



TAB 4

Report to Convocation June 26, 2014

Professional Regulation Committee

Committee Members

Malcolm Mercer (Chair)
Paul Schabas (Vice-Chair)
John Callaghan
Robert Evans
Julian Falconer
Janet Leiper
William C. McDowell
Ross Murray
Jan Richardson
Susan Richer
Peter Wardle

Purpose of Report: Decision and Information

**Prepared by the Policy Secretariat
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COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on June 12, 2014. In attendance were Malcolm Mercer (Chair), John Callaghan, Robert Evans, Julian Falconer (by telephone), Janet Leiper, and Susan Richer. Brian Lawrie also attended the meeting.
2. Staff members attending were Elliot Spears, Zeynep Onen, Josée Bouchard, Naomi Bussin, and Margaret Drent.

FOR DECISION

AMENDMENT TO BY-LAW 11 TO ENFORCE PAYMENT OF COSTS

Motion:

3. That Convocation approve an amendment to By-Law 11, as set out in the motion at [Tab 4.1.1](#), to support the Law Society's authority to enforce the payment of costs under section 45.1 of the *Law Society Act*.

Introduction and Overview

4. On June 28, 2012, based on a report of the Joint Working Group on the issue of costs in regulatory proceedings, Convocation approved the authority for the Law Society to automatically suspend a licensee's licence for failure to pay costs within the time specified in an order until costs are paid in full, and the authority to permit licensees to apply for an extension of the time to pay costs.
5. The implementation of automatic suspension in the case of non-payment of a costs order made by a Law Society Tribunal required statutory as well as By-Law amendments. An amendment to the *Law Society Act* came into force on December 12, 2013 to add section 45.1 to the Act, which permits a licensee's licence to be automatically suspended if the licensee is ordered to pay costs and fails to comply with the deadline for payment provided for under the order or the by-laws.¹ The license is suspended until costs are paid in full.
6. New Section 45.1 of the *Law Society Act* is reproduced below.

Suspension for failure to comply with costs order

45.1 (1) A licensee's licence is suspended if the licensee is ordered to pay costs under section 49.28 and he or she fails to comply by the deadline for payment provided for under the order or the by-laws, as the case may be. 2013, c. 17, s. 12.

Non-application

¹ *Modernizing Regulation of the Legal Profession Act, 2013*, S.O. 2013, c. 17, online at http://www.e-laws.gov.on.ca/html/source/statutes/english/2013/elaws_src_s13017_e.htm.

(2) Subsection (1) does not apply unless the time for appealing the costs order has expired or, if an appeal of the costs order is commenced, unless the appeal is finally disposed of. 2013, c. 17, s. 12.

Start of suspension

(3) A suspension under subsection (1) begins on the following date:

1.If no appeal of the costs order is commenced, the later of the day after the time for commencing an appeal expires and the day after the deadline for payment.

2.If an appeal of the costs order is commenced and is finally disposed of, the day after the deadline for payment provided for on appeal or under the by-laws, as the case may be. 2013, c. 17, s. 12.

Notice

(4) The Society shall give notice of a suspension under subsection (1) to the licensee, and shall specify in the notice the date on which the suspension began. 2013, c. 17, s. 12.

Length of suspension

(5) A suspension under subsection (1) remains in effect until the licensee pays, to the satisfaction of the Society,

(a) the costs owing; and

(b) any other amount owed by the licensee to the Society under this Act. 2013, c. 17, s. 12.

Costs payable by instalment

(6) If costs are payable by instalment, a reference in this section to a deadline for payment of costs shall be read as a reference to a deadline for payment of any instalment of the costs. 2013, c. 17, s. 12.

7. In June 2014, the Professional Regulation and Paralegal Standing Committees reviewed and are recommending a draft amendment to By-Law 11 with regard to the provisions in s. 45.1. According to the amendment, the default deadline for payment of costs is one year from the date of the order (if not specified in the order). Further, the licensee may apply to the Executive Director, Professional Regulation to:
 - (a) extend the deadline for payment of costs
 - (b) set up payment plans for costs orders
 - (c) accept less than the full amount of cost ordered
 - (d) waive all or part of the interest due pursuant to an order.

8. As reported in the June 2012 report of the Joint Working Group on Costs, which included members of the Professional Regulation, Paralegal Standing, and Tribunals Committees,

the Law Society's objective in dealing with enforcement of costs is to enable the collection of costs owed pursuant to an Order of the Law Society Tribunal. Law Society jurisprudence is clear that the costs of discipline proceedings should not be borne by the professions at large. The new suspension provision creates a more effective process for regulation of licensees who fail to comply with these Orders. However, collection of costs remains the priority.

