



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Report to Convocation January 24, 2008

Professional Regulation Committee

Committee Members

Clayton Ruby, Chair
Julian Porter, Vice-Chair
Heather Ross, Vice-Chair
Linda Rothstein, Vice-Chair
Melanie Aitken
Tom Conway
Brian Lawrie
George Finalyson
Patrick Furlong
Gary Gottlieb
Ross Murray
Sydney Robins
Bonnie Tough
Roger Yachetti

Purpose of Report: Decision

**Prepared by the Policy Secretariat
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COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on January 10, 2008. In attendance were Clay Ruby (Chair), Heather Ross (Vice-chairs), Tom Conway, George Finlayson, Gary Gottlieb, Brian Lawrie (by telephone), Ross Murray and Bonnie Tough. Kim Carpenter-Gunn also attended with representatives from LawPRO, Michelle Strom and Duncan Gosnell. Staff attending were Naomi Bussin, Lesley Cameron, Malcolm Heins, Terry Knott, Dulce Mitchell, Elliot Spears and Jim Varro.

**NEW BY-LAWS, *RULES OF PROFESSIONAL
CONDUCT* AND GUIDELINES ON
REQUIREMENTS FOR SUSPENDED LICENSEES
AND LICENSEES WHO HAVE UNDERTAKEN NOT
TO PRACTICE**

Motion

2. That Convocation

- a. Amend By-law 7.1 [Operational Obligations and Responsibilities] by adding the following:**

PART IV

OBLIGATIONS RESULTING FROM SUSPENSION

Interpretation

8. In this Part,

“existing client” means,

- (a) a person who is a client of a suspended licensee when a suspension order is made against the licensee, or
- (b) a person who becomes a client of the suspended licensee after the suspension order is made but before the suspension begins;

“former client” means a person who was a client of a suspended licensee before a suspension order was made against the licensee but who was not a client when the order was made;

“prospective client” means a person who seeks to retain a suspended licensee after the suspension order is made the licensee but before the suspension begins;

“suspended licensee” means a licensee who holds a Class L1 licence or a Class P1 licence and who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Notice requirements before suspension begins

9. (1) A suspended licensee shall before the suspension begins, but not later than the date on which the suspension begins,
- (a) notify every existing client, on whose matters the work will not be completed by the suspended licensee before the suspension begins, of the suspension order and that,
 - (i) the suspended licensee will be unable to complete the work,
 - (ii) the client will need to retain another licensee to complete the work, and
 - (iii) the suspended licensee, subject to any rights that the suspended licensee may have over the client's file, will transfer the file to the licensee, if any, retained by the client to complete the work or will return the file to the client; and
 - (b) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection 14 (1) of the name and contact information of the licensee to whom the suspended licensee has given possession of the client's documents and files.

Compliance with subclauses (1) (a) (i) to (iii) not required

(2) A suspended licensee is not required to comply with the notice requirements mentioned in subclauses (1) (a) (i) to (iii) if the only work remaining to be completed on the client's matter is work mentioned in section 12 or 13, but, in such a case, the suspended licensee shall, before the suspension begins, notify the client of the name and contact information of the licensee retained by the suspended licensee to complete the work.

Notice requirements: during suspension

10. A suspended licensee shall, during the suspension,
- (a) notify all persons who contact the suspended licensee's place of business of the suspension order; and
 - (b) notify any existing client or former client who contacts the suspended licensee's place of business of the name and contact information of another licensee who has been given possession of the clients' documents and files.

Notice requirements: prospective clients

11. A suspended licensee, at the time a prospective client seeks to retain the suspended licensee, shall notify the prospective client of the suspension order.

Work remaining on file: final report to client

12. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is a final report to the client, the suspended licensee shall, before the suspension begins, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

Work remaining on file: fulfilment of undertakings

13. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is the fulfilment of one or more undertakings given by the suspended licensee, the suspended licensee shall retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

Additional requirements: preparation of will, power of attorney, corporate records

14. (1) This section applies to a suspended licensee who performs or has performed any of the following work for a client:

1. Preparation of a will.
2. Preparation of a power of attorney.
3. Preparation of, or preparation and continued maintenance of, corporate records.

Requirement re original documents

- (2) A suspended licensee shall, before the suspension begins,
 - (a) return to the client all original documents; or
 - (b) transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work.

Real estate law: direction re Teranet access disk

15. A suspended licensee who has access to the Teranet system shall, on or before the date the suspension begins, complete and file with the Society, in a form provided by the Society, a direction authorizing the Society to take all steps necessary to cancel the suspended licensee's Teranet access disk for the period of the suspension.

Return of photo identification card

16. A suspended licensee shall, on or before the date the suspension begins, return to the Society any photo identification card issued to her or him by the Society.

Students

17. A suspended licensee, who has accepted a person into service under articles of clerkship where the period of service includes any or all of the period of the suspension, shall, before the suspension begins,

- (a) notify the person of the suspension order and that the suspended licensee will not be able to retain the person in service under articles of clerkship after the suspension begins;
- (b) arrange for another licensee, who is authorized and approved by the Society to do so, to accept the person into service under articles of clerkship after the suspension begins; and
- (c) arrange with the Society for the person's service under articles of clerkship to be transferred from the suspended licensee to the other licensee effective the date on which the suspension begins.

Report to Society on compliance

18. A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this Part.

Permission to be exempt from requirement

19. A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

PARTIE IV

OBLIGATIONS EN CAS DE SUSPENSION

Interprétation

8. Les définitions qui suivent s'appliquent à la présente partie.

« ancien client » Personne qui était le client ou la cliente d'un titulaire de permis suspendu ou d'une titulaire de permis suspendue avant le rendu de l'ordonnance de suspension, mais qui ne l'est plus à ce moment-là. (« former client »)

« client actuel » S'entend :

- a) soit de la personne qui est le client ou la cliente d'un titulaire de permis suspendu ou d'une titulaire de permis suspendue lors du rendu de l'ordonnance de suspension;
- b) soit de la personne qui devient le client ou la cliente d'un titulaire de permis suspendu ou d'une titulaire de permis suspendue après le rendu de l'ordonnance de suspension, mais avant le début de la suspension. (« existing client »)

« client éventuel » La personne qui cherche à retenir les services d'un titulaire de permis suspendu ou d'une titulaire de permis suspendue après le rendu de l'ordonnance de suspension, mais avant le début de la suspension. (« prospective client »)

« ordonnance de suspension » Ordonnance rendue en application de la Loi qui a pour effet de suspendre un permis autorisant à exercer le droit en Ontario en qualité d'avocat ou à fournir des services juridiques en Ontario, que la suspension commence lors du rendu de l'ordonnance ou par la suite. (« suspension order »)

« titulaire de permis suspendu » Titulaire de permis qui détient un permis de catégorie L1 ou P1 et qui fait l'objet d'une ordonnance de suspension. (« suspended licensee »)

Avis à donner avant le début de la suspension

9. (1) Les titulaires de permis suspendus font ce qui suit au plus tard à la date du début de la suspension :

- a) ils avisent chacun et chacune des clients actuels dans le cadre des affaires desquels ils n'ont pas terminé leurs travaux avant le début de la suspension de l'ordonnance de suspension elle-même et de ce qui suit :
 - (i) ils ne seront pas en mesure de terminer les travaux,
 - (ii) le client ou la cliente devra retenir les services d'un autre ou d'une autre titulaire de permis pour terminer les travaux,
 - (iii) sous réserve des droits qu'ils peuvent avoir sur le dossier du client ou de la cliente, ils le transféreront à la ou au titulaire de permis retenu par le client ou la cliente pour terminer les travaux, le cas échéant, ou au client ou à la cliente même;

- b) ils avisent chacune et chacune des clients actuels et des anciens clients pour lesquels ils ont effectué des travaux visés au paragraphe 14 (1) du nom et des coordonnées du ou de la titulaire de permis à qui ils ont remis la possession des documents et des dossiers du client ou de la cliente.

Cas où l'observation des alinéas (1) a) (i) à (iii) est facultative

(2) Les titulaires de permis suspendus ne sont pas tenus de donner les renseignements exigés aux sous-alinéas (1) a) (i) à (iii) si les seuls travaux qui restent à terminer dans le cadre de l'affaire du client ou de la cliente sont visés à l'article 12 ou 13. Dans ce cas, toutefois, ils avisent le client ou la cliente, avant le début de la suspension, du nom et des coordonnées du ou de la titulaire de permis dont ils retiennent les services pour terminer les travaux.

Renseignements à donner pendant la suspension

10. Pendant la durée de la suspension, les titulaires de permis suspendus :
- a) d'une part, avisent toutes les personnes qui entrent en contact avec leur lieu d'affaires de l'ordonnance de suspension;
 - b) d'autre part, avisent chaque client actuel ou cliente actuelle et chaque ancien client ou ancienne cliente qui entre en contact avec leur lieu d'affaires du nom et des coordonnées de l'autre titulaire de permis à qui ils ont remis la possession des documents et des dossiers le ou la concernant.

Renseignements à donner : clients éventuels

11. Les titulaires de permis suspendus avisent de l'ordonnance de suspension le client éventuel ou la cliente éventuelle qui cherche à retenir leurs services.

Travaux restants : rapport final destiné au client

12. Si, à la date du début de la suspension, le seul travail qui reste à terminer aux titulaires de permis suspendus dans le cadre de l'affaire d'un client ou d'une cliente est le rapport final destiné à celui-ci ou à celle-ci, ils retiennent, avant le début de la suspension, les services d'un ou d'une autre titulaire de permis, qui est autorisé à cette fin, pour qu'il ou elle examine le dossier du client ou de la cliente et qu'il ou elle rédige et lui envoie le rapport final.

