TAB 4

Report to Convocation
January 25, 2018

Professional Regulation Committee

Committee Members
William C. McDowell (Chair)
Malcolm Mercer (Vice-Chair)
Jonathan Rosenthal (Vice-Chair)
Fred Bickford
John Callaghan
Gisèle Chrétien
Suzanne Clément
Seymour Epstein
David Howell
Carol Hartman
Michael Lerner
Brian Lawrie
Virginia MacLean
Susan Richer
Raj Sharda
Jerry Udell

Purpose of Report: Decision and Information

Prepared by the Professional Regulation Division
Matthew Wylie (416-947-3953)

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For Decision

COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on January 11, 2018. In attendance were William C. McDowell (Chair), Malcolm Mercer (Vice-Chair), Jonathan Rosenthal (Vice-Chair), Fred Bickford, Gisèle Chrétien, Suzanne Clément, Carol Hartman (by telephone), David Howell, Michael Lerner (by telephone), Brian Lawrie, Virginia MacLean, and Susan Richer. Paralegal Standing Committee members Michelle Haigh (Chair), Janis Criger (Vice-Chair), Robert Burd (by telephone), Cathy Corsetti, Marian Lippa, Barbara Murchie, and Baljit Sikand (by telephone) also attended the meeting.

2. Law Society staff members Cara-Marie O'Hagan, Juda Strawczynski, Will Morrison, and Matthew Wylie participated in the meeting.

TAB 4.1

FOR DECISION

REVISED SUPPLEMENTARY REPORT TO THE SEVENTH REPORT OF THE ADVERTISING & FEE ARRANGEMENTS ISSUES WORKING GROUP

MOTION

3. **That Convocation approve the following recommendations of the Advertising and Fee Arrangements Issues Working Group ("Working Group"):**

   a. ***Partial Contingency Fees*: The proposed reforms to contingency fees described in its Seventh Report to Convocation should apply to partial contingency fee arrangements.**

   b. ***Interim/Interlocutory Costs*: If interim or interlocutory costs ("interlocutory costs") are awarded to a party operating under a contingency fee agreement ("CFA"):**

      i. **Interlocutory costs received on account of fees should be paid to the licensee in order to facilitate prosecution of the matter, but such payments should be treated as advance payments against the ultimate contingent fee with such payments being included in the total recovery. Interlocutory costs received on account of disbursements should be paid to whoever is responsible for paying disbursements, thereby reducing the amount ultimately payable in respect of disbursements;**

      ii. **If the matter is adjudicated on the merits and costs are determined by the court and awarded in favour of the client, the interlocutory costs should be included in the calculation of the total costs awarded; and**

      iii. **Subject to the CFA providing otherