

Rule 7.6-1.1 and Subrule 6.01(6) Applications

A Guide to the Law Society's Policy and Procedures

Introduction

This Guide describes the Law Society's policies and procedures relating to applications by licensees who wish to retain, occupy space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law or provision of legal services any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has had his or her licence to practise law or to provide legal services revoked, has been suspended, has had his or her licence to practise law or provide legal services suspended, has undertaken not to practise law or provide legal services, or who has been involved in disciplinary action and been permitted to resign or to surrender his or her licence to practise law or to provide legal services, and has not had his or her licence restored.

Rule 7.6-1.1 of the Law Society's *Rules of Professional Conduct* provides as follows:

Without the express approval of a committee of Convocation appointed for the purpose, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law or provision of legal services any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has had his or her licence to practise law or to provide legal services revoked, has been suspended, has had his or her licence to practise law or to provide legal services suspended, has undertaken not to practise law or to provide legal services, or who has been involved in disciplinary action and been permitted to resign or to surrender his or her licence to practise law or to provide legal services, and has not had his or her licence restored.

Subrule 6.01(6) of the Law Society's *Paralegal Rules of Conduct* provides as follows:

Without the express approval of a committee of Convocation appointed for the purpose, a paralegal shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the provision of legal services any person who, in

Ontario or elsewhere,

- a) is disbarred and struck off the Rolls,
- b) is a person whose licence to practise law or to provide legal services is revoked,
- c) as a result of disciplinary action, has been permitted to resign his or her membership in the Law Society or to surrender his or her licence to practise law or to provide legal services, and has not had his or her licence restored,
- d) is suspended,
- e) is a person whose licence to practise law or to provide legal services is suspended, or
- f) is subject to an undertaking not to practise law or to provide legal services.

The Committee of Convocation referred to in the rules is drawn from those benchers who also sit on the Law Society Tribunal's Hearing Division because this group includes all benchers with the exception of those who authorize disciplinary actions against licensees, and because a group of members of the Hearing Division can be convened easily for review of applications on an ongoing basis, in accordance with existing practice. The application process does not result in a hearing. However, the Applicant and a representative of the Law Society may appear before the Committee if either requests an appearance.

In this guide, "Applicant" refers to a Law Society licensee applying for permission to hire a former licensee who has been disbarred or who has had their licence revoked, who has been involved in disciplinary action and been permitted to resign or surrender their licence, a suspended licensee, or a licensee who has undertaken not to practise law or provide legal services. This person is referred to in the guide as the "Person".

The Policy Objectives of rule 7.6-1.1 and subrule 6.01(6)

These rules are designed to protect the public. As the public places significant trust in lawyers and paralegals, those who deal with a licensee and the licensee's practice should be protected from unregulated exposure to a person who, in Ontario or elsewhere, has been disbarred or suspended, has had their licence revoked, has undertaken not to practice, or who has been involved in disciplinary action and been permitted to surrender his or her licence to practise law or provide legal services.

To protect the public and to ensure effective supervision, the Law Society has adopted certain policies and procedures for applications under rule 7.6-1.1 and/or subrule 6.01(6).

The Criteria for Applicants

Entering into arrangements described in the rules places significant responsibility on the Applicant.

Applicants under rule 7.6-1.1 and subrule 6.01(6) must satisfy the Law Society that they can effectively supervise the Person. In order to protect the public interest, the Law Society will recommend that Applicants who cannot meet this threshold should be denied the privilege of entering into an arrangement with the Person.

Applicants are assessed on their experience, competence and ethical standards. Such Applicants must demonstrate a dedication to professional excellence and an awareness of and commitment to ethical standards and behaviour. The Law Society will consider information provided by the Applicant, as well as information in the Law Society's possession and that obtained from the public. Information about the Applicant will be obtained from all relevant Law Society divisions, including Professional Development and Competence, and Professional Regulation. The Applicant will also be asked to consent to the Law Society reviewing their LAWPRO claims history and any participation they may have had in the Practice Review program. Applicants with an extensive history of regulatory issues or unsatisfactory participation in Practice Review may not be approved. The Law Society may also

receive relevant information about the Applicant from other investigatory and regulatory bodies and agencies. The approval granted to an Applicant is only for the particular arrangement requested. The approval does not follow the Person to a new employment situation or office arrangement.