Travaux restants : respect d'engagements

13. Si, à la date du début de la suspension, les seuls travaux qui restent à terminer aux titulaires de permis suspendus dans le cadre de l'affaire d'un client ou d'une cliente sont de respecter un ou plusieurs engagements qu'ils ont pris, ils retiennent, avant le début de la suspension, les services d'un ou d'une autre titulaire de permis, qui est autorisé à cette fin, pour qu'il ou elle prenne toutes les mesures nécessaires au respect des engagements.

Autres exigences : testaments, procurations ou registres sociaux

14. (1) Le présent article s'applique aux titulaires de permis suspendus qui ont effectué l'un ou l'autre des travaux suivants pour un client ou une cliente :

1. La rédaction d'un testament.
2. La rédaction d'une procuration.
3. La préparation de registres sociaux ou leur tenue à jour.

Exigences : originaux

- (2) Avant le début de la suspension, les titulaires de permis suspendus :
 - a) soit retournent tous les originaux au client ou à la cliente;
 - b) soit transfèrent le dossier du client ou de la cliente, originaux compris, à un ou une autre titulaire de permis qui est autorisé à effectuer les travaux nécessaires.

Droit immobilier : directive concernant le disque d'accès à Teranet

15. Au plus tard à la date du début de la suspension, les titulaires de permis suspendus qui ont accès au réseau Teranet remplissent et déposent auprès du Barreau une directive rédigée selon la formule fournie par ce dernier, qui autorise celui-ci à prendre toutes les mesures nécessaires pour rendre inopérant leur disque d'accès à Teranet pendant la durée de la suspension.

Remise de la carte d'identité

16. Au plus tard à la date du début de la suspension, les titulaires de permis suspendus remettent au Barreau la carte d'identité avec photo qu'il leur a délivrée.

Étudiants

17. Les titulaires de permis suspendus qui ont accepté une personne en service en vertu de la convention de stage pour une durée de service qui tombe en totalité ou en partie dans la période de suspension font ce qui suit avant le début de la suspension :

- a) ils avisent la personne de l'ordonnance de suspension et du fait qu'ils ne pourront pas la garder en service en vertu de la convention de stage après le début de la suspension;
- b) ils prennent des dispositions pour qu'un ou une autre titulaire de permis, qui est autorisé et approuvé par le Barreau pour ce faire, accepte la

personne en service en vertu de la convention de stage après le début de la suspension;

- c) ils prennent les dispositions auprès du Barreau pour que le service que la personne effectue auprès d'eux en vertu de la convention de stage soit transféré à l'autre titulaire de permis à compter de la date du début de la suspension.

Reddition de comptes au Barreau quant à l'observation

18. Les titulaires de permis suspendus rédigent et déposent auprès du Barreau, dans les 30 jours du début de la suspension, un rapport rédigé selon la formule fournie par celui-ci, qui confirme et qui expose en détail la façon dont ils observent la présente partie.

Permission d'être dispensé

19. Les titulaires de permis suspendus peuvent demander par écrit au Barreau d'être dispensés d'une exigence prévue à la présente partie ou de la modifier. Le Barreau peut alors les dispenser de l'exigence ou la modifier, sous réserve des conditions qu'il impose.

- b. **Amend By-Law 9 [Financial Transactions and Records] by adding the following:**

PART II.1

HANDLING OF MONEY BY LICENSEE WHOSE LICENCE IS SUSPENDED

Interpretation

2.1 In this Part,

“suspended licensee” means a licensee who holds a Class L1 or a Class P1 licence and who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Handling of money by suspended licensee

2.2 (1) Subject to subsection (2) and section 2.3, a suspended licensee shall not, during the suspension receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

Exception

(2) A suspended licensee may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the suspended licensee for the person or group; or
- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Trust account

2.3 (1) A suspended licensee shall, within 30 days of the beginning of the suspension,

- (a) withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, and, as required, pay to the appropriate person,

- (i) money properly required for payment to a person on behalf of a client,
 - (ii) money required to reimburse the suspended licensee for money properly expended, or for expenses properly incurred, on behalf of a client,
 - (iii) money required for or toward payment of fees for services performed by the suspended licensee, and
 - (iv) all other money that belongs to the suspended licensee or to a person other than a client;
- (b) after complying with clause (a), withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, all money belonging to a client and pay the money to,
- (i) the client,
 - (ii) another licensee to whom the client has directed the suspended licensee to make payment, or
 - (iii) another licensee who has agreed with the suspended licensee to accept payment in the event that the suspended licensee is unable to comply with subclause (i) or (ii); and
- (c) after complying with clauses (a) and (b),
- (i) close every trust account that was kept in the name of the suspended licensee, and
 - (ii) cancel or cause to be cancelled the suspended licensee's signing authority on every trust account that was kept in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

Compliance with clause (1) (b) not required

(2) A suspended licensee is not required to comply with clause (1) (b) if the client's file is transferred, in accordance with Part IV of By-Law 7.1, to another licensee in the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

Application of sections of Part IV

(3) Subsection 9 (3) and sections 10, 11 and 12 apply to the withdrawal of money from a trust account under this section.

Report to Society on compliance

(4) A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this section.

Permission to be exempt from requirement

2.4 A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

PARTIE II.1

INTERDICTION D'EFFECTUER DES OPERATIONS TOUCHANT DES FONDS – TITULAIRE DE PERMIS SUSPENDUS

Interprétation

2.1 Les définitions qui suivent s'appliquent à la présente partie.

« ordonnance de suspension » Ordonnance rendue en application de la Loi qui a pour effet de suspendre un permis autorisant à exercer le droit en Ontario en qualité d'avocat ou à fournir des services juridiques en Ontario, que la suspension commence lors du rendu de l'ordonnance ou par la suite. (« suspension order »)

« titulaire de permis suspendu » Titulaire de permis qui détient un permis de catégorie L1 ou P1 et qui fait l'objet d'une ordonnance de suspension. (« suspended licensee »)

Interdiction d'effectuer des opérations touchant des fonds

2.2 (1) Sous réserve du paragraphe (2) et de l'article 2.3, les titulaires de permis suspendus ne doivent pas, pendant la durée de la suspension, recevoir de fonds ni d'autres biens d'une personne ou d'un groupe de personnes ou en leur nom ni effectuer d'autres opérations touchant des fonds ou d'autres biens qui sont détenus en fiducie pour une personne ou un groupe de personnes.

Exception

(2) Les titulaires de permis suspendus peuvent recevoir des fonds d'une personne ou d'un groupe de personnes ou en leur nom dans les cas suivants :

- a) il s'agit du paiement d'honoraires pour des services qu'ils ont fournis à cette personne ou à ce groupe de personnes;
- b) il s'agit du remboursement de fonds légitimement dépensés ou de frais légitimement engagés au nom de cette personne ou de ce groupe.

Compte en fiducie

2.3 (1) Les titulaires de permis suspendus font ce qui suit dans les 30 jours du début de la suspension :

- a) ils retirent les fonds suivants de chaque compte en fiducie ouvert à leur nom ou au nom du cabinet où ils sont associés ou employés et, au besoin, ils les versent à la personne pertinente :
 - (i) les fonds légitimement requis pour effectuer un paiement au nom d'une cliente ou d'un client,
 - (ii) les fonds requis pour se rembourser des fonds dépensés ou engagés légitimement au nom d'une cliente ou d'un client,
 - (iii) les fonds requis pour régler leurs honoraires relativement à des services rendus,
 - (iv) tous les fonds qui leur appartiennent ou qui appartiennent à une personne autre que la cliente ou le client;
- b) après avoir observé l'alinéa a), ils retirent tous les fonds appartenant à une cliente ou à un client de chaque compte en fiducie ouvert à leur nom ou au nom du cabinet où ils sont associés ou employés et ils les versent :
 - (i) soit à la cliente ou au client,
 - (ii) soit à un autre ou à une autre titulaire de permis à qui la cliente ou le client leur a donné la directive de verser les fonds,
 - (iii) soit à un ou une autre titulaire de permis qui a convenu avec eux d'accepter le versement lorsqu'ils ne peuvent pas observer le sous-alinéa (i) ou (ii);
- c) après avoir observé les alinéas a) et b) :

- (i) d'une part, ils ferment chaque compte en fiducie ouvert à leur nom,
- (ii) d'autre part, ils annulent ou font annuler l'autorisation de signer qu'ils ont reçue à l'égard de chaque compte en fiducie tenu au nom du cabinet où ils sont associés ou employés.

Cas où l'observation de l'alinéa (1) b) est facultative

(2) Les titulaires de permis suspendus ne sont pas tenus d'observer l'alinéa (1) b) si le dossier de la cliente ou du client est transféré, conformément à la partie IV du règlement administratif n° 7.1, à un ou une autre titulaire de permis du cabinet où ils sont associés ou employés.

Application de la partie IV

(3) Le paragraphe 9 (3) et les articles 10, 11 et 12 s'appliquent au retrait de fonds d'un compte en fiducie effectué dans le cadre du présent article.

Reddition de comptes au Barreau quant à l'observation

(4) Les titulaires de permis suspendus rédigent et déposent auprès du Barreau, dans les 30 jours du début de la suspension, un rapport rédigé selon la formule fournie par celui-ci, qui confirme et qui expose en détail la façon dont ils observent le présent article.

Permission d'être dispensé

2.4 Les titulaires de permis suspendus peuvent demander par écrit au Barreau d'être dispensés d'une exigence prévue à la présente partie ou de la modifier. Le Barreau peut alors les dispenser de l'exigence ou la modifier, sous réserve des conditions qu'il impose.

- c. **Make the following amendments to rule 6.07 of the *Rules of Professional Conduct* (amendments shown in ~~strikeout~~ and in underlined text):**

6.07 PREVENTING UNAUTHORIZED PRACTICE

Preventing Unauthorized Practice

6.07 (1) A lawyer shall assist in preventing the unauthorized practice of law and the unauthorized provision of legal services.

