a member for failure to pay an annual fee if, for a period prescribed by the by-laws, the member has been in default for failure to pay the fee. The By-Law prescribes the period for the purposes of subsection 46 (1) of the *Law Society Act*.

Under subsection 46 (2) of the *Law Society Act*, as it will read when the *Law Society Amendment Act, 1998* comes into force, a suspension for failure to pay an annual fee will continue until the amount owing is paid in accordance with the by-laws. The By-Law specifies the amount to be paid in order for a suspension for failure to pay an annual fee to be lifted.

The By-Law will replace existing rules made under the *Law Society Act*.

BY-LAW 15

ANNUAL FEE

Requirement to pay annual fee

1. (1) Every year, a member shall pay an annual fee, in accordance with sections 2 and 3, unless the member is exempt from payment of an annual fee.

Exemption from requirement to pay annual fee: life members and honorary members

- (2) Life members and honorary members are not required to pay an annual fee.

Same: retired and incapacitated member

- (3) A member whose application to be exempt from payment of an annual fee is approved under section 4, is not required to pay an annual fee.

Amount and payment of annual fee

2. (1) The amount of the annual fee for a year shall be determined by Convocation.

Levy for Lawyers Fund for Client Compensation

- (2) An annual fee shall include a Lawyers Fund for Client Compensation levy.

Payment due

- (3) Payment of an annual fee is due on January 1 every year.

Amount payable

- (4) Subject to subsections (5) and (6), a member shall pay the full amount of an annual fee and any taxes that the Society is required to collect from the member in respect of the payment of an annual fee.

Same

- (5) A member who does not practise law, including a member employed in education, in government or in a corporation in a position where he or she is not required to practise law, shall pay fifty percent of an annual fee and any taxes that the Society is required to collect from the member in respect of the payment of an annual fee.

Same

- (6) The following members shall pay twenty-five percent of an annual fee and any taxes that the Society is required to collect from the member in respect of the payment of an annual fee:

1. A member who does not engage in any remunerative work, including the practice of law, in or outside of Ontario.
2. A member who is in full-time attendance at a university college or designated educational institution within the meaning of the *Income Tax Act* (Canada) and does not practise law.
3. A member who is on a maternity, paternity or adoption leave and does not practise law.

Interpretation: practising law

- (7) For the purposes of subsections (5) and (6), a member practises law if the member gives any legal advice respecting the laws of Ontario or Canada or provides any legal services.

Application of subss. (3) to (6)

- (8) Subsections (3) to (6) apply only to persons who are members on January 1.

Persons admitted, etc. after January 1

(9) A person who after January 1 is admitted or readmitted as a member, or whose membership after January 1 is restored, shall pay, in respect of the year in which he or she is admitted or readmitted as a member, or in which his or her membership is restored, an amount of an annual fee determined by the formula,

$$(A \div 12) \times B$$

where,

- A is the amount of the annual fee the person would have been required to pay under subsection (4), (5) or (6) if he or she were a member on January 1, and
- B is the number of whole calendar months remaining in the year after the month in which the person is admitted or readmitted as a member or in which the person's membership is restored.

Same: payment due

(10) Payment of an annual fee by a person to whom subsection (9) applies is due on the day on which the person is admitted or readmitted as a member or on which the person's membership is restored.

Student members admitted as members

(11) Despite subsection (9), a student member who, after January 1 and before March 31 in a year, is admitted as a member shall pay, in respect of the year in which he or she is admitted as a member, the amount of an annual fee payable by a person admitted as a member on April 1.

Same: payment due

(12) Payment of an annual fee by a student member to whom subsection (11) applies is due on April 1 in the year in which the student member is admitted as a member.

Change in status

3. (1) If a member who is required to pay the full amount, or fifty percent, of an annual fee becomes entitled to pay fifty percent, or twenty-five percent, of an annual fee, the member shall pay,

- (a) an amount determined by the formula

$$(A \div 12) \times B$$

where

- A is the full amount, or fifty percent, of an annual fee, and
- B is the number of whole or part calendar months during which the member is required to pay the full amount, or fifty percent, of an annual fee; and
- (b) an amount determined by the formula

$$(C \div 12) \times D$$

where

C is fifty percent, or twenty-five percent, of an annual fee, and

D is the number of whole calendar months during which the member is required to pay fifty percent, or twenty-five percent, of an annual fee.

Same

(2) If a member who is required to pay fifty percent, or twenty-five percent, of an annual fee becomes required to pay the full amount, or fifty percent, of an annual fee, the member shall pay, in respect of the period of time during which he or she is required to pay the lesser amount of an annual fee and the period of time during which he or she is required to pay the higher amount of an annual fee,

(a) an amount determined by the formula

$$(E \div 12) \times F$$

where

E is fifty percent, or twenty-five percent, of an annual fee, and

F is the number of whole calendar months during which the member is required to pay fifty percent, or twenty-five percent, of the annual fee; and

(b) an amount determined by the formula

$$(G \div 12) \times H$$

where

G is the full amount, or fifty percent, of an annual fee, and

H is the number of part or whole calendar months during which the member is required to pay the full amount, or fifty percent, of an annual fee.

Same

(3) If a member who is required to pay the full amount, fifty percent or twenty-five percent of an annual fee becomes exempt from payment of an annual fee, the member shall pay an amount determined by the formula

$$(I \div 12) \times J$$

where

I is the full amount, fifty percent or twenty-five percent of an annual fee, and

J is the number of whole or part calendar months during which the member is required to pay the full amount, fifty percent or twenty-five percent of an annual fee

**When payment due**

(4) If under this section, a member is required to pay, in respect of a year, an amount that is greater than the amount required to be paid under section 2, the difference between the amount that the member is required to pay under this section and the amount that the member is required to be pay under section 2 shall be due on a date to be specified by the Secretary.

**Application for refund**

(5) If under this section, a member is required to pay, in respect of a year, an amount that is less than the amount required to be paid under section 2, subject to subsections (5) and (6), the member is entitled to a refund of the difference between the amount that the member is required to pay under section 2 and the amount that the member is required to be pay under this section.

**Application for refund**

(5) A member shall apply to the Society to claim an entitlement to a refund under subsection (4).

**Time for making application**

(6) An application to the Society under subsection (5) shall be made before the end of the year in respect of which the member claims an entitlement to a refund under subsection (4).

**No entitlement to refund**

(7) A member who does not comply with subsection (6) is not entitled to receive a refund.

**Retired and incapacitated members**

4. (1) A member may apply to the Society for an exemption from payment of an annual fee if he or she,
- (a) is over sixty-five years of age and is permanently retired from the practice of law in Ontario; or
  - (b) is permanently disabled and, as a result, is unable to practise law.

**Application form**

(2) An application under subsection (1) shall be in a form provided by the Society.

**Consideration of application**

(3) The Secretary shall consider every application made under subsection (1) and if the Secretary is satisfied that the requirements described in clause (1) (a) or (1) (b) have been met, the Secretary shall approve the application.

**Effective date of exemption**

(4) A member whose application is approved is exempt from payment of the annual fee beginning on the first day of the first month after the month in which the member submits an application form completed to the satisfaction of the Secretary.

**Interpretation: practising law**

(5) For the purposes of subsection 4 (1), a member practises law if the member gives any legal advice respecting the laws of Ontario or Canada or provides any legal services

**Failure to pay annual fee**

5. (1) If a member fails to pay an annual fee in accordance with this By-Law within four months after the day on which payment is due, an elected benchler appointed for the purpose by Convocation may make an order under subsection 46 (1) of the Act suspending the member's rights and privileges.



Payment plan: deemed date of failure to pay

(2) Where the Society arranges or permits a schedule for the payment of an annual fee by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay an annual fee will be deemed to have occurred on January 1.

Reinstatement of rights and privileges

(3) If a member's rights and privileges have been suspended under subsection 46 (1) of the Act for failure to pay an annual fee, the suspension remains in effect until the member pays to the Society, in accordance with this By-Law, the annual fee which he or she failed to pay and a reinstatement fee in an amount determined by Convocation from time to time.

Commencement

6. This By-Law comes into force on February 1, 1999.

## THE LAW SOCIETY OF UPPER CANADA

### BY-LAW 16

#### PROFESSIONAL LIABILITY LEVIES

#### EXPLANATORY NOTE

The By-Law requires members to pay insurance premium levies and provides for exemptions from payment of insurance premium levies.

Under subsection 46 (1) of the *Law Society Act*, as it will read when the *Law Society Amendment Act, 1998* comes into force, the Society will have the authority to suspend (without a hearing) the rights and privileges of a member for failure to pay an insurance premium levy if, for a period prescribed by the by-laws, the member has been in default for failure to pay the levy. The By-Law prescribes the period for the purposes of subsection 46 (1) of the *Law Society Act*.

Under subsection 46 (2) of the *Law Society Act*, as it will read when the *Law Society Amendment Act, 1998* comes into force, a suspension for failure to pay an insurance premium levy will continue until the amount owing is paid in accordance with the by-laws. The By-Law specifies the amount to be paid in order for a suspension for failure to pay an insurance premium levy to be lifted.

The By-Law will replace existing rules made under the *Law Society Act*.

2-AES

### BY-LAW 16

#### PROFESSIONAL LIABILITY LEVIES

Interpretation: "Society's insurance plan"

1. (1) In this By-Law, "Society's insurance plan" means the Society's professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its members.

**Interpretation: engaging in practice of law**

(2) In this By-Law, a person engages in the practice of law if he or she performs professional services for others in the capacity of a barrister or solicitor or if he or she gives legal advice to others.

**Requirement to pay insurance premium levies**

2. (1) Unless otherwise exempted, every member of the Society who is eligible for coverage under the Society's insurance plan and who engages in the practice of law during the course of any year shall pay insurance premium levies for that year in accordance with this By-Law.

**Same**

(2) A member who is required to pay any insurance premium levy shall pay the amount of the levy and any taxes that the Society is required to collect from a member in respect of the payment of the insurance premium levy.

**Insurance premium levies**

3. The insurance premium levies mentioned in section 2 shall consist of a base levy, an innocent party surcharge levy and such other levies as may be set by Convocation or required by the Society's insurance plan.

**Time for payment of insurance premium levies**

4. (1) The base levy and the innocent party surcharge levy are due and payable on January 1 every year.

**Same**

(2) Such other levies as may be set by Convocation or required by the Society's insurance plan are due and payable on the dates specified by Convocation or the Society's insurance plan.

**Failure to pay insurance premium levies**

5. (1) If a member fails to pay an insurance premium levy required to be paid under this By-Law within four months after the day on which payment of the levy is due, an elected benchler appointed for the purpose by Convocation may make an order under subsection 46 (1) of the Act suspending the member's rights and privileges.

**Payment plan: deemed date of failure to pay**

(2) Where the Society arranges or permits a schedule for the payment of an insurance premium levy by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay the levy will be deemed to have occurred on January 1.

**Reinstatement of rights and privileges**

(3) If a member's rights and privileges have been suspended under subsection 46 (1) of the Act for failure to pay an insurance premium levy required under this By-Law, the suspension remains in effect until the member pays to the Society the required insurance premium levy and a reinstatement fee in an amount determined by Convocation from time to time.

**Refund of unused portion of insurance premium levy**

6. Where a member, who has paid one or both of the base levy and the innocent party surcharge levy, subsequently, during the course of the year for which the levy or levies were payable, dies, retires, ceases to be eligible for coverage or is exempted by the Society from the requirement to pay one or both of the levies, the unused portion of the base levy and the innocent party surcharge levy shall be refunded on a pro rata basis, subject to a two month minimum.

**Society's insurance fund**

7. (1) The insurance premium levies paid by members shall be used for the Society's insurance fund, or to pay the required insurance premiums, reserves, group deductibles, adjusting costs, counsel and legal fees, administration costs and other expenses reasonably incurred in connection with the Society's insurance plan.

Society's Insurance fund not used up at year-end

(2) If at the end of any year the insurance fund is not entirely used up, the surplus remaining shall be carried forward into the next year.

Eligibility for coverage

8. (1) Every member of the Society other than an honorary member or a student member is eligible for coverage under the Society's insurance plan provided that his or her rights and privileges as a member are not suspended.

Application for coverage

(2) A member who is eligible for coverage under the Society's insurance plan but who is not required under this By-Law to pay insurance premium levies may apply to the Society for coverage and, if granted coverage, shall pay the required levies in accordance with this By-Law.

Exemption from payment of insurance premium levies

9. (1) The following are eligible to apply for exemption from payment of insurance premium levies:

1. Any member who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario.
2. Any member who, during the course of the year for which a levy is payable,
  - i. will be resident in a Canadian jurisdiction other than Ontario,
  - ii. will engage in the practice of law in Ontario on an occasional basis only, and
  - iii. demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be at least equivalent to that required under the Society's insurance plan.
3. Any member who, during the course of the year for which a levy is payable,
  - i. will be employed by a single employer,
  - ii. will provide legal service only for and on behalf of the employer as,
    - A. counsel or solicitor to the Government of Canada or the Government of Ontario,
    - B. a Crown Attorney,
    - C. counsel to a corporation other than a law corporation, or
    - D. a city solicitor, and
  - iii. will not engage in the practice of law in Ontario so as to provide legal services to persons other than the employer.
4. Any member employed as a law teacher who, during the course of the year for which a levy is payable, will not engage in the practice of law in Ontario so as to provide legal services other than teaching.

Interpretation: occasional practice of law

(2) For the purposes of paragraph 2 of subsection (1), in any year, a member engages in the practice of law on an occasional basis if, during that year, the member,

- (a) completes not more than ten real estate transactions;
- (b) performs not more than eighty hours of work, where such work is usually billed on an hourly basis; or
- (c) completes such number of real estate transactions or performs such number of hours of work as may be permitted by the Society.

Interpretation: "employer"

(3) In paragraph 3 of subsection (1), "employer" includes a corporation, any affiliated, controlled and subsidiary company of the corporation and any other entity employing the member.

Interpretation: "affiliated", "controlled" and "subsidiary"

(4) In subsection (3), "affiliated", "controlled" and "subsidiary" have the same meanings given them in the *Securities Act*.

Exemption from payment of insurance premium levies: honorary members

10. Honorary members are exempt from payment of insurance premium levies.

Commencement

11. This By-Law comes into force on February 1, 1999.

## THE LAW SOCIETY OF UPPER CANADA

### BY-LAW 17

#### FILING REQUIREMENTS

#### EXPLANATORY NOTE

The By-Law requires members to file specified reports with the Society. The reports are to be contained in forms.

The By-Law also permits the Secretary to require a member to file a public accountant's report addressing specific matters. In the event a member fails to file a public accountant's report as required, the By-Law permits the Secretary to require an investigation to be conducted of the member's financial records for the purposes of obtaining the information that would have been provided in the public accountant's report.

Under subsection 47 (1) of the *Law Society Act*, as it will read when the *Law Society Amendment Act, 1998* comes into force, the Society will have the authority to suspend (without a hearing) the rights and privileges of a member for failure to file a report required under the by-laws if, for a period prescribed by the by-laws, the member has been in default for failure to file the report. The By-Law prescribes the period for the purposes of subsection 47 (1) of the *Law Society Act*.

Under subsection 47 (2) of the *Law Society Act*, as it will read when the *Law Society Amendment Act, 1998* comes into force, a suspension for failure to file a report will continue until the report is filed in accordance with the by-laws. The By-Law specifies the report to be filed for a suspension for failure to file a report to be lifted.

The By-Law will replace provisions currently contained in Regulation 708.

6-AES

## BY-LAW 17

### FILING REQUIREMENTS

#### Notice of fiscal year

1. Every member who engages in the private practice of law in Ontario shall inform the Secretary in writing of the termination date of his or her fiscal year, and shall file with the Secretary written notice of any change in the fiscal year within one month after the change is made.

#### Requirement to submit report

2. (1) Every member shall submit a report to the Society, by January 31 of each year, in respect of the member's practice of law in Ontario during the preceding year.

#### Same

(2) In addition to the report required by subsection (1), members shall submit the following reports to the Society:

1. Every member who engages in the private practice of law in Ontario, except a member described in paragraph 2 or 3, shall submit a report to the Society within ninety days after the termination of his or her fiscal year, in respect of the member's private practice of law in Ontario during the fiscal year.
2. Every member, who in a year engages in the private practice of law in Ontario exclusively as an employee of a sole practitioner or law firm, shall submit a report to the Society in respect of the member's private practice of law in Ontario during the year and in respect of the member's employment with each sole practitioner or firm with which he or she was employed during the year.
3. Every member, who in a year engages in the practice of law in Ontario exclusively as an employee of a corporation which is not a member of the Society or as an employee of an unincorporated association which is not a law firm or a member of the Society, shall submit a report to the Society in respect of the member's practice of law in Ontario during the year and in respect of the member's employment with each corporation or unincorporated association with which he or she was employed during the year.
4. Every member, who in a year does not engage in the private practice of law in Ontario but who continues, from his or her private practice of law in Ontario in a previous year, to hold or handle the money or property of any person in any capacity, shall submit a report to the Society in respect of each person's property which he or she held or handled during the year.