Consideration of the Person

Revocation of a licence, permission to surrender a licence as a result of discipline and a disciplinary suspension arise from serious professional misconduct or conduct unbecoming a licensee. Disciplinary sanctions are imposed to protect the public, maintain high professional standards and preserve public confidence in the legal profession. Licensees may also be subject to administrative suspensions imposed for non-compliance with reporting and payment obligations to the Law Society. Rule 7.6-1.1 and subrule 6.01(6) apply to all suspended licensees, including licensees who are administratively suspended.

An Applicant's proposal to enter into an arrangement with a Person will involve consideration of that Person's character, attitudes and abilities, including

- The type of misconduct that led to discipline/suspension
- Allegations of misconduct/conduct unbecoming that were not resolved prior to the conclusion of the discipline or conduct hearing, including unresolved complaints
- Post-discipline attitude, conduct and reformation; including any complaints of unauthorized practice or practising under suspension
- The elapsed time since the discipline
- Ability and capacity to perform tasks as proposed by the Applicant
- Sincerity and frankness in discussing issues relating to his or her circumstances, including any discipline
- Pre- and post-discipline cooperation with the Law Society
- Outstanding obligations to the Law Society, LAWPRO or other insurance

providers, clients and other investigatory and regulatory bodies and agencies

- Status history with respect to administrative suspensions

In assessing the Person, the Law Society will review its records and may review other relevant information, for example, records of other investigatory and regulatory bodies and agencies. The Person will also be asked to consent to the Law Society reviewing their LAWPRO or other insurance provider claims history and any participation they may have had in the Practice Review program.

The Application and Reapplication Process

The application process is initiated by a written request from an Ontario lawyer entitled to practise law or a licensed paralegal entitled to provide legal services in Ontario. The Client Service Centre will forward general information relating to rule 7.6-1.1 and subrule 6.01(6) applications to the Applicant, together with blank forms to be completed by the Applicant and the Person. Both parties must consent to disclosure of information from other sources.

The Applicant and the Person must complete and return the forms to the Law Society with an application fee of \$200.00 plus HST. The Applicant will be asked to submit a general proposal for how they plan to supervise the Person. The Applicant will also be required to place two consecutive notices, at his or her cost, in the *Ontario Reports* indicating that he or she is applying or reapplying under rule 7.6-1.1 or subrule 6.01(6) to hire the Person, and that anyone with comments about the application should respond to the Law Society by a date indicated in the notice. The notice will include a generic statement that information about plans of supervision that are approved by the Committee in rule 7.6-1.1 and subrule 6.01(6) applications can be obtained from the Law Society. The first of two consecutive notices should be published when all material relevant to the application has been filed and the Law Society's review of the application is about to begin.

Upon receipt of the completed forms, Client Service Centre staff will compile

information contained in the Law Society's records and received from LAWPRO, other insurance providers or other investigatory and regulatory bodies and agencies about the Applicant and the Person. Upon completion, the application will be forwarded to the Regulatory Compliance department of the Law Society to prepare a summary of information about the Applicant and the Person, which will be forwarded to the Applicant with the prior consent of the Person. The Person will receive only his or her information summary.

Applicants must carefully review the Law Society's summary of information on the Person, as they may not be aware of details about the Person's prior discipline. Upon considering all of the information, Applicants may wish to amend their proposed plan for supervising the Person.

The Regulatory Compliance department is responsible for monitoring compliance with orders and undertakings obtained by the Law Society, and will monitor any approved applications under rule 7.6-1.1 and subrule 6.01(6).

Regulatory Compliance staff will prepare a draft Plan of Supervision and Undertakings to be signed by the Applicant and the Person, if the application is approved. These will be sent to the Applicant and the Person for their input. Once this input is received, Regulatory Compliance will incorporate the summaries and the draft Plan of Supervision and Undertakings (if agreed to by the Law Society, the Applicant and the Person in advance, or if not, the Plan of Supervision and Undertakings acceptable to the Society and those acceptable to the Applicant and Person), along with a memorandum for the Committee. A copy of the memorandum will be sent to the Applicant, for comment within a specified time, before the materials are provided to the Committee. The Applicant may choose to share the memorandum with the Person, in the knowledge that the memorandum may contain information about the Applicant's history with the Law Society that the Person may not have previously known. The memorandum will include the Plan of Supervision, conditions for the arrangement recommended by the Law Society's Professional Regulation Division staff and discussion of issues relevant to approval of the application that staff believe

should be brought to the attention of the Committee. At this time, the Applicant may request an appearance before the Committee. Otherwise, the Committee will consider the application in writing only.

The materials submitted by the Applicant and the Person are confidential. The application will be reviewed by the Committee in camera. The final decision of the Committee will be available to the public, together with any approved Plan of Supervision.