[Amended – June 2007]

Commentary

Statutory provisions against the practice of law and provision of legal services by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, regulation, and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of secrecy, the professional standard of care that the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include professional liability insurance, rights with respect to the assessment of bills, rules respecting the handling of trust monies, and requirements for the maintenance of compensation funds.

Working With or Employing Unauthorized Persons ~~Disbarred Persons, Suspended Licensees, and Others~~

(2) 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 license to practise law or to provide legal services revoked, has been suspended, has had his or her license 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 license to practise law or to provide legal services, and has not had his or her license restored.

[Amended June 2007]

Practice by Suspended Lawyers Prohibited

6.07 (3) A lawyer whose licence to practise law is suspended shall comply with the requirements of the By-laws and shall not

- (a) practise law,
- (b) represent or hold himself or herself out as a person entitled to practise law,
or
- (c) represent or hold himself or herself out as a person entitled to provide legal services.

Commentary

Part IV of By-Law 7.1 (Operational Obligations and Responsibilities) and Part II.1 of By-Law 9 (Financial Transactions and Records) set out the obligations of a lawyer whose licence to practise law is suspended.

Undertakings Not to Practise Law

(4) A lawyer who gives an undertaking to the Law Society not to practise law shall not,

- (a) practise law,
- (b) represent or hold himself or herself out as a person entitled to practise law,
or
- (c) represent or hold himself or herself out as a person entitled to provide legal services.

Undertakings to Practice Law Subject to Restrictions

(5) A lawyer who gives an undertaking to the Law Society to restrict his or her practice shall comply with the undertaking.

Introduction and Background

3. To ensure appropriate guidance to and regulation of licensees whose licences are suspended or who are subject to other restrictions on practice, the Committee is recommending that amendments to the By-Laws and *Rules of Professional Conduct* to set out relevant licensee obligations be adopted.
4. Currently, the Law Society publishes “Guidelines for Suspended, Resigned or Disbarred Members and Members Who Have Given an Undertaking Not to Practise” (last updated June 2001 – see **Appendix 1**)¹. These Guidelines provide detailed instructions to lawyers on what they can and cannot do if their licence is suspended or they are subject to an undertaking not to practise. Instruction is also given to those who licenses have been surrendered or revoked.
5. The Committee is recommending that the Guidelines for suspended licensees, or licensees who have undertaken not to practise, be converted into By-laws and *Rules of Professional Conduct*. There are two reasons for this proposed change:
 - a. The current Guidelines are not enforceable against a licensee who fails to observe them. By turning the Guidelines into obligations under the Law Society’s By-laws and Rules, they will be enforceable.
 - b. The Guidelines in their current form no longer accurate in light of the May 1, 2007 amendments to the *Law Society Act*. Previously, there was no legislative prohibition on suspended lawyers acting as paralegals. Now, lawyers who cannot engage in the practice of law because of a suspension of their licence can no longer provide legal services. A specific P1 licence is required in order to engage in the provision of legal services as a paralegal. This changes the information contained in the Guidelines. In addition, the information in the Guidelines relevant to lawyers is required for paralegal licensees who are suspended or who have undertaken not to practice.

¹ Given the initiative to formulate a by-law on this subject, the Guidelines have not been updated in accordance with the amended *Law Society Act*.

The Professional Regulation and Paralegal Standing Committee Process

6. At its November 2007 meeting, the Committee approved the amendments to the By-Laws and *Rules of Professional Conduct* in this report for Convocation's consideration. The By-Law amendments were drafted to cover both lawyer and paralegal licensees and similar rules of conduct were anticipated for paralegal licensees. The Chair, after consulting through staff with the Chair of the Paralegal Standing Committee (PSC), determined that the PSC would need to review this matter and approve it before it is reported to Convocation.
7. The PSC met on December 7, 2007, and approved the By-Law amendments, with only minor grammatical changes suggested to two sections. The PSC also approved changes to the Paralegal Rules to incorporate requirements similar to those for lawyers.² Further, Guidelines for paralegal licensees have also been prepared and were reviewed by the PSC. They are virtually identical to the lawyer Guidelines, with necessary modifications for the scope of practice of paralegals. The PSC will be reporting the Paralegal Rules amendments and Guidelines for paralegals to January 24, 2008 Convocation.
8. The PSC is content that the Committee report the By-Law amendments on behalf of both Committees.

By-Law Amendments

9. Generally, the information contained in the current Guidelines describes the activities that a lawyer who is not permitted to practise must do, may do and is prohibited from doing in respect of his or her practice. The new By-Law provisions are based on the Guideline's requirements.
10. The amendments to By-Law 7.1 (Operational Obligations and Responsibilities) include the following:
 - a. notice requirements to clients prior to the effective date of the suspension;

² The paralegal Rules are being reported by the PSC to Convocation for adoption in January 2008.

- b. notice requirements to clients and prospective clients after the suspension has begun;
 - c. requirements with respect to completion of work in progress at the time the suspension commences and with respect to the handling of original documents;
 - d. certain obligations of the lawyer to students and the Law Society as a result of the suspension; and
 - e. a requirement for a compliance report.
11. The amendments to By-Law 9 (Financial Transactions and Records) deal with obligations with respect to handling of client money and property, and include:
- a. a general prohibition on receiving and handling trust money or other property of a client;
 - b. obligations with respect to withdrawals of funds from a trust account;
 - c. a requirement for a compliance report to the Law Society.
12. These By-Laws with the amendments redlined are included at **Appendix 2**.

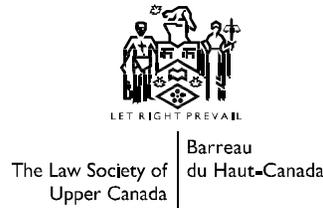
Rules Amendments

13. The Committee is recommending that three new subrules, 6.07(3) through (5), be added on this subject.
14. New subrule 6.07(3) requires lawyer to comply with the By-Laws and prohibits the practice of law by a person whose licence is suspended. Commentary to this subrule references the relevant By-Laws. A second new subrule, 6.07(4), prohibits a person who has undertaken not to practice from practicing law. The third new subrule, 6.07(5), requires lawyers who have agreed by undertaking to restrict their practices to comply with the undertaking.
15. A minor clarifying amendment to the heading to subrule 6.07(2) is also proposed.

16. The input of the Society's rules drafter, Don Revell, on the rules drafts appearing in this report has been received.

For Information: Redrafted Guidelines

17. The Committee agreed with the Director of Professional Regulation that new Guidelines should be drafted for the benefit of licensees whose licences are suspended or who are subject to an undertaking not to practice.
18. Two new Guidelines have been prepared (at **Appendix 3**). The Guidelines reference the By-Laws and Rules. The first Guideline includes information for licensees on prohibited, mandatory and permissible activities, based on the definitions of the practice of law and provision of legal services contained in the *Law Society Act* and the case law on unauthorized practice. The second includes information for individuals who have surrendered their licences to practise law or whose licenses have been revoked.
19. The second Guideline serves two purposes. Although the Law Society loses jurisdiction over persons who surrender their licence or whose licences are revoked, the information contained in the Guidelines is useful for former licensees. It is also important to publish this information for former licensees as it could be evidence used for unauthorized practice prosecutions.
20. As the Guidelines do not require Convocation's approval, they are reported as information.



GUIDELINES FOR SUSPENDED, RESIGNED OR DISBARRED MEMBERS AND MEMBERS WHO HAVE GIVEN AN UNDERTAKING NOT TO PRACTISE

Subsections (1)(a) of Section 50 and Section 50.1(1) of the *Law Society Act*, R.S.O. 1990, c. L.8 as amended provide as follows:

- 50 (1) Except where otherwise provided by law,
(a) no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold themselves out as or represent themselves to be a barrister or solicitor or practise as a barrister or solicitor;
- 50.1(1) Every person who contravenes section 50 is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

EFFECTIVE FROM THE DATE OF SUSPENSION, RESIGNATION, DISBARMENT OR UNDERTAKING NOT TO PRACTISE:

I - YOU MAY:

- (a) See clients only for the limited purpose of assisting them in transferring their past or present legal work to another solicitor;
- (b) Collect accounts receivable;
- (c) Render accounts for work completed on or before the date of your suspension, resignation, disbarment or undertaking not to practise;

II - YOU SHALL NOT:

Carry on the practice or profession of a barrister and solicitor in any way, nor, represent or hold yourself out as a barrister and solicitor in any way. Except on the terms set out above, and without limiting the generality of the following, you shall not:

- (a) Accept any new clients;
- (b) Accept new legal work for existing clients;
- (c) Give legal advice to any client, other individual, corporation or other entity;
- (d) Subject to paragraph (f), continue, commence, carry on or defend any lawsuit or proceeding for any client, other individual, corporation or other entity with or without fee;
- (e) Subject to paragraph (f), appear in court for any purpose other than in your personal capacity to represent yourself as a party and/or as a witness;
- (f) Provide legal services to the public, unless acting as an agent where permitted by statute or by leave of the court or tribunal (e.g. including but not limited to Provincial Offences, Landlord and Tenant, Small Claims and Highway Traffic Act matters) on the specific condition that the principal has been advised, in writing, that you are not entitled to act and are not acting as a barrister and solicitor, that your representation will not afford them the protection of the Lawyers' Professional Indemnity Company in the event of your negligence or the protection of the Lawyers Fund for Client Compensation in the event of dishonesty or fraud and that your representation will not afford them the protection of solicitor-client privilege. In addition, any Court, administrative tribunal or other adjudicative body, as well as all other parties involved, must be informed that you are not entitled to act as a barrister and solicitor but are appearing as an agent.
- (g) Draft or revise legal documents of any type, and/or execute documents of any type which require or permit execution by a barrister and solicitor;
- (h) Notarize documents pursuant to the *Notaries Act*, R.S.O. 1990, c. N.6, or swear affidavits pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
- (i) Report to clients, other than to: 1) inform them that you are not practising law; and/or 2) deliver an account for services rendered prior to your suspension, resignation, disbarment or undertaking not to practise (for the preparation of client reporting letters see III (b) below);
- (j) Certify, or give any opinions on, title to property;

- (k) Subject to paragraph (f), draft and/or send a demand letter threatening or intimating that legal proceedings of any form will be taken on behalf of a third party, with or without fee;
- (l) Act as a solicitor for the estate of a deceased person or party under a “disability” as defined by the Rules of Civil Procedure;
- (m) Prepare wills or have anything to do with the administration, distribution or completion of estates, other than in your capacity as an estate trustee;
- (n) Give to another lawyer or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
- (o) Hold yourself out as a barrister and/or a solicitor;
- (p) Occupy or share office space with a barrister and solicitor in contravention of Rule 6.07;
- (q) Provide services to a barrister and solicitor, in relation to that individual's practice of law in contravention of Rule 6.07;
- (r) Act as an articling principal to a student-at-law in the Bar Admission Course or act as the supervising lawyer to a student-at-law in the Bar Admission Course;
- (s) Accept any referrals from the Lawyer Referral Service.

EFFECTIVE FROM THE DATE OF THE SOCIETY’S DECISION OR ORDER SUSPENDING YOU, PERMITTING OR ACCEPTING YOUR RESIGNATION OR DISBARRING YOU, OR REQUIRING OR ACCEPTING YOUR UNDERTAKING NOT TO PRACTISE, WHERE YOU HAVE NOT APPEALED AND OBTAINED A STAY OF THE DECISION OR ORDER:

III YOU MUST:...

- (a) Arrange immediately to inform all clients in active matters that they should take their files to a solicitor of their choice, unless such matters will be completed before the date you cease to practise. You may, in this capacity, suggest a referral to a particular solicitor. The ultimate choice of who is retained rests with the client and not with you;
- (b) Not accept any new client matters without informing the prospective clients of the decision or order and the fact of that you will cease to practise on a particular date, unless such matters will be completed before the date you cease to practise

**EFFECTIVE FROM THE DATE OF SUSPENSION, RESIGNATION,
DISBARMENT OR UNDERTAKING NOT TO PRACTISE:**

IV YOU MUST:

Fulfil the requirements of all paragraphs below and confirm, in writing, to the Law Society, **within 30 days of your suspension, resignation, disbarment or undertaking not to practise** that you have done so.

- (a) Assign any and all outstanding reporting letters to another solicitor in good standing for completion. You may prepare a draft report for the solicitor of your choice, but that solicitor must review the file completely and send any reporting letter out to the client on his or her letterhead. You may make personal arrangements with the solicitor for his or her remuneration;
- (b) Employ another solicitor or agent to complete all undertakings given by and accepted by you prior to your suspension, cancellation or undertaking not to practise;
- (c) Return original wills and documents to clients or arrange to transfer this part of your practice to another solicitor, and inform your clients and the Law Society who has been given possession of their wills, documents and files;
- (d) Remove any sign from your door, building, premises, window, building directory or property designating it as a "law office" or designating you to be a "barrister", "solicitor", "lawyer", "Q.C.", "notary public" and/or "commissioner of oaths", in English or any other language. The above words must also be removed or crossed out from all stationery, letterhead, business cards, forms, stamps, accounts and any publications bearing your name;
- (e) If you were issued a Law Society Membership Photo ID Card, confirm that you have returned it to the Society forthwith, if you have not already done so;
- (f) Telephone/fax:
 - i) Either disconnect the lines or arrange for a voice message to advise callers that your law practice is closed until further notice and provide callers with the name and number of another lawyer to call for information regarding their files. Members under a definite suspension can leave a message advising when the office will reopen;

- ii) Contact your telephone company and directory advertisers instructing them to remove from the next printing of the white and yellow pages of the telephone directory any words or abbreviations for "barrister", "solicitor", "lawyer", "Q.C.", "notary public" and/or "commissioner of oaths", in English or any other language, and to delete from Directory Assistance your law office listings and;
 - iii) Have your name deleted from the listing of lawyers under your law firm's name;
- (g) Trust Account(s):
Have all trust funds on deposit balanced to client liabilities as of the date of your suspension, resignation, disbarment or undertaking not to practise and turn funds over to:
- (i) clients; or
 - (ii) succeeding solicitor, in trust, by direction of client; or
 - (iii) succeeding solicitor of your choice, in trust, if clients decline to claim or direct; and
 - (iv) close the account(s);
 - (v) forward a copy of your trust bank statements showing account closed particulars to the Law Society;
- (h) Finalize your accounting books and records to the latest of the date of your suspension, resignation, disbarment or undertaking not to practise and the closure of your trust account. Submit your annual filings within 90 days of your fiscal year-end, as required by the By-Laws.
- (i) If a suspended member or a member subject to an undertaking not to practise, continue to file annually thereafter a Member's Annual Report;
- (j) Locate another member of the profession who will act as the articling principal to your current or incoming students-at-law and arrange for the orderly assignment or transfer of articles of the student-at-law under the direction of the Articling Director at the Law Society.

Enquiries regarding these guidelines and compliance should be directed to the Law Society of Upper Canada at telephone 416-947-3315.

June 8, 2001

BY-LAW 7.1

Made: October 25, 2007
Amended: November 22, 1007

OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

PART I

GENERAL

Interpretation

1. (1) In this By-law,

“licensee” means a licensee who holds a Class L1 licence;

“non-licensee” means an individual who,

- (a) is not a licensee;
- (b) is engaged by a licensee to provide her or his services to the licensee; and
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee.

Interpretation: “effective control”

(2) For the purposes of subsection (1), a licensee has effective control over an individual’s provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society’s rules of professional conduct and the Society’s policies and guidelines.

PART II

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Application

2. This Part does not apply to the provision of legal services by a student under the supervision of a licensee who is approved by the Society.

Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may, in accordance with this Part, assign to a non-licensee tasks and functions in connection with the licensee's practice of law in relation to the affairs of the licensee's client.

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law in relation to the affairs ~~business~~ of the licensee's client only if the client consents to the licensee doing so.

Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law in relation to the affairs of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law in relation to the affairs of each client..

(2) Without limiting the generality of subsection (1),

- (a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;
- (b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
- (c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;
- (d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;
- (e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at frequent intervals;
- (f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;
- (g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and
- (h) the licensee shall ensure that a non-licensee does not, at any time, act

finally in respect of the affairs of the licensee's client.

Assignment of tasks, functions: prior express instruction and authorization required

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,
1. to give or accept an undertaking on behalf of the licensee;
 2. to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
 3. to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

(2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Tasks, functions that may not be assigned: general

6. A licensee shall not permit a non-licensee,
- (a) to give the licensee's client legal advice;
 - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;
 - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);
 - (d) to sign correspondence, other than correspondence of a routine administrative nature;
 - (e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee; or
 - (f) to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

PART III
COLLECTION LETTERS

Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,
- a. the letter is in relation to the affairs of the licensee’s client;
 - b. the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;
 - c. if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;
 - d. the letter is on the licensee’s business letterhead; and
 - e. the letter is signed by the licensee.

PART IV
OBLIGATIONS RESULTING FROM SUSPENSION

Interpretation

8. In this Part,

“existing client” means,

- (a) a person who is a client of a suspended licensee when a suspension order is made against the licensee, or
- (b) a person who becomes a client of the suspended licensee after the suspension order is made but before the suspension begins;

“former client” means a person who was a client of a suspended licensee before a suspension order was made against the licensee but who was not a client when the order was made;

“prospective client” means a person who seeks to retain a suspended licensee after the suspension order is made the licensee but before the suspension begins;

“suspended licensee” means a licensee who holds a Class L1- licence or a Class P1 licence and who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Notice requirements before suspension begins

9. (1) A suspended licensee shall before the suspension begins, but not later than the date on which the suspension begins,

- (a) notify every existing client, on whose matters the work will not be completed by the suspended licensee before the suspension begins, of the suspension order and that,
 - (i) the suspended licensee will be unable to complete the work,
 - (ii) the client will need to retain another licensee to complete the work, and
 - (iii) the suspended licensee, subject to any rights that the suspended licensee may have over the client’s file, will transfer the file to the licensee, if any, retained by the client to complete the work or will return the file to the client; and
- (b) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection 14 (1) of the name and contact information of the licensee to whom the suspended licensee has given possession of the client’s documents and files.

Compliance with subclauses (1) (a) (i) to (iii) not required

(2) A suspended licensee is not required to comply with the notice requirements mentioned in subclauses (1) (a) (i) to (iii) if the only work remaining to be completed on the client’s matter is work mentioned in section 12 or 13, but, in such a case, the suspended licensee shall, before the suspension begins, notify the client of the name and contact information of the licensee retained by the suspended licensee to complete the work.

Notice requirements: during suspension

10. A suspended licensee shall, during the suspension,

- (a) notify all persons who contact the suspended licensee’s place of business of the suspension order; and

- (b) notify any existing client or former client who contacts the suspended licensee's place of business of the name and contact information of another licensee who has been given possession of the clients' documents and files.

Notice requirements: prospective clients

11. A suspended licensee, at the time a prospective client seeks to retain the suspended licensee, shall notify the prospective client of the suspension order.

Work remaining on file: final report to client

12. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is a final report to the client, the suspended licensee shall, before the suspension begins, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

Work remaining on file: fulfillment of undertakings

13. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is the fulfillment of one or more undertakings given by the suspended licensee, the suspended licensee shall retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

Additional requirements: preparation of will, power of attorney, corporate records

14. (1) This section applies to a suspended licensee who performs or has performed any of the following work for a client:

1. Preparation of a will.
2. Preparation of a power of attorney.
3. Preparation of, or preparation and continued maintenance of, corporate records.

Requirement re original documents

- (2) A suspended licensee shall, before the suspension begins,
- (a) return to the client all original documents; or
 - (b) transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work.

Real estate law: direction re Teranet access disk

15. A suspended licensee who has access to the Teranet system shall, on or before the date the suspension begins, complete and file with the Society, in a form provided by the Society, a direction authorizing the Society to take all steps necessary to cancel the suspended licensee's Teranet access disk for the period of the suspension.

Return of photo identification card

16. A suspended licensee shall, on or before the date the suspension begins, return to the Society any photo identification card issued to her or him by the Society.

Students

17. A suspended licensee, who has accepted a person into service under articles of clerkship where the period of service includes any or all of the period of the suspension, shall, before the suspension begins,

- (a) notify the person of the suspension order and that the suspended licensee will not be able to retain the person in service under articles of clerkship after the suspension begins;
- (b) arrange for another licensee, who is authorized and approved by the Society to do so, to accept the person into service under articles of clerkship after the suspension begins; and
- (c) arrange with the Society for the person's service under articles of clerkship to be transferred from the suspended licensee to the other licensee effective the date on which the suspension begins.

Report to Society on compliance

18. A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this Part.

Permission to be exempt from requirement

19. A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

BY-LAW 9

FINANCIAL TRANSACTIONS AND RECORDS

PART I

INTERPRETATION

Interpretation

1. (1) In this By-Law,

“arm’s length” has the same meaning given it in the *Income Tax Act* (Canada);

“cash” means current coin within the meaning of the *Currency Act* (Canada), notes intended for circulation in Canada issued by the Bank of Canada pursuant to the *Bank of Canada Act* and current coin or banks notes of countries other than Canada;

“charge” has the same meaning given it in the *Land Registration Reform Act*;

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

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

“holiday” means,

- (a) any Saturday or Sunday;
- (b) New Year’s Day, and where New Year’s Day falls on a Saturday or Sunday, the following Monday;
- (c) Good Friday;
- (d) Easter Monday;
- (e) Victoria Day;
- (f) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday;
- (g) Civic Holiday;
- (h) Labour Day;
- (i) Thanksgiving Day;

- (j) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday;
- (k) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday;
- (l) Boxing Day; and
- (m) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

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

“licensee” means a licensee who holds a Class L1 licence and includes a firm of licensees;

“money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders;

“related” has the same meaning given it in the *Income Tax Act* (Canada);

“Teranet” means Teranet Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Business Services.

Time for doing an act expires on a holiday

(2) Except where a contrary intention appears, if the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

When deemed in trust

(3) For the purposes of subsections 9 (1), (2) and (3) and section 14, cash, cheques negotiable by the licensee, cheques drawn by the licensee on the licensee’s trust account and credit card sales slips in the possession and control of the licensee shall be deemed from the time the licensee receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day.

PART II

HANDLING OF MONEY BY BANKRUPT LICENSEE

Handling of money by bankrupt licensee

2. (1) Subject to subsections (2) and (3), a licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) shall not receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

Exception

(2) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the licensee for the person or group; or
- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Same

(3) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may apply in writing to the Society for permission to receive from or on behalf of a person or group of persons any money or other property, other than as permitted under subsection (2), or for permission to handle money or other property that is held in trust for a person or group of persons, and the Society may permit the licensee to do so, subject to such terms and conditions as the Society may impose.

PART II.1

HANDLING OF MONEY BY LICENSEE WHOSE LICENCE IS SUSPENDED

Interpretation

2.1 In this Part,

“suspended licensee” means a licensee who holds a Class L1 or a Class P1 licence and who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Handling of money by suspended licensee

2.2 (1) Subject to subsection (2) and section 2.3, a suspended licensee shall not, during the suspension receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

Exception

(2) A suspended licensee may receive from or on behalf of a person or group of persons money,

- (a) in payment of fees for services performed by the suspended licensee for the person or group; or
- (b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Trust account

2.3 (1) A suspended licensee shall, within 30 days of the beginning of the suspension,

- (a) withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed, and, as required, pay to the appropriate person,
 - (i) money properly required for payment to a person on behalf of a client,
 - (ii) money required to reimburse the suspended licensee for money properly expended, or for expenses properly incurred, on behalf of a client,
 - (iii) money required for or toward payment of fees for services performed by the suspended licensee, and
 - (iv) all other money that belongs to the suspended licensee or to a person other than a client;
- (b) after complying with clause (a), withdraw from every trust account kept in the name of the suspended licensee, or in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended

licensee is employed, all money belonging to a client and pay the money to,

- (i) the client,
- (ii) another licensee to whom the client has directed the suspended licensee to make payment, or
- (iv) another licensee who has agreed with the suspended licensee to accept payment in the event that the suspended licensee is unable to comply with subclause (i) or (ii); and

(c) after complying with clauses (a) and (b),

- (i) close every trust account that was kept in the name of the suspended licensee, and
- (ii) cancel or cause to be cancelled the suspended licensee's signing authority on every trust account that was kept in the name of the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

Compliance with clause (1) (b) not required

(2) A suspended licensee is not required to comply with clause (1) (b) if the client's file is transferred, in accordance with Part IV of By-Law 7.1, to another licensee in the firm of licensees of which the suspended licensee is a partner or by which the suspended licensee is employed.

Application of sections of Part IV

(3) Subsection 9 (3) and sections 10, 11 and 12 apply to the withdrawal of money from a trust account under this section.

Report to Society on compliance

(4) A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this section.

Permission to be exempt from requirement

2.4 A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt

the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

PART III

CASH TRANSACTIONS

Definition

3. In this Part,

“funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;

“public body” means,

- (a) a department or agent of Her Majesty in right of Canada or of a province;
- (b) an incorporated city, metropolitan authority, town, township, village, county, district, rural municipality or other incorporated municipal body or an agent of any of them; and
- (c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or agent of the organization.

Cash received

4. (1) A licensee shall not receive or accept from a person, in respect of any one client file, cash in an aggregate amount of 7,500 or more Canadian dollars.

Foreign currency

(2) For the purposes of this section, when a licensee receives or accepts from a person cash in a foreign currency the licensee shall be deemed to have received or accepted the cash converted into Canadian dollars at,

- (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada’s Daily Noon Rates that is in effect at the time the licensee receives or accepts the cash; or
- (b) if the day on which the licensee receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the licensee receives or accepts the cash.

Application

5. Section 4 applies when, in respect of a client file, a licensee engages in or gives instructions in respect of the following activities:
 1. The licensee receives or pays funds.
 2. The licensee purchases or sells securities, real properties or business assets or entities.
 3. The licensee transfers funds by any means.

Exceptions

6. Despite section 5, section 4 does not apply when the licensee,
 - (a) receives cash from a public body, an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* (Canada) applies, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act, an association that is regulated by the *Cooperative Credit Associations Act* (Canada), a company to which the *Trust and Loan Companies Act* (Canada) applies, a trust company or loan company regulated by a provincial Act or a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public;
 - (b) receives cash from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;
 - (c) receives cash pursuant to an order of a tribunal;
 - (d) receives cash to pay a fine or penalty; or
 - (e) receives cash for fees, disbursements, expenses or bail provided that any refund out of such receipts is also made in cash.

PART IV

TRUST ACCOUNT

TRUST ACCOUNT TRANSACTIONS

Money received in trust for client

7. (1) Subject to section 8, every licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation, to be kept in the name of the licensee, or in the name of the firm of licensees of which the licensee is a partner or by which the licensee is employed, and designated as a trust account.

Interpretation

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

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

Money to be paid into trust account

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

- 1. Money that may by inadvertence have been drawn from a trust account in contravention of section 9.
- 2. Money paid to a licensee that belongs in part to a client and in part to the licensee where it is not practical to split the payment of the money.

Withdrawal of money from trust account

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

One or more trust accounts

- (5) A licensee may keep one or more trust accounts.

Money not to be paid into trust account

8. (1) A licensee is not required to pay into a trust account money which he or she receives in trust for a client if,
- (a) the client requests the licensee in writing not to pay the money into a trust account;
 - (b) the licensee pays the money into an account to be kept in the name of the client, a person named by the client or an agent of the client; or
 - (c) the licensee pays the money immediately upon receiving it to the client or to a person on behalf of the client in accordance with ordinary business practices.

Same

- (2) A licensee shall not pay into a trust account the following money:
- 1. Money that belongs entirely to the licensee or to another licensee of the firm of licensees of which the licensee is a partner or by which the licensee is employed, including an amount received as a general retainer for which the licensee is not required either to account or to provide services.
 - 2. Money that is received by the licensee as payment of fees for services for which a billing has been delivered, as payment of fees for services already performed for which a billing will be delivered immediately after the money is received or as reimbursement for disbursements made or expenses incurred by the licensee on behalf of a client.

Record keeping requirements

(3) A licensee who, in accordance with subsection (1), does not pay into a trust account money which he or she receives in trust for a client shall include all handling of such money in the records required to be maintained under Part V.

Withdrawal of money from trust account

9. (1) A licensee may withdraw from a trust account only the following money:
- 1. Money properly required for payment to a client or to a person on behalf of a client.
 - 2. Money required to reimburse the licensee for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client.

3. Money properly required for or toward payment of fees for services performed by the licensee for which a billing has been delivered.
4. Money that is directly transferred into another trust account and held on behalf of a client.
5. Money that under this Part should not have been paid into a trust account but was through inadvertence paid into a trust account.