#### Due dates

(3) The report required under paragraph 2, 3 or 4 of subsection (2) shall be submitted to the Society by March 31 of the year immediately following the year in respect of which the member is required to report.

**Membership Information Form**

- (4) The report required under subsection (1) shall be in Form 17A [Membership Information Form].

**Private Practitioner's Report**

- (5) The report required under subsection (2) shall be in Form 17B [Private Practitioner's Report].

**Failure to complete or file report under s. 2**

3. (1) If a member fails to submit a report required under section 2 completed to the satisfaction of the Secretary within four months after the day on which the report was due, an elected benchner appointed for the purpose by Convocation may make an order under subsection 47 (1) of the Act suspending the member's rights and privileges.

**Reinstatement of rights and privileges**

- (2) If a member's rights and privileges have been suspended under section 47 (1) of the Act for failure to submit a completed report required under section 2 of this By-Law, the suspension remains in effect until the member submits to the Society, in respect of each year or fiscal year in respect of which the member failed to submit a completed report, the reports required under section 2 completed to the satisfaction of the Secretary.

**Current versions of Forms 17A and 17B to be used**

- (3) The reports required to be submitted under subsection (2) shall be in Form 17A and Form 17B in force at the time that the member is submitting the reports under that subsection.

**Requirement to submit public accountant's report**

4. (1) The Secretary may, at any time and with or without cause, require any member who is required to submit a report under subsection 2 (2) to submit to the Society, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the member is required to submit a report to the Society under subsection 2 (2).

**Contents of report and time for filing**

- (2) The Secretary shall specify the matters to be included in the report and the time within which it must be submitted to the Society.

**Member's obligation to provide access to files, etc.**

- (3) For the purpose of permitting the public accountant to complete the report, the member shall,
- (a) grant to the public accountant full access, without restriction, to all files maintained by the member;
  - (b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and
  - (c) provide to the public accountant such explanations as the public accountant may require.

**Authority to confirm independently particulars of transactions**

- (4) For the purpose of permitting the public accountant to complete the report, the public accountant may confirm independently the particulars of any transaction recorded in the files.

**Cost**

- (5) The cost of preparing the report required under subsection (1), including the cost of retaining a public accountant, shall be paid for by the member.

**Public accountant's duty of confidentiality**

(6) When retaining a public accountant to complete a report required under this section, a member shall ensure that the public accountant is bound not to disclose any information that comes to his or her knowledge as a result of activities undertaken to complete the report, but the public accountant shall not be prohibited from disclosing information to the Society as required under this By-Law.

**Failure to submit public accountant's report: suspension**

5. (1) If a member fails to submit the report of a public accountant in accordance with section 4 within two months after the time specified by the Secretary, an elected benchler appointed for the purpose by Convocation may make an order under subsection 47 (1) of the Act suspending the member's rights and privileges.

**Reinstatement of rights and privileges**

(2) If a member's rights and privileges have been suspended under subsection 47 (1) of the Act for failure to submit the report of a public accountant in accordance with section 4 of this By-Law, the suspension remains in effect until the member submits the report to the Society.

**Failure to submit public accountant's report: investigation**

6. (1) If a member fails to submit the report of a public accountant in accordance with section 4, the Secretary may require an investigation of the member's financial records to be made by a person designated by him or her, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

**Investigation: application of subss. 4 (3) and (4)**

(2) Subsections 4 (3) and (4) apply with necessary modifications to the investigation under this section.

**Confidentiality**

(3) A person designated to investigate a member's financial records under this section shall not disclose any information that comes to his or her knowledge as a result of the investigation except as required in connection with the administration of the Act or the by-laws.

**Cost**

(3) The cost of the investigation under this section shall be paid for by the member.

**Commencement**

7. This By-Law comes into force on February 1, 1999.

**THE LAW SOCIETY OF UPPER CANADA**

**BY-LAW 18**

**RECORD KEEPING REQUIREMENTS**

**EXPLANATORY NOTE**

The By-Law sets out the financial records that a member is required to maintain when he or she receives, distributes, holds, handles, *etc.* money or other property on behalf of a client. The By-Law also sets out the records that a member is required to maintain when he or she acts for a lender.

The By-Law will replace provisions currently contained in Regulation 708.

5-AES

## BY-LAW 18

### RECORD KEEPING REQUIREMENTS

#### GENERAL

##### Interpretation

1. (1) In this By-Law,

“client” includes a person or group of persons from whom or on whose behalf a member receives money or other property;

“firm of members” means a partnership of members and all members employed by the partnership;

“lender” means a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or corporation;

“member” includes a firm of members;

“money” includes current coin, government or bank notes, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.

“Arm’s length” and “related”

(2) For the purposes of this By-Law, “arm’s length” and “related” have the same meanings given them in the *Income Tax Act* (Canada).

“Charge”

(3) For the purposes of this By-Law, “charge” has the same meaning given it in the *Land Registration Reform Act*.

##### Requirement to maintain financial records

2. Every member shall maintain financial records to record all money and other property received and disbursed in connection with the member’s practice, and, as a minimum requirement, every member shall maintain, in accordance with sections 4, 5 and 6, the following records:

1. A book of original entry identifying each date on which money is received in trust for a client, the person from whom money is received, the amount of money received and the client for whom money is received in trust.
2. A book of original entry showing all disbursements out of money held in trust for a client and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the person to whom money is disbursed, the amount of money which is disbursed and the client on whose behalf money is disbursed.
3. A clients’ trust ledger showing separately for each client for whom money is received in trust all money received and disbursed and any unexpended balance.



4. A record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.
5. A book of original entry showing all money received, other than money received in trust for a client, and identifying each date on which money is received, the person from whom money is received and the amount of money received.
6. A book of original entry showing all disbursements of money, other than money held in trust for a client, and identifying each date on which money is disbursed, the method by which money is disbursed, including the number or a similar identifier of any document used to disburse money, the amount of money which is disbursed and the person to whom money is disbursed.
7. A fees book or a chronological file of copies of billings, showing all fees charged and other billings made to clients and the dates on which fees are charged and other billings are made to clients and identifying the clients charged and billed.
8. A record showing a comparison made monthly of the total of balances held in the trust account or accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparisons:
  - i. A detailed listing made monthly showing the amount of money held in trust for each client and identifying each client for whom money is held in trust.
  - ii. A detailed reconciliation made monthly of each trust bank account.
9. A record showing all property, other than money, held in trust for clients, and describing each property and identifying the date on which the member took possession of each property, the person who had possession of each property immediately before the member took possession of the property, the value of each property, the client for whom each property is held in trust, the date on which possession of each property is given away and the person to whom possession of each property is given.
10. Bank statements or pass books, cashed cheques and detailed duplicate deposit slips for all trust and general accounts.
11. Signed electronic trust transfer requisitions and signed printed confirmations of electronic transfers of trust funds.

Record keeping requirements if mortgages and other charges held in trust for clients

3. Every member who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain financial records in addition to those required under section 2 and, as a minimum additional requirement, shall maintain, in accordance with sections 4, 5 and 6, the following records:

1. A mortgage asset ledger showing separately for each mortgage or charge,
  - i. all funds received and disbursed on account of the mortgage or charge,
  - ii. the balance of the principal amount outstanding for each mortgage or charge,
  - iii. an abbreviated legal description or the municipal address of the real property, and

- iv. the particulars of registration of the mortgage or charge.
- 2. A mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,
  - i. all funds received and disbursed on account of each mortgage or charge held in trust for the person,
  - ii. the balance of the principal amount invested in each mortgage or charge,
  - iii. an abbreviated legal description or the municipal address for each mortgaged or charged real property, and
  - iv. the particulars of registration of each mortgage or charge.
- 3. A record showing a comparison made monthly of the total of the principal balances outstanding on the mortgages or charges held in trust and the total of all principal balances held on behalf of the investors as they appear from the financial records together with the reasons for any differences between the totals, and the following records to support the monthly comparison:
  - i. A detailed listing made monthly identifying each mortgage or charge and showing for each the balance of the principal amount outstanding.
  - ii. A detailed listing made monthly identifying each investor and showing the balance of the principal invested in each mortgage or charge.

Financial records to be permanent

- 4. (1) The financial records required to be maintained under sections 2 and 3 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

Paper copies of financial records

- (2) If a financial record is entered and posted by mechanical or electronic means, a member shall ensure that a paper copy of the record may be produced promptly on the Society's request.

Financial records to be current

- 5. (1) Subject to subsection (2), the financial records required to be maintained under sections 2 and 3 shall be entered and posted so as to be current at all times.

Exceptions

- (2) The record required under paragraph 8 of section 2 and the record required under paragraph 3 of section 3 shall be created within fifteen days after the last day of the month in respect of which the record is being created.

Preservation of financial records required under s. 2

- 6. (1) Subject to subsection (2), a member shall keep the financial records required to be maintained under section 2 for at least the six year period immediately preceding the member's most recent fiscal year end.

Same

- (2) A member shall keep the financial records required to be maintained under paragraphs 1, 2, 3, 8, 9, 10 and 11 of section 2 for at least the ten year period immediately preceding the member's most recent fiscal year end.

Preservation of financial records required under s. 3

(3) A member shall keep the financial records required to be maintained under section 3 for at least the ten year period immediately preceding the member's most recent fiscal year end.

Record keeping requirements when acting for lender

7. (1) Every member who acts for or receives money from a lender shall, in addition to maintaining the financial records required under sections 2 and 3, maintain a file for each charge, containing,

- (a) a completed investment authority, signed by each lender before the first advance of money to or on behalf of the borrower;
- (b) a copy of a completed report on the investment;
- (c) if the charge is not held in the name of all the lenders, an original declaration of trust;
- (d) a copy of the registered charge; and
- (e) any supporting documents supplied by the lender.

Exceptions

- (2) Clauses (1) (a) and (b) do not apply with respect to a lender if,
  - (a) the lender,
    - (i) is a bank listed in Schedule I or II to the *Bank Act* (Canada), a licensed insurer, a registered loan or trust corporation, a subsidiary of any of them, a pension fund, or any other entity that lends money in the ordinary course of its business,
    - (ii) has entered a loan agreement with the borrower and has signed a written commitment setting out the terms of the prospective charge, and
    - (iii) has given the member a copy of the written commitment before the advance of money to or on behalf of the borrower;
  - (b) the lender and borrower are not at arm's length;
  - (c) the borrower is an employee of the lender or of a corporate entity related to the lender;
  - (d) the lender has executed Form 1 of Regulation 798 of the Revised Regulations of Ontario, 1990, made under the *Mortgage Brokers Act*, and has given the member written instructions, relating to the particular transaction, to accept the executed form as proof of the loan agreement;
  - (e) the total amount advanced by the lender does not exceed \$6,000; or
  - (f) the lender is selling real property to the borrower and the charge represents part of the purchase price.

Requirement to provide documents to lender

(3) Forthwith after the first advance of money to or on behalf of the borrower, the member shall deliver to each lender,

- (a) if clause (1) (b) applies, an original of the report referred to therein; and
- (b) if clause (1) (c) applies, a copy of the declaration of trust.

**Requirement to add to file maintained under subs. (1)**

(4) Each time the member or any member of the same firm of members does an act described in subsection (5), the member shall add to the file maintained for the charge the investment authority referred to in clause (1) (a), completed anew and signed by each lender before the act is done, and a copy of the report on the investment referred to in clause (1) (b), also completed anew.

**Application of subs. (4)**

(5) Subsection (4) applies in respect of the following acts:

1. Making a change in the priority of the charge that results in a reduction of the amount of security available to it.
2. Making a change to another charge of higher priority that results in a reduction of the amount of security available to the lender's charge.
3. Releasing collateral or other security held for the loan.
4. Releasing a person who is liable under a covenant with respect to an obligation in connection with the loan.

**New requirement to provide documents to lender**

(6) Forthwith after completing anew the report on the investment under subsection (4), the member shall deliver an original of it to each lender.

**Requirement to add to file maintained under subs. (1): substitution**

(7) Each time the member or any other member of the same firm of members substitutes for the charge another security or a financial instrument that is an acknowledgment of indebtedness, the member shall add to the file maintained for the charge the lender's written consent to the substitution, obtained before the substitution is made.

**Exceptions**

(8) The member need not comply with subsection (4) or (7) with respect to a lender if clause (2) (a), (b), (c), (e) or (f) applied to the lender in the original loan transaction.

**Investment authority: Form 18A**

(9) The investment authority required under clause (1) (a) shall be in Form 18A.

**Report on investment: Form 18B**

(10) Subject to subsection (11), the report on the investment required under clause (1) (b) shall be in Form 18B.

**Report on investment: alternative to Form 18B**

(11) The report on the investment required under clause (1) (b) may be contained in a reporting letter addressed to the lender or lenders which answers every question on Form 18B.

Commencement

8. This By-Law comes into force on February 1, 1999.

Form 18A

Investment Authority

*(Note to lawyer: This form is required in a private mortgage transaction whether or not the mortgage was arranged by you. Please have your client complete every point on this form, with "n/a" being noted if the point is not applicable. This form may be entered on a word processor. For the definition of mortgage broker and other terms found in the clause of the Lawyers' Professional Indemnity Company Policy found at the bottom of this form, please refer to the policy.)*

To: *(Specify name of lawyer or law firm.)*

I (or we) instruct you to act on my (or our) behalf, on my (or our) mortgage investment (or investments) of *(specify amount)*, the details, conditions and disclosures of which are set out below.

A. Details about the investment:

1. Name and address of borrower (or borrowers): *(specify)*
2. Name and address of guarantor (or guarantors) (if any): *(specify)*
3. Legal description and municipal address of real property: *(specify)*
4. Type of property: *(specify, e.g., residence, vacant land, etc.)*
5. (a) Principal amount of mortgage or charge: *(specify)*
5. (b) Amount of loan to be advanced by me (or us): *(specify)*
6. Rank of mortgage or charge is first (or specify other rank).
7. My (or our) investment of *(specify amount)* represents *(specify percentage)* of the total loan to the borrower (or borrowers).
8. (a) I am (or we are) satisfied that the approximate value of the property is *(specify amount)*.
8. (b) I (or we) used the following means to determine the approximate value of the property: *(specify)*.
8. (c) Including my (or our) mortgage amount, the percentage of the value of the property that is mortgaged (or encumbered) is *(specify percentage)*.
9. (a) The term of loan is *(specify term of loan in months, years, etc.)*.
9. (b) The due date of loan is *(specify date)*.
9. (c) The loan is amortized over *(specify number of years)*.

10. The interest rate is *(specify interest rate)* calculated semi annually, not in advance *(or specify how interest rate is calculated)*.
11. Particulars of amounts and due dates *(monthly, quarterly, etc.)* of payments of principal and interest: *(specify)*
12. Particulars and amounts of any bonus or holdback or any other special terms: *(specify)*
13. (a) The mortgage is to be registered in the name *(or names)* of *(specify name or names)*.
13. (b) After completion of the mortgage transaction, a collection or administration fee of *(specify amount)* per instalment is payable by the investor *(or investors)* *(or borrower)* *(or borrowers)* to *(specify recipient of fee)*.
13. (c) If the mortgage is held in trust, the dates on which payments are to be made by the trustee *(if applicable)* to me *(or us)* are: *(specify dates)*
14. Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the names of recipients and amounts paid, are: *(specify)*

B. Conditions:

1. *(Instructions: Clauses (a) and (b) below refer to information which each investor may require from the lawyer. If you require the information referred to in a clause, initial the clause.)*

The information which I *(or we)* require from you as my *(or our)* lawyer before you complete the transaction and make the advance is as follows:

- (a) If my *(or our)* investment will be in a position other than a first mortgage or charge, details, including amounts, of all existing encumbrances outstanding.
  - (b) If the mortgage or charge is a syndicated mortgage, and a prospectus is necessary, a copy of the prospectus. We acknowledge and accept that you as my *(or our)* lawyer express no opinion as to the necessity for or validity of a prospectus.
2. *(Instructions: Each investor to complete and initial clause (a) and, if clause (a) is answered in the affirmative, to complete (if necessary) and initial clause (b) and to initial clause (c).)*
    - (a) I *(or we)* instruct you to obtain a current and independent appraisal of the subject property and provide it to me *(or us)* before you complete this mortgage transaction. *(Specify yes or no.)*
    - (b) The appraisal is to be paid by me *(or us)* or *(specify name of person who is to pay for appraisal)*.
    - (c) I *(or we)* have been advised and accept that you as my *(or our)* lawyer do not express an opinion as to the validity of the appraisal.

