



Law Society
of Ontario

Barreau
de l'Ontario

Tab 7

Tribunal Committee

Report to Convocation for Information Proposed Law Society Tribunal Rules of Practice

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Proposed Law Society Tribunal Rules of Practice

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Issue

Convocation is provided with a copy of the new draft Law Society Tribunal *Rules of Practice*, proposed to replace the current *Rules of Practice and Procedure*. We invite comment from Law Society and public stakeholders by January 15, 2019. The final version of the rules and related forms will be presented for decision at the first Convocation in 2019, in both official languages, to take effect, if approved, on April 1, 2019.

The draft *Rules of Practice* are included at [Tab 7.1](#).

A Table of Concordance comparing the new rules with the old ones is included at [Tab 7.2](#).

Executive Summary

The new *Rules of Practice* make changes to adopt modern approaches and best practices for process design and drafting in administrative law.

The Tribunal Committee approached the redrafting of the rules with the goal to develop rules that would:

- better reflect the Tribunal's values of proportionality, accessibility, fairness;
- better accommodate vulnerable witnesses and those with mental health issues;
- be more user friendly and flexible
- be clearer and more understandable, using plain language;
- be more uniform and less repetitive; and
- allow for greater use of written processes, active adjudication and technology.

The rules have been updated where necessary to reflect current practice, not only before the Law Society Tribunal but generally before the courts and elsewhere in the administrative justice system.

The new rules are based on a flexible, values-based approach to adjudication, allowing the Tribunal to respond to the particular needs and dynamics of each case. Panels have more discretion in many areas, and are guided in the exercise of that discretion by explicit principles.

The significant proposed substantive changes include:

- definition of the values that guide procedural decisions;
- more flexible case management powers and methods of hearing issues;
- greater use of written hearings and technology;
- more flexible powers on admission of evidence;
- a revamp of the rule that deals with not public proceedings and documents.

The new rules are easier to use, in particular for the many self-represented licensees and licence applicants who appear before the Tribunal. They also set out many current practices that are currently unwritten or written only in case law.

The presentation of this draft to Convocation is the culmination of an extensive process. The rules have not been completely rewritten since 2009. The need for change was identified in various reports, notably the Tribunal Model Three-Year Review Final Report (January 2016). In addition, the report of the Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples, approved by Convocation on May 24, 2018, recommended the consideration of various changes to the Tribunal rules, in particular flexibility in taking evidence.

Intensive work on revamping the rules has been the main focus of the Tribunal Committee over the past 18 months, in addition to various changes to the rules that were made in the years immediately prior. From April 2017 to November 2018, the Tribunal Committee addressed various policy issues and drafts, which have culminated in this draft.

Key Changes

The most significant proposed changes are:

A. A values-based approach: Rule 1

Rule 1 sets out the modern values-based approach that is at the heart of the new rules. It is intended to guide the exercise of discretion by Tribunal members and clearly communicate the “why” behind the Tribunal’s actions to all stakeholders.

The rule incorporates the Tribunal’s core values of fairness, quality, transparency and timeliness, as well as interpretive principles being adopted and applied throughout the justice system such as accessibility, proportionality and flexibility. The focus in everything the Tribunal does remains the public interest.

B. Focus on case management: Rule 7

Rule 7 articulates the Tribunal’s case management processes. Rule 7.1 defines values that apply to case management, including early identification of issues, minimizing adjournments, and using hearing time effectively. The chair of an assigned hearing panel can now give procedural directions through a case conference, reducing the need to schedule the time of all three panel members on short notice when a procedural issue arises. This will also reduce delays when panel members are away. There is a clear definition of the powers of a case conference or proceeding management conference, including allowing issues related to public access to be dealt with, which is important to dealing quickly with requests that material not be public

C. Flexibility in admitting evidence: Rule 11.7

The current rules provide that the rules of evidence applicable in civil proceedings apply at many Tribunal hearings. The new proposed rules remove that restriction, thereby applying s. 15 of the *Statutory Powers Procedure Act* (SPPA), which allows a tribunal to admit any testimony or documents that are relevant unless privileged. The current rules already adopt multiple exceptions to the civil rules of evidence that are also found in the SPPA, and include a complete waiver of the rules in interlocutory suspension motions.

The new approach would not lead to automatic admission of evidence that would be excluded in civil court. Rather, it would give a panel discretion to do so. Case law makes it clear that evidence may not be admitted under the SPPA where to do so would result in procedural unfairness, considered in light of the well-established principles of administrative law. Since fairness is affected by the context, and given the importance of the rights at stake in our proceedings, departures from the common law would need to be clearly justified and appropriate at the Law Society Tribunal.

The standard of proof or quality of evidence required to meet that standard also does not change. The party with the burden of proof (the Law Society in conduct and capacity proceedings) must prove its case on a balance of probabilities. The panel must scrutinize relevant evidence to determine whether it is more likely than not that an alleged event occurred. Evidence must be sufficiently *clear, cogent and convincing* to meet this test.

The current rules which require the application of the civil rules of evidence make the Law Society of Ontario an outlier, although not unique among Canadian law societies. The only other Canadian law society that is required to apply the civil rules is Manitoba. In Ontario, discipline committees of the health professions to which the *Health Professions Procedural Code* applies are required by statute to apply the civil rules of evidence, as are the Association of Professional Engineers and the Ontario Association of Architects. The Ontario College of Teachers, Ontario College of Social Workers and Social Service Workers and Chartered Professional Accountants of Ontario are not required to do so.

This issue was discussed extensively over various Committee meetings. A majority of Committee members are recommending this change to the admission of evidence, but the Committee is not completely unanimous on this recommendation. The key aspects of the different views can be summarized as follows.

The majority of the Committee was of the view that the change:

- would allow for more flexibility to adapt the admission of evidence to the context of lawyer and paralegal professional regulation and to different types of cases;

- would reduce technical arguments that may hamper self-represented licensees and licence applicants, particularly those not expert in litigation, from putting forward their case;
- would permit alternative processes for admission of evidence in specific situations such as those involving Indigenous witnesses, sexual misconduct complainants and children, and respond to the recommendations of the Review Panel on Regulatory and Hearing Processes Affecting Indigenous Peoples; and
- would not lead to significant differences from the current approach in most cases, given that the civil rules are becoming less technical and more principled, and those applying the SPPA often exclude evidence for the same reasons that it is excluded in civil court.

The minority of the Committee was of the view that:

- the civil rules provide clear guidelines, known to most licensees and licence applicants, that ensure fairness, in particular for licensees;
- the fact that there are not significant differences between the two approaches suggests that the current approach should be maintained; and
- moving away from the civil rules would lead to the unnecessary and inappropriate reliance on unreliable forms of evidence such as hearsay, especially in affidavits, to the detriment of a robust and fair process in which the Law Society must prove its case.

The 2018 fall adjudicator education is on evidentiary issues, and the Tribunal Chair has advised that if this change is made, adjudicator education on the application of the SPPA will be included in upcoming education sessions.

D. Balancing openness, privilege and privacy: Rule 13

Defining the appropriate balance between transparency and protecting privilege and privacy interests has been a challenge under the current rules. The Appeal Division's decision in *Law Society of Upper Canada v. Xynnis*, 2014 ONLSAP 9 provided guidelines on this issue but they were not in the current Rule 18.

Rule 13:

- reflects the *Xynnis* approach, including the balancing test adopted from Supreme Court jurisprudence, makes clear that privileged or possibly privileged documents are automatically not public, and explicitly states that children and sexual misconduct complainants' identities are not to be made public;
- defines the effect of a not public order and non-disclosure order more clearly;

- includes provisions about publication bans, which are not in the current rule at all;
- includes specific considerations for departures from openness in capacity proceedings, recognizing the special privacy considerations when health is the main issue in the proceeding; and
- makes correspondence from the parties that the panel has reviewed public, which it was not in the former rules. This is essential to maintaining transparency as the Tribunal increases the use of written processes.

E. Modernizing through written proceedings and use of technology

The rules increase the use of written hearings and technology, notably by:

- removing the current restrictions that prevent most proceedings from being held in writing (Rule 9.3);
- providing that a party may attend an oral appearance by telephone or electronically on request, while clarifying that a witness or a person examining the witness must attend in person unless there is consent or leave (Rule 9.2);
- requiring the filing of electronic documents in certain circumstances (Rule 5.8) and ensuring that paper documents can be easily made electronic (Rule 5.10).

F. Requiring licensee witness statements: Rule 10.5

Under the proposed rules, licensees are required to prepare and disclose documents they intend to rely on and witness statements in all proceedings. Currently the Law Society must do so in all proceedings and the licensee must do so only in certain types of proceedings. Witness statements are only exchanged between the parties and are not provided to the Tribunal. This change will help ensure that both parties are prepared for hearing, know how the hearing will develop and allow for greater case management.

G. Process simplifications

Rule 14.3 permits the panel in a conduct application to deal with matters that would otherwise be the subject of a capacity application. The power to make such a rule is set out in s. 61.2(2)(g) of the *Law Society Act*.

A licensee will no longer be asked to waive their appeal rights when a reprimand is ordered. Currently, the parties are required to decide, on the spot at the hearing, whether to waive their rights to appeal the decision. If they waive their rights to appeal, the reprimand is administered right away and otherwise it is not administered until the appeal period is over. Rule 16.2 allows for the reprimand to be administered, and a party can still appeal as they can appeal any other decision.

The current Rule 26.02 prohibits a single panelist from making an order revoking a licence or permitting a licensee to surrender their licence. The new Rule 14.2 limits the prohibition to the single panelist assigned to a summary hearing. This enables the parties to agree to a single panelist. Usually in such circumstances, the panelist agreed to is the pre-hearing conference adjudicator.

H. A new proceeding type: motions to vary or cancel interlocutory orders: Rule 12.8

Rule 12 sets out that a party may move to vary or cancel an interlocutory suspension on the basis of fresh evidence or a material change in circumstances and that this will be a new proceeding. The ability to bring such a motion, and other terms, currently must be spelled out in each interlocutory suspension order and is now defined in the rules. Creating a new proceeding for a motion to vary or cancel simplifies the administration of such motions because the old file, which may be years old, does not have to be reopened.