Permission to withdraw other money

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

Limit on amount withdrawn from trust account

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

Manner in which certain money may be withdrawn from trust account

10. A licensee shall withdraw money from a trust account under paragraph 2 or 3 of subsection 9 (1) only,

- (a) by a cheque drawn in favour of the licensee;
- (b) by a transfer to a bank account that is kept in the name of the licensee and is not a trust account; or
- (c) by electronic transfer.

Withdrawal by cheque

11. A cheque drawn on a trust account shall not be,

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

Withdrawal by electronic transfer

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

When money may be withdrawn

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

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

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

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

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

Same

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

Additional requirements relating to confirmation

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

- (a) produce a printed copy of the confirmation;
- (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;

- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

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

Electronic trust transfer requisition

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 9A.

Definitions

13. (1) In this section,

“closing funds” means the money necessary to complete or close a transaction in real estate;

“transaction in real estate” means,

- (a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the *Land Titles Act* and a mortgage, but excluding a rent charge, or
- (b) a conveyance of freehold or leasehold land, including a deed and a transfer under the *Land Titles Act*, but excluding a lease.

Withdrawal by electronic transfer: closing funds

(2) Despite section 12, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.

When closing funds may be withdrawn

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the licensee must be one to which access is restricted by the use of at least one password or access code.
2. The electronic transfer system used by the licensee must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.
3. The confirmation required by paragraph 2 must contain,
 - i. the name of the person or entity in whose name the account from which money is drawn is kept,
 - ii. the number of the trust account from which money is drawn,
 - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
 - iv. the number of the account to which money is transferred, and
 - v. the date the transfer is carried out.
4. Before the electronic transfer system used by the licensee is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,
 - i. the licensee, or
 - ii. in exceptional circumstances, a person who is not the licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

Additional requirements relating to confirmation

- (4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the licensee shall,
 - (a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);

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

Same

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

Electronic trust transfer requisition: closing funds

(6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 9C.

Requirement to maintain sufficient balance in trust account

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

AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS

Authorizing Teranet to withdraw money from trust account

15. (1) Subject to subsection (2), a licensee may authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Conditions

(2) A licensee shall not authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction unless Teranet

agrees to provide to the licensee in accordance with subsection (3) a confirmation of the withdrawal that contains the information mentioned in subsection (4).

Time of receipt of confirmation

(3) The confirmation required under subsection (2) must be received by the licensee not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the licensee.

Contents of confirmation

- (4) The confirmation required under subsection (2) must contain,
- (a) the amount of money withdrawn from the trust account;
 - (b) the time and date that the authorization to withdraw money is received by Teranet; and
 - (c) the time and date that the confirmation from Teranet is sent to the licensee.

Written record of authorization

(5) A licensee who authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction shall record the authorization in writing.

Same

(6) The written record of the authorization required under subsection (5) shall be in Form 9B and shall be completed by the licensee before he or she authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Additional requirements relating to confirmation

- (7) Not later than 5 p.m. on the day immediately after the day on which the confirmation required under subsection (2) is sent to a licensee, the licensee shall,
- (a) produce a paper copy of the confirmation, if the confirmation is sent to the licensee by electronic means;
 - (b) compare the paper copy of the confirmation and the written record of the authorization relating to the withdrawal to verify whether money was withdrawn from the trust account by Teranet as authorized by the licensee;

- (c) indicate on the paper copy of the confirmation the name of the client and any file number in respect of which money was withdrawn from the trust account, if the confirmation does not already contain such information; and
- (d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.

Special trust account

- 16 (1) The trust account from which Teranet may be authorized by a licensee to withdraw money shall be,
- (a) an account at a chartered bank, provincial savings office, credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a registered trust corporation kept in the name of the licensee or in the name of the firm of licensees of which the licensee is a partner or by which the licensee is employed, and designated as a trust account; and
 - (b) an account into which a licensee shall pay only,
 - (i) money received in trust for a client for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction; and
 - (ii) money properly withdrawn from another trust account for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction.

One or more special trust accounts

- (2) A licensee may keep one or more trust accounts of the kind described in subsection (1).

Payment of money into special trust account

- (3) A licensee shall not pay into a trust account described in subsection (1) more money than is required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction, and if more money is, through inadvertence, paid into the trust account, the licensee shall transfer from the trust account described in subsection (1) into another trust account that is not a trust account described in subsection (1) the excess money.

Time limit on holding money in special trust account

(4) A licensee who pays money into a trust account described in subsection (1) shall not keep the money in that account for more than five days, and if the money is not properly withdrawn from that account by Teranet within five days after the day on which it is paid into that account, the licensee shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

Interpretation: counting days

(5) In subsection 16 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 16 (1) for more than five days.

Application of ss. 9, 11, 12 and 14

17. Sections 9, 11, 12 and 14 apply, with necessary modifications, to a trust account described in subsection 16 (1).

PART V

RECORD KEEPING REQUIREMENTS

REQUIREMENTS

Requirement to maintain financial records

18. Every licensee shall maintain financial records to record all money and other property received and disbursed in connection with the licensee's professional business, and, as a minimum requirement, every licensee shall maintain, in accordance with sections 21, 22 and 23, the following records:

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

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

12. Signed authorizations of withdrawals by Teranet and signed paper copies of confirmations of withdrawals by Teranet.

Record keeping requirements if cash received

19 (1) Every licensee who receives cash shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received and any file number in respect of which cash is received and containing the signature of the licensee or the person authorized by the licensee to receive cash and of the person from whom cash is received.

No breach

(2) A licensee does not breach subsection (1) if a receipt does not contain the signature of the person from whom cash is received provided that the licensee has made reasonable efforts to obtain the signature of the person from whom cash is received.

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

20. Every licensee who holds in trust mortgages or other charges on real property, either directly or indirectly through a related person or corporation, shall maintain financial records in addition to those required under section 18 and, as a minimum additional requirement, shall maintain, in accordance with sections 21, 22 and 23, the following records:

1. A mortgage asset ledger showing separately for each mortgage or charge,
 - i. all funds received and disbursed on account of the mortgage or charge,
 - ii. the balance of the principal amount outstanding for each mortgage or charge,
 - iii. an abbreviated legal description or the municipal address of the real property, and
 - iv. the particulars of registration of the mortgage or charge.
2. A mortgage liability ledger showing separately for each person on whose behalf a mortgage or charge is held in trust,

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

Financial records to be permanent

21. (1) The financial records required to be maintained under sections 18, 19 and 20 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

Paper copies of financial records

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

Financial records to be current

22. (1) Subject to subsection (2), the financial records required to be maintained under sections 18, 19 and 20 shall be entered and posted so as to be current at all times.

Exceptions

(2) The record required under paragraph 8 of section 18 and the record required under paragraph 3 of section 20 shall be created within twenty-five days after the last day of the month in respect of which the record is being created.

Preservation of financial records required under ss. 18 and 19

23. (1) Subject to subsection (2), a licensee shall keep the financial records required to be maintained under sections 18 and 19 for at least the six year period immediately preceding the licensee's most recent fiscal year end.

Same

(2) A licensee shall keep the financial records required to be maintained under paragraphs 1, 2, 3, 8, 9, 10 and 11 of section 18 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

Preservation of financial records required under s. 20

(3) A licensee shall keep the financial records required to be maintained under section 20 for at least the ten year period immediately preceding the licensee's most recent fiscal year end.

Record keeping requirements when acting for lender

24. (1) Every licensee who acts for or receives money from a lender shall, in addition to maintaining the financial records required under sections 18 and 20, maintain a file for each charge, containing,

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

Exceptions

- (2) Clauses (1) (a) and (b) do not apply with respect to a lender if,
 - (a) the lender,

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

Requirement to provide documents to lender

- (3) Forthwith after the first advance of money to or on behalf of the borrower, the licensee shall deliver to each lender,
 - (a) if clause (1) (b) applies, an original of the report referred to therein; and
 - (b) if clause (1) (c) applies, a copy of the declaration of trust.

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

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

Application of subs. (4)

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

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

New requirement to provide documents to lender

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

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

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

Exceptions

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

Investment authority: Form 9D

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

Report on investment: Form 9E

(10) Subject to subsection (11), the report on the investment required under clause (1) (b) shall be in Form 9E.

Report on investment: alternative to Form 9E

(11) The report on the investment required under clause (1) (b) may be contained in a reporting letter addressed to the lender or lenders which answers every question on Form 9E.

GUIDELINES FOR LAWYERS WHO ARE SUSPENDED OR WHO HAVE GIVEN AN UNDERTAKING NOT TO PRACTISE

GENERAL

1. (1) In this guideline, “suspended lawyer” means a lawyer whose licence to practise law is suspended or who undertakes to the Law Society not to practise law.

(2) A suspended lawyer or a lawyer who has undertaken to the Law Society to restrict his or her practice must cease practice as a result of the suspension or the restriction on his or her practice under the terms of the undertaking. Suspended lawyers are also prohibited from providing legal services as defined by the *Law Society Act*, as only those persons licensed by the Law Society to provide legal services may do so. By-laws 7.1(IV) and 9(II.1) impose on suspended lawyers certain notice requirements, obligations and restrictions on activities, including handling of money and other property.