C. Disclosure:

1. I (or we) acknowledge being advised by you as my (or our) lawyer that you do not have any direct or indirect interest in the borrower (or borrowers). (Specify yes or no and indicate the date on which the lawyer advised you that he or she has no direct or indirect interest in the borrower or borrowers.)

*(If the lawyer has an interest in the borrower or borrowers, he or she is unable to act for you on this loan (Rule 7, Rules of Professional Conduct).)*

*(Warning:*

1. *You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with the investor or investors at all times. The lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's or investors' instructions. The lawyer is not permitted to personally guarantee the obligations of the borrower or borrowers nor the suitability of the property as security for the mortgage investment.*
2. *Any loss you may suffer on this mortgage investment will not be insured under the lawyer's professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it. \*)*

I (or we) hereby acknowledge receipt of a copy of this form prior to the advance of funds to or on behalf of the borrower (or borrowers). I (or we) further acknowledge having read and understood the above warnings.

Investor (or Investors):

*(Specify full name of the investor (or full names of the investors) and specify the investor's (or each investor's) address.)*

*(Signature of the investor (or of each investor))*

*(Date of signature)*

*\*(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply "to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above.")*

---

Form 18B

Report On The Investment

*(Note to lawyer: In all private mortgage transactions, whether or not the mortgage was arranged by you, you must complete this form, or, alternatively, you must complete a reporting letter which includes responses to all numbered items in this form. If you complete this form, you must complete every numbered item on this form, with "n/a" being entered if the numbered item is not applicable. If you complete a reporting letter, you must respond to all numbered*

28th January, 1999

*items in this form in your reporting letter. If a numbered item is not applicable, you must include it in your reporting letter and indicate that it is not applicable. After completion, an original of this form, or the reporting letter, must be delivered forthwith to each lender. This form may be entered on a word processor. For the definition of mortgage broker and other terms found in the clause of the Lawyers' Professional Indemnity Company Policy found at the bottom of this form, please refer to the policy.)*

To: *(Specify name and address of investor.)*

A. Details about the investment:

1. Name and address of borrower (or borrowers): *(specify)*
2. Name and address of guarantor (or guarantors) (if any): *(specify)*
3. Legal description and municipal address of real property: *(specify)*
4. Type of property: *(specify, e.g., residence, vacant land, etc.)*
5. (a) Principal amount of mortgage or charge: *(specify)*
5. (b) Amount of loan advanced by you: *(specify)*
6. Rank of mortgage or charge is first (or specify other rank).
7. Your investment of *(specify amount)* represents *(specify percentage)* of the total of this loan to the borrower (or borrowers).
8. Date principal advanced: *(specify)*
9. (a) The term of loan is *(specify term of loan in months, years, etc.)*.
9. (b) The due date of the loan is *(specify date)*.
9. (c) The loan is amortized over *(specify number of years)*.
10. The interest rate is *(specify interest rate)* calculated semi annually, not in advance (or specify how interest rate is calculated).
11. Particulars of amounts and due dates *(monthly, quarterly, etc.)* of payments of principal and interest: *(specify)*
12. Particulars and amounts of any bonus or holdback or any other special terms: *(specify)*
13. Details of any existing encumbrances, including rank on title, balances outstanding, mortgagee name and maturity dates: *(specify)*
14. In those instances in which the mortgage or charge is a collateral security, or if the mortgage or charge is collaterally secured, the details of other security are: *(specify)*
15. (a) Particulars of disbursements made for legal, brokerage or other fees or commissions in connection with the placement of the loan, including the names of recipients and amounts paid, are: *(specify)*



28th January, 1999

15. (b) Alternatively, I have advised I cannot confirm what independent commissions or fees are being charged to the borrower.

16. Registration number, date of registration and land registry office location: *(specify)*

17. Insurance particulars *(where relevant)*: *(specify)*

**B. Conditions And Disclosure:**

In accordance with your Form 18A [Investment Authority] request for information and disclosures prior to the advance of your money, I advise that I have previously provided you with the requested information and disclosures as follows:

1. Particulars of existing encumbrances outstanding: *(Specify yes or no, and if yes, specify date on which particulars were provided.)*

2. In the case of a syndicated mortgage where a prospectus was required, a copy of the prospectus: *(Specify yes or no, and if yes, specify date on which prospectus was provided.)*

I advised and you acknowledged that I gave no opinion as to the necessity or validity of a prospectus.

3. Independent appraisal: *(Specify yes or no, and if yes, specify date on which independent appraisal was provided.)*

I advised and you acknowledged that I gave no opinion as to the necessity or validity of an appraisal.

4. Any loss you may suffer on this mortgage investment will not be insured under the lawyers' professional liability policy if the lawyer has acted as a mortgage broker or has helped to arrange it.\*

I advised and you acknowledged having read and understood this warning.

*(Warning: You are cautioned that the responsibility for assessing the financial merits of the mortgage investment rests with the investor at all times. The lawyer's responsibility is limited to ensuring the mortgage is legally registered on title in accordance with the investor's instructions. The lawyer is not permitted to personally guarantee the obligations of the borrower or borrowers nor the suitability of the property as security for the mortgage investment.*

*(Name of lawyer or law firm)*

*(Address of lawyer or law firm)*

*(Signature of lawyer)*

*(Date of signature)*

*\*(Pursuant to clause (g) of Part III of the Professional Liability Insurance Policy for Lawyers, the policy does not apply "to any CLAIM directly or indirectly arising as a result of the INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM arising from circumstances where the INSURED has provided PROFESSIONAL SERVICES in conjunction with the above".)*

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 19

HANDLING OF MONEY AND OTHER PROPERTY

EXPLANATORY NOTE

The By-Law deals with the handling of money and other property by members.

The By-Law will replace provisions currently contained in Regulation 708.

5-AES

BY-LAW 19

HANDLING OF MONEY AND OTHER PROPERTY

Interpretation

1. (1) In this By-Law,

"client" means a person or group of persons from whom or on whose behalf a member receives money or other property;

"firm of members" means a partnership of members and all members employed by the partnership;

"member" includes a firm of members;

"money" includes current coin, government or bank notes, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.

(2) For the purposes of subsections 4 (1), (2) and (3) and section 8, cash, cheques negotiable by the member, cheques drawn by the member on the member's trust account and credit card sales slips in the possession and control of the member shall be deemed from the time the member receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day.

Money received in trust for client

2. (1) Subject to section 3, every member who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation, to be kept in the name of the member, or in the name of the firm of members of which the member is a partner or by which the member is employed, and designated as a trust account.

**Interpretation**

(2) For the purposes of subsection (1), a member receives money in trust for a client if the member receives from a person,

- (a) money that belongs in whole or in part to a client;
- (b) money that is to be held on behalf of a client;
- (c) money that is to be held on a client's direction or order;
- (d) money that is advanced to the member on account of fees for services not yet rendered; or
- (e) money that is advanced to the member on account of disbursements not yet made.

**Money to be paid into trust account**

(3) In addition to the money required under subsection (1) to be paid into a trust account, a member shall pay the following money into a trust account:

- 1. Money that may by inadvertence have been drawn from a trust account in contravention of section 4.
- 2. Money paid to a member that belongs in part to a client and in part to the member where it is not practical to split the payment of the money.

**Withdrawal of money from trust account**

(4) A member who pays into a trust account money described in paragraph 2 of subsection (3) shall as soon as practical withdraw from the trust account the amount of the money that belongs to him or her.

**One or more trust accounts**

(4) A member may keep one or more trust accounts.

**Money not to be paid into trust account**

3. (1) A member is not required to pay into a trust account money which he or she receives in trust for a client if,

- (a) the client requests the member in writing not to pay the money into a trust account;
- (b) the member pays the money into an account to be kept in the name of the client, a person named by the client or an agent of the client; or
- (c) the member pays the money immediately upon receiving it to the client or to a person on behalf of the client in accordance with ordinary business practices.

**Same**

(2) A member shall not pay into a trust account the following money:

- 1. Money that belongs entirely to the member or to another member of the firm of members of which the member is a partner or by which the member is employed, including an amount received as a general retainer for which the member is not required either to account or to provide services;

2. Money that is received by the member as payment of fees for services for which a billing has been delivered, as payment of fees for services already performed for which a billing will be delivered immediately after the money is received or as reimbursement for disbursements made or expenses incurred by the member on behalf of a client.

**Record keeping requirements**

- (3) A member who, in accordance with subsection (1), does not pay into a trust account money which he or she receives in trust for a client shall include all handling of such money in the records required under By-Law 00 to be maintained in connection with the member's practice.

**Withdrawal of money from trust account**

4. (1) A member may withdraw from a trust account only the following money:
  1. Money properly required for payment to a client or to a person on behalf of a client
  2. Money required to reimburse the member for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client;
  3. Money properly required for or toward payment of fees for services performed by the member for which a billing has been delivered.
  4. Money that is directly transferred into another trust account and held on behalf of a client.
  5. Money that under this By-Law should not have been paid into a trust account but was through inadvertence paid into a trust account.

**Permission to withdraw other money**

- (2) A member may withdraw from a trust account money other than the money mentioned in subsection (1) if he or she has been authorized to do so by the Secretary.

**Limit on amount withdrawn from trust account**

- (3) A member shall not at any time with respect to a client withdraw from a trust account under this section, more money than is held on behalf of that client in that trust account at that time.

**Manner in which certain money may be withdrawn from trust account**

5. A member shall withdraw money from a trust account under paragraph 2 or 3 of subsection 4 (1) only,
  - (a) by a cheque drawn in favour of the member;
  - (b) by a transfer to a bank account that is kept in the name of the member and is not a trust account; or
  - (c) by electronic transfer.

**Withdrawal by cheque**

6. A cheque drawn on a trust account shall not be,
  - (a) made payable either to cash or to bearer; or

- (b) signed by a person who is not a member except in exceptional circumstances and except when the person has signing authority on the trust account on which a cheque will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all the trust accounts on which signing authority has been delegated to the person.

Withdrawal by electronic transfer

- 7. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.

When money may be withdrawn

- (2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the member must be one that does not permit an electronic transfer of funds unless,
  - i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and
  - ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.
2. The electronic transfer system used by the member must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.
3. The confirmation required by paragraph 2 must contain,
  - i. the number of the trust account from which money is drawn,
  - ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,
  - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
  - iv. the number of the account to which money is transferred,
  - v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and
  - vi. the time and date that the confirmation from the financial institution is sent to the member.
4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic trust transfer system, an electronic trust transfer requisition must be signed by,

- i. a member, or
  - ii. in exceptional circumstances, a person who is not a member if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

Application of para. 1 of subs. (2) to sole practitioner

(3) Paragraph 1 of subsection (2) does not apply to a member who practises law without another member as a partner and without another member or person as an employee, if the member himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

Same

(4) In exceptional circumstances, the data referred to in subsection (3) may be entered by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

Additional requirements relating to confirmation

(5) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (2) is sent to a member, the member shall,

- (a) produce a printed copy of the confirmation;
- (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(6) In exceptional circumstances, the tasks required by subsection (5) may be performed by a person other than the member, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the member in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 19A.

Requirement to maintain sufficient balance in trust account

8. Despite any other provision in this By-Law, a member shall at all times maintain sufficient balances on deposit in his or her trust accounts to meet all his or her obligations with respect to money held in trust for clients.

28th January, 1999

**Commencement**

9. This By-Law comes into force on February 1, 1999.

**Form 19A**

**Electronic Trust Transfer Requisition**

**Requisition (number)**

Amount of funds to be transferred: *(Specify amount.)*

Re:

*(Specify name of client.)*

*(Specify file reference number.)*

Reason for payment: *(Give reason for payment.)*

Trust account to be debited:

Name of financial institution: *(Specify name.)*

Account number: *(Specify number.)*

Name of recipient: *(Specify name.)*

Account to be credited:

Name of financial institution: *(Specify name.)*

Branch name and address: *(Specify name and address.)*

Account number: *(Specify number.)*

Person requisitioning electronic trust transfer: *(Print the person's name.)*

*(Date)*

*(Signature of person requisitioning electronic trust transfer)*

**Additional transaction particulars:**

*(This section should be completed by the person entering the details of the transfer, after he or she has entered the details of the transfer, and by the person authorizing the transfer at the computer terminal, after he or she has authorized the transfer.)*

Person entering details of transfer:

Name: *(Print person's name.)*

*(Signature of person entering details of transfer.)*

Person authorizing transfer at computer terminal:

Name: *(Print person's name.)*

*(Signature of person authorizing transfer at computer terminal.)*

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 20

REVIEW OF COMPLAINTS

EXPLANATORY NOTE

The By-Law continues the current process for the review of complaints. Under the process, each lay benchers is a Complaints Review Commissioner whose function is to review the Society's disposition of complaints against members. The disposition by specified persons and bodies of a complaint against a member (*e.g.*, the Proceedings Authorization Committee, the Hearing Panel, the Appeal Panel) is not subject to review by a Complaints Review Commissioner.

The By-Law will replace existing rules made under the *Law Society Act*.

2-AES

BY-LAW 20

REVIEW OF COMPLAINTS

Complaints Review Commissioners

1. Each lay benchers is a Complaints Review Commissioner.

Function

2. (1) Subject to subsection (2), the function of a Complaints Review Commissioner is to review the Society's disposition of a complaint against a member.

Same

- (2) A Complaints Review Commissioner shall not review the disposition of a complaint against a member by,
  - (a) the chair and vice-chairs of the Discipline Committee as it was constituted before February 1, 1999;
  - (b) a committee of benchers acting under section 33 of the Act as that section read before February 1, 1999;
  - (c) Convocation acting under section 33 of the Act as that section read before February 1, 1999;
  - (d) the Proceedings Authorization Committee;
  - (e) the Hearing Panel; or
  - (f) the Appeal Panel.



**Request to review disposition of complaint**

3. (1) A complainant who is dissatisfied with the Society's disposition of his or her complaint against a member may request the Secretary to refer the Society's disposition of the complaint to a Complaints Review Commissioner for review.

**Referral of disposition of complaint to Commissioner**

(2) If a request is made under subsection (1), unless a complaint was disposed of by the persons or body mentioned in subsection 2 (2), the Secretary shall refer the Society's disposition of a complaint to a Complaints Review Commissioner for review.

**Review by Commissioner of disposition of complaint**

4. (1) A Complaints Review Commissioner shall review every disposition of a complaint referred to him or her under subsection 3 (2) and shall decide whether the Society's disposition of a complaint was appropriate.

**Referral to Secretary for further investigation**

(2) A Complaints Review Commissioner may, before or after deciding whether the Society's disposition of a complaint was appropriate, refer a complaint to the Secretary and direct the Secretary to investigate the complaint further.

**Procedure on review**

5. The procedure applicable to a review by a Complaints Review Commissioner of the Society's disposition of a complaint shall be determined by the Complaints Review Commissioner and, without limiting the generality of the foregoing, the Complaints Review Commissioner may decide who may make submissions to him or her, when and in what manner.

**Independent counsel**

6. The Complaints Review Commissioners may retain independent counsel on such terms and conditions as they consider appropriate to provide them with advice on the performance of their duties and the exercise of their duties under this By-Law.

**Two or more Commissioners may review disposition of complaint**

7. Despite any provision in this By-Law, two or more Complaints Review Commissioners may sit together to review the Society's disposition of a complaint and sections 2, 4 and 5 apply, with necessary modifications, to the review of the Society's disposition of a complaint by two or more Commissioners.

**Commencement**

8. This By-Law comes into force on February 1, 1999. Although not expressly stated in the By-Law, the complaints review process set out therein will be available only until the office of Complaints Resolution Commissioner is operational.

THE LAW SOCIETY OF UPPER CANADA  
BY-LAW 21  
PROCEEDINGS AUTHORIZATION COMMITTEE

(To be provided under separate cover)

THE LAW SOCIETY OF UPPER CANADA  
BY-LAW 22  
APPEARANCE AS COUNSEL IN SPECIFIC PROCEEDING  
EXPLANATORY NOTE

The By-Law authorizes a person who is not a member, but who meets specified requirements and who is granted permission by the Society to do so, to appear as counsel in a specific proceeding in an Ontario court.