I. Balancing fairness and efficiency: new timelines

Some timelines are proposed to be changed as follows:

- Appeals are deemed abandoned after six months instead of one year (Rule 17.4).
- To accommodate the new obligation for the licensee to deliver witness statements, the Law Society must do so earlier (Rule 10.5).
- Those receiving a request to admit (usually licensees) are given more time to respond if the document is long (Rule 11.3).

J. Combining the Hearing and Appeal Division rules: Rule 2.2

Currently there are approximately 65 pages of Hearing Division rules and 37 pages of Appeal Division rules. The separate Appeal Division rules require the user to refer back to the Hearing Division rules for many types of issues. By combining the two sets of rules into one, the rules become far more user friendly and less repetitive.

Process

Starting in early 2014, the Tribunal Committee, together with the Tribunal Chair, identified and implemented numerous substantive changes to the *Rules of Practice and Procedure* with the focus being on streamlining and enhancing Tribunal processes. These changes ranged from allowing the Tribunal Office greater abilities to schedule appearances to requiring licensees to prepare and provide pre-hearing conference memos; new proceedings were created (retired judges appearing as counsel and licensees working with or employing unauthorized persons proceedings) and others were discontinued (the consent resolution process pilot project); a new electronic case management system was introduced and changes to the forms in 2016 meant that information provided publicly on the Tribunal's website was made easier to review and follow.

Since April 2017, the Tribunal Chair and the Committee have been working intensively on the first comprehensive review of the rules since the last major changes were introduced in 2009. Its discussions on a multitude of issues have been supported by multiple research memoranda from Tribunal counsel and the Office of General Counsel.

The Tribunal Committee considered many policy issues which underlie the new *Rules of Practice* over multiple meetings during the last 18 months including:

- Rule 1 – Guiding principles; purposes and interpretation;
- Simplifying pre-hearing processes: rules regarding scheduling, adjournments, and case management (including PMCs, PHCs, and case conferences);
- Simplifying and increasing flexibility for appearances before the Tribunal: rules regarding form, language, location, consent to one panelist, consent to hearing by the PHC panelist, transcripts, disclosure and production, the record of proceeding and transparency; the ability of a single adjudicator to revoke or accept the surrender of a licence on consent, increasing the use of written hearings;
- Simplifying orders limiting public access to hearings and documents (not public, non-disclosure, publication ban);
- Simplifying the rules regarding the approach to evidence – flexibility in applying the SPPA;
- Addressing questions regarding privilege;
- Addressing the public nature of capacity proceedings.

The proposed rules have been drafted applying the Tribunal's core values and the principles developed at the outset of the process and included as Rule 1 of the new rules. The rules continue the Tribunal's commitment to an open and responsive process. They correct practical problems that have arisen under the current rules and codify current practices before the Tribunal.

The rules are being provided to Convocation for information at this time to enable a wide consultation to occur. The draft rules will be posted on the Tribunal's website and the consultation promoted on Twitter and in an e-mail blast in December 2018. The final version will be provided to the Tribunal Committee for approval and then to Convocation for approval at its first meeting of 2019.



LAW SOCIETY TRIBUNAL RULES OF PRACTICE

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RULE 1: PURPOSES AND INTERPRETATION

Purposes

1.1 The purposes of these rules are to:

- (a) establish fair processes that consider the interests of the public, the legal professions, individual licensees and licence applicants;
- (b) promote timely determination of proceedings in accordance with the public interest;
- (c) make the Tribunal's processes clear and understandable;
- (d) allow for flexibility to adapt processes to the needs of particular cases and types of cases, including those involving disadvantaged and vulnerable persons;
- (e) promote early identification of issues in dispute and facilitate agreement and resolution;
- (f) ensure that processes and proceedings are transparent to the public and to licensees; and
- (g) allow licensees and licence applicants to participate effectively in the process, whether or not they have a representative.

Interpretive Principles

1.2 These rules shall be interpreted and applied in accordance with their purposes.

1.3 Orders and directions made under these rules shall be proportionate to the importance and complexity of the issues.

1.4 The Tribunal may exercise its powers at the request of a party or on its own initiative.

1.5 The Tribunal may decide not to strictly apply these rules unless to do so would be inconsistent with legislation, regulations or a specific rule.

RULE 2: APPLICATION AND DEFINITIONS

Name

2.1 These rules are referred to as the Law Society Tribunal *Rules of Practice*.

Application

2.2 These rules apply to all proceedings before the Hearing and Appeal Divisions of the Law Society Tribunal, starting April 1, 2019.

Definitions

2.3 In these rules, unless the context requires otherwise:

“Act” means the *Law Society Act*, RSO 1990, c. L. 8;

“administrative suspension order appeal” means an appeal from an order under section 46, 47, 47.1, 48, or 49 of the Act;

“appeal” includes, where appropriate, a cross-appeal;

“appearance” means a hearing, motion, case conference, pre-hearing conference or proceeding management conference;

“appellant” means a person who starts an appeal, including, where appropriate, a person who starts a cross-appeal;

“assigned hearing panel” means the Tribunal member or members assigned to a hearing or motion by the Chair;

“Chair” means the Chair of the Law Society Tribunal, or a Vice-Chair of the Hearing or Appeal Division acting in the Chair’s absence;

“document” includes electronic records;

“endorsement” means a record of an action taken by the Tribunal, made by a panelist or Tribunal staff;

“file” means to provide a document to the Tribunal in accordance with Rules 5.4 to 5.11;

“holiday” means any Saturday, Sunday, statutory holiday or other day on which the Tribunal is closed;

“intervenor” means a person or organization granted leave to participate in a proceeding or a part of a proceeding under Rule 4;

“Law Society” means the Law Society of Ontario;

“leave” means permission granted by a panel;

“licensee” means a lawyer or paralegal who is a party to a proceeding;

“licence applicant” means the applicant for a licence in a licensing proceeding;

“non-disclosure order” means an order that the transcript or a part of the transcript of a public appearance be not public, and that anyone who was present may not disclose what occurred;

“not public order” means an order that an appearance or document, or a part of the appearance or document, be not public;

“originating process” means a Notice of Application, Notice of Referral for Hearing, Notice of Appeal, Notice of Administrative Suspension Order Appeal, Notice of Cross-Appeal, Notice of Motion – Interlocutory Suspension or Restriction or Notice of Motion – Vary or Cancel Interlocutory Suspension or Restriction;

“panel” means the member or members of the Tribunal assigned to an appearance by the Chair;

“panelist” means a member of a panel;

“publication ban” means an order that no one may publish information about what occurred at a public hearing or the contents of otherwise public documents;

“representative” means a person representing a party in the proceeding;

“serve” means to provide documents to the other party or parties in accordance with Rule 3.1 or Rule 5.1;

“summary hearing” means a proceeding in which the Law Society requests that the matter be assigned to a single member panel under para. 1 of s. 2(1) of O. Reg. 167/07;

“Tribunal” means the Law Society Tribunal, and includes a panel.

Same meaning as in the Act

2.4 If a word or phrase is defined in the Act, it has the same meaning in these rules unless the rules specify otherwise.

Calculating time

2.5 In calculating time under these rules, or under a direction or order made under these rules:

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens but including the day on which the second event happens;
- (b) where a period of less than seven days is prescribed, holidays shall not be counted;
- (c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.

RULE 3: STARTING AND WITHDRAWING PROCEEDINGS

Service

- 3.1 (1) A party starts a proceeding by serving and filing the appropriate originating process (Forms 1-17) and information sheet (Forms 18-25).
- (2) A party must serve an originating process and information sheet by:
- (a) hand delivery to the person being served;
 - (b) regular mail, registered mail or courier; or
 - (c) any other method agreed to by the person being served or directed by the Tribunal.
- (3) The Law Society must file originating processes and information sheets electronically.

Amending an originating process

- 3.2 (1) A party may amend an originating process by serving and filing an amended version that clearly indicates the nature of the changes:
- (a) in a proceeding in the Hearing Division, no later than 10 days before the hearing on the merits; and
 - (b) in a proceeding in the Appeal Division, at any time before the appeal is perfected.
- (2) A party may amend an originating process after the deadline with consent of the other party or with leave.

Withdrawing a proceeding or motion

- 3.3 (1) A party may, at any time, withdraw a proceeding or motion by serving and filing a Notice of Withdrawal (Form 26).
- (2) A party that brought a proceeding or motion and does not attend an appearance or meet a deadline set by the Tribunal may be deemed to have withdrawn the proceeding or motion.
- (3) Another party may request costs after a proceeding or motion is withdrawn or deemed withdrawn.

RULE 4: ADDITIONAL PARTICIPANTS

Adding parties

- 4.1 The Tribunal may make an order adding a person as a party where the person is entitled under the Act or otherwise by law to be a party to the proceeding.

Intervenors

4.2 (1) The Tribunal may make an order permitting a person to participate in the proceeding or a part of the proceeding as an intervenor if this would be in the interests of justice.

(2) The Tribunal shall determine the extent of an intervenor's participation and may make other directions about that participation.

Friend of the Tribunal

4.3 The Tribunal may invite a person to participate in the proceeding or part of the proceeding to assist the Tribunal. A person who participates under this rule is not a party and no costs order may be made against that person.

RULE 5: SERVICE, FILING, COMMUNICATING WITH THE TRIBUNAL AND FORM OF DOCUMENTS

How to serve

5.1 A document other than an originating process may be served by:

- (a) hand delivery;
- (b) regular mail, registered mail or courier;
- (c) fax, if the document is 20 pages or less;
- (d) e-mail; or
- (e) any other method agreed to by the person being served or directed by the Tribunal.

Effective date of service

5.2 Service is deemed to be effective:

- (a) if the document is faxed, e-mailed, hand delivered or delivered by courier before 5 p.m. on a business day, on that day;
- (b) if the document is faxed, e-mailed, hand delivered or delivered by courier on a holiday or after 5 p.m. on a business day, on the next business day;
- (c) if the document is mailed, on the fifth business day after mailing.

Service using contact information in the Law Society's records

5.3 Service on a licensee using contact information provided to the Law Society under By-Law 8, ss. 3 and 4 is considered effective unless otherwise ordered by the Tribunal.