MANDATORY ACTIVITIES

2. (1) Before the effective date of the suspension or undertaking not to practise, the suspended lawyer shall:
 - a) Remove any sign from his or her door, building, premises, window, building directory, property or any other location designating it as a “law office” or designating the suspended lawyer as being able to practise law or to be a “barrister”, “solicitor”, “lawyer”, “Licensee of the Law Society of Upper Canada”, “Licensed by the Law Society of Upper Canada”, “notary public”, “commissioner for taking affidavits” or “commissioner of oaths” or similar words giving the impression, in English or any other language, that he or she is able to practise law.
 - b) Remove or cross-out the words or terms set out in a) from all stationery, letterhead, business cards, forms, stamps, accounts electronic mail forms, internet sites and any other advertisements or publications bearing his or her s name;
 - c) Disconnect his or her telephone and facsimile lines or arrange for a voice message to advise callers that his or her law practice is closed until further notice and provide callers with the name and number of another licensee to call for information regarding their files.
 - d) Suspended lawyers under a definite suspension may leave a message advising when the office will reopen.

PROHIBITED ACTIVITIES

3. (1) Effective from the date of suspension or undertaking not to practise, a lawyer shall not:
 - a) Accept legal work for new clients;
 - b) Accept new legal work for existing clients;
 - c) Notarize documents pursuant to the *Notaries Act*, R.S.O. 1990, c. N.6, or commission affidavits or statutory declarations pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
 - d) Report to clients, other than to:
 - i. inform them of the suspension or the undertaking not to practise; and
 - ii. deliver an account for services rendered in the period before the suspension or undertaking not to practise began;
 - e) Give to another licensee or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
 - f) Occupy or share office space with a licensee in contravention of Subrule 6.07(2) of the *Rules of Professional Conduct*;
 - g) Provide services to a licensee, in relation to that licensee's professional business in contravention of Subrule 6.07(2) of the *Rules of Professional Conduct*;
 - h) Act as an articling principal to a student in the Licensing Process or act as the supervising lawyer to a student in the Licensing Process; and
 - i) Accept any referrals from the Lawyer Referral Service.
- (2) A suspended lawyer shall not resume the practice of law upon termination of a suspension or undertaking not to practise until the suspended lawyer receives written confirmation of the termination of the suspension or undertaking not to practise from the Law Society. This confirmation will be promptly given.

PERMITTED ACTIVITIES

4. (1) During the term of the suspension or undertaking not to practise, the suspended lawyer may only:
 - a) See clients for the limited purpose of assisting them in transferring their past or present legal work to another licensee;
 - b) If requested by the client, suggest a referral to a particular licensee to continue work on the client's file. The ultimate choice of who is retained rests with the client and not with the suspended lawyer;
 - c) Collect accounts receivable;
 - d) Render accounts for work completed before the effective date of the suspended lawyer's suspension or undertaking not to practise; and

- e) Arrange with the licensee whom the suspended lawyer has retained to complete outstanding reporting letters and undertakings the licensee's remuneration.

GUIDELINES FOR FORMER LAWYERS WHOSE LICENCES HAVE BEEN REVOKED OR WHO HAVE BEEN PERMITTED TO SURRENDER THEIR LICENCES

GENERAL

1. (1) In this guideline,
 - (a) “former lawyer” means a lawyer whose licence to practise law has been revoked or who has been permitted to surrender his or her licence.
 - (b) “existing client” means,
 - i. a person who is a client of a former lawyer when an order is made revoking the former lawyer’s licence or permitting the former to surrender his or her licence, or
 - ii. a person who becomes a client of the former lawyer after an order is made revoking the former lawyer’s licence or permitting the former to surrender his or her licence but before the order takes effect.
 - (c) “former client” means a person who was a client of a former lawyer an order is made revoking the former lawyer’s licence or permitting the former to surrender his or her licence but who was not a client when the order was made.
 - (d) “prospective client” means a person who seeks to retain a former lawyer after an order is made revoking the former lawyer’s licence or permitting the former lawyer to surrender his or her licence but before the order takes effect.
- (2) A former lawyer must cease practice as a result of the order revoking the former lawyer’s licence or permitting the former lawyer to surrender his or her licence. Former lawyers are also prohibited from providing legal services as defined by the *Law Society Act*, as only those persons licensed by the Law Society to provide legal services may do so.

MANDATORY ACTIVITIES

2. (1) Before the effective date of the revocation or surrender of his or her licence, the former lawyer shall:

Advertising

- a) Remove any sign from his or her door, building, premises, window, building directory, property or any other location designating it as a “law office” or designating the suspended lawyer as being able to practise law or to be a “barrister”, “solicitor”, “lawyer”, “Licensee of the Law Society of Upper Canada”, “Licensed by the Law Society of Upper Canada”, “notary public”, “commissioner for taking affidavits” or “commissioner of

- oaths” or similar words giving the impression, in English or any other language, that he or she is able to practise law;
- b) Remove or cross-out the words or terms set out in a) from all stationery, letterhead, business cards, forms, stamps, accounts electronic mail forms, internet sites and any other advertisements or publications bearing his or her name;
 - c) Disconnect his or her telephone and facsimile lines or arrange for a voice message to advise callers that his or her law practice is closed and provide callers with the name and number of another licensee to call for information regarding their files.

Notice to Clients

- d) Notify all existing clients, work on whose matters will not be completed by the former lawyer before the order revoking the former lawyer’s licence or permitting the former lawyer to surrender his or her licence takes effect, of the order and that:
 - (i) the former lawyer will unable to complete the work,
 - (ii) the client will need to retain another licensee of the client’s choosing to complete the work, and
 - (iii) the former lawyer, subject to any rights that the former lawyer may have over the client’s file, will transfer the file to the licensee, if any, retained by the client to the complete work or will return the file to the client; and
 - (iv) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection j(i), and the Law Society, of the name and contact information of the licensee to whom the suspended licensee has given possession of the clients’ documents and files.

Compliance with clause (d)(i) to (iii) not required

- (2) A former lawyer is not required to comply with the notice requirements mentioned in subclauses (d)(i) to (iii) if the only work remaining to be completed on the client’s matter is work mentioned in subsections (h) or (i) but, in such a case, the former lawyer shall, before the order revoking the former lawyer’s licence or permitting the former lawyer to surrender his or her licence takes effect, notify the client of the name and contact information of the licensee retained by the former lawyer to complete the work.

Notice requirements: on date of and during suspension

- (3) A suspended licensee shall, during the suspension,
 - a) notify all persons who contact the former lawyer’s place of business of the order revoking the former lawyer’s licence or permitting the former lawyer to surrender his or her licence; and

- b) notify any existing client or former client who contacts the former lawyer's place of business, and the Law Society, of the name and contact information of another licensee who has given possession of the clients' documents and files.

Notice requirements: prospective clients

- (4) A former lawyer, at the time a prospective client seeks to retain the former lawyer, shall notify the prospective client of the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence.

Work remaining on file: final report to client

- (5) If, on the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, the only work remaining for the former lawyer to complete on a client's matter is a final report to the client, the former lawyer shall, before the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

Work remaining on file: fulfilment of undertakings

- (6) If, on the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, the only work remaining for the former lawyer to complete on a client's matter is the fulfillment of one or more undertakings given by the former lawyer, the former lawyer shall, retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

Additional requirements: preparation of will, power of attorney, corporate records

- (7) This section applies to a former lawyer who performs or has performed any of the following work for a client:
 - a) Preparation of a will.
 - b) Preparation of a power of attorney.
 - c) Preparation of, or preparation and continued maintenance of, corporate records.

Requirement re: original documents

- (8) A former lawyer shall, before the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect,
 - a) return to the client all original documents; or
 - b) transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work, and inform the

clients and the Law Society of the licensee who has been given possession of the client's wills, documents and files.

Real estate law: direction re Teranet access disk

- (9) A former lawyer who has access to the Teranet system shall, on or before the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, complete and file with the Society, in a form provided by the Society, a direction authorizing the Society to take all steps necessary to cancel former lawyer's Teranet access disk.

Return of photo identification card

- (10) A former lawyer shall, on or before the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, return to the Society any photo identification card issued to her or him by the Society.

Students

- (11) A former lawyer, who has accepted a person into service under articles of clerkship where the period of service includes any or all of the period after the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, shall, before the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect,
- a) notify the person of the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence and that the former lawyer will not be able to retain the person in service under articles of clerkship after the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect;
 - b) arrange for another licensee, who is authorized and approved by the Society to do so, to accept the person into service under articles of clerkship after the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect; and
 - c) arrange with the Society for the person's service under articles of clerkship to be transferred from the suspended licensee to the other licensee effective the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect.

Trust Accounts

- (12) A former lawyer shall within 30 days of the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect:
- a) withdraw from every trust account kept in the name of the former lawyer, or in the name of the firm of licensees of which the former lawyer was a partner or by which the former lawyer was employed, and, as required, pay to the appropriate person,
 - i. money properly required for payment to a person on behalf of a client,
 - ii. money required to reimburse the former lawyer for money properly expended, or for expenses properly incurred, on behalf of a client,
 - iii. money required for or toward payment of fees for services performed by the former lawyer, and
 - iv. all other money that belongs to the former lawyer or to a person other than a client;
 - b) after complying with clause (i), withdraw from every trust account kept in the name of the former lawyer, or in the name of the firm of licensees of which the former lawyer was a partner or by which the former lawyer was employed, all money belonging to a client and pay the money to,
 - i. the client,
 - ii. another licensee to whom the client has directed the former lawyer to make payment, or
 - iii. another licensee who has agreed with the former lawyer to accept payment in the event that the suspended licensee is unable to comply with subclause 1 or 2;unless the client transfers their files to another lawyer in the firm of licensees of which the former lawyer was a partner or by which the former lawyer was employed;
 - c) after complying with clauses (i) and (ii),
 - i. close every trust account that was kept in the name of the former lawyer, and
 - ii. cancel or cause to be cancelled the former lawyers's signing authority on every trust account that was kept in the name of the firm of licensees of which the former lawyer was a partner or by which the former lawyer was employed.