An application for permission to appear as counsel in a specific proceeding in an Ontario court is first considered by the Secretary. If the Secretary is satisfied that specified requirements are met, the Secretary notifies the applicant in writing that he or she may appear as counsel in a specific proceeding in an Ontario court. An applicant who is refused permission by the Secretary to appear as counsel in a specific proceeding in an Ontario court may request to have the Admissions and Equity Committee reconsider the application. The decision of the Admissions and Equity Committee is not subject to the approval of Convocation.

The By-Law will replace provisions currently contained in Regulation 708.

2-AES

BY-LAW 22  
APPEARANCE AS COUNSEL IN SPECIFIC PROCEEDING

Persons authorized to appear as counsel in specific proceeding

1. Subject to the approval of the court, a person who is not a member may appear as counsel in a specific proceeding in an Ontario court if the person meets the following conditions:

1. The person is a Canadian citizen or a permanent resident of Canada.
2. The person is of good character.

3. The person is qualified to practise law in any province or territory of Canada outside Ontario.

Application to Society

2. (1) A person who is not a member who wishes to appear as counsel in a specific proceeding in an Ontario court shall apply in writing to the Society for permission to appear as counsel in the proceeding.

Application fee

- (2) Every application made under subsection (1) shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Application to be considered by Secretary

- (3) Every application made under subsection (1), in respect of which the application fee required under subsection (2) has been paid, shall be considered by the Secretary, and,

- (a) if the Secretary is satisfied that the conditions set out in section 1 are met, the Secretary shall notify the applicant in writing that he or she is permitted to appear as counsel in the specific proceeding; or
- (b) if the Secretary is satisfied that the conditions set out in section 1 are not met, the Secretary shall notify the applicant in writing that he or she is not permitted to appear as counsel in the specific proceeding.

Review of Secretary's decision

- (4) An applicant who is refused permission to appear as counsel in a specific proceeding in an Ontario court by the Secretary under subsection (2) may request the Secretary to refer his or her application to the Admissions and Equity Committee for reconsideration.

Same

- (5) The Secretary shall refer to the Admissions and Equity Committee an application for permission to appear as counsel in a specific proceeding in an Ontario court if the applicant has requested the Secretary to do so under subsection (4).

Consideration of application by Admissions and Equity Committee.

- (6) The Admissions and Equity Committee shall consider every application referred to it under subsection (5), and,

- (a) if the Committee is satisfied that the conditions set out in section 1 are met, the Committee shall direct the Secretary to notify the applicant in writing that he or she is permitted to appear as counsel in the specific proceeding; or
- (b) if the Committee is satisfied that the conditions set out in section 1 are not met, the Committee shall direct the Secretary to notify the applicant in writing that he or she is not permitted to appear as counsel in the specific proceeding.

Documents and explanations

- (7) For the purposes of assisting the Secretary or the Admissions and Equity Committee to consider an application for permission to appear as counsel in a specific proceeding in an Ontario court, the applicant shall provide to the Secretary or Committee such documents and explanations as the Secretary or Committee may require.

Exercise of powers by Admissions and Equity Committee

- (8) The performance of any duty, or the exercise of any power, given to the Admissions and Equity Committee under this By-Law is not subject to the approval of Convocation.

28th January, 1999

3. Despite section 1, clause 2 (3) (a) and clause 2 (6) (a), no person is permitted to appear as counsel in a specific proceeding in an Ontario court unless the person has

- (a) filed with the Society the consent, to accept service in respect of the proceeding, of an agent resident in Ontario who is a member, together with the agent's name and address in Ontario;
- (b) has paid to the Society a fee in an amount determined by Convocation from time to time.

Commencement

4. This By-Law comes into force on February 1, 1999.

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

- (1) Copies of Memoranda from Ms. Elliot Spears dated January 26 and 27, 1999 re: By-Laws made under subsections 62 (0.1) and (1) of the Law Society Act.

Ms. Cronk thanked all those involved for all their hard work including Elliot Spears, Janet Brooks, Jonathan Batty, Richard Tinsley and Jim Varro.

BY-LAW 1 - BY-LAWS

Green Book

An amendment was made and accepted to add the word "Regular" before "Convocation" in section 1.(2) on page 1 of By-Law 1.

BY-LAW 2 - GENERAL

Green Book

It was moved by Mr. Cole, seconded by Mr. Aaron that the word "same" be deleted from the By-Laws throughout.

Lost

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Laws 1 and 2 be adopted as amended.

Carried

BY-LAW 3 - CHIEF EXECUTIVE OFFICER

Green Book

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that section 2. be amended to include the words "shall report to the Treasurer and" after the word "Officer" and that section 3.(3) be amended by inserting the words "by the Treasurer or" after the word "her".

Withdrawn

It was moved by Ms. Cronk, seconded by Ms. Eberts that By-Law 3 be adopted.

Carried

28th January, 1999

BY-LAW 4 - OFFICE OF SECRETARY

Green Book

It was moved by Ms. Cronk, seconded by Mr. Aaron that By-Law 4 be adopted.

Carried

BY-LAW 5 - ELECTION OF BENCHERS

Memorandum dated January 26th, 1999

An amendment was made and accepted that in section 49.(1)(a) the word "regional" be inserted before the word "bencher" to reflect the decision of Convocation on January 22nd, 1999.

An amendment was accepted to add the words "or less" after the word "same" in section 15. on page 7 of the memorandum dated January 26th. The sentence would then read:

"If after the acceptance of all valid nominations, the number of candidates eligible to be elected as bencher from an electoral region is the same or less as the number of benchers to be elected from that electoral region,....."

By-Law 5 was voted on and adopted as amended.

BY-LAW 6 - ELECTION OF TREASURER

Green Book

It was moved by Ms. Curtis, seconded by Mr. Millar that section 3. on page 1 be amended by deleting the words "four days after the close of nominations" and inserting the words "within four days before the advanced poll".

Not Put

The following amendments were suggested:

that on page 2, section 9.(1) the word "second" be deleted and replaced with the word "third".

that on page 4, section 14.(1) be changed to reflect that another ballot would be taken if there was a tie vote.

By-Law 6 was sent back for further consideration to build flexibility for voting.

BY-LAW 7 - BENCHERS

Green Book

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 7 be adopted.

Carried

BY-LAW 8 - CONVOCATION

Green Book and Memorandum dated January 27th, 1999

It was moved by Ms. Curtis, seconded by Mr. Aaron that on page 1 section 1.(2) be deleted re: Court apparel.

Carried

The following changes were made and accepted:

- that on page 1 section 2.(2) the word "written" be added before the word "request". The sentence would then read:

"Upon the written request of five benchers, the Secretary shall convene a special meeting of Convocation..."

- that the word "elected" in section 7.(1)(2)(3) on page 2 be inserted before the word "bencher".

It was moved by Ms. Cronk, seconded by Mr. Orved that the words "and instantaneously" be deleted from section 3.(3) on page 1. The sentence would then read:

".....permit all persons participating in the meeting to communicate with each other simultaneously."

Carried

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 8 be adopted as amended.

Carried

BY-LAW 9 - COMMITTEES

Green Book and Memorandum of January 27th, 1999

It was moved by Mr. Armstrong, seconded by Mr. Millar and accepted that section 17.(6) on page 7 be amended by adding the words "The Legal Aid Committee shall continue after April 1st, 1999 and carry out such duties as set by Convocation".

An amendment was accepted that on page 4 of the Green Book, section 11.(d) the words "and expenditure" be added after the word "budget" which would then read: "to review budget and expenditure plans and projections,....."

It was moved by Mr. Carey, seconded by Ms. Cronk and accepted that section 6.(1) should read "The Treasurer may recommend to Convocation the removal from a standing committee....."

An amendment was made and accepted to change "Public Affairs Committee" to "Government and Public Affairs Committee" in section 2. on page 1.

It was moved by Ms. Eberts, seconded by Ms. Cronk and accepted that section 11.(d) should read: "to review the budget and expenditure plans and projections of the annual budget of the Law Society of Upper Canada and any unbudgeted expenditures arising in a year and to provide comments and advice to Convocation thereon and to recommend approval of such budget or expenditures or any extraordinary or special budget required for the purposes of the Society by Convocation."

It was moved by Mr. Krishna, seconded by Mr. Aaron and accepted that a section be added to By-Law 9 to read that: "matters in committee be held in camera unless otherwise authorized by the Chair".

By-Law 9 was voted on and adopted as amended.

Convocation took a recess at 11:30 a.m. and resumed at 11:50 a.m.

RESUMPTION OF THE MARCOVITCH DISCIPLINE MATTER

PRESENT:

The Treasurer, Armstrong, Carpenter-Gunn, Chabhar, Cole, Crowe, Eberts, Gottlieb, Krishna, MacKenzie, Murphy, Ortved, Puccini, Swaye and Wright.

The Secretary placed the matter before Convocation.

Messrs. Topp and Feinstein and Ms. Curtis and Ms. Cronk withdrew for this matter.

Ms. Braid appeared on behalf of the Society and the solicitor appeared on his own behalf.

There were submissions by Ms. Braid as to what material had been provided by the solicitor.

Convocation had before it the Report of the Discipline Committee dated 2nd September, 1998, together with an Affidavit of Service sworn 15th September, 1998 by Yvette Soulliere that she had effected service on the solicitor by registered mail on 11th September, 1998 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th November, 1998 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Robert C. Topp

In the matter of  
The Law Society Act  
and in the matter of

Catherine Braid  
For the Society

28th January, 1999

DAVID MARK MARCOVITCH  
of the City  
of Toronto  
a barrister and solicitor

Not Represented  
For the solicitor

Heard: July 7, 1998

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

---

REPORT

---

On July 12, 1997 Complaint D254/97 was issued; and on August 22, 1997 Complaint D316/97 was issued, against David Mark Marcovitch alleging that he was guilty of professional misconduct.

The matter was heard in public on July 7, 1998 before Robert C. Topp sitting as a single bencher. The Solicitor attended the hearing. He was unrepresented by counsel. Catherine Braid appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to have been established:

Complaint D254/97

2. a) He failed to file with the Society within six months of the termination of his fiscal year ended April 30, 1996, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Complaint D316/97

2. a) He failed to produce his books and records of his practice to a Law Society representative, despite numerous requests made commencing March 6, 1997, thereby contravening Section 18 of Regulation 708 made pursuant to the Law Society Act.

Evidence

Part of the evidence before the Committee consisted of the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D254/97 and Complaint D316/97 and is prepared to proceed with a hearing of these matters on July 7, 1998.



II. IN PUBLIC/IN CAMERA

2. The parties agree that these matters should be heard in public pursuant to Section 9 of the *Statutory Powers Procedure Act*.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D254/97 and Complaint D316/97. He admits the particulars contained within each of the Complaints. With respect to each Complaint, the Solicitor admits that the particulars, together with the facts as set out below, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 11, 1986. He practises as a sole practitioner.

A. Complaint D254/97: Failure to file Forms 2/3 within six months of the fiscal year ending April 30, 1996

5. The Solicitor's fiscal year end is April 30. The Solicitor did not file his Form 2 and Form 3 within six months of the fiscal year ending April 30, 1996, as required by section 16(2) of Regulation 708 under the *Law Society Act*.

6. By letter dated November 14, 1996, the Law Society advised the Solicitor he had not complied with the annual filing requirements of section 16 of Regulation 708 of the *Law Society Act*. The Solicitor was advised that the last filing received from him was for the period ended April 30, 1995. The Solicitor was requested to contact the Law Society should he believe his filing had already been made. (Tab 2, Document Book, Complaint D254/97).

7. The Solicitor responded to the Law Society by letter, dated November 15, 1996. The Solicitor advised the Law Society of his personal situation and requested a "few more weeks" to respond to the Law Society so that he could attend to his personal matters. (Tab 3, Document Book, Complaint D254/97).

8. By registered mail, dated December 13, 1996, the Law Society advised the Solicitor he had not taken the necessary steps to bring his filings up-to-date. The Solicitor was advised that failure to comply with section 16 of Regulation 708 of the *Law Society Act* may result in disciplinary action being taken against him. The Solicitor was requested to give this matter his immediate attention. The Law Society's December 13, 1996 letter was delivered and signed for on December 18, 1996. (Tab 4, Document Book, Complaint D254/97).

9. The Solicitor responded to the Law Society by letter, dated December 20, 1996. He confirmed receipt of the Law Society's Notice of Default. He also requested confirmation from the Law Society concerning whether or not he should be using the "new" or "old" forms. On December 27, 1996, a Law Society staff employee telephoned the Solicitor's office and left a message with the Solicitor's secretary, advising the Solicitor that the old forms could still be used. (Tab 5, Document Book, Complaint D254/97).

10. On February 17, 1997, a Law Society staff employee left a telephone voice mail message for the Solicitor to call the Law Society. On February 18, 1997, the Solicitor returned the telephone call, leaving a voice mail message for the Society's staff employee. The Solicitor left another voice mail message for the Society's staff employee on February 19, 1997 which was returned by the Society's staff employee on February 20, 1997. By letter, dated February 19, 1997, the Solicitor advised the Law Society that his personal situation was the cause of his delay in dealing with the outstanding matter with the Law Society. He requested an extension until the end of March, 1997 to allow him time to file all the necessary material that was still outstanding with the Society. (Tabs 6 and 7, Document Book, Complaint D254/97).

11. On February 25, 1997, a Law Society staff employee telephoned the Solicitor who advised that he could have the outstanding forms filed with the Society in approximately two weeks. The Solicitor was advised that, if he was able to forward his January 31, 1997 trust comparison to the Society that day, he would be granted the requested two week extension. When the Solicitor advised that could not provide the requested trust comparison until the following day, the Solicitor was advised that a further extension could not be granted. (Tab 8, Document Book, Complaint D254/97).

12. To date, the Solicitor has not provided the outstanding filings.

B. Complaint D316/97: Failure to produce books and records

13. On February 26 and 28, 1997, an audit of the Solicitor's books and records was authorized by the Law Society because (1) the Solicitor's last filing as at April 30, 1995 indicated that there was an approximate shortage in his trust account in the sum of \$41,764.11 and (2) the Solicitor had failed to make the required annual filing with the Society since April 30, 1995. (Tab 1, Document Book, Complaint D254/97)

14. On March 6, 1997, Anita McCann, an Examiner with the Law Society's Department of Audit and Investigation, attended at the Solicitor's office and advised the Solicitor that an audit had been authorized. The Solicitor stated that his books and records were at his home and that he was not able to assist with the audit at that time as he was in the middle of discoveries. The Solicitor further advised that his books and records were 3 months in arrears. Ms. McCann explained that co-signing procedures would be instigated if the Solicitor could not bring his books and records up to date. Arrangements were made for Ms. McCann to return the next day, March 7, 1997, to conduct the audit. The Solicitor was provided with a list of the books and records that would be required by the Society in order to conduct the audit. (Tabs 1 and 2, Document Brief, Complaint D316/97).

15. On March 7, 1997, Ms. McCann returned to the Solicitor's office. The Solicitor advised that his books and records were still at his home and that they were approximately 2 years in arrears. Co-signing controls against the Solicitor's operating trust account were discussed, agreed to by the Solicitor and instituted. The Solicitor indicated that he could update his books and records within 3 weeks. (Tabs 3 and 4, Document Brief, Complaint D316/97).

16. On March 13, 1997, Ms. McCann returned to the Solicitor's office and arranged for the Solicitor to open up a new operating trust account with Joel Hertz as a co-signer. (Tabs 5 and 6, Document Brief, Complaint D316/97).

17. In a letter, dated April 7, 1997, Ms. McCann asked the Solicitor to advise her when his books and records would be brought up to date. No response was received from the Solicitor. (Tab 7, Document Brief, Complaint D316/97).

18. On April 16, 1997, Ms. McCann telephoned the Solicitor. As the Solicitor was in a meeting with a client, Ms. McCann left a message with the receptionist to give to the Solicitor, requesting that he call her. No response was received from the Solicitor. (Tab 8, Document Brief, Complaint D316/97).

19. In a letter to the Solicitor, dated May 5, 1997, Ms. McCann advised that a response to her April 7, 1997 letter had not been received and requested that the Solicitor respond forthwith. No response was received from the Solicitor. (Tab 9, Document Brief, Complaint D316/97).

20. In a registered letter to the Solicitor, dated May 29, 1997, Ms. McCann advised that she had not received a response from the Solicitor to either of her two previous letters, dated April 7, 1997 and May 5, 1997. Ms. McCann requested contact from the Solicitor by June 9, 1997. The registered letter was received and signed for on May 30, 1997 (Tab 10, Document Brief, Complaint D316/97). In a letter to Ms. McCann, dated June 6, 1997, the Solicitor advised that he and his bookkeeper were working to rectify the outstanding matters. The Solicitor indicated that he expected to be completed "by month end". (Tab 11, Document Brief, Complaint D316/97).