Confirmation of service

5.4 When a document is filed with the Tribunal, service must be confirmed by:

- (a) a Confirmation of Service form (Form 27);
- (b) an affidavit of the person who served it;
- (c) an e-mail showing that the document was sent to the other person's e-mail address; or
- (d) written acceptance of service by the person served.

Communication with the Tribunal

- 5.5 (1) All parties must be copied on correspondence sent to the Tribunal about the substance of the proceeding. If this rule is not followed, the Tribunal Office shall refuse to accept or process the correspondence.
- (2) All communication with a panel other than during an appearance shall be sent in writing to the Tribunal Office, and may be sent electronically.

Courtesy and respect

- 5.6 (1) All documents filed, and all written and oral communications with the Tribunal must be relevant to the proceeding, courteous and respectful to all participants in the proceeding and to the Tribunal.
- (2) The Tribunal may direct that documents and communications that do not comply with this rule be removed from the record of proceeding.
- (3) Failure to comply with this rule is a relevant factor in making a costs award.

Acceptance of documents by the Tribunal

- 5.7 Acceptance of documents by the Tribunal does not mean that they are timely, properly served or otherwise comply with these rules or the order or direction under which they were filed. The Tribunal may reject documents after they are filed.

Filing requirements: electronic and hard copies

- 5.8 (1) The following must be filed in electronic copy:
- (a) pre-hearing conference memoranda;
 - (b) any document less than 10 pages, unless filed at an appearance.
- (2) The following, if 10 pages or more, must be filed in both electronic and hard copy:
- (a) agreed statements of facts (not including exhibits);
 - (b) affidavits (not including exhibits);
 - (c) requests to admit;

- (d) draft orders;
- (e) facta;
- (f) written submissions; and
- (g) notices of motion.

(3) All other documents must be filed in hard copy.

Filing electronic documents

5.9 Electronic copies of documents may be filed in Word and/or pdf format, by e-mail (if less than 20 MB), or on a USB drive or such other method as the Tribunal may permit. The document file name must include the Tribunal file number, the name of the document and the party filing.

Filing hard copy documents

5.10 When filing in hard copy the party must file:

- (a) two copies of the document if the appearance is before a single-member panel;
- (b) four copies of the document if the appearance is before a three-member panel; or
- (c) six copies of the document if the appearance is before a five-member panel;

together with an electronic copy or an additional untabbed and unbound hard copy.

Layout

5.11 Documents prepared for Tribunal proceedings must be on white 8.5 by 11 inch paper, using 12-point font, double-spaced, except for quotations which may be single-spaced, with a margin of at least 1 ½ inches on the left-hand side.

Facta

5.12 A factum must include at least the following sections:

- (a) overview;
- (b) issues;
- (c) facts, argument and law;
- (d) the order requested;
- (e) schedule A, containing a list of authorities referred to; and
- (f) schedule B, containing the text of the relevant portions of statutes, regulations, by-laws and rules.

Books of authorities

5.13 (1) Parties must mark those passages in their book of authorities to which they intend to refer in oral argument.

(2) Parties should not include authorities contained in the Tribunal Book of Authorities or in a book of authorities already filed by another party.

Covers

5.14 The front and back covers of bound documents must be:

- (a) green if filed by the Law Society;
- (b) white if filed by a licensee or licence applicant;
- (c) blue if filed by any other party; or
- (d) red if the document is subject to a not public order, non-disclosure order or publication ban, unless the document was filed before the order was made.

RULE 6: SCHEDULING, ADJOURNMENTS AND ACCOMMODATION

First appearance

6.1 (1) The date of the first appearance, in Hearing Division proceedings, is set out on the information sheet.

(2) For a summary hearing, interlocutory suspension or restriction motion, or motion to vary or cancel an interlocutory suspension or restriction, the first appearance is the scheduled hearing date. The Law Society must confirm the availability of a proposed hearing date with the Tribunal Office before including it in the information sheet.

(3) For all other Hearing Division proceedings, the first appearance is a proceeding management conference. Available proceeding management conference dates are posted on the Tribunal website.

(4) An appeal hearing is scheduled by the Tribunal Office once the appeal has been perfected.

Who may schedule or adjourn

6.2 An appearance may be scheduled or adjourned by:

- (a) a pre-hearing conference or proceeding management conference;
- (b) the assigned hearing panel or its chair; or
- (c) the Tribunal Office, if the scheduling or adjournment is on consent.

Adjournments

- 6.3 Adjournments are not automatic, even if the parties consent. Once an appearance before the assigned hearing panel is scheduled, that date is firm and adjournments will be granted only in exceptional circumstances, as set out in the Tribunal's Practice Direction on Adjournments. Parties must be ready to proceed on the dates scheduled.
- 6.4 The Tribunal may order that there be terms to an adjournment.

Accommodation

- 6.5 Participants in proceedings are entitled to accommodation of their needs under the *Human Rights Code*, RSO 1990, c. H. 19, to the point of undue hardship. A participant in a proceeding must notify the Tribunal as soon as possible of any accommodation requests.

Failure to attend or participate

- 6.6 Where notice of an appearance has been given to a person and the person does not attend or does not participate, the panel may proceed in the absence of the person or without the person's participation. The person will not be entitled to any further notice in the proceeding.

RULE 7: CASE MANAGEMENT

Principles

- 7.1 The Tribunal applies active case management throughout the course of proceedings, so that, among other things:
- (a) proceedings move forward in a fair and timely way, in the public interest;
 - (b) scheduled hearing time is used efficiently and effectively so the assigned hearing panel hears and decides the issues in dispute;
 - (c) issues are identified early so the parties have the opportunity to fully prepare; and
 - (d) adjournments are granted only due to unforeseeable and exceptional circumstances.

Case management directions

- 7.2 Case management directions may be made at the request of a party or on the Tribunal's own initiative at:
- (a) a proceeding management conference;
 - (b) a pre-hearing conference;
 - (c) a hearing or case conference, by the assigned hearing panel; or

- (d) a case conference, by the chair of the assigned hearing panel, prior to or between hearing days.

Format

- 7.3 A proceeding management conference, pre-hearing conference or case conference may be held in person, by telephone, by videoconference, in writing or any combination of these formats.

Endorsement

- 7.4 A panelist shall prepare an endorsement after each proceeding management conference, pre-hearing conference or case conference, recording any directions made or appearances scheduled.

Proceeding management conference

- 7.5 The Tribunal may schedule a proceeding management conference on its own initiative or at the request of any party.

Directions at proceeding management conference

- 7.6 A proceeding management conference panelist may:
- (a) schedule or adjourn an appearance;
 - (b) set timelines and deadlines for steps in the proceeding;
 - (c) hear and decide a procedural motion;
 - (d) make a not public order, non-disclosure order or publication ban, except one that relates to the exclusion of the public from all or part of the hearing on the merits; and
 - (e) make any other procedural directions, including directions about process at the hearing.

Pre-hearing conference

- 7.7 The purpose of a pre-hearing conference is to facilitate the just and most expeditious disposition of a proceeding.

Issues discussed at pre-hearing conference

- 7.8 A pre-hearing conference panelist may discuss with the parties,
- (a) the identification, limitation or simplification of the issues in the proceeding;
 - (b) the identification and limitation of evidence and witnesses;
 - (c) the possibility of settlement of any or all of the issues in the proceeding;
 - (d) the possibility of the parties entering into an agreed statement of facts; and

- (e) the procedural steps appropriate to moving the matter toward a hearing in a fair and timely manner.

When a pre-hearing conference is scheduled

- 7.9 A pre-hearing conference shall be promptly scheduled in every proceeding other than a summary hearing, interlocutory suspension or restriction motion, motion to vary or cancel an interlocutory suspension or restriction, or appeal unless the matter is ready for hearing. The Tribunal may, at the request of a party, or on its own initiative, schedule a pre-hearing conference in any proceeding, at any time.

Confidential and without prejudice

- 7.10 A pre-hearing conference is confidential and without prejudice. No one may disclose what occurred at a pre-hearing conference or what is contained in a pre-hearing conference memorandum, unless otherwise ordered or required by law. The panelist may summarize in the endorsement the results of the discussions and the directions made.

Directions at pre-hearing conference

- 7.11 (1) A pre-hearing conference panelist may:
- (a) schedule or adjourn an appearance;
 - (b) set timelines and deadlines for steps in the proceeding; and
 - (c) make any other procedural directions to move the matter forward toward hearing in a fair and timely manner, including directions about process at the hearing.
- (2) Procedural directions may be made by a pre-hearing conference panelist whether or not the parties consent.

Pre-hearing conference memoranda

- 7.12 (1) Each party must prepare a pre-hearing conference memorandum containing a statement of the facts the party relies upon and its position on the issues in the proceeding.
- (2) Each party's memorandum must be sent by e-mail to the other parties and to the Tribunal Office. The Law Society's memorandum must be sent at least seven days prior to the first pre-hearing conference. The licensee or licence applicant's memorandum must be sent at least two days prior to the first pre-hearing conference.
- (3) The Tribunal may waive the requirement to file a memorandum, if the preparation of the memorandum would not be practical or of assistance in the circumstances.

Limitation on assignment of pre-hearing conference panelist

- 7.13 (1) A panelist who conducted a pre-hearing conference in an application shall not be assigned to a motion or merits hearing or to any appeal of that application, nor shall a

member of the panel assigned to a hearing preside at a pre-hearing conference, except with consent of the parties. The parties must confirm their agreement by filing a consent (Form 28).

(2) This rule does not preclude a panelist who conducted a pre-hearing conference from conducting a proceeding management conference.

Case conference

7.14 A case conference may be scheduled on the assigned hearing panel's own initiative, as directed at a proceeding management conference, or at the request of any party.

Directions at case conference

7.15 At a case conference, the assigned hearing panel or its chair may:

- (a) schedule or adjourn an appearance;
- (b) set timelines and deadlines for steps in the proceeding;
- (c) make a not public order, non-disclosure order or publication ban, except that the panel chair alone may not make an order that relates to the exclusion of the public from all or part of the hearing on the merits; and
- (d) make any other procedural directions.

RULE 8: MOTIONS

Motions

8.1 (1) A motion must be made by notice of motion (Form 29) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

(2) If a motion date has not been confirmed by the Tribunal at the time the notice of motion is served and filed, the notice of motion should indicate that the motion will be heard on a date to be set by the Tribunal.