PROHIBITED ACTIVITIES

3. (1) Subject to subsection 2(1)(n) and 4(1)(f), a former lawyer shall not, after the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons

- (2) Effective from the date the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, a former lawyer shall not:
- a) Accept legal work for new clients;
 - b) Accept new legal work for existing clients;
 - c) Notarize documents pursuant to the *Notaries Act*, R.S.O. 1990, c. N.6, or commission affidavits or statutory declarations pursuant to the *Commissioners for taking Affidavits Act*, R.S.O. 1990, c. C.17;
 - d) Report to clients, other than to:
 - i. inform them of the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her; and
 - ii. deliver an account for services rendered in the period before the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence took effect;
 - e) Give to another licensee or receive on behalf of a client, other individual, corporation or other entity, any undertaking with respect to any legal matter;
 - f) Occupy or share office space with a licensee in contravention of Subrule 6.07(2) of the *Rules of Professional Conduct*;
 - g) Provide services to a licensee, in relation to that licensee's professional business in contravention of Subrule 6.07(2) of the *Rules of Professional Conduct*;
 - h) Act as an articling principal to a student in the Licensing Process or act as the supervising lawyer to a student in the Licensing Process; and
 - i) Accept any referrals from the Lawyer Referral Service.

PERMITTED ACTIVITIES

4. (1) After the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect, the former lawyer may only:
- a) See clients for the limited purpose of assisting them in transferring their past or present legal work to another licensee;
 - b) If requested by the client, suggest a referral to a particular licensee to continue work on the client's file. The ultimate choice of who is retained rests with the client and not with the suspended lawyer;
 - c) Collect accounts receivable;
 - d) Render accounts for work completed before the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect;
 - e) Arrange with the licensee whom the former lawyer has retained to complete outstanding reporting letters and undertakings the licensee's remuneration; and
 - f) Receive from on behalf of a person or group of persons money:
 - (i) in payment of fees for services performed by the former lawyer for the person or group prior to the date on which the order revoking

- the former lawyer's licence or permitting the former lawyer to surrender his or her licence took effect; or
- (ii) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group prior to the date on which the order revoking the former lawyer's licence or permitting the former lawyer to surrender his or her licence takes effect.

AMENDMENT TO BY-LAW 4 (LICENSING)

Motion

21. **That Convocation amend By-Law 4 [Licensing] by adding the following section immediately after the heading “LICENCE TO PROVIDE LEGAL SERVICES” / “PERMIS AUTORISANT LA PRESTATION DE SERVICES JURIDIQUES”:**

Requirement for issuance of Class P1 licence: not otherwise licensed

10.1 It is a requirement for the issuance of a Class P1 licence that an applicant not already hold a licence to provide the legal services that a licensee who holds a Class P1 licence is authorized to provide.

Exigence pour l’octroi d’un permis de catégorie P1 : pas d’autre permis

10.1 Pour obtenir un permis de catégorie P1, le requérant ou la requérante ne peut pas déjà détenir un permis autorisant la prestation des mêmes services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir.

The full text of this motion, which includes other amendments dealt with in the report of the Finance Committee, appears at Tab 3.

Reasons for the Amendment

22. Prior to May 1, 2007 and the new statutory regime for licensing lawyers and paralegals, some lawyers whose membership in the Law Society was suspended performed paralegal work during the suspension.
23. After May 1, the work of paralegals pursuant to the *Law Society Act* falls within the provision of legal services for which a person requires a paralegal licence. As both those who practise law and provide legal services are required to be licensed under the Act, the Committee is recommending that a person licensed as a lawyer cannot also be licensed as a paralegal. This would mean, for example, that a lawyer whose license to practise law is suspended cannot be licensed as a paralegal and provide legal services.

21. In the Committee's view, this recommendation is consistent with the regulatory scheme under the Act whereby a licence to practise law and a licence to provide legal services are separate. It is in the public interest that the licensing scheme be transparent and applied in a way that promotes a clear understanding of who is entitled to practise law and who is entitled to provide legal services.
22. While this may affect some lawyers who are suspended as a result of a disciplinary penalty, a larger group is lawyers who are administratively suspended (e.g. for non-payment of the annual fee or failure to file the Member's Annual Report) and whose suspensions in some cases have continued for a number of years. Some of these lawyers have indicated an interest in applying for a P1 (paralegal) license.
23. To implement this recommendation, By-Law 4 should be amended to provide that a lawyer currently licensed by the Law Society (suspended or otherwise) is not entitled to apply for a P1 licence. The relevant part of By-Law 4 for the purpose of the amendment is attached at **Appendix 4**.
24. This matter was also reviewed by the Paralegal Standing Committee, which supports the Professional Regulation Committee's recommendation.

**BY-LAW 4
(EXCERPT)**

LICENSING

LICENCE TO PROVIDE LEGAL SERVICES

Requirements for issuance of Class P1 licence: application received prior to November 1, 2007

11. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence prior to November 1, 2007:
1. The applicant must have done any one of the following:
 - i. Provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years prior to May 1, 2007.
 - ii. Obtained education, in a legal services program in Ontario, that the Society determines is equivalent to at least nine courses in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities and provided legal services, that a licensee who holds a Class P1 licence is authorized to provide, in the five years prior to May 1, 2007, that include ten instances of representing a party before the Small Claims Court, before the Ontario Court of Justice, before a summary conviction court, before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament or before a person dealing with a claim, within the meaning of section 6, or a matter related to a claim when the Small Claims Court, the Ontario Court of Justice, the summary conviction court the tribunal or the person was hearing the merits of a proceeding.
 - iii. Graduated, within the three years prior to the application for licensing, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,
 - A. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and
 - B. a field placement of a least 120 hours.
 2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

3. The applicant must provide written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant has met the experience requirement mentioned in paragraph 1.

Interpretation: “full-time basis”

(2) For the purposes of this section, an applicant provides legal services on a full-time basis if the applicant provides legal services, on the average, 30 hours per week.

Requirements for issuance of Class P1 licence: application received after October 31, 2007 and prior to July 1, 2010

12. The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after October 31, 2007 and prior to July 1, 2010:

1. The applicant must have graduated, within the three years prior to the application, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,
 - i. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 (Providing Legal Services) licence is authorized to provide and one of which was a course on professional responsibility and ethics, and
 - ii. a field placement of a least 120 hours.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

Requirements for issuance of Class P1 licence: application received after June 30, 2010

13. The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

HOUSEKEEPING AMENDMENT TO COMMENTARY TO SUBRULE 2.04(10.3) OF THE *RULES OF PROFESSIONAL CONDUCT*

Motion

25. That Convocation amend the last sentence of the commentary to subrule 2.04(10.3) of the *Rules of Professional Conduct* by replacing “subrule 5.01(6) on supervision and delegation” with “subsection 3(2) of By-Law 7.1 (Operational Obligations and Responsibilities)”.
26. On a referral from Law Society staff, the Committee learned that an incorrect reference is made to subrule 5.01(6) in the last sentence in the commentary to subrule 2.04(10.3).
27. When By-Law 7.1 (Operational Obligations and Responsibilities) was made by Convocation in October 25, 2007, Rule 5.01 was revoked. The rule was then remade by Convocation on November 22, 2007, and subrule 5.01(6) ceased to exist in the *Rules of Professional Conduct*.
28. The current sentence of commentary in issue reads:
- In reference to clause (a) of subrule (10.1), see also subrule 5.01(6) on supervision and delegation.
29. Subrule 2.04(10.1) deals with conflicts obligations in affiliations between lawyers and affiliated entities. Subrule 5.01(6) was a prohibition on a lawyer’s delegation of tasks to the affiliated (i.e. non-lawyer) entity or its staff without client consent, and read:
- (6) In addition to the requirements of this rule and the commentaries thereunder, a lawyer in an affiliation shall not delegate to the affiliated entity or the affiliated entity’s staff any

tasks in connection with the provision of legal services without obtaining the client's informed consent.

30. This subrule was a made into s. 3(2) in new By-Law 7.1 and reads as follows:

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law in relation to the affairs of the licensee's client only if the client consents to the licensee doing so.

31. The Committee agreed that the last sentence of commentary to subrule 2.04(10.1) should be amended to correct the reference to the By-Law.

RULE 2.04

Affiliations Between Lawyers and Affiliated Entities

(10.1) Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a lawyer shall disclose to the client

- (a) any possible loss of solicitor and client privilege because of the involvement of the affiliated entity, including circumstances where a non-lawyer or non-lawyer staff of the affiliated entity provide services, including support services, in the lawyer=s office,
- (b) the lawyer=s role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,
- (c) any financial, economic or other arrangements between the lawyer and the affiliated entity that may affect the independence of the lawyer=s representation of the client, including whether the lawyer shares in the revenues, profits or cash flows of the affiliated entity; and
- (d) agreements between the lawyer and the affiliated entity, such as agreements with respect to referral of clients between the lawyer and the affiliated entity, that may affect the independence of the lawyer=s representation of the client.

(10.2) Where there is an affiliation, after making the disclosure as required by subrule (10.1), a lawyer shall obtain the client=s consent before accepting a retainer under subrule (10.1).

(10.3) Where there is an affiliation, a lawyer shall establish a system to search for conflicts of interest of the affiliation.

Commentary

Lawyers practising in an affiliation are required to control the practice through which they deliver legal services to the public. They are also required to address conflicts of interest in respect of a proposed retainer by a client as if the lawyer=s practice and the practice of the affiliated entity were one where the lawyers accept a retainer to provide legal services to that client jointly with non-legal services of the affiliated entity. The affiliation is subject to the same conflict of interest rules as apply to lawyers and law firms. This obligation may extend to inquiries of offices of affiliated entities outside of Ontario where those offices are treated economically as part of a single affiliated entity.

In reference to clause (a) of subrule (10.1), see also subrule 5.01(6) on supervision and delegation.