21. On July 3, 1997, Ms. McCann telephoned the Solicitor at his office. She was advised by the receptionist that the Solicitor would call her right back. No response was received from the Solicitor. (Tab 12, Document Brief, Complaint D316/97).

22. To date, the Solicitor has not produced his books and records as requested by the Law Society

23. On December 10, 1997, the Solicitor signed an Acknowledgement and Undertaking (Appendix "A" to this Agreed Statement of Facts) in which he undertook to produce to the Law Society certain banking records from his trust accounts at the Bank of Montreal and National Trust, by December 15, 1997 and December 22, 1997 respectively, and to use his best efforts to produce certain banking records from his trust account at the Toronto-Dominion Bank, on or before January 9, 1998. The Solicitor only provided some of the requested documents from his trust account at the Bank of Montreal on December 15, 1997. Specifically, he produced bank statements, register reports and client trust balance sheets for each month from May 31, 1995 to March 29, 1996 inclusive. As such, he has not provided all of the required documents from the Bank of Montreal, as set out in the first condition in the Acknowledgement and Undertaking. Also, the Solicitor has not produced any of the documents he undertook to provide the Law Society with from National Trust or that he undertook to use his best efforts to produce from the Toronto Dominion Bank, as set out in the second and third condition in the Acknowledgement and Undertaking. The Solicitor has not provided the Law Society with an explanation for his breach of the Acknowledgement and Undertaking.

V. DISCIPLINE HISTORY

24. The Solicitor does not have a discipline history.

DATED at Toronto this 7th day of July, 1998."

---

RECOMMENDATION AS TO PENALTY

---

The recommendation of the Committee is as follows:

1. That the Solicitor be reprimanded in Convocation if he fully produces his books and records and makes his filings, to the satisfaction of the Society, at least twenty-one days prior to this matter being heard in Convocation; and, that he pay Law Society costs in the amount of \$2,500 on or before December 1, 1998;

2. That if the Solicitor fails to produce the books and records and make the filings to the satisfaction of the Society at least twenty-one days prior to this matter being heard in Convocation, his rights and privileges be suspended for a period of two months definite and indefinitely thereafter until such time as he satisfactorily produces his books and records and makes his filings; and, that he pay Law Society costs in the amount of \$2,500, to be paid prior to his being reinstated;

3. That the Solicitor enroll in the Practice Review Program.

---

REASONS FOR RECOMMENDATION

---

In regard to penalty in this matter, the circumstances that are set out in the Agreed Statement of Facts demonstrate what, at first blush, would appear to be a total abdication of the Solicitor's responsibilities and may, under different circumstances, indicate lack of governability.

However, in this circumstance, after hearing from the Solicitor and the myriad disasters which have struck him; from ill children to a separation, a divorce, family problems, death in his family, one can see the turmoil that was going on in his life at this period of time.

The Solicitor readily admits that he is in default and has expedited the hearing of this matter by an Agreed Statement of Facts.

The concern of the Society having regard to the outstanding trust records and what appear to be outstanding trust shortages, is serious in the extreme and must be rectified. The Solicitor has indicated that he will produce the records to the Law Society and make the filings prior to this matter being at Convocation, and he understands that the Law Society needs twenty-one days prior to this matter being in Convocation so that they can have a look at them and decide what position to take.

The Solicitor also understands that failure to produce those records may well mean that my recommendation will be rejected by Convocation and a more serious penalty will be tabled, such as his disbarment, unless he produces the records and makes the filings. The Solicitor understands that all I can do is recommend a penalty, but given the face of this record and what appears to be trust problems, the Solicitor is well aware of his necessity to produce the records before this matter reaches Convocation.

I have considered the joint submission that was made by counsel for the Society and by the Solicitor and I find it to be both fair and reasonable under all the circumstances. I have no difficulty whatsoever in accepting the joint submission; more particularly, based on the cooperation of the Solicitor and the reasonable position taken by counsel for the Society.

I therefore recommend to Convocation the following penalty:

1) that if the Solicitor fully produces his books and records and makes the filings to the satisfaction of the Society at least twenty-one days prior to this matter being heard in Convocation, then he should receive a reprimand in Convocation.

In regard to costs, I accept the Society's submission that the sum of \$2,500 is appropriate and the Solicitor does not dispute this sum as being reasonable under the circumstances. The Solicitor's difficult personal life demonstrates to me that it is important that in imposing costs, that he be granted enough time to reasonably come to grips with payment of those costs and therefore, I recommend to Convocation that the costs be payable on or before December 1st, 1998.

2) If the Solicitor fails to provide the books and records and make the filings to the satisfaction of the Society at least twenty-one days before this matter reaches Convocation, then I recommend to Convocation that the Solicitor's rights and privileges be suspended for a period of two months definite and indefinitely thereafter until such time as he satisfactorily produces his books and records.

Costs of \$2,500 is also recommended in this circumstance with the recommendation that if the Solicitor is suspended, the costs must be paid prior to his being reinstated.

3) I also strongly recommend to both the Solicitor and to Convocation, failing the Solicitor accepting my recommendation, that the Solicitor forthwith enroll in the Practice Review Program so that he can avail himself of the resources that are available to him. It is clear that given what has happened in his personal life, it may be safe to at least fear that his practice may be in chaos and he could use some assistance in having them look at it. It is strongly recommended to the Solicitor and failing that, to Convocation as a term of either the reprimand or the suspension.

28th January, 1999

The recommendation as to the Practice Review Program is not meant to be punitive, rather it is meant to be rehabilitative, and hopefully, by the time the Solicitor reaches Convocation, he will have accepted this invitation because it may help him immensely when he is in Convocation.

Finally, it is important in imposing penalty in this matter not to impose a penalty which would crush the Solicitor because he now seems to be on the road to recovery and I specifically point to his Agreed Statement of Facts which is the end of a long period of time where the Solicitor seemed to have been immobilized by his personal problems.

David Mark Marcovitch was called to the Bar on April 11, 1986.

ALL OF WHICH Iis respectfully submitted

DATED this 2nd day of September, 1998

Robert C. Topp

It was moved by Mr. Swaye, seconded by Mr. Wright that the Report be adopted.

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded if he produced his books and records and makes his filings to the satisfaction of the Society and pay costs in the amount of \$2,500, failing which he be suspended for a period of 2 months definite and indefinitely thereafter until such time as he satisfactorily produces his books and records and makes his filings and pay costs before being reinstated. In addition the solicitor is to enroll in the Practice Review Program.

A letter dated January 26th, 1999 was tendered by the solicitor and filed as Exhibit 3.

Ms. Braid made submissions in support of the recommended penalty.

The solicitor made submissions for a lesser penalty of a reprimand in Convocation.

Counsel, the solicitor, the reporter and the public withdrew.

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that the solicitor be suspended for a period of 2 months definite, such suspension to continue indefinitely until he has satisfactorily produced his books and records and made his filings.

Withdrawn

It was moved by Mr. Gottlieb, seconded by Mr. MacKenzie that the solicitor be suspended as of March 25th, 1999 for 1 month definite, and from month to month thereafter if the solicitor has provided his books and records and made his filings to the satisfaction of the Law Society. Should the books and records and filings be provided to the satisfaction of the Law Society before March 25th the suspension is to be rescinded and in that event the solicitor is to be reprimanded at the Discipline Convocation in March, and the requirement for costs be waived.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended as of March 25th, 1999 for 1 month definite, and from month to month thereafter until the solicitor provides his books and records and made his filings to the satisfaction of the Society. If the books and records and filings are provided to the satisfaction of the Society before March 25th then the Order suspending him is to be rescinded and the solicitor is to be reprimanded at the Discipline Convocation in March, and that the requirement for costs be waived.

#### Resumption of By-Laws

#### BY-LAW 10 - MEETINGS OF MEMBERS

##### Green Book

The following amendments were accepted:

page 5, section 23.(2)(b) that the word "court" be inserted before the word "tribunal".

page 4, section 19.(2) that a subsection be added to read "motion to table"

It was moved by Mr. Aaron, seconded by Ms. Cronk that on page 5, section 22. the word "including" be inserted after the word "meeting" and the words "and, without limiting the generality of the foregoing, the Treasurer may rule upon" be deleted.

Lost

By-Law 10 was voted on and adopted as amended.

#### BY-LAW 11 - CALL TO BAR AND ADMISSIONS AND ENROLMENT AS SOLICITOR

##### Green Book

It was moved by Mr. Aaron, seconded by Mr. Millar that on page 5, section 5 the Treasurer establish a sub-committee and appoint its members to consider an Oath of Allegiance to Canada, Her Majesty the Queen or both and report back to Convocation.

Carried

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 11 be adopted.

Carried

#### BY-LAW 12 - BAR ADMISSION COURSE

##### Green Book

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that By-Law 12 be adopted.

Carried

BY-LAW 13 - MEMBERS

Green Book

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that By-Law 13 be adopted.

Carried

BY-LAW 14 - RESIGNATION

Green Book and Memorandum dated January 27th, 1999

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 14 be adopted.

Carried

BY-LAW 15 - ANNUAL FEE

Green Book

The following issues were referred to the Professional Regulation Committee for further consideration:

1. guidelines as to when an automatic suspension or disbarment authority be exercised;
2. language - "automatic disbarment";
3. form of notice to member;
4. publication of penalties; and
5. single bench guidelines.

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 15 be adopted.

Carried

BY-LAW 16 - PROFESSIONAL LIABILITY LEVIES

The following amendments were made:

- page 1, section 3. that the words "insurer of" be added before the word "Society's" at the end of the sentence. The sentence would then read:  
  
"The insurance premium levies mentioned in section 2 shall consist of a base levy, an innocent party surcharge levy and such other levies as may be set by Convocation or required by the insurer of the Society's insurance plan."
- page 1, section 4.(1) that the sentence read "....the base levy, the innocent party surcharge levy and the claims history surcharge levy.....".
- page 1, section 4.(2) that the words "insurer of" be inserted before the word "Society's" to read "insurer of the Society's insurance plan"

- page 2, section 7.(1) the words "to the insurer of the Society's insurance plan" be added after the word "premiums", delete the word "reserves" and replace with the word "claims" and delete the words "and other" and insert the words "or such other". The sentence would then read:

"The insurance premium levies paid by members shall be used for the Society's insurance fund, or to pay the required insurance premiums to the Society's insurance plan, claims, group deductibles, adjusting costs, counsel and legal fees, administration costs or such other expenses reasonably incurred in connection with the Society's insurance plan."

- page 2, section 8.(2) that the words "or the insurer of the Society's insurance plan" be added before the words "for coverage". The sentence would then read:

"A member who is eligible or the insurer of the Society's insurance plan for coverage...."

It was moved by Mr. Ortved, seconded by Ms. Cronk that By-Law 16 be adopted as amended.

Carried

The heading of the By-Law was changed to read "Professional Liability Insurance Levies".

#### BY-LAW 17 - FILING REQUIREMENTS

##### Green Book

It was moved by Ms. Curtis, seconded by Mr. Aaron that on page 2 section 4.(1) be amended by deleting the words "and with or without cause" after the words "The Secretary may". The sentence would then read:

"The Secretary may, at any time require any member who is required to submit a report under subsection 2(2) submit to the Society, in addition to the report required under that subsection, a report of a public accountant...."

Carried

By-Law 17 was voted on and adopted as amended.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:15 P.M.

CONVOCATION RECONVENED AT 2:15 P.M.

#### PRESENT:

The Treasurer, Backhouse, Carey, R. Cass, Chahbar, Cole, Cronk, Crowe, Curtis, DelZotto, Feinstein, Furlong, Gottlieb, Krishna, Lawrence, MacKenzie, Murphy, Ortved, Puccini, Swaye, Wardlaw and Wright.

.....



.....  
IN PUBLIC  
.....

By-Laws (cont'd)

BY-LAW 18 - RECORD KEEPING REQUIREMENT

Green Book

It was moved by Ms. Cronk, seconded by Mr. Crowe that By-Law 18 be adopted.

Carried

BY-LAW 19 - HANDING OF MONEY AND OTHER PROPERTY

Green Book and Memorandum of January 27th, 1999

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 19 be adopted.

Carried

BY-LAW 20 - REVIEW OF COMPLAINTS

Green Book

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 20 be adopted.

Carried

BY-LAW 21 - PROCEEDINGS AUTHORIZATION COMMITTEE

Green Book and Memorandum dated January 26th, 1999

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 21 be adopted.

Carried

BY-LAW 22 - APPEARANCE AS COUNSEL IN SPECIFIC PROCEEDING

Green Book

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 22 be adopted.

Carried

BY-LAW 23 - REPORTING OF COURT DECISIONS

Green Book and Memorandum dated January 27th, 1999

It was moved by Ms. Curtis, seconded by Mr. Murphy and accepted that on page 1 of the memorandum, section 2.(2) be deleted re: "Advertising by member".

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that By-Law 23 as amended be adopted.

Carried

It was moved by Mr. Swaye, seconded by Ms. Cronk that the By-Laws be reviewed by Convocation every 4 years.

It was moved by Mr. Gottlieb, seconded by Mr. MacKenzie that the Swaye/Cronk motion to review By-Laws be tabled.

Lost

The Swaye/Cronk motion was voted on and carried.

Draft Rules of Practice and Procedure made pursuant to the Law Society Act, as amended

Blue Book

Ms. Cronk presented the Draft Rules of Practice and Procedure for Convocation's approval.

The Competency Hearings will be considered at a later date.

Professional Regulation Committee  
Report to Convocation  
January 28, 1999

---

Draft Rules of Practice and Procedure  
Made Pursuant to the  
Law Society Act, as amended

**RULES OF PRACTICE AND PROCEDURE**

**Explanatory Information**

As a result of amendments to the Law Society Act through the Law Society Amendment Act, 1998, Convocation has authority to make rules of practice and procedure applicable to conduct, professional competence, capacity, admissions, readmissions, reinstatement, requalification, restoration and non-compliance proceedings as well as the appeals of summary orders.

Subsection 61.2 of the Act sets out the jurisdiction to make rules and lists some areas in which rules may be made. Subsection 61.2(3) deems the rules to be made under s.25.1 of the Statutory Powers Procedure Act ("SPPA"), which authorizes tribunals to make rules governing their procedures. Where a conflict exists between the Law Society's rules and the SPPA, subsection 61.2(4) provides that the Law Society's rules prevail.

As a result of discussions between the Treasurer and various organizations having an interest in the Law Society's hearing process, input on the rules was received from representatives from the Advocates' Society, the Criminal Lawyers' Association, County and District Law Presidents Association, CBAO and Metropolitan Toronto Lawyers Association. In two meetings of these representatives, members of the Professional Regulation Committee and Law Society staff, a number of issues were discussed leading to changes to the initial draft of the rules.

The rules as drafted apply to all proceedings described in the amended Law Society Act with the exception of professional competence hearings, pending consultation with the Professional Development and Competence Committee which is considering the implementation of the professional competence scheme under the Act.

THE LAW SOCIETY OF UPPER CANADA

*DRAFT*

RULES OF PRACTICE AND PROCEDURE  
MADE UNDER SECTION 61.2 OF *THE LAW SOCIETY ACT*

SUMMARY OF CONTENTS

RULE 1	GENERAL RULES .....	1
RULE 2	JOINDER AND NON-PARTY PARTICIPATION .....	5
RULE 3	ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS .....	6
RULE 4	COMMENCEMENT OF PROCEEDINGS .....	9
RULE 5	SERVICE .....	10
RULE 6	DISCLOSURE .....	11
RULE 7	MOTIONS .....	12
RULE 8	INTERIM ORDERS .....	15
RULE 9	PRE-HEARING PROCEDURES .....	16
RULE 10	PRE-HEARING CONFERENCES .....	17
RULE 11	EVIDENCE .....	19
RULE 12	CONDUCT OF HEARINGS .....	20
RULE 13	ORDERS .....	21
RULE 14	COSTS .....	22
RULE 15	APPEALS .....	24
RULE 16	SUMMARY ORDERS .....	27

THE LAW SOCIETY OF UPPER CANADA

*DRAFT*

RULES OF PRACTICE AND PROCEDURE  
MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*

RULE 1 GENERAL RULES

Application

- 1.01 Rules 1 through 15 apply to hearings before tribunals under sections 27, 28.1, 31, 32, 34, 38, 45, 49.32(1), 49.32(2), 49.42, and 49.43 of the *Law Society Act* (hereinafter "the Act").

Definitions

- 1.02 (1) In these Rules, unless the context requires otherwise, words that are not defined in subrule (2) have the meanings defined in the Act or the *Statutory Powers Procedure Act*.