(3) The Tribunal may direct that a party attend a proceeding management conference before setting a motion date.

(4) A motion may not be brought prior to the start of the proceeding to which it relates.

Motion materials

8.2 (1) This rule applies where a motion is made by notice of motion, unless the Tribunal has made specific directions otherwise.

(2) At least 10 days before the hearing of the motion, the moving party must serve and file a motion record that includes the notice of motion, together with a factum and a book of authorities.

(3) A responding party to the motion must serve and file a factum, together with a motion record and book of authorities, if any, at least three days before the hearing of the motion.

(4) A motion record must have consecutively numbered pages and contain;

- (a) a table of contents that lists each document contained in the motion record and describes each by its nature and date, including exhibits, which shall be described by their nature, date and exhibit number or letter;
- (b) the notice of motion, if not already included in another party's motion record; and
- (c) all affidavits and other material upon which the party intends to rely.

(5) Where cross-examination on an affidavit in a motion record occurs, it will take place before the panel at the motion hearing, unless the parties agree or the Tribunal orders that it take place before an official examiner. The party calling the witness must ensure the attendance of the witness for cross-examination.

Motions on consent or unopposed motions

8.3 When a motion is on consent or unopposed:

- (a) facta and books of authorities are not required; and
- (b) the moving party must file a draft of the order sought and any consents.

RULE 9: APPEARANCES

Form of appearance

9.1 Unless otherwise provided, an appearance shall take place orally and in person.

Attending an appearance electronically

9.2 (1) Subject to Rule 9.2(2), a party or the party's representative may attend an oral appearance by telephone or electronically on request.

(2) A witness giving oral evidence and a representative or self-represented party examining a witness must attend an oral appearance in person, unless the other party consents or the Tribunal gives leave.

Written appearance

9.3 (1) The Tribunal may direct, at the request of a party or on its own initiative, that an appearance or part of an appearance take place in writing.

(2) A request that an appearance take place in writing may be heard in writing.

(3) The panel assigned to a written appearance may convert the appearance to an oral appearance.

Language

9.4 (1) A proceeding shall be conducted in English, French, or both English and French, at the choice of the licensee or licence applicant.

(2) A licensee or licence applicant who asks that the language of the proceeding be changed from the language in which it was started must make the request within 30 days of service of the originating process.

(3) Documents provided in a language other than English or French must be accompanied by a translation of the document into the language of the proceeding by a qualified translator as well as a certificate by the translator setting out that the translation is a true and accurate translation to the best of the translator's skill and ability.

(4) A party intending to call a witness whose testimony will require interpretation must notify the Tribunal as early as possible, no later than seven days before the hearing at which the witness will be examined.

Location

9.5 (1) Subject to Rules 9.5(2) and (3), an in-person hearing shall be held at the Law Society Tribunal in Toronto.

(2) Where all parties consent to a hearing being held outside Toronto and within the Province of Ontario, the hearing shall be held in that place.

(3) On the motion of a party, or on the Tribunal's own initiative, an order may be made that a hearing be held in another place.

Hearing proceedings together or consecutively

9.6 (1) The Tribunal may order that two or more proceedings, in whole or in part, be heard at the same time or one immediately after the other, if:

- (a) the proceedings have a question of fact, law or mixed fact and law in common;
- (b) the proceedings involve the same parties;
- (c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or
- (d) for any other reason an order ought to be made under this rule.

(2) Where an order is made under Rule 9.6 (1), the Tribunal shall determine the effects of hearing the merits of the proceedings together or one immediately after the other, and may give directions about those effects.

Consent to hearing before one panelist

- 9.7 The parties to a conduct proceeding may consent to having one panelist preside at the hearing on the merits of the proceeding under O. Reg. 167/07, s. 2(1) by filing a consent (Form 28) with the Tribunal.

Transcripts

- 9.8 (1) A person wishing to have a copy of the transcript of a public appearance must order it, at their own expense, from the reporting service that recorded the appearance.

(2) The first party to obtain a transcript of an appearance is responsible for the cost of the Tribunal's electronic and hard copies, which will be provided to the Tribunal directly by the reporting service.

Video, photographs and recording

- 9.9 No one, other than a court reporting service, may take photographs or make a video or audio recording in the Tribunal premises or the hearing room without leave.

RULE 10: DISCLOSURE AND PRODUCTION

Law Society's obligation to disclose

- 10.1 The Law Society must disclose to the licensee or licence applicant, within a reasonable period of time following the filing of the application, all potentially relevant documents in its possession over which there is no privilege as well as the existence of any potentially relevant documents in its possession which it is not disclosing due to privilege.

Production from the Law Society

- 10.2 A licensee or licence applicant bringing a motion for further production from the Law Society must include in the motion record prior correspondence to the Law Society's representative requesting the documents and the Law Society representative's response.

Interlocutory suspension motions

- 10.3 Rules 10.1 and 10.2 do not apply to interlocutory suspension or restriction motions, though a panel may require disclosure in such motions.

Production from third parties

- 10.4 Where a party seeks production of documents from a third party, the party seeking the documents must obtain a motion date, and serve on the third party a summons to witness requiring the third party to attend on the motion date, conduct money and a Notice of Motion. The Notice of Motion must set out the relevance of the documents requested from the third party.

Witness statements and document books

- 10.5 (1) Each party must provide to every other party:
- (a) a document book containing all anticipated documentary evidence;

(b) a list of witnesses that the party intends to call; and

(c) an affidavit, signed witness statement or summary of the anticipated oral evidence of each witness, as well as the witness's contact information or the contact information of a person through whom the witness may be contacted.

(2) The Law Society must comply with this rule no later than 14 days before a summary hearing and no later than 20 days before any other merits hearing. A licensee or licence applicant must comply with this rule not later than seven days before a summary hearing and no later than 10 days before any other merits hearing.

Expert reports

10.6 (1) Each party must provide to every other party, no later than 45 days before a hearing, a copy of the affidavit or written report of every expert witness the party intends to call.

(2) An affidavit or report of an expert must include an Acknowledgement of Expert's Duty (Form 30).

Consequences of failure to disclose

10.7 Evidence not disclosed as required by this rule may not be relied upon without leave of the Tribunal.

RULE 11: EVIDENCE

Agreed facts

11.1 A panel may receive and rely on any facts agreed to by the parties without further proof or evidence.

Affidavit evidence

11.2 (1) The evidence-in-chief of a witness may be given by affidavit, unless the Tribunal orders otherwise.

(2) Any cross-examination on an affidavit will take place before the assigned hearing panel, unless the parties agree or the Tribunal orders that it take place before an official examiner.

(3) The party calling the witness must ensure the attendance of the witness for cross-examination.

Deemed admissions

11.3 (1) A party may request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document. The request must be in Form 32 and served on the other party. The request to admit must include a copy of any document mentioned in it unless the other party already has the document. A request may be made:

- (a) no later than 30 days before the hearing if the request contains 75 paragraphs or less;
 - (b) no later than 50 days before the hearing if the request contains 76-200 paragraphs;
 - (c) no later than 70 days before the hearing if the request contains more than 200 paragraphs.
- (2) The party that receives the request must respond;
- (a) no later than 20 days after the date of service if the request contains 75 paragraphs or less;
 - (b) no later than 40 days after the date of service if the request contains 76-200 paragraphs;
 - (c) no later than 60 days after the date of service if the request contains more than 200 paragraphs.
- (3) The response must be in Form 32 and must, in relation to each fact and document mentioned in the request:
- (a) admit the truth of the fact or the authenticity of the document;
 - (b) specifically deny the truth of the fact or the authenticity of the document and set out the reason for the denial; or
 - (c) refuse to admit the truth of the fact or the authenticity of the document and set out the reason for the refusal.
- (4) If a party fails to respond to a request to admit or fails to respond in a manner that complies with this rule, that party will be deemed to admit, for the purposes of the proceeding only, the truth of the facts or the authenticity of the documents mentioned in the request to admit.
- (5) If a party on whom a request to admit was served does not attend or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party will be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.
- (6) If a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved, the Tribunal shall take the denial or refusal into account in exercising its discretion respecting costs.

(7) The Tribunal may relieve a party from a deemed admission.

Filing materials before the hearing

11.4 A party may file an agreed statement of facts, request to admit that has been deemed admitted, affidavit or document book for the panel to review to prepare for the hearing. Filing such documents does not preclude another party from objecting to their admissibility at the hearing.

Summons

11.5 (1) The Tribunal may, by summons, require any person to give evidence on oath or affirmation at a hearing and/or produce in evidence at a hearing specified documents and things.

(2) A summons shall be in Form 32, and may be signed by the Registrar or a Tribunal member.

(3) On request of a party, unless a panel has directed otherwise, the Tribunal Office may provide a blank summons to a party.

(4) The party that obtains a summons must serve the summons on the witness, and pay attendance money as set out in Tariff A under the *Rules of Civil Procedure*.

Exclusion of witnesses

11.6 (1) Subject to Rule 11.6(2), the Tribunal may direct that a witness be excluded from a hearing until the witness is called to give evidence.

(2) A party or a person instructing a party's representative shall not be excluded, but an order may be made that that person's evidence be called before the party's other witnesses.

(3) Unless the Tribunal orders otherwise, there must be no communication to an excluded witness of any evidence given during the witness' absence until after the witness has given evidence.

Admission of evidence

11.7 Admission of evidence is governed by the *Statutory Powers Procedure Act*, RSO 1990, c. S. 22. No evidence shall be admitted where to do so would be contrary to the purposes of these rules.

Limits on examination or cross-examination

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

Information obtained by the Discrimination and Harassment Counsel

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

RULE 12: INTERLOCUTORY SUSPENSION AND RESTRICTION MOTIONS

Authority

- 12.1 (1) On the motion of the Law Society, the Tribunal may make an interlocutory order suspending a licence or restricting the manner in which a licensee may practise law or provide legal services.
- (2) On the motion of a licensee or the Law Society, the Tribunal may vary or cancel an interlocutory order made under this rule.

Motions rule applies

- 12.2 Rule 8 applies to interlocutory suspension or restriction motions, except where it differs from this rule.