Applications under rule 7.6-1.1 and subrule 6.01(6) are generally approved for a defined term of three years. During that term, the Applicant must report quarterly within each year to the Law Society on adherence to the Plan of Supervision and conditions. Each report must be accompanied by a fee of \$50.00 plus HST. At the end of the term, if the quarterly reports show ongoing compliance and no regulatory issues have arisen between the Law Society and the Applicant, or the Law Society and the Person, the application, if requested in writing by both parties, may be renewed for a further three years after a review by the Committee.

If issues have arisen, generally, the Applicant may be required to reapply with a formal reapplication (and republish) at the end of the three-year period, and pay a reapplication fee of \$150.00 plus HST.

The materials submitted on a formal reapplication will update materials submitted at the time of the original application, and will include a report on the activities and supervision of the Person over the past term. On a reapplication, the Applicant must submit either a letter confirming his or her general information on the form previously submitted or an amended form. The material will also include the Law Society's updated summary for the Applicant and his or her term end report about the Person. In the reapplication, the Applicant must affirm that the approved Plan of Supervision was followed, and request that the existing Plan of Supervision continue or request that it be altered. If the request is that the Plan of Supervision be altered, the Applicant must provide support for that request. The Applicant should identify how the public interest will be protected, how the request will assist in the rehabilitation of the

Person and what supervisory controls the Applicant intends to implement. In the reapplication form, the Applicant must provide and respond to any concerns or complaints about the Person during the past term and re-affirm that the Applicant will comply with the Plan of Supervision for the next term, if approved. As noted above, the Applicant must also publish a notice of the reapplication.

The Plan of Supervision

The Applicant must file a proposal for a plan outlining the tasks that the Person will perform, together with the supervisory procedures to be implemented. The choice of tasks to be delegated will be primarily influenced by the disciplinary history of the Person and past and current work history. The Plan of Supervision must provide for safeguards and controls for the protection of the public, and demonstrate effective measures for rehabilitation through supervision, monitoring and evaluation. In formulating the Plan of Supervision, the Applicant must ensure that the delegated tasks do not cross the line to the practise of law or the provision of legal services.

Generally a Plan of Supervision will identify

- the areas of law or legal services in which tasks will be delegated to the Person, and identify the nature and types of tasks to be performed within each area of law or legal services.
- any other non-legal tasks or functions expected to be performed by the Person.
- the procedure whereby the Person reports to the Applicant. Preferably this will be a written or computerized report, either generated weekly or daily, in which the Person reports on the nature of tasks and services performed and identifies the files worked on.
- the Applicant's proposed monitoring and evaluation procedures. The Applicant should meet regularly with the Person to review and evaluate the past performance of delegated tasks and supervise ongoing and newly delegated tasks. The Applicant must identify how the Person will be supervised in the event that the Applicant is out of the office for an extended period of time (more than five days).

- guidelines and procedures to ensure that the Person does not have access to the Applicant's bank accounts or accounting records.
- guidelines and procedures to ensure that the Applicant's staff, other personnel occupying or sharing office space with the Applicant's professional business and clients, as required, are advised of the history and current status of the Person.
- guidelines and procedures to ensure that the Applicant's staff, other personnel occupying or sharing office space with the Applicant's professional business and clients, as required, are aware of the nature and types of tasks that the Person is to perform.

After expiry of the publication notice period, the Plan of Supervision is prepared by the Regulatory Compliance department of the Law Society based on the Applicant's proposal, and taking into account any public protection concerns raised by information reviewed about either the Applicant or the Person. Staff will then submit the application, together with any responses to the notice, to the Committee for review and it will either accept or reject it.

Applicants who wish to amend a Plan of Supervision that has been approved by the Committee must apply in writing, and subject to review by Law Society staff, to the Committee for the amendment.

Only the approved Plan of Supervision, as noted above, is available to interested members of the public and licensees upon written request.

Follow Up Monitoring

As noted above, initial applications are usually approved for a term of three years during which quarterly reports, with the appropriate fee, must be filed by the Applicant on compliance with the Plan of Supervision and conditions attached to approval of the arrangement. The reports give the Law Society and the Applicant an opportunity to assess and evaluate the performance of the Person, and to monitor the effectiveness of the supervision. This also affirms the responsibility that the Applicant assumes when entering such arrangements.

The reports are due within 15 days of the end of each quarter. Failure to file the reports may result in revocation of the permission granted to the Applicant to continue in the arrangement with the Person. The reporting procedures may be altered at the discretion of the Committee.