



Law Society
of Ontario

Barreau
de l'Ontario

Tab 8

Professional Regulation Committee

Review of the Good Character Process

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Issue

This preliminary report is provided to Convocation for information.

This report provides a status update on the review of the good character process, including an overview of some of the changes that are being discussed by staff with the Indigenous Advisory Group (IAG).

Executive Summary

At the Law Society Annual General Meeting on May 9, 2018, in response to a Motion that had been brought forward, a commitment was made by the then Treasurer that the Professional Regulation Committee would review the process for assessing a candidate's good character with guidance and input from the IAG. A staff level review was commenced shortly thereafter.

In October, the IAG received an overview of the current good character process and discussed proposed improvements and enhancements to that process.

Staff and the IAG will continue discussing proposed reforms to the good character review process. It is expected that a package of suggested reforms will be ready for review by the Professional Regulation Committee early in 2019.

Background

On March 15, 2018, the Secretary of the Law Society received a motion to be made at the Annual General Meeting, held on May 9, 2018 (the "Motion").

The Motion resolved that the Law Society of Ontario:

- i) review its process for assessing a candidate's good character, giving particular consideration to transparency, certainty, and the potential for existence of discriminatory barriers, and deliver a preliminary report to review to Convocation within six months;
- ii) ensure that the process for assessing a candidate's good character is transparent, provides candidates with certainty, and does not include any elements that constitute discriminatory barriers to admission; and
- iii) ensure that any assessment of the good character of Indigenous candidates bear in mind the *lpeelee* context at all stages.

The Motion was withdrawn prior to the Annual General Meeting, on the basis of a commitment by the former Treasurer that the Professional Regulation Committee would review the process for assessing a candidate's good character with guidance and input from the IAG.¹

In response to the former Treasurer's commitment, a consultation memorandum on the good character process was prepared. This memorandum examined the current good character review process and considered the need for improvements and/or enhancements to address the concerns implicit in the Motion. The memorandum focused on three areas of improvement:

1. Expanding information about the good character process available on the LSO website;
2. Making standardized information available in response to inquiries about the good character process; and
3. Amending or omitting questions on the licensing application form.

The memorandum proposed increasing transparency and certainty for applicants by expanding the information available on the Law Society's website to provide more detailed information about the criteria that is used to assess character, the questions that applicants are required to answer, the supporting documents or information that may assist in the resolution or investigation of good character issues, and high level statistical information about past good character review outcomes.

The memorandum also proposed the creation of a standardized information sheet about the good character investigation process and its outcomes, and the creation of an internal information sheet or "talk track" for staff who receive inquiries about the good character process, in order to ensure that applicants and prospective applicants receive as detailed information as is possible.

In addition, possible training opportunities for those staff involved in the good character review process, including specific training recommendations made previously in the Indigenous Framework and the Report of the Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples, were also considered.

The memorandum also examined the good character questions and considered whether the questions were appropriate and indicative of issues with good character. In particular, the memorandum examined question #1 of the good character section of the application, in light of

¹ See Annual General Meeting of the Law Society of Ontario, Wednesday May 9, 2018, webcast at <http://lso.peachnewmedia.com/streaming/interface-v7.php?topic=258260&band=1&stream=1&id=&semid=110028&provider=487&custid=176529&static=1&bypass=12>, at 43:00. See also, "LSO will review good character requirements", *Law Times* May 14, 2018 available at <https://www.lawtimesnews.com/author/dale-smith/lso-will-review-good-character-requirements-15735/>.

submissions received from the Ontario Bar Association.² In its submission the OBA suggested that the good character questions be amended to exclude the reporting of absolute and conditional discharges using the same temporal limitations as set out in the *Criminal Records Act* and the *Police Records Checks Reform Act*.

On October 11, the IAG considered the memorandum and discussed other possible improvements and/or enhancements that may address those concerns raised by the Motion. Specifically, the IAG suggested improvements in relation to the information that is made available to applicants, the disposition of applications that disclose certain past criminal convictions, and staff training with respect to cultural competence as well as the principles established by the Supreme Court in the *Gladue* and *Ipeelee* decisions.³

These possible process improvements will be refined and further discussed to determine efficacy and possible impacts, with the goal that a package of recommended improvements and enhancements be finalized for consideration by the Professional Regulation Committee and Convocation early in 2019.

Next Steps

Staff will meet again with the IAG to discuss further recommendations and to receive feedback, input, and guidance. A final report will then be brought to the Committee, once all feedback and recommendations from the IAG have been considered and adopted wherever possible. The final report will include, among other things, a package of suggested reforms to application materials and resource materials in order to increase transparency and certainty for licensing applicants and prospective applicants.

A copy of this report was also provided for information to the Paralegal Standing Committee and the Equity and Indigenous Affairs Committee.

² Ontario Bar Association, *The Good Character Inquiry and Dispositions of Discharge* Submissions to the Law Society of Ontario, April 16, 2018, available at <https://www.oba.org/CMSPages/GetFile.aspx?guid=6cb2855f-d4a6-4c29-9a9d-7f575a219a95>.

³ *R v. Gladue* [1999] 1 S.C.R. 688, and *R v. Ipeelee* 2012 SCC 13.