When authorization required

- 12.3 If the motion relates to a proceeding where the Hearing Division has not started a hearing on the merits, the Law Society shall obtain the authorization of the Proceedings Authorization Committee to bring an interlocutory suspension or restriction motion.

Service and materials

- 12.4 (1) In an interlocutory suspension or restriction motion, the Law Society must serve and file its Notice of Motion, Information Sheet, motion record, factum and book of authorities at least three days before the hearing of the motion, unless the Tribunal orders otherwise.
- (2) The Tribunal may order that service is not necessary if:
- (a) it is not practical; or
 - (b) the delay it could cause may lead to serious consequences.
- (3) The licensee must serve and file a motion record, factum and book of authorities, if any, not later than 2 p.m. on the day before the hearing of the motion, unless the motion is being heard on 10 days' notice or more, in which case they must be filed no later than three days prior to the hearing.

Interim interlocutory suspension

- 12.5 Unless ordered otherwise, an interim interlocutory suspension or restriction order remains in effect until the interlocutory suspension motion is determined.

Duration of interlocutory suspension

12.6 Unless ordered otherwise, a full interlocutory suspension or restriction order remains in effect until a final order is made in the conduct proceeding to which the motion relates, or the Tribunal varies or cancels the order.

Grounds to vary or cancel

12.7 An interlocutory suspension or restriction order may be varied or cancelled on the basis of fresh evidence or a material change in circumstances.

Motion to vary or cancel

12.8 A request to vary or cancel an interlocutory suspension or restriction order is made by serving and filing a Motion – Vary or Cancel Interlocutory Suspension (Form 8) and information sheet (Form 20 or 21).

RULE 13: RECORD OF PROCEEDING AND TRANSPARENCY

Record of proceeding

13.1 The record of proceeding consists of:

- (a) all materials filed with the Tribunal, unless the Tribunal refuses them for failure to comply with these rules, an order or direction;
- (b) all exhibits, including any marked “for identification”;
- (c) all other documents and correspondence from a party reviewed by a panel, except for the purpose of a pre-hearing conference;
- (d) all notices of hearing;
- (e) all endorsements;
- (f) all orders made by the Tribunal;
- (g) all reasons issued by the Tribunal; and
- (h) all transcripts filed with the Tribunal.

Open tribunal

13.2 (1) The contents of the record of proceeding and all appearances except pre-hearing conferences are public, unless the Tribunal or a court orders otherwise.

(2) Anyone may attend a public appearance unless the Tribunal orders otherwise.

Departing from openness

13.3 (1) The Tribunal may make a not public order, non-disclosure order or publication ban only if:

- (a) an order is necessary to prevent a serious risk to the administration of justice because reasonable alternative measures will not do so; and
- (b) the benefits of the order outweigh the effects on the right to free expression and the transparency of the administration of justice.

(2) If a not public order, non-disclosure order or publication ban is necessary, the Tribunal shall make the order that affects openness the least while achieving the objective.

Capacity proceedings

13.4 In considering a request for a not public order, non-disclosure order or publication ban in a capacity proceeding, a panel shall consider:

- (a) that the central issue in capacity proceedings is the licensee's health;
- (b) the nature and impact on the public of any of the licensee's actions that led to the proceeding;
- (c) any stigma related to the nature of the licensee's health issues;
- (d) possible impact of disclosure on the licensee's or others' health; and
- (e) any other relevant factor.

Children and sexual misconduct complainants

13.5 A not public order, non-disclosure order or publication ban shall be made to ensure that the identities of children and persons who allege sexual assault or misconduct are not made public.

Privilege

13.6 Unless the holder of the privilege has given consent, the Tribunal shall order that privileged or possibly privileged documents, and evidence about privileged or possibly privileged documents and communications be not public.

Effect of not public order

13.7 (1) When an oral appearance is not public, no one may attend except for the licensee or licence applicant, the parties' representatives, witnesses and anyone else permitted by the panel.

(2) When an oral appearance is not public, no one other than the licensee or licence applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

(3) When a document is not public, it must not be provided to anyone other than the parties, their representatives, or a witness testifying about the document.

(4) No one may disclose what occurred during a not public appearance to anyone other than the parties or their representatives. No one who has become aware of a not public document as a result of the proceeding may disclose its contents to anyone other than the parties or their representatives.

Effect of non-disclosure order

13.8 (1) When there is a non-disclosure order, no one other than the licensee or licence applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

(2) No one may disclose what occurred during an appearance subject to a non-disclosure order to anyone other than the parties or their representatives. No one who has become aware of a not public document as a result of attending the appearance may disclose its contents to anyone other than the parties or their representatives.

Effect of publication ban

13.9 (1) When a publication ban has been made, the hearing and Tribunal file remain open to the public.

(2) No one may publish in any document or broadcast or transmit in any way information or documents subject to a publication ban.

(3) The Tribunal and the court reporting service that transcribes the proceeding shall include a written notice of a publication ban on documents and transcripts to which it applies.

Effect of order

13.10 No order under this part prevents Tribunal staff or panelists from accessing materials in the Tribunal's file or attending an appearance.

RULE 14: ORDERS AND REASONS

Orders

14.1 Unless otherwise provided, an order or direction is effective from the date it is made, whether orally on the record, in an endorsement, in reasons or in a formal order, and whether or not an endorsement or formal order has been issued.

Power to make orders

14.2 A single panelist assigned to a summary hearing shall not make an order revoking a licensee's licence or permitting a licensee to surrender his or her licence.

Addressing capacity issues in conduct applications

14.3 With the consent of the parties, a panel assigned to a conduct application under s. 34 of the Act may deal with matters that would otherwise have to be the subject of a capacity application under s. 38 of the Act, and may make any order referred to in s. 40 of the Act.

Formal order

- 14.4 (1) Any party may prepare a draft of a formal order.
- (2) A formal order shall be in Form 34-38 as appropriate.
- (3) A party that has prepared a draft of a formal order may submit it to the Tribunal, before or after a panel makes its decision.
- (4) The draft order will be treated as a submission and the panel may amend the order.
- (5) Where a formal order is not prepared by any party, it will be prepared by the Tribunal Office.
- (6) Any member of a panel may sign the formal order or reasons.

Reasons

- 14.5 A panel shall give reasons for its final order in a capacity proceeding or appeal, and for any other order if a party requests reasons within 30 days after the order is made.

Correction of errors

- 14.6 The Registrar, the Registrar's designate or the panel that made the endorsement, order or reasons may correct typographical errors, errors of calculation or similar minor errors.

RULE 15: COSTS

Power to award costs

- 15.1 (1) Costs may only be awarded against the Law Society,
- (a) in a licensing, conduct, capacity, competence or non-compliance proceeding, where the proceeding was unwarranted, or where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default; or
 - (b) in a proceeding not mentioned in clause (a), where the Law Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.
- (2) Costs may be awarded against the licensee or licence applicant,
- (a) where a determination adverse to the licensee or licence applicant was made; or
 - (b) where the licensee or licence applicant caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

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

Tariff

15.2 When a panel awards costs, it shall consider, but is not bound by, the tariff of fees for services (Appendix A).

Security for costs

15.3 (1) Security for costs may be sought by the Law Society in: a licensing proceeding, if the applicant was previously a licensee of the Law Society in Ontario; a restoration proceeding; a reinstatement proceeding; or a terms dispute proceeding.

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

- (a) the applicant has an order against him or her for costs in the same or another proceeding under the Act that remains unpaid in whole or in part;
- (b) in the case of a reinstatement or terms dispute proceeding, there is good reason to believe that the proceeding is without merit and the applicant has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made; or
- (c) in the case of a licensing or restoration proceeding, there is good reason to believe that the applicant has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made.

(3) Unless the Tribunal orders otherwise, the applicant 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.

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

RULE 16: REPRIMANDS

Administration of reprimands

16.1 (1) A reprimand shall be administered either orally at a hearing open to the public or in writing.

(2) A written reprimand is part of the record of the proceeding.

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

Appeals and reprimands

- 16.2 The administration of a reprimand does not affect the right to appeal the order or the arguments that can be raised on appeal.

RULE 17: APPEALS

Appeals of interlocutory orders

- 17.1 There is no appeal of an interim or interlocutory order of the Hearing Division, except of an order that finally disposes of an interlocutory suspension or restriction motion, which can be appealed by either party.

Deadline for appeal

- 17.2 (1) To start an appeal, a notice of appeal (Form 14 or 15) and information sheet (Form 24 or 25) must be filed within 30 days of the later of the release of the final order or reasons in the Hearing Division proceeding appealed from. After that, an appeal may be started only with the written consent of the respondent to the appeal or with leave.
- (2) No later than 10 days after filing the notice of appeal, the appellant must serve and file written confirmation from the court reporting service that any transcripts not filed in the Hearing Division proceeding have been ordered.
- (3) If otherwise entitled to appeal, the respondent may cross-appeal by serving and filing a notice of cross-appeal (Form 17) no later than 15 days after being served with the notice of appeal. No information sheet is required with a notice of cross-appeal.

Perfecting the appeal

- 17.3 The appellant must perfect the appeal within 60 days of filing the notice of appeal by serving and filing the appellant's appeal book, factum, book of authorities and any transcripts not filed in the Hearing Division proceeding or previous Appeal Division proceedings.

Dismissal for delay and deemed withdrawal

- 17.4 (1) If an appeal is not perfected by the deadline, the respondent may bring a motion to dismiss the appeal for delay.
- (2) If the appeal has not been perfected five months from the date the notice of appeal was filed, the Registrar shall advise the parties that the appeal will be deemed withdrawn if not perfected within six months after the notice of appeal was filed.
- (3) If an appellant to cross-appeal wishes to pursue the cross-appeal even if the appeal is deemed withdrawn, the respondent must notify the Tribunal within two weeks of receiving the Registrar's notice.
- (4) If the appeal has not been perfected within six months of the date the notice of appeal was filed, the Registrar shall deem the appeal withdrawn. If the appellant to cross-appeal has advised of a desire to pursue a cross-appeal, a proceeding

management conference shall be scheduled to set a timeline for the hearing of the cross-appeal.

(5) The Tribunal may reinstate an appeal or cross-appeal that was deemed withdrawn.

Deadline for respondent's materials if no cross-appeal filed

17.5 If the respondent has not filed a cross-appeal, the respondent must serve and file the respondent's appeal book, factum and book of authorities no later than 14 days before the appeal hearing.

Deadline for respondent's materials if cross-appeal filed

17.6 If the respondent has filed a cross-appeal, the respondent must serve and file the respondent's appeal book, factum and book of authorities no later than 30 days after the appeal was perfected. The respondent must file a factum and appeal book that cover both the appeal and cross appeal.

Respondent to cross-appeal materials

17.7 If the respondent has filed a cross-appeal, the appellant must file a factum as respondent by cross-appeal and may file a supplementary appeal book and book of authorities no later than 14 days prior to the appeal hearing.

Compendia

17.8 No later than five days before the hearing of the appeal, each party must file a compendium containing the documents it intends to refer to in oral argument.

RULE 18: FRESH EVIDENCE ON APPEAL

Motion to introduce fresh evidence

18.1 Except where the respondent consents, an appellant who wishes to introduce evidence at the hearing of the appeal that was not before the Hearing Division must, by notice of motion, make a motion to the Appeal Division to do so.

Proposed evidence in sealed envelope

18.2 The appellant who makes a fresh evidence motion must file, together with the motion record, sufficient copies of the evidence as required by Rule 5.6, each copy in a separate sealed envelope, which shall not be public pending a decision on the motion.

Hearing of fresh evidence motion

18.3 A motion under this rule will be heard at the beginning of the appeal hearing.

Hearing of appeal in any event

18.4 The parties must be prepared to proceed with the hearing of the appeal on the date scheduled regardless of the disposition of a motion under this rule.

Where respondent consents

18.5 Where the respondent consents to the introduction of fresh evidence, the evidence may be included and referred to in the parties' materials, so long as the evidence is clearly identified as fresh evidence that was not before the Hearing Division.

RULE 19: APPEAL MATERIALS

Appeal books

- 19.1 (1) The appellant's appeal book must contain, in consecutively numbered pages:
- (a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;
 - (b) a copy of the notice of appeal and any notice of cross-appeal, as amended;
 - (c) a copy of the order or orders appealed from;
 - (d) a copy of all endorsements and reasons of the Hearing Division in the proceeding;
 - (e) a copy of the originating process that initiated the proceeding before the Hearing Division;
 - (f) a copy of any exhibits that are referred to in the appellant's factum;
 - (g) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the appellant's factum;
 - (h) a copy of any directions given at a proceeding management conference in the appeal;
 - (i) a copy of any endorsements, orders and reasons of the Appeal Division made in the appeal; and
 - (j) where any of the materials are subject to a non-publication order, a copy of the non-publication order.
- (2) The respondent's appeal book must contain, in consecutively numbered pages with numbered tabs, arranged in the following order:
- (a) a table of contents listing each document contained in the appeal book and describing each document by its nature and date;
 - (b) a copy of any exhibits referred to in the respondent's factum that are not included in the appellant's appeal book; and

- (c) a copy of any other documents filed with the Hearing Division that are relevant to the appeal and referred to in the respondent's factum that are not included in the appellant's appeal book.

(3) Any documents subject to a not public order, non-disclosure order or publication ban must be included in a separate appeal book volume.

Appeal facta

19.2 (1) An appeal factum must be no more than 30 pages, unless the Tribunal orders otherwise.

(2) In a factum, references to the transcript of the proceeding before the Hearing Division must be by date, page number and line, while references to exhibits must be by tab and page number in the appropriate appeal book.

RULE 20: ADMINISTRATIVE SUSPENSION ORDER APPEALS

Starting administrative suspension order appeal

20.1 (1) An appellant may start an administrative suspension order appeal by serving on the Law Society and filing with the Tribunal a Notice of Administrative Suspension Order Appeal (Form 16) and an information sheet (Form 25) no later than 30 days from the date the administrative suspension order was deemed to have been received by the appellant.

(2) An administrative suspension order appeal may be started beyond this time limit with consent of the Law Society or leave of the Tribunal.

Administrative suspension order appeals on consent

20.2 Where an administrative suspension order appeal is on consent, the appeal shall be heard in writing. The written consent of the parties and a draft order must be filed with the Tribunal at the time the notice of administrative suspension order appeal is filed or as soon after that as possible. No other material needs to be filed unless directed by the Tribunal.

Filing of affidavits and hearing

20.3 (1) The Law Society must file an affidavit or affidavits that set out the factual basis for making the administrative suspension order no later than 30 days after the filing of the Notice of Administrative Suspension Order Appeal.

(2) The appellant must file an affidavit or affidavits that set out the factual basis for the appeal no later than 45 days after the filing of the Notice of Administrative Suspension Order Appeal.

(3) Cross-examination on the affidavits and any reply evidence will take place orally at the appeal hearing, unless otherwise ordered.

(4) No facts need be filed prior to the hearing, unless otherwise ordered.

Pre-hearing conference

20.4 The Tribunal Office shall schedule a pre-hearing conference in every administrative suspension order appeal after filing of the affidavits.

APPENDIX A – Tariff of Fees for Services

Experience	Rate
Lawyer (20 years and over)	Up to \$350 per hour
Lawyer (12 to 20 years)	Up to \$325 per hour
Lawyer (11 to 12 years)	Up to \$315 per hour
Lawyer (10 to 11 years)	Up to \$300 per hour
Lawyer (9 to 10 years)	Up to \$285 per hour
Lawyer (8 to 9 years)	Up to \$270 per hour
Lawyer (7 to 8 years)	Up to \$255 per hour
Lawyer (6 to 7 years)	Up to \$240 per hour
Lawyer (5 to 6 years)	Up to \$225 per hour
Lawyer (4 to 5 years)	Up to \$215 per hour
Lawyer (3 to 4 years)	Up to \$205 per hour
Lawyer (2 to 3 years)	Up to \$195 per hour
Lawyer (1 to 2 years)	Up to \$180 per hour
Lawyer (less than 1 year)	Up to \$165 per hour
Lawyer on staff with the Law Society of Ontario, other than Discipline Counsel	Up to \$190 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (10 years and more of paralegal experience)	Up to \$150 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (5 to 10 years of paralegal experience)	Up to \$120 per hour
Licensed paralegal and paralegal on staff with the Law Society of Ontario (1 to 5 years of paralegal experience)	Up to \$90 per hour
Student	Up to \$90 per hour

Experience	Rate
Law Clerk	Up to \$90 per hour
Forensic auditor on staff with the Law Society of Ontario	Up to \$190 per hour
Investigator or Complaints Resolution Officer on staff with the Law Society of Ontario	Up to \$90 per hour

TABLE OF CONCORDANCE

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
Rule 1 Purposes and Interpretation		
1.1 Purposes		NEW
1.2 Interpret to purposes	1.03 Interpretation of rules	
1.3 Proportionality		NEW
1.4 Exercise of Tribunal power		NEW
1.5 Waive application of rules		NEW
Rule 2 Application and Definitions	Rule 1 Application and interpretation Rule 3 Time	
2.1 Name		NEW
2.2 Application	1.01 Application <i>AD 1.1 Application</i>	Start Date: April 1, 2019
2.3 Definitions	1.02(1) <i>AD 1.3 Interpretation</i>	Simplified
2.4 Same meaning as in LSA	1.02(2)	Simplified
2.5 Calculating time	Rule 3 Time	Simplified; removes reference to extend/abridge time
Rule 3 Commencing and withdrawing proceedings	Rule 9 Originating Process <i>AD Rules 3 Commencing Appeal and 5 Cross Appeal</i>	
3.1 Service	9.01 Service <i>AD 3.1 Commencing appeal</i> <i>AD 5.1 Commencing cross-appeal</i>	Simplified; also includes appeals
3.2 Amending an originating process	9.02 Amendment <i>AD 3.3 Amending appeal</i> <i>AD 5.4 Amending cross-appeal</i>	Simplified; also includes amending appeals
3.3 Withdrawing a proceeding or motion	9.03 Abandonment	Simplified; language changed to withdraw

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
	13.04 Abandoning a motion	
Rule 4 Additional Participants	Rule 6 Adding parties Rule 8 Non-party participation	
4.1 Adding parties	Rule 6 Adding parties	Same
4.2 Intervenors	8.01 non-party participation	Simplified – added term “intervenor”
4.3 Friend of the Tribunal	8.02 Intervening as a friend of the court	Simplified; specifies friend of the Tribunal cannot be subject to costs
Rule 5 Service, filing, communicating with the Tribunal and form of documents	Rule 5 Communication with panel Rule 10 Service of documents Rule 24.11 Documentary evidence <i>AD Rules 6 Appellant’s Materials and 8 Respondent’s Materials</i>	
5.1 How to serve	10.01 Manner of service	Same
5.2 Effective date of service	10.02 Effective date of service	Same
5.3 Contact information in the LSO’s records	10.04 Contact info in the Society’s records	Simplified
5.4 Confirmation of service	10.03 Proof of service	Same plus addition of e-mail
5.5 Communication with the Tribunal	5.01 Communication with panel	NEW: to reflect current practice that all parties must be copied on correspondence or Tribunal Office shall refuse to accept; Also all correspondence shall be sent in writing and may be sent electronically
5.6 Courtesy and respect		NEW: to reflect current expectations
5.7 Acceptance of materials by the Tribunal		NEW: to reflect current practice

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
5.8 Filing requirements: electronic and hard copies		<p>NEW: This rule allows parties to file only an electronic copy of PHC memos and any document less than 10 pages.</p> <p>Documents of 10 or more pages must be filed in both electronic and hard copy. Other rules speak to numbers of hard copies and file name conventions of electronic copies.</p>
5.9 Filing electronic documents		NEW: This rule sets out how electronic copies of documents may be filed. See also Rules 5.6 and 5.11
5.10 Filing hard copy documents	24.11 Documentary evidence	<p>Sets out the number of copies required; earlier rules only included number of copies required for motions so this was added to clarify that it applies to all documents filed.</p> <p>Also adds a requirement to file an electronic copy or an additional untabbed and unbound hard copy to allow for scanning of the document.</p>
5.11 Layout	AD 6.2	Simplified; applies to all documents; applies to HD and AD; This was included only in the earlier AD rules so this was added to clarify that it applies to all documents filed.
5.12 Facta	AD 6.2 Factum – Appellant’s Materials AD 6.2 Factum – Respondent’s Materials	Simplified; applies to HD and AD; removes descriptions of content;