- (2) In these Rules,

"appeal" means an appeal under subsections 49.32(1) and (2) of the Act;

"Appeals Management Tribunal" or "AMT" means the benchers to whom jurisdiction is assigned in procedural matters;

"Hearings Management Tribunal" or "HMT" means the benchers to whom jurisdiction is assigned in procedural matters;

"holiday" means a holiday as defined in the *Rules of Civil Procedure*;

"interim order" means an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practice law;

"motion" means a request for a ruling or decision by a tribunal on a particular issue at any stage in the proceeding which is subject to these Rules, other than a request for an adjournment;

"originating process" means a notice of application, a notice of hearing, or a notice of motion for an interim order where a notice of application has not yet been served;

"party" means the Society, the person who is subject to the proceeding, and any other person added as a party by the tribunal in accordance with the Act;

"person subject to a proceeding" means a member, student member, former member or non-Ontario lawyer as the context may require;

"proceeding" means a proceeding under the Act that commences with the service of an originating process;

"tribunal" means whichever of the HMT, Hearing Panel, AMT, or Appeal Panel that is or will be hearing the applicable part of a proceeding;

#### Interpretation of Rules

- 1.03 (1) These Rules shall be liberally construed to secure the just and expeditious determination of proceedings.
- (2) Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

#### Substantial Compliance

- 1.04 (1) Substantial compliance with a form or notice required by or under these Rules is sufficient.
- (2) No proceeding is invalid by reason only of a defect or other irregularity in form.

#### Compliance with a Rule

- 1.05 (1) Any provision of these Rules may be waived with the consent of the parties and leave of the tribunal.
- (2) The tribunal may, where it is in the interests of justice, dispense with compliance with any Rule at any time and upon such terms as are just.

#### Computing Time

- 1.06 Subject to Rule 1.07, in computing time periods specified in these Rules or in an order of a tribunal,
- (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 under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and
  - (d) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it shall be deemed to be received or effective on the next day that is not a holiday.

#### Extension or Abridgment of Time Periods

- 1.07 (1) A tribunal by order may extend or abridge any time prescribed by these Rules on such terms as are just.
- (2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

#### Withdrawal of Counsel

- 1.08 Where counsel for a party seeks to be removed from the record of a proceeding, counsel shall bring a motion for leave to withdraw before the tribunal.

#### Removal of Counsel

- 1.09           Where a party seeks to remove a counsel from the record of a proceeding, the party shall bring a motion before the tribunal.

#### Communication with a Tribunal

- 1.10           Communication with a tribunal outside of the hearing shall be in the presence of all parties or their counsel, or in writing through the Clerk of the tribunal with a copy served on all parties.

#### Summons

- 1.11   (1)    A summons to witness may be signed by the Secretary.
- (2)    On the request of a party, the Secretary shall provide a summons to a witness in blank form and the party may complete the summons and insert the name of the witness.
- (3)    Service of a summons on a witness is the responsibility of the party who obtained the summons.
- (4)    The party who obtained the summons shall pay attendance money to a witness in accordance with Tariff A under the *Rules of Civil Procedure*.
- (5)    Notwithstanding subrule (4), if a person is in attendance at the hearing, it is unnecessary to serve the person with a summons or to pay attendance money to call the person as a witness.

#### Form of Proceeding

- 1.12   (1)    Subject to subrule (2), hearings shall be held orally with the parties, and their counsel if applicable, appearing in person.
- (2)    The tribunal on motion by any party may order that some or all of a hearing be held as an electronic hearing.
- (3)    On a motion under subrule (2), the tribunal may consider, on balance,
- (a)    the suitability of the subject matter;
- (b)    the nature of the evidence and whether credibility is in issue;
- (c)    whether the matters in dispute are questions of law;
- (d)    the convenience of the parties;
- (e)    the cost, efficiency and timeliness of the proceeding;
- (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 which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.

- (4)    On consent, a party may move for an order that some or all of a hearing be held as a written hearing.

### Location of Hearings

- 1.13 (1) Subject to this rule, all hearings shall be held at the offices of the Society in Toronto.
- (2) The tribunal, on motion by any party, may order that a hearing be held at a place other than the offices of the Society in Toronto.
- (3) On a motion under subrule (2), the tribunal may consider, on balance,
- (a) the convenience of the parties;
  - (b) the cost, efficiency and timeliness of the proceeding;
  - (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 which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.
- (4) The tribunal may set the location of a hearing in a place other than the offices of the Society in Toronto only after consultation with the Hearings Coordinator and the Secretary.
- (5) The Hearings Coordinator shall be informed forthwith where there is a request for an adjournment of a hearing scheduled to be held in a location other than the offices of the Society in Toronto.

### Adjournments

- 1.14 (1) Where the grounds for a request for an adjournment are known in advance of the date scheduled for the hearing, the adjournment request shall be made,
- (a) to the HMT, where a hearing before a Hearing Panel is pending and a Hearing Panel is not seized of the proceeding; or
  - (b) to the AMT, where an appeal to the Appeal Panel is pending and an Appeal Panel is not seized of the proceeding,
- where a sitting of the HMT or AMT is scheduled, or can be scheduled, before the date scheduled for the hearing.
- (2) In circumstances to which subrule (1) does not apply, a request for adjournment shall be made to the tribunal on the date scheduled for the hearing.

## RULE 2 JOINDER AND NON-PARTY PARTICIPATION

### Joinder of Parties

- 2.01 Where permitted under the Act, the Hearing Panel may add any person as a party to a proceeding.

### Non-Party Participation

- 2.02 (1) A tribunal may allow a person who is not a party to participate in a proceeding if the participation of the person would, in the opinion of the tribunal, be of assistance to the tribunal, or is required in the interests of justice.
- (2) The tribunal shall determine the extent of such participation, when granted, and without limiting the generality of this, the tribunal may allow the person to make oral or written submissions, to lead evidence, and to cross-examine witnesses.

### RULE 3 ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

#### Proceedings other than Capacity Proceedings

- 3.01 Subject to rule 3.04, hearings shall be open to the public except where the tribunal is of the opinion that,
- (a) matters involving public security may be disclosed;
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing 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
- (c) it is necessary to maintain the confidentiality of a privileged document or communication.

#### Reasons and Order of the Tribunal

- 3.02 (1) Subject to subrule (2), the order and reasons of a tribunal, including any written disposition, are a matter of public record.
- (2) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal may order that all or part of its reasons, except for those referred to in subrule (3), are not to be made public.
- (3) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal shall issue with its decision a written statement of the reasons for holding the proceeding, or applicable part of the proceeding, in the absence of the public but shall do so without disclosing any matters which, in the opinion of the tribunal, ought not to be disclosed.

#### Procedure Where Party Seeks *In Camera* Order

- 3.03 (1) A party seeking an order that any part of a proceeding be held in the absence of the public shall bring a motion in public before the tribunal in accordance with rule 7 with necessary modifications.
- (2) Where a party is of the view that it will not be possible to argue the motion without disclosing specific matters which are the subject of the motion, that party may seek an order that the motion be heard in the absence of the public.



- (3) Where a party requests that the motion be held in the absence of the public, the party shall state in public the general grounds upon which the motion is brought without disclosing the specific matters which the party wishes to be received in the absence of the public.
- (4) Where a party requests that the motion be heard in the absence of the public, the tribunal may grant leave to a non-party to participate in the motion.
- (5) In considering whether to permit a non-party to participate in the motion, the tribunal shall consider the nature of the non-party's interest, whether there is any reason for concern that the non-party may fail to maintain the confidentiality of matters which are disclosed in the absence of the public, and whether the interests of the public will otherwise be adequately represented.
- (6) The tribunal shall advise a non-party who is permitted to participate in the absence of the public that, unless otherwise ordered, the non-party may not publish or otherwise communicate or disclose to anyone outside the hearing room anything that has been disclosed in the absence of the public.
- (7) The tribunal shall advise the non-party that if the confidentiality of the proceeding is breached, in appropriate cases, the tribunal or any party to the proceeding may state a case to the Divisional Court for an order punishing that person for contempt.
- (8) In circumstances where the motion is held in the absence of the public and is dismissed, the tribunal may, in public, following the motion, order that the motion be treated as if the motion had been held in public.

#### Capacity Proceedings

- 3.04
- (1) A proceeding shall, subject to subrule (2), be held in the absence of the public if it is a proceeding in respect of a determination of incapacity.
  - (2) At the request of the person subject to the proceeding, the tribunal may order that the proceeding be open to the public.
  - (3) An application for a determination of incapacity shall not be made public by the Society except as required in connection with a proceeding, except as provided for in the Act, or unless the proceeding before the tribunal is open to the public as provided by subrule (2).
  - (4) Where the hearing of an application for a determination of incapacity has been open to the public in accordance with subrule (2), the decision, order and reasons of the tribunal are a matter of public record.
  - (5) Where the hearing of an application for a determination of incapacity has been closed to the public, and where the tribunal has made an order suspending or limiting the member or student member's rights and privileges, the order is a matter of public record but the tribunal's reasons shall not be made public.

### Application to Appeals

- 3.05 (1) Where an appeal arises from a decision, order or reasons of a tribunal in respect of a conduct, admission, or readmission proceeding, the provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications, to the decision, order and reasons of the Appeal Panel.
- (2) Where an appeal arises from a decision, order or reasons of a tribunal in respect of a capacity proceeding, the provisions of rule 3.04 apply, with necessary modifications, to the decision, order and reasons of the Appeal Panel.

### Non-publication Orders

- 3.06 (1) A tribunal may order that information disclosed in the course of a proceeding open to the public is not to be published or otherwise made public by any person, provided that the tribunal is satisfied that the information discloses,
- (a) matters involving public security;
  - (b) intimate financial or personal matters or other matters may be disclosed at the hearing 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
  - (c) matters for which it is necessary to maintain the confidentiality of a privileged document or communication.
- (2) A motion for a non-publication order shall be made in accordance with rule 3.03 with necessary modifications.

## RULE 4 COMMENCEMENT OF PROCEEDINGS

### Conduct, Capacity, and Non-Compliance Proceedings

- 4.01 (1) A notice of application shall be issued by the Society in Form 4A in respect of conduct, capacity, and non-compliance proceedings.
- (2) A copy of the notice of application shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

### Admission, Restoration, Requalification, Reinstatement, and Readmission Proceedings

- 4.02 (1) A notice of hearing shall be issued by the Society in Form 4B,
- (a) in respect of admission and restoration applications where a hearing is required by the Society;
  - (b) in respect of readmission applications, in every case;
  - (c) in respect of requalification and reinstatement applications where the person the subject of the proceeding requests, in writing, a hearing.

- (2) A copy of the notice of hearing shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

#### Abandonment of a Proceeding

- 4.03 (1) Prior to the hearing of a conduct, capacity, or non-compliance proceeding on its merits, the Society may abandon a notice of application by delivering a notice of abandonment in Form 4C.
- (2) Prior to the hearing of an admission or restoration proceeding on its merits, the Society may abandon the requirement of a hearing by delivering a notice of abandonment in Form 4C.
- (3) Prior to the hearing of an admission, restoration, requalification, reinstatement or readmission proceeding on its merits, the person subject to the proceeding may abandon his or her application by delivering a notice of abandonment in Form 4C.

### RULE 5 SERVICE OF DOCUMENTS

#### Service of Documents on Parties

- 5.01 (1) An originating process shall be served on the person subject to the proceeding.
  - (a) personally;
  - (b) by mailing a copy thereof in a registered letter addressed to the person's last known residence or office address as shown by the records of the Society; or
  - (c) where a person subject to a proceeding is represented by counsel prior to issuance of an originating process, on counsel where counsel endorses on the originating process or a copy of it an acceptance of service and the date of the acceptance.
- (2) An originating process shall be served at least ten days before it is first returnable before a tribunal.
- (3) Service of any document other than an originating process may be effected,
  - (a) by personal delivery to the party or the party's counsel;
  - (b) by regular or registered mail to the last known address of the party or the party's counsel;
  - (c) by facsimile transmission to the last known facsimile transmission number of the party or the party's counsel but, where the recipient is the person subject to the proceeding or his or her counsel, the consent of the recipient is required;
  - (d) by courier, including Priority Post, to the last known address of the party or the party's counsel; or
  - (e) by any other means authorized or permitted by the tribunal.
- (4) Service is deemed to be effective when delivered,
  - (a) by personal delivery or facsimile transmission before 4 p.m., on the day of delivery or facsimile transmission, and after that time, on the next day;

- (b) by regular or registered mail, on the fifth day after mailing;
- (c) by courier, on the second day after the document was provided to the courier; or
- (d) by any means authorized or permitted by the tribunal, on the date ordered by the tribunal.

## RULE 6 DISCLOSURE

### Obligations of the Society

- 6.01 (1) The Society shall make such disclosure as is required by law and without limiting the generality of this requirement, the Society shall provide a person subject to a proceeding, at least ten days before the hearing,
- (a) a copy of any document upon which it intends to rely and the opportunity to examine any other document;
  - (b) a summary of the oral evidence of all witnesses; and
  - (c) the list of witnesses which the Society intends to call.
- (2) Subject to rule 6.05, evidence against a person subject to a proceeding is not admissible unless disclosure of that evidence has been made at least ten days before the hearing.

### Obligations of the Person Subject to a Proceeding

- 6.02 (1) In admission, requalification, restoration, and reinstatement proceedings, evidence upon which the person subject to the proceeding intends to rely is not admissible unless the person has provided to the Society, within 60 days of receipt of the notice of hearing,
- (a) a copy of any documents upon which the person intends to rely;
  - (b) a summary of the oral evidence of all witnesses upon which the person intends to rely; and
  - (c) the list of witnesses which he or she intends to call.
- (2) In readmission proceedings, evidence upon which a person subject to the proceeding intends to rely is not admissible in that proceeding unless he or she has provided to the Society, with the prescribed application form, the material listed in subrule (1)(a) through (c) within 60 days of receipt of the notice of hearing.

### Summaries of Evidence

- 6.03 Where parties are required to disclose a summary of the oral evidence of a witness, the summary shall be in writing and 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' name and address or, if the witness' address is not provided, the name of a person through whom the witness can be contacted.

### Expert Reports

- 6.04 Evidence of an expert led by any party or non-party participant is not admissible unless the party or non-party participant gives all parties in the proceeding, at least ten days before the hearing, the expert's curriculum vitae, and a copy of the expert's written report or, if there is no written report, a summary of the evidence.

### Discretion of Tribunal

- 6.05 A tribunal may, in its discretion, allow the introduction of evidence that is not admissible under rules 6.01, 6.02 and 6.04 and may make such directions as it considers necessary to ensure that no party is prejudiced.

## RULE 7 MOTIONS

### Scheduling the Motion

- 7.01 (1) The party bringing a motion to be heard on a date, other than the date scheduled for the hearing of the proceeding on its merits, shall obtain available dates and times for the hearing of the motion from the Hearings Coordinator.
- (2) The party bringing a motion, on a date other than the date scheduled for the hearing of the proceeding on its merits, shall inform the Hearings Coordinator of the estimated length of time it will take to argue the motion when obtaining the available dates and times.

### Making a Motion

- 7.02 (1) A motion shall be made by a notice of motion in accordance with Form 7A unless the nature of the motion or the circumstances make a notice of motion unnecessary.
- (2) The notice of motion shall be served on any person or party who will be affected by the order sought at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.
- (3) The moving party shall serve on any person or party served with the notice of motion and file with the Clerk of the tribunal, at least seven days before the hearing date,
- (a) a motion record containing the notice of motion and all affidavits and other material to be relied upon; and
- (b) a factum, if desired by the moving party, and a book of those authorities referred to in the factum.

### Responding to a Motion

- 7.03 (1) The responding party may serve on the moving party and any person or party served with the notice of motion, at least three days before the hearing date,
- (a) a responding record containing any materials not contained in the motion record to be relied upon; and

- (b) a factum, if desired by the responding party, and a book of those authorities referred to in the factum.
- (2) Four copies of the materials referred to in subrule (1) shall be filed with the Clerk of the tribunal with proof of service at least three days before the hearing date.

#### Motion Records

- 7.04 A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.

#### Evidence on the Motion

- 7.05 Subject to rules 11.01 (3) and 11.02, evidence on a motion shall be given by affidavit unless the tribunal orders otherwise.

#### Abandoning a Motion

- 7.06 (1) A party who makes a motion may abandon it by delivering a notice in Form 4C to that effect to any person or party served with the notice of motion and the Clerk of the tribunal.
- (2) A party who serves a notice of motion and does not file it or appear at the hearing of the motion shall be deemed to have abandoned the motion unless the tribunal orders otherwise.
- (3) Where a motion is abandoned or is deemed to have been abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the tribunal orders otherwise.

#### Motions on Consent

- 7.07 Where a motion is on consent, the motion may be heard in writing without the attendance of the parties or persons affected, unless the tribunal orders otherwise, and the written consent of the motion participants and a draft order shall be filed with the notice of motion.

#### Disposition of Motions

- 7.08 When a motion is heard by a tribunal prior to the hearing of the proceeding on its merits, the tribunal may grant the relief sought, dismiss or adjourn the motion, in whole or in part and with or without terms, or may adjourn the motion to be disposed of by the tribunal hearing the proceeding on its merits.

#### Written Order

- 7.09 (1) Immediately after a motion has been determined, the successful party shall and any other party or person served with the notice of motion may, deliver a draft of the formal order.
- (2) An order shall be in accordance with Form 7B.
- (3) An order delivered in accordance with subrule (1), or rule 7.07, shall be reviewed, amended if necessary and signed by the chair of the tribunal which heard the motion.

- (4) This subrule does not apply to orders made on the record during the hearing of a proceeding on its merits or to motions in writing in accordance with rule 7.07.

#### Costs and Adjournments

- 7.10 All motions shall be brought in a timely fashion having regard to all of the circumstances, and the moving party's failure to do so, may be taken into account in awarding costs on the motion and any related adjournment which may be necessary.

#### RULE 8 INTERIM ORDERS

##### General

- 8.01 Rule 7 applies with necessary modifications to this rule.

##### Making the Motion

- 8.02 At any time, including prior to service of a notice of application, the Society may bring a motion before a Hearing Panel for an interim order.

##### Materials to be Served

- 8.03 (1) The Society shall serve on the member or student member, at least three days notice the date on which the motion is to be heard,
- (a) a motion record which shall contain the notice prescribed in rule 7, all affidavits and any other material to be relied upon; and
  - (b) a factum, if desired by the Society, and a book containing any authorities referred to in the factum.
- (2) Four copies of the materials referred to in subrule (1) shall be filed with the Clerk of the Hearing Panel with proof of service the day before the hearing of the motion.

##### Responding to the Motion

- 8.04 (1) The member or student member may serve on the Society, no later than 2:00 p.m. the day before the hearing of the motion,
- (a) a responding motion record containing any materials not contained in the Society's motion record; and
  - (b) a factum, if desired by the member or student member, and a book of those authorities referred to in the factum.
- (2) Four copies of the materials referred to in subrule (1) shall be filed with the Clerk of the Hearing Panel with proof of service by 4:00 p.m. the day before the hearing of the motion.

### Order to Specify Duration

- 8.05            An interim order continues in force until a further order of a tribunal sets aside or varies the interim order, or the final order on the merits of the proceeding.

## RULE 9 PRE-HEARING PROCEDURES

### Tribunal to which proceedings are first returnable

- 9.01    (1)    Subject to subrules (3) and (4), a proceeding shall be first returnable before the HMT to set a date for a hearing on its merits.
- (2)    When the originating process is served, notice shall be given of the time and place at which the proceeding shall be returnable before the HMT.
- (3)    A proceeding which originates by notice of application shall be first returnable before a Hearing Panel for the purpose of proceeding with a hearing on its merits where the hearing of another proceeding has already been scheduled or the nature of the allegations in the notice of application requires that the hearing be expedited.
- (4)    A proceeding which originates by notice of motion for an interim order where a notice of application has not yet been served shall be first returnable before the Hearing Panel for the hearing the motion on its merits.

### Setting Hearing Dates

- 9.02    (1)    Subject to subrule (2), a hearing into a proceeding shall be set only on regularly scheduled hearing dates obtained from the Hearings Coordinator.
- (2)    Where the parties estimate that the hearing will require more than one day,
- (a)    the parties shall request special dates for the hearing at the HMT; and
- (b)    the HMT, at its discretion, may direct that the parties to attend a pre-hearing conference as prescribed by Rule 10.
- (3)    Prior to requesting the HMT to set special dates for the hearing, the parties shall first obtain available dates from the Hearings Coordinator.

## RULE 10        PRE-HEARING CONFERENCES

### Party to Request

- 10.01    (1)    Prior to the hearing of a proceeding on its merits, commenced by either a notice of application or a notice of hearing, any party may request that a pre-hearing conference take place before a benchler.
- (2)    There shall not be more than one pre-hearing conference in a proceeding except by order of the pre-hearing conference benchler or the HMT or on the consent of the parties.



- (3) The pre-hearing conference benchers shall not sit on the tribunal at the hearing of a proceeding on its merits unless the parties consent in accordance with rule 12.01.

#### Attendance at Pre-Hearing

- 10.02 (1) Where a party refuses to attend a pre-hearing conference, an order that a pre-hearing conference be held may be obtained on motion to the HMT.
- (2) Unless otherwise ordered, written notice of the time and place of a pre-hearing conference shall be given by the Hearings Coordinator to the parties and the pre-hearing benchers.
- (3) Unless otherwise ordered or the parties consent, the parties and their counsel are required to attend in person.

#### Preparation for Pre-hearing Conference

- 10.03 Unless otherwise ordered, the parties shall exchange pre-hearing conference memoranda and any related documents and provide copies to the pre-hearing conference benchers, at least two days prior to the pre-hearing conference.

#### Electronic Pre-hearing Conference

- 10.04 A pre-hearing conference may be held by conference telephone with the consent of the parties and leave of the pre-hearing conference benchers or the HMT.

#### Procedure at Pre-hearing Conference

- 10.05 At the pre-hearing conference, the presiding benchers shall discuss with the parties, among other things,
  - (a) whether any of the issues can be settled;
  - (b) whether the issues can be simplified;
  - (c) whether the parties are able to enter into an agreed statement of facts concerning all or part of the subject matter of the proceeding; and
  - (d) the advisability, in appropriate cases, of attempting other forms of resolution.

#### Closed and Without Prejudice

- 10.06 A pre-hearing conference shall not be open to the public and all discussions at the pre-hearing conference shall be without prejudice.

#### Documents

- 10.07 Documents provided to the pre-hearing conference benchers shall,
  - (a) at the conclusion of the pre-hearing conference, be returned by the pre-hearing conference benchers to the party who provided them ; and
  - (b) not be considered to be filed in the proceedings.

### Agreements and Undertakings

- 10.08 (1) Agreements and undertakings made at a pre-hearing conference may be recorded in a memorandum prepared by or at the direction of the pre-hearing conference benchers.
- (2) Copies of the memorandum referred to in subrule (1) shall be provided to the parties.
- (3) Agreements and undertakings in the memorandum referred to in subrule (1) are binding upon the parties to the proceeding unless otherwise ordered by the Hearing Panel.

## RULE 11 EVIDENCE

### Rules of Evidence

- 11.01 (1) The rules of evidence applicable in civil proceedings apply in proceedings under the Act.
- (2) Notwithstanding subrule (1), with leave of the tribunal, an affidavit or statutory declaration of any person is admissible in evidence as proof, in the absence of evidence to the contrary, of the statements made therein.
- (3) An affidavit for use in a proceeding may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit but where, in the opinion of the tribunal, better evidence should be adduced through direct evidence of a witness, the tribunal may require the party to file or call such direct evidence and strike out the evidence filed.

### Cross-Examination before Official Examiner

- 11.02 (1) A tribunal may order, on its own motion or on the motion of a party, that the cross-examination of the deponent of an affidavit be conducted before an official examiner.
- (2) Where the cross-examination of the deponent of an affidavit is conducted before an official examiner, it shall be conducted in a manner analogous to the procedure under the *Rules of Civil Procedure* and, where necessary, the parties may seek direction from the tribunal.

### Documentary Evidence

- 11.03 In addition to providing a copy to the other party, any party tendering a document as evidence shall provide to the Clerk of the tribunal,
- (a) four copies of each document where the hearing is before a three member Hearing Panel; or,
- (b) two copies of each document where the hearing is before a one member Hearing Panel, the HMT, or the AMT.

RULE 12 CONDUCT OF HEARINGS

Consent

- 12.01 Where the member or student member and the Society consent to a hearing before a one member Hearing Panel, a consent in Form 12A, must be filed with the Hearing Panel prior to the commencement of the hearing.

Pre-hearing Conference

- 12.02 Where a pre-hearing conference has been held in relation to a proceeding, and the member or student member and the Society consent to the proceeding being heard before the pre-hearing bench sitting as a one member Hearing Panel,

- (a) the hearing shall not commence until after the conclusion of the pre-hearing conference;
  - (b) the hearing shall be conducted in accordance with the same rules applicable to any other proceeding before a Hearing Panel; and,
  - (c) consent, in Form 12B, shall be executed after the pre-hearing conference by both the member or student member and the Society and filed with the Hearing Panel prior to the commencement of the hearing.
- Exclusion of Witnesses in Proceedings

- 12.04 (1) A tribunal may order that one or more witnesses be excluded from the hearing until called to give evidence.
- (2) An order under subrule (1) may not be made in respect of a party to the proceeding or a witness whose presence is essential to instruct counsel for the party calling the witness, but the tribunal may require any such party or witness to give evidence before other witnesses are called to give evidence on behalf of that party.
- (3) Where an order is made excluding one or more witnesses from the hearing, there shall be no communication to an excluded witness of any evidence given during the witness' absence from the hearing, except with the leave of the tribunal, until after the witness has been called and has given evidence.

Visual or Audio Recording of Proceedings

- 12.05 (1) Subsections 136 (1), (2) and (3) of the *Courts of Justice Act* apply to proceedings with necessary modifications.

Transcripts

- 12.06 (1) All oral and electronic hearings shall be recorded to permit the production of a transcript.
- (2) The first party to order a transcript shall pay the cost of transcribing and shall file a copy of the transcript as part of the record.

#### Interpreters

- 12.07 (1) Where a witness requires an interpreter, the Society shall provide the interpreter, subject to an order to the contrary by the tribunal.
- (2) An interpreter shall be competent and independent and, before the witness is called, shall swear or affirm that he or she will interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and his or her answers.

#### Special Needs

- 12.08 Parties shall notify the Hearings Coordinator as early as possible of any special needs of the parties or their witnesses.

### RULE 13 ORDERS

#### Admonitions and Reprimands

- 13.01 (1) Unless the right of appeal is waived by a party, a reprimand or admonition shall not be administered before the time for serving a notice of appeal has expired.
- (2) A reprimand or admonition may be administered by any member of the tribunal.
- (3) Where an order of reprimand or admonition is appealed and where the Appeal Panel decides that a reprimand or admonition is the appropriate disposition, the reprimand or admonition may be administered by any member of the Appeal Panel.
- (4) A reprimand or admonition may be administered in writing.
- (5) Except where a reprimand or admonition is administered in writing, it is to be administered at a sitting of the Hearing Panel or the Appeal Panel, as the case may be, that is open to the public.
- (6) An admonition shall be a matter of public record but shall not be published in the Ontario Lawyers Gazette or in any formal media release by the Society except where the admonition is referred to in subsequent or other proceedings.

#### Orders issued by One Member Hearing Panel in Conduct Proceedings

- 13.02 A one member Hearing Panel may not make an order under subsections 35(1) 1 or 35(1) 2 of the Act.

#### Written Reasons

- 13.03 (1) Subject to subrule (2) and subrule 15.06, a tribunal is required to give reasons in writing if the request for written reasons is made within thirty days after the day on which the panel makes its final decision or order.
- (2) A Hearing Panel shall issue written reasons for decisions in relation to capacity applications in every case.

#### Incapacity Orders made in the absence of the Member or Student Member

- 13.04 (1) Where the Hearing Panel has proceeded in the absence of the member or student member and has determined that there are reasonable grounds for believing that the member or student member is, or has been, incapacitated, the Hearing Panel may make an interim order.
- (2) An interim order becomes final on the thirty-first day after the day on which notice of the interim order is served on the member or student member unless, before that day, he or she moves before the Hearing Panel to have the interim order of suspension set aside and the issue of incapacity determined.
- (4) The member or student member named in the order may appeal a final order of suspension made under this rule.

#### RULE 14 COSTS

##### Security for Costs

- 14.01 (1) In admission, readmission, reinstatement, restoration or requalification proceedings, or an appeal arising from any of these proceedings, the tribunal, on motion by the Society, may make such order for security for costs as is just where it appears that,
- (a) the person subject to the proceeding has an order for payment of costs made against him or her in the same or another proceeding under the Act which remains unpaid in whole or in part; and
- (b) there is good reason to believe that the proceeding is unwarranted and the person subject to the proceeding has insufficient assets in Ontario to pay the costs of the Society where ordered.
- (2) A person subject to a 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 except with leave of the tribunal.
- (3) Where a person subject to a proceeding defaults in giving the security required by an order, the tribunal, on motion by the Society, may dismiss the proceeding and any stay obtained no longer applies.

##### Motions for Costs

- 14.04 A request for costs shall be made by motion to the tribunal which heard proceeding on its merits or where otherwise appropriate.

##### Costs against the Society

- 14.05 In admission, conduct, capacity, or non-compliance proceedings, where it appears that the proceedings were unwarranted, the tribunal may order that such costs as it considers just be paid to the person subject to the proceeding by the Society and any other party to the proceeding.

#### Costs to the Society

- 14.06 (1) In appropriate cases, where a tribunal has made a determination in a proceeding that is adverse to a party other than the Society, the tribunal may make an order requiring that party to pay all or part of,
- (a) the Society's legal costs and expenses;
  - (b) the Society's costs and expenses incurred in investigating the matter; and,
  - (c) the Society's costs and expenses incurred in conducting the proceeding.
- (2) In awarding costs and expenses, the tribunal shall apply any tariff which may be approved by Convocation from time to time.

#### Wasted or Unreasonable Costs

- 14.07 (1) Where a party or non-party participant has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the tribunal may make an order awarding such costs as are just.
- (2) An order under subrule (1) may be made by the tribunal on its own motion or on the motion of any party in the proceeding.

#### RULE 15 APPEALS

##### General

- 15.01 Subject to the Act, there is no appeal from an interlocutory order of a Hearing Panel other than an interim order made under rule 8.

##### Stay Pending Appeal

- 15.02 A party seeking a stay of a final order of a Hearing Panel shall bring a motion to the Appeal Panel in accordance with Rule 7 with necessary modifications.

##### Commencement of Appeals

- 15.02 (1) An appeal shall be brought by a notice of appeal in accordance with Form 15A.
- (2) The notice of appeal shall be served on all other parties and filed with the Clerk to the Appeal Panel:
- (a) within 30 days of service of the order;
  - (b) after 30 days on consent of the parties, or with leave of the Appeal Panel.

Materials on the Appeal

- 15.03 (1) A party delivering a notice of appeal shall contemporaneously serve and file a certificate of the contents of the record book, in accordance with Form 15B, listing the contents of the record book necessary for that party's purposes.
- (2) Within five days of delivery of a certificate of the contents of the record book, the other party shall serve and file a certificate of the contents of the record book in accordance with Form 15B.
- (3) Subject to subrule (5), the contents of the record book shall contain the documents listed in the certificate(s), as the case may be, unless ordered otherwise by the AMT.
- (4) Within thirty days of delivery of the first certificate of the contents of the record book, the party delivering a notice of appeal shall serve a record book on the opposing party or counsel for that party and shall file 6 copies of the record book with the Clerk to the Appeal Panel.
- (5) Where a party fails to deliver a certificate of the contents of the record book, that party shall be deemed to accept the other party's certificate of the contents of the record book, unless the party obtains the consent of the other party or an order from the AMT.
- (6) The record book shall contain, in consecutively numbered pages, the following,
- (a) a table of contents describing each document by its nature and date and, in the case of an exhibit, by exhibit number or letter;
  - (b) a copy of each notice of appeal;
  - (c) a copy of each document required;
  - (d) all relevant transcripts or a list of all relevant transcripts together with a certificate of the court reporter confirming that such transcripts have been ordered and any deposit required for preparation of transcripts has been paid; and
  - (e) a copy of each certificate of the contents of the record book.
- (7) The party delivering a notice of appeal shall serve a factum on all other parties within 15 days of the delivery of the record book.
- (8) Within 15 days of receipt of a factum, a party shall serve a responding factum on all other parties.
- (9) Each factum shall contain a concise statement, without argument, of the facts, issues to be argued, a concise statement of law, and authorities relating to each issue and the order sought.
- (10) Each party shall serve with their factum, a book of authorities unless the authorities to be relied upon are contained in the standard book of authorities.
- (11) Each party shall file 6 copies of that party's factum and book of authorities with the Clerk to the Appeal Panel.