9. The Report acknowledged that in some cases, a licensee may be unable to comply with a costs order within a specified period for valid reasons.² For this reason, the By-Law grants flexibility to the Executive Director of the Professional Regulation Division to respond to applications by licensees regarding costs for the relief set out in the By-Law.

² June 2012 Professional Regulation Committee Report to Convocation (Report of the Joint Working Group on Costs), paragraphs 42 and 43.

THE LAW SOCIETY OF UPPER CANADA
**BY-LAWS MADE UNDER
SUBSECTION 62 (0.1) AND (1) OF THE *LAW SOCIETY ACT***

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 26, 2014

MOVED BY

SECONDED BY

THAT By-Law 11 [Regulation of Conduct, Capacity and Professional Competence], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, February 21, 2008, April 24, 2008, October 30, 2008, January 29, 2009, October 28, 2010, April 25, 2013, May 30, 2013 and March 4, 2014, be further amended as follows:

1. **The English version of the By-Law is amended by adding the following:**

PART VII

DEADLINE FOR PAYMENT OF ORDERS FOR COSTS

Deadline for payment

58. (1) For the purposes of subsection 49.28 (3) of the Act, a licensee shall pay an order for costs, if not specified or otherwise provided for in the order, within one year of the date of the order.

Application by licensee

- (2) On application by a licensee in writing, the Executive Director, Professional Regulation may:
 1. Extend the deadline for paying costs provided for under an order for costs or under subsection (1).
 2. Establish a payment plan for the payment of an order for costs.
 3. Agree to accept an amount payable under an order for costs that, if paid by the licensee, satisfies the Society that the order for costs is paid in full.
 4. Waive all or a portion of the interest otherwise payable under an order for costs.

2. The French version of the By-law is amended by adding the following:

PARTIE VII

ÉCHÉANCE DE PAIEMENT DES ORDONNANCES D'ADJUDICATION DES DÉPENS

Échéance de paiement

58. (1) Pour l'application du paragraphe 49.28 (3) de la Loi, un titulaire de permis paie une ordonnance d'adjudication des dépens, sauf si l'échéance est précisée ou prévue autrement dans l'ordonnance, dans l'année qui suit la date de l'ordonnance.

Demande du titulaire de permis

(2) Sur demande écrite du titulaire de permis, la directrice ou le directeur administratif de la réglementation professionnelle peut :

1. Reporter l'échéance de paiement des frais fixée par une ordonnance d'adjudication des dépens ou fixée en vertu du paragraphe (1).
2. Établir des modalités de versement pour le paiement d'une ordonnance d'adjudication des dépens.
3. Accepter un montant payable en vertu d'une ordonnance d'adjudication des dépens qui, s'il est versé par le titulaire de permis, convainc le Barreau que l'ordonnance d'adjudication des dépens est payée en entier.
4. Supprimer en totalité ou en partie les intérêts par ailleurs payables en vertu d'une ordonnance d'adjudication.

FOR INFORMATION

ALTERNATIVE BUSINESS STRUCTURES WORKING GROUP STATUS REPORT

Introduction

10. This report provides an update on the recent activities of the Alternative Business Structures (ABS) Working Group, following Convocation's approval of the Working Group's report in February 2014.

11. The four initiatives approved by Convocation in February were:
 - a. consultation based on four ABS models and a subsequent report;
 - b. review by the ABS Working Group and the Professional Regulation Committee of Rules from the perspective of risk-based proportionality;
 - c. consideration of firm and entity regulation; and
 - d. consideration of compliance based regulation.

12. This report focuses on our ABS consultations, which have now begun. The first phase is an initial consultation which involves the preparation of additional written material and introductory meetings with stakeholder organizations. The second phase will be a more the formal Call for Input from a broader audience, based on written material to be prepared by the Working Group. The third phase is the Working Group's consideration of the results of the consultation and next steps, which may include recommendations to Convocation.

13. First phase meetings included Working Group presentations to the Treasurer's Liaison Group, the County and District Law Presidents Association plenary, the Ontario Trial Lawyers Association, the CBA First Annual Ethics Forum, the Ontario Bar Association Council, and an educational program for Ontario government lawyers. Other meetings with key organizations and interested stakeholders are being arranged.

14. The Law Society ABS web page is now live (www.lsuc.on.ca/abs/), and contains background materials available for public review. Additional resources will be added to the Law Society's web page over the course of the year.