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
5.13 Books of authorities	<i>AD 6.3</i> Book of Authorities – Appellant’s Materials <i>AD 8.4</i> Book of Authorities – Respondent’s Materials	Simplified; applies to HD and AD
5.14 Covers	<i>AD 6.1(3)</i> Appeal book; <i>AD 6.2 (5)</i> Factum; <i>AD 6.3(3)</i> Appeal book; etc.	Simplified; applies to HD as well as AD and ensures that all materials will be easily identifiable: LSO bound documents will be in green covers, Licensee/licence applicant bound documents will be white, any other party’s documents will be blue. Any document subject to a public access order will be bound in red.
Rule 6 Scheduling Adjournments and Accommodation	Rule 11 Scheduling Rule 12 Proceedings Management Rule 14 Adjournments Rule 23.04 Accommodation AD Rule 11 Scheduling	
6.1 First appearance	11.01 Hearing on merits of proceeding 11.02 Notice of hearing 12.01 PMC <i>AD 11</i> Scheduling	Simplified; for appeals sets out that appeal hearing is scheduled by Tribunal Office after appeal perfected
6.2 Who may schedule or adjourn	14.01 How to obtain (adjournment) 14.02 Adjournments by the Tribunal Office	Simplified
6.3 Adjournments	14.01 How to obtain (adjournment)	Refers to practice direction
6.4 Adjournment on terms		NEW: to reflect existing practice
6.5 Accommodation	23.04 Accommodation required	The rule now expressly refers to the HRC and undue hardship

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
6.6 Failure to attend or participate	12.03(2) Failure to attend/participate (PMC)	CHANGE: expanded to apply to all hearings; this is currently included in the Notice of Hearing
Rule 7 Case Management	Rule 5.02 Case management Rule 12 Proceedings management Rule 22 PHC AD Rule 12 Appeal Management	NEW: Applies equally to AD as well as HD; Also puts PMC/PHC/Case conferences together in the rules for easier reference; Explicitly establishes case conference and ability for chair of assigned hearing panel to conduct case conference
7.1 Principles		NEW: sets out the principles to be applied
7.2 CM directions	5.02 CM endorsements	NEW: to reflect current practice
7.3 Format	12.02 PMC: format 22.05 Method of conducting PHC AD 12.1 Appeal Management Conference	Simplified
7.4 Endorsement	22.09 Results of PHC	Clearly setting out endorsements required at PMC, PHC and case conference
7.5 PMC	12.01 PMC 12.03 Attendance at PMC AD 12.1 AMC AD 12.3 Request for AMC	Simplified
7.6 PMC directions	12.04 Matters to be dealt with AD 12.2 Matters to be dealt with (AMC)	Simplified
7.7 PHC	Rule 22 Pre-hearing conferences 22.01 Purpose of PHC	Simplified
7.8 PHC issues	22.01 Purpose of PHC	Simplified

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
7.9 When PHC scheduled	22.02 PHC to be conducted 22.04 Timing of PHC 22.06 Scheduling of PHC	Simplified
7.10 PHC confidential, w/o prejudice	22.10 No disclosure to the panel	Simplified
7.11 PHC directions	22.01 Purpose of PHC	Simplified
7.12 PHC memo	22.07 PHC memo	Simplified; No longer sets out that Tribunal Office does not retain the memo; a copy is retained by the Tribunal Office so that parties are not required to send again if new panelist is assigned (Memos will not be kept in the file)
7.13 PHC panelist not assigned	22.10 (2) PHC panelist cannot preside at hearing	Now explicitly sets out that PHC panelist can conduct a PMC as is current practice
7.14 Case conference		NEW: to reflect current practice
7.15 Case conference directions		NEW: to reflect current practice
Rule 8 Motions	Rule 13 Motions AD 13 Motions	Applies to AD as well as HD
8.1 Motions	11.03 Hearing of motion 13.01 Making the motion AD 11.2 Scheduling AD motion	Simplified; clearly sets out that motion date is to be confirmed by Tribunal and may require PMC first to set timelines
8.2 Motion materials	13.02 Moving party's obligations 13.03 Responding party's obligations	Simplified
8.3 Motions on consent or unopposed	13.05 Motion on consent	Simplified
Rule 9 Appearances	Rule 12.03(2) Failure to attend participate Rule 15 Language of hearing	

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
	Rule 16 Form of hearing Rule 17 Location of hearing Rule 18.07 Prohibition against photography etc. Rule 23 Conduct of hearing	
9.1 Form of appearance	Rule 16 Form of hearing 16.01 Oral hearing	Simplified; oral hearing remains the default for most hearings
9.2 Attending electronically	16.02 Motions for electronic hearing	When a party can request an electronic hearing and when an oral hearing is required
9.3 Written appearance	16.03 Written hearing	Simplified
9.4 Language	Rule 15 Language of hearing 15.01 Hearing in English or French 15.02 Hearing in English 15.03 Hearing in French 23.03 Interpreter	Simplified
9.5 Location	Rule 17 Location of Hearing	Simplified; NEW: adds that the location can be moved to elsewhere in Ontario on consent
9.6 Hearings proceeding together or consecutively	Rule 7.01 Hearing proceedings together or consecutively	Simplified
9.7 Consent to one panelist	23.01 Consent to hearing by one panelist	Simplified
9.8 Transcripts	23.02 Production, ordering, costs, filing of transcript	Simplified
9.9 Video, photographs and recording	18.07 Prohibition against photography etc.	Simplified; prohibits photos or recording in the Tribunal premises or the hearing room without leave
Rule 10 Disclosure and production	Rule 19 Disclosure	

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
10.1 LSO obligation to disclose	19.01 (1) Obligations of the Society	LSO to disclose all potentially relevant documents over which there is no privilege
10.2 Production from the LSO		How to bring motion for further production from the LSO
10.3 Interlocutory suspension motions		Clearly sets out existing practice
10.4 Production from third parties		NEW: setting out how to request production via summons
10.5 Witness statements and document books	19.01(3) Summary of evidence	Simplified. The timelines have changed: LSO to comply not later than 14 days before a summary hearing and 20 days before any other merits hearing (currently 10 days). Licensee/licence applicant to comply not later than 7 days (summary hearing) or 10 days (for other merits hearings) (currently 10 days). NEW: There is now an obligation on the licensee / licence applicant to disclose witness statements
10.6 Expert reports	19.02 Expert reports	Simplified; New form to be added – Acknowledgement of Expert's Duty; to reflect case law and Rules of Civil Procedure
10.7 Consequences of failure to disclose	19.03 Consequences of failure to disclose	Simplified
Rule 11 Evidence	Rule 20 Admissions Rule 24 Evidence	
11.1 Agreed facts	24.04 Agreed facts	Simplified
11.2 Affidavit evidence	24.03 Evidence by affidavit	Simplified

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
11.3 Deemed admissions	20.02 Request to admit fact or document 20.03 Response to request to admit 20.04 Effect of request to admit 20.05 Costs on denial or refusal to admit 20.06 Withdrawal of admission	Simplified; extended time period for longer requests
11.4 Filing materials before the hearing		NEW: documents can be filed before the hearing without consent – although reference should be made to Rule 22.1 Filing of consent documents before hearing
11.5 Summons	24.13 Summonses	Simplified
11.6 Exclusion of witnesses	24.01 Exclusion of witness	Simplified
11.7 Admission of evidence	24.02 Rules of Evidence	NEW: Removes reference to the rules of evidence applicable in civil proceedings. A panel is to admit evidence that would not be admissible in a civil proceeding only if it complies with procedural fairness and promotes the fairness, accessibility or responsiveness of the Tribunal's proceedings SPPA: Evidence What is admissible in evidence at a hearing 15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
		<p>affirmation or admissible as evidence in a court,</p> <ul style="list-style-type: none"> (a) any oral testimony; and (b) any document or other thing, <p>relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.</p> <p>What is inadmissible in evidence at a hearing</p> <p>(2) Nothing is admissible in evidence at a hearing,</p> <ul style="list-style-type: none"> (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or (b) that is inadmissible by the statute under which the proceeding arises or any other statute. <p>Conflicts</p> <p>(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceeding</p>
11.8 Limits on examination or cross-examination	23.05 Limitation on examination of witness	Same; reflects exact language of the SPPA
11.9 Information obtained by the DHC	24.14 Certain info not admissible	Amended; clearly sets out that any evidence about communications with or

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
		actions taken by the DHC in performing their duties shall not be ordered to be produced and is inadmissible at a hearing.
Rule 12 Interlocutory suspension and restriction motions	Rule 21 Interlocutory suspension or restriction	
12.1 Authority	21.01 Authority	Simplified
12.2 Motions rule applies	21.02 Motion rule applies	Same
12.3 When authorization required	21.03 PAC authorization	Simplified
12.4 Service and materials	21.04 Making the motion 21.05 Licensee's Materials	Same
12.5 Interim interlocutory suspension		NEW; clarifies that interim interlocutory orders expire on the full order being made
12.6 Duration of interlocutory suspension	21.07 Order	Simplified; this and 12.6 take what was in each interlocutory suspension order previously and puts it in the rules
12.7 Grounds to vary or cancel	21.07(1)(c)	Simplified
12.8 Motion to vary or cancel		NEW: creates a separate proceeding to vary or cancel
Rule 13 Record of proceeding and transparency	Rule 27 Record of proceeding Rule 18 Access to Hearing AD Rules 6.5 and 8.5 may refuse documents	
13.1 Record of proceeding	Rule 27 Record of proceeding AD 6.5 Tribunal Office may refuse documents AD 8.5 Tribunal Office may refuse documents	Now includes correspondence reviewed by a panel; also clarifies that transcripts that are filed with the Tribunal and all exhibits (including those marked "for identification") are included in record