- (12) Where the party who files a notice of appeal fails to file a certificate of content of the record book, record book, factum or book of authorities in the time prescribed by this rule or by the AMT, the notice of appeal shall be deemed to be abandoned, unless the party obtains the consent of the other party or an order from the AMT.

Appeal Management Tribunal (AMT)

- 15.04 (1) The AMT shall schedule hearings before the Appeal Panel.
- (2) The AMT shall hear motions with respect to,
- (a) the abridgement or extension of any time prescribed by these Rules or by a previous order of the AMT;
  - (b) the location of the hearing of an appeal or a motion;
  - (c) the form of the hearing, including a request to hold a hearing as an electronic or written hearing;
  - (d) the consequences of non-compliance with a previous order of the AMT;
  - (e) the materials to be filed with the Appeal Panel;
  - (f) procedural issues regarding motions before the Appeal Panel including the contents of any affidavit or the record book of further evidence, the scope or conduct of a cross-examination, and the costs of transcripts and appointments before an official examiner; and
  - (g) requests to strike out a notices of appeal for failure to comply with these rules or any order of the AMT or the Appeal Panel.
- (3) The AMT may, on request of a party or on its own motion, transfer the hearing of a motion to the Appeal Panel hearing the proceeding on its merits.

Motion to Tender Fresh Evidence

- 15.05 (1) If a party seeks to tender evidence to the Appeal Panel which was not before the Hearing Panel, the party shall bring a motion before the Appeal Panel in accordance with Rule 7 with necessary modifications.
- (2) Both parties shall be prepared to proceed with the Appeal Panel's consideration of the appeal on its merits following a motion to tender fresh evidence, in any event of the result of the motion.
- (3) Where the party who files a notice of motion to tender fresh evidence fails to file supporting materials in the time prescribed by this rule or by the AMT or fails to attend for cross-examination if required or fails to obtain transcripts of any cross-examinations in accordance with these rules, the notice of motion to tender fresh evidence shall be deemed abandoned, unless the party obtains the consent of the other party or an order from the AMT.



Reasons

- 15.06           The Appeal Panel shall give written reasons for its decision in every case.

RULE 16           SUMMARY ORDERS

Application

- 16.01   (1)     Rule 16 applies to matters concerning sections 46, 47, 48, 49, 49.1 and 49.32(3) of the Act.
- (2)     Rules 1, 5, 6, 7, 10, 11, 12 and 14 apply with necessary modification to Rule 16.

Definitions

- 16.02           In this Rule,

“summary disposition bench” means an elected bench appointed by Convocation, pursuant to sections 46, 47, 48, 49 or 49.1 of the Act, to make summary orders.

“summary order” means an order prescribed by sections 46, 47, 48, 49 or 49.1 of the Act.

“summary order appeal” means an appeal prescribed by subsection 49.32(3) of the Act.

Summary Orders

- 16.03           A summary order issued by the summary disposition bench shall be in accordance with Form 16A.

Service of Summary Orders

- 16.04   (1)     Notice to a member or former member of a summary order shall be served personally or by mailing a copy thereof in a registered letter addressed to the person’s last known residence or office address as shown by the records of the Society.
- (2)     Where notice is given by registered mail it shall be deemed to have been given on the fifth day after the mailing.

Appeal of a Summary Order

- 16.05   (1)     An appeal of a summary order on any question of fact or law shall be brought by a notice of appeal in accordance with Form 16B.
- (2)     The notice of appeal shall be served on the Society and filed with the Clerk to the Appeal Panel:
- (a)     within 30 days of service of the Order on the member;
- (b)     after 30 days on consent of the Society, or with leave of the Appeal Panel.

#### Disclosure of Documents by Society

- 16.06           Where a notice of appeal is served on the Society, it shall make disclosure to the member or former member, within 10 days of receipt of the notice of appeal, of all relevant documents in its possession, power or control.

#### Appeal Record

- 16.07   (1)   The member or former member shall serve on the Society within 30 days of service of the notice of appeal,
- (a)   an appeal record which shall contain the summary order, the notice of appeal, all affidavits, and any other material to be relied upon; and
- (b)   a factum, if desired by the member or former member, and a book containing any authorities referred to in the factum.
- (2)   The member or former member shall file six copies of the materials referred to in subrule (1) with the Clerk of the Appeal Panel with proof of service within 5 days of service of the materials on the Society.

#### Responding to an Appeal

- 16.08   (1)   The Society shall serve on the member or former member, within 10 days of the receipt of an appeal record,
- (a)   a responding appeal record containing any materials not contained in the appeal record upon which it intends to rely; and
- (b)   a factum, if desired by the Society, and a book of those authorities referred to in the factum.
- (2)   The Society shall file six copies of the materials in subrule (1) with the Clerk of the Appeal Panel with proof of service no more than 5 days after the service of the material upon the member or former member.

#### Evidence on the Appeal of a Summary Order

- 16.09           Subject to Rules 11.01 (3) and 11.02, evidence on the appeal of a summary order shall be given by affidavit unless the Appeal Panel orders otherwise.

#### Scheduling the Appeal

- 16.10           After the member or former member has complied with Rule 16.07, the member or former member shall contact the Hearings Coordinator within 30 days to obtain available dates and times for the hearing of the appeal.

Abandoning a Summary Order Appeal

- 16.11 (1) The member or former member may abandon a summary order appeal by serving a notice of abandonment in Form 4C on the Society and the Clerk of the Appeal Panel.
- (2) The member, or former member, who,
- (a) fails to comply with the provisions of Rule 16.07;
  - (b) fails to comply with the provisions of Rule 16.10; or
  - (c) fails to appear at the hearing of the appeal,
- shall be deemed to have abandoned the summary order appeal unless the Appeal Panel orders otherwise.
- (3) Where an appeal is abandoned or is deemed to have been abandoned, the Society is entitled the costs of the appeal unless the Appeal Panel orders otherwise.

Appeals on Consent

- 16.12 Where an appeal is on consent, the appeal may be heard in writing without the attendance of the Society or the member or former member unless the Appeal Panel orders otherwise. The written consent of the parties and a draft order shall be filed with the Clerk of the Appeal Panel.

Enclosed in Convocation file, copies of:

- (1) Paper entitled Errata and Additions to Draft Rules of Practice and Procedure; and
  - (2) Paper entitled Summary of Proceedings (other than professional competence) and Summary Orders under the Law Society Act, as amended.
- .....

The following amendments were accepted:

- page 11, Rule 6.01 (1) add the word "with" after the word "hearing" at the end of the sentence.
- page 17, Rule 10.02(2) add the word "conference" before the word "bencher" at the end of the sentence.
- page 19, Rule 11.02(2) add the words "or statutory declaration" after the word "affidavit"
- page 20, Rule 12.04(2) delete the word "instruct" in the second line and insert the word "advise"
- page 23, Rule 14.06(2) add the words "may fix costs and if applicable" after the word "tribunal"

It was moved by Ms. Cronk, seconded by Mr. MacKenzie that the Rules as amended by the errata document be approved.

Carried

MOTIONS - APPOINTMENTS

Proceedings Authorization Committee

It was moved by Mr. Murphy, seconded by Mr. Crowe that the Proceedings Authorization Committee be composed of Eleanore Cronk (Chair), Mary Eberts (Vice-Chair), Neil Ortved and Derry Millar.

Carried

Appeal Panel

It was moved by Mr. MacKenzie, seconded by Mr. Swaye that Mr. Arnup be appointed Chair of the Appeal Panel.

Carried

Hearing Panel

It was moved by Mr. MacKenzie, seconded by Mr. Swaye that Larry Banack be appointed Chair of the Hearing Panel.

Carried

Pre-hearing Conference Benchers

It was moved by Mr. MacKenzie, seconded by Mr. Swaye that Robert Topp be appointed the Pre-hearing Conference Benchers.

Carried

Ontario Legal Aid Committee

It was moved by Mr. Cole, seconded by Mr. Crowe that the Treasurer strike a special committee to prepare a list of persons to be considered by Convocation for appointment to the board of the Legal Aid Ontario as required by Section 5.(2) 2. of the Legal Aid Services Act, 1998.

Carried

Appointment of Scrutineers

It was moved by Ms. Backhouse, seconded by Mr. Crowe that the Treasurer be authorized to appoint six members of the Law Society of Upper Canada as scrutineers for the 1999 election of benchers from the list attached hereto.

Carried

(list in camera)

REPORT ON BENCHER REMUNERATION AND NON-BINDING REFERENDUM

The Report on Bencher Remuneration was presented by the Treasurer for Convocation's consideration.

Report to Convocation  
January 28, 1999

---

Report on Bencher Remuneration  
and Non-binding Referendum

Purpose of Report: Decision

I. INTRODUCTION

1. On January 22, 1999, the Task Force on the 1999 Bencher Election and Referendum presented its report. In response, Convocation voted to conduct a non-binding referendum on bencher remuneration at the next bencher election and directed staff to prepare a referendum question for Convocation's approval.
2. Bencher remuneration has been considered a number of times at the Law Society. The committee that produced the *Ferguson Report* in 1990 included this issue in its consultation process. Although the committee was unable to reach a consensus on bencher remuneration, its members agreed that any remuneration method established must not encourage members to run in the hope of monetary reward.
3. On February 28, 1997, the Finance and Audit Committee reported to Convocation that it was unable to make a decision on bencher remuneration. The only consensus reached was on compensation for attendance at discipline and admissions hearing. At that time, Convocation voted 22 to 21 in favour of some form of bencher honorarium.

II. NON-BINDING REFERENDUM PRINCIPLES

4. Fundamental requirements for the implementation of any democratic referendum, binding or not, are:
  - a. a clear and unambiguous question put to voters,
  - b. an impartial administration of the process and,
  - c. the provision of sufficient information to the voters to enable them to make an informed choice.
5. To provide voters with sufficient information to enable them to make an informed choice and to frame a clear and unambiguous question, Convocation must make some key decisions regarding bencher remuneration.
6. The key decisions are the determination of the type and amount of remuneration, the duties to be remunerated, the category of benchers who are eligible and any limits or conditions on remuneration.
7. Once these matters are determined and articulated in the question put to voters, the membership will have at hand at the moment of voting, all relevant information regarding the issue, including the implications to them of a Yes or No vote.

### III. FINANCIAL IMPLICATIONS

8. The Law Society has collected data on the amount of time spent by benchers on Law Society business. It must be borne in mind that this data is based on the legislative scheme in place prior to February 1, 1999 when benchers were required to convene as a Discipline Convocation once a month, and panels of benchers heard minor discipline matters, such as failing to file forms. How the new legislation will impact on the time commitment of benchers is as yet unknown.
9. In 1995, the cost of remunerating benchers was calculated based on the actual time spent by each bencher at Convocation, discipline hearings, discipline Convocations and committee days. The cost was calculated using the Legal Aid rate of \$67.00 per hour. It was estimated that the total cost of bencher remuneration would be \$400,826.
10. In 1997, the Chief Financial Officer estimated the cost of remunerating benchers using the Legal Aid rate and a seven hour day. The estimate assumed full attendance by benchers at all Convocation, Discipline Convocation and Committee days (a minimum of 27 days), in addition to 412 bencher days spent at discipline hearings. The total cost was estimated at \$750,400. If the attendance rate at all these dates was 66%, the cost of bencher remuneration for 1997 would have been approximately \$561,000.

Year	Rate	# of bencher hours	Cost of bencher remuneration	Increase to membership fee
1995	\$67 (Legal Aid rate)	5983 (actual)	\$400,826	\$16 - \$20
1997	\$67	11,200 (estimate - gives maximum exposure)	\$750,400	\$20 - \$28

11. The following table shows the number of days in 1998 benchers were called upon to attend to Law Society business.

Meeting	# days	benchers expected	total number of bencher hours (7 hr day)
Discipline Convocation	8	40	2240
Special Convocation	3	40	840
Regular Convocation	9	40	2520
Committee	9	40	2520
Hearings	126	any 2 (average)	1764
Pre-hearings	74	any 2 (average)	1036
Total			10,920 hrs = 1,560 days

12. There is no provision in the 1999 budget for bencher remuneration. The implementation of a bencher remuneration scheme would have to begin in the year 2000.

13. The Law Society reimburses benchers' expenses. The amount budgeted for these expenses in 1999 is \$607,100. Bencher remuneration is being considered in addition to expenses.

#### IV. KEY DECISIONS

14. Type of remuneration: The preferred method of remunerating benchers depends on the purpose the remuneration is intended to serve. In addition, the administrative processes required to manage bencher remuneration would vary from the simple to the complex depending on the method of remuneration.
- A. It must be decided whether benchers will be remunerated according to:
- i. An hourly, daily or meeting rate  
If the remuneration is intended to compensate bencher for lost time, remuneration based on hourly rates for actual lost hours of billable time might best achieve this objective. It would, however, require the most complex administration and this necessarily means greater administrative costs.
  - ii. An annual honorarium  
If remuneration is intended to recognize the service to the public and the profession, an annual stipend might best satisfy this objective. It would require the least administrative involvement once rules for bencher eligibility are established.
  - iii. A mixture  
This would comprise an annual honorarium plus an hourly, daily or meeting rate.
- b. Limits: If remuneration by hourly, daily or meeting rate is opted for, it may be prudent to establish a cap on the annual amount any one bencher may receive.
15. Duties: The specific duties for which benchers would be remunerated must be determined. They could include preparation time for bencher meetings, answering enquiries from the membership and attendance at:
- Convocation
  - Committee meetings
  - Pre-hearings
  - Hearing panels
  - Appeal panels
  - Working groups and task forces
  - Meetings with the membership
16. The following table gives a range of the total cost associated with the different types of remuneration schemes. The amount of the increase to the membership fee is based on 24,300 fee-paying members. The total cost represents the maximum exposure to the Law Society because it is based on full attendance at all meetings.

Type of scheme	Rate of pay	Total cost	Membership fee increase
Per day (1,560 days)	\$175/day (lay benchers rate)	\$273,000	\$11
	\$650/day (physician rate)	\$1,014,000	\$41
	\$750/day (dentists rate)	\$1,170,000	\$47
Per hour (10,920 hrs)	\$67 (Legal Aid)	\$731,000	\$29
Honorarium	\$3,000/yr	\$120,000	\$5
	\$5,000/yr	\$200,000	\$8
	\$10,000/yr	\$400,000	\$16
	\$30,000/yr	\$1,200,000	\$48
Mixed: honorarium plus \$175 per day	\$3,000 per 40 benchers + \$175 per 2 benchers for 200 days	\$190,000	\$8

17. Conditions: Certain conditions for benchers remuneration can be considered. For example, benchers may be required to donate a certain number of attendance days or to perform a specific number of hours of service before being eligible for remuneration.
18. Paid benchers: Convocation should specify which categories of benchers it wishes to remunerate:
  - a. Elected benchers
  - b. Benchers by virtue of office
  - c. Life benchers
  - d. Former Treasurers
  - e. Lay benchers
19. Relevant Information: The non-binding referendum ballot must be accompanied by an information leaflet that clearly describes the advisory nature of the referendum and, as objectively as possible, describes arguments for and against the motion including a synopsis of the debate on this issue at Convocation.

#### V. THE REFERENDUM QUESTION

20. The remuneration scheme will determine the framing of the referendum question, enabling the inclusion of the necessary information that will allow voters to make an informed decision.
21. Having been directed by Convocation to propose a question for the non-binding referendum, and having regard to the need to minimize the financial burden to the members and the potential administrative costs to the Law Society, while at the same time recognizing the contribution made by benchers, the following question is proposed:

Should individual benchers be remunerated with an annual honorarium of \$10,000 provided that the benchers perform a minimum of 150 hours of service to the Law Society per year, presuming that:



- benchers expenses will continue to be covered by the Law Society in addition to the honorarium and,
- the annual membership fee would be raised by no more than \$20 per member?

Your vote:      Yes \_\_\_\_      No \_\_\_\_

#### VI. ISSUES FOR CONVOCATION'S CONSIDERATION

22.      vocation is requested to consider the proposed question for the non-binding referendum and the remuneration scheme it is based upon.
23.      vocation is requested to provide direction on the preparation of the information leaflet that will accompany the non-binding referendum ballot.

.....

A debate followed.

It was the consensus of Convocation that a task force be established, composed of Larry Banack (Chair), Carole Curtis and Dan Murphy to set questions and background on whether Benchers should receive remuneration or honorarium and that it be distributed to the Benchers and voted on.

CONVOCATION ROSE AT 3:40 P.M.

Confirmed in Convocation this *19* day of *February* 1999

*Harry T. Strosberg*  
Treasurer