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
		Also recognizes that Tribunal can refuse documents for failure to comply with the Rules, order or direction. (Does not change the practice)
13.2 Open tribunal	18.01 Hearing to be public	Open hearings remain the default
13.3 Departing from openness	18.02 Hearing in the absence of the public	Simplified; reflects the case law
		NEW: clearly sets out principle from case law that the order to be made must be the one that affects openness the least
13.4 Capacity proceedings		NEW: What a panel should consider when a public access order is requested in capacity proceedings. Rule developed following several discussions at Tribunal Committee
13.5 Children and sexual misconduct complainants		NEW: to reflect current case law and practice
13.6 Privilege		NEW: Rule developed following consultation with Tribunal Committee
13.7 Effect of not public order	18.03 Attendance at hearing held in the absence of the public	Simplified explanations
13.8 Effect of non-disclosure order	18.04 Non-disclosure of information: hearing held in absence of the public 18.05 Order for non-disclosure: hearing open to the public	Simplified explanations
13.9 Effect of publication ban		Adds publication ban to the rules
13.10 Effect of order		NEW: clearly sets out that Tribunal staff and panelists can access materials to

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
		which an order under this part applies
Rule 14 Orders and reasons	Rule 26 Decisions Orders and Reasons AD Rule 16 Reasons	
14.1 Orders	26.01 Effective date of decision 26.02(4) Effective date of order	Simplified and also that a formal order need not be prepared in every instance
14.2 Powers to make orders	26.02 Orders issued by one panelist	CHANGE: limitation on single panelist from revoking/ accepting surrender of licence to a single panelist assigned to a summary hearing
14.3 Addressing capacity issues in conduct applications		NEW: May be modified in future pending policy discussions
14.4 Formal order	26.03 Formal order	Simplified; also clarifies that draft orders are submissions and that the panel may amend the order.
14.5 Reasons	26.04 Where written reasons required AD Rule 16 Reasons	Simplified; time within which to request reasons shortened from 60 days to 30 days
14.6 Correction of errors	26.05 correction of errors	Added "Registrar's designate"
Rule 15 Costs	Rule 25 Costs	
15.1 Power to award costs	25.01 Costs against the Society & against the subject of a proceeding and non-party	Simplified
15.2 Tariff	25.01(5) Tariff of fees for services	NEW: The tariff for costs has been incorporated as an appendix to the Rules.
15.3 Security for costs	25.02 Security for costs	Simplified
Rule 16 Reprimands	Rule 28 Reprimands	
16.1 Administration of reprimands	28.01 Time for administration	Simplified

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
16.2 Appeals and reprimands		CHANGE: Parties are no longer asked to waive their rights of appeal when a reprimand is administered and the administration of the reprimand does not affect appeal rights. A party who wishes to appeal can accept the reprimand and still appeal.
Rule 17 Appeals - General	<i>AD Rule 3 Commencement of appeal</i> <i>AD Rule 4 Transcripts</i> <i>AD Rule 5 Cross-appeal</i> <i>AD Rule 6.6 Date for filing appellant's materials</i> <i>AD Rule 7 Perfecting appeals</i> <i>AD Rule 8 date for filing respondent's materials</i> <i>AD Rule 9 Compendium</i> <i>AD Rule 10 Abandonment and dismissal for delay</i>	
17.1 Appeals of interlocutory orders	<i>AD Rule 2 Appeals from interlocutory orders</i>	Simplified;
17.2 Deadline for appeal	<i>AD 3.1 Commencing appeal</i> <i>AD 3.2 Extending time to commence appeal</i>	Simplified; 30 days from final order or reasons so clear to parties they have until reasons come to decide whether to file
	<i>AD 4.1 Transcripts</i>	Allows appellant to request transcripts already filed in HD to be transferred to AD file
	<i>AD 5.1 Commencing cross-appeal</i> <i>AD 5.2 Extending time to commence cross-appeal</i>	Simplified
17.3 Perfecting the appeal	<i>AD 7.1 Perfecting appeals</i>	Simplified; changed start date of time lines from date notice

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
		of appeal filed not from HD order.
17.4 Dismissal for delay and deemed withdrawal	<i>AD 10</i> Abandonment and dismissal for delay	Simplified; time period shortened from 12 months to 6 months; Registrar to advise appellant prior to expiry of time.
17.5 Deadline for respondent's materials – no cross-appeal	<i>AD 8.6(1)</i> Date for filing respondent's materials: no cross appeal	Simplified
17.6 Deadline for respondent's materials – cross-appeal	<i>AD 8.6(2)</i> Date for filing respondent's materials: cross appeal	Simplified
17.7 Respondent by cross-appeal materials	<i>AD 6.6</i> Date for filing appellant's materials as respondent by cross-appeal	Simplified
17.8 Compendia	<i>AD 9</i> Compendium	Simplified
Rule 18 Fresh evidence on appeal	<i>AD Rule 14</i> Fresh Evidence	
18.1 Motion to tender fresh evidence	<i>AD 14.1</i> Tendering fresh evidence	Simplified
18.2 Sealed evidence	<i>AD 14.1(3)</i> Materials on motion	Simplified
18.3 Hearing motion	<i>AD 14.1(5)</i> Hearing	Simplified
18.4 Hearing appeal in any event	<i>AD 14.1(6)</i> Hearing Appeal	Simplified
18.5 Where respondent consents	<i>AD 14.2</i> Respondent consents to intro of fresh evidence	Simplified
Rule 19 Appeal materials	<i>AD Rule 6</i> Appellant's Materials <i>AD Rule 8</i> Respondent's Materials <i>AD Rule 9</i> Compendium	
19.1 Appeal books	<i>AD 6.1</i> and <i>AD 8.1</i> Appeal book	Simplified
19.2 Appeal facta	<i>AD 6.2(4)</i> and <i>AD 8.2</i> Factum	Simplified

PROPOSED LAW SOCIETY TRIBUNAL RULES OF PRACTICE	CURRENT RULES OF PRACTICE AND PROCEDURE	NOTES
	<i>AD 8.3</i> Factum as cross-appellant	
Rule 20 Administrative suspension order appeals	<i>AD Rule 17</i> Summary order Appeals	Updated language to more clearly separate from “summary hearings” orders
20.1 Starting administrative suspension order appeal	<i>AD 17.1</i> Summary order appeals	Simplified
20.2 Appeal on consent	<i>AD 17.3</i> Summary order appeals on consent	Simplified
20.3 Filing affidavits and hearing	<i>AD 17.4</i> Filing affidavits and hearing	Same
20.4 PHC	<i>AD 17.5</i> PHC	Simplified
Appendix		
	REMOVED	
	2.01 Non-compliance with rules	Implicit in new 1.5
	3.02 Extend or abridge time	Determined separate rule is not necessary; PMC rule for example uses timelines/deadlines as an example of issues to be dealt with
	4 Representation	Determined that no rule is necessary; current rule honoured more in the breach
	7.02 Dividing proceeding	Determined that no rule is necessary. New Rule 9.6 deals with hearing proceedings together or consecutively and that which the Tribunal can join, it can also tear asunder.
	13.06 Disposition of motion	Determined that no rule is necessary.
	14.03 Adjournments: Considerations	Set out in the case law and practice direction
	16.04 Notice requirement for electronic or written hearing in context of interlocutory	Motion requirements removed so no need to carve out exception for interlocutory

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	suspension/practice restriction motion	suspension/practice restriction motion
	18.06 Review of Rule 18 order	No need to specify that the panel may review all or part of the order and may confirm, vary, suspend or cancel the order.
	19.01(2) Obligations of subject of the proceeding (Disclosure)	
	21.06 Admissibility of evidence	Removed: now accounted for by incorporating the SPPA approach to evidence; see Rule 11.17 above
	22.03 Who presides at PHC	Not necessary to set out that the V or VC assigns the panelist
	22.08 Attendance at PHC	
	24.05 Admissibility of evidence from former proceeding	<p>Removed: this is now accounted for by incorporating the SPPA approach to evidence:</p> <p>SPPA: Use of previously admitted evidence</p> <p>15.1 (1) The tribunal may treat previously admitted evidence as if it had been admitted in a proceeding before the tribunal, if the parties to the proceeding consent. 1994, c. 27, s. 56 (30).</p> <p>Definition</p> <p>(2) In subsection (1), “previously admitted evidence” means evidence that was admitted, before the</p>

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		<p>hearing of the proceeding referred to in that subsection, in any other proceeding before a court or tribunal, whether in or outside Ontario.</p> <p>Additional power</p> <p>(3) This power conferred by this section is in addition to the tribunal's power to admit evidence under section 15.</p>
	24.06 Proof of prior commission of offence	<i>See immediately above</i>
	24.07 Proof of prior facts	<i>See immediately above</i>
	24.08 Transcript and reasons of an adjudicative body	
	24.09 Taking official notice of facts	<p>Removed: this is now accounted for by incorporating the SPPA approach to evidence:</p> <p>Notice of facts and opinions</p> <p>16. A tribunal may, in making its decision in any proceeding,</p> <ul style="list-style-type: none"> (a) take notice of facts that may be judicially noticed; and (b) take notice of any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge.
	24.10 Bank and business records	

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	24.12 Copies of documents can be admitted as evidence	<p>Removed: this is now accounted for by incorporating the SPPA approach to evidence:</p> <p>Copies</p> <p>15. (4) Where a tribunal is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.</p>
	26.02 (2) Order for fine	<p>Removed as being accounted for by the SPPA:</p> <p>Interest</p> <p>17(2) A tribunal that makes an order for the payment of money shall set out in the order the principal sum, and if interest is payable, the rate of interest and the date from which it is to be calculated.</p>
	26.02 (3) Order for costs	<i>See immediately above</i>
	26.06 Notice of decisions	<p>Removed as being accounted for by the SPPA:</p> <p>Notice of decision</p> <p>18. (1) The tribunal shall send each party who participated in the proceeding, or the party's representative, a copy of its final decision or order, including the reasons if any have been given,</p> <p>(a) by regular lettermail;</p> <p>(b) by electronic transmission;</p>

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		<p>(c) by telephone transmission of a facsimile; or</p> <p>(d) by some other method that allows proof of receipt, if the tribunal's rules made under section 25.1 deal with the matter.</p>
	Rule 29 Retired Judge etc.	Determined no rule is necessary as can be dealt with under the rule for written appearances.
	<i>AD 1.2</i> Application of HD rules	HD and AD rules combined into one set
	<i>AD Rule 15</i> Hearing of Appeal: time limits	Removed; Current practice is that time limits are set at AMC or by panel on day of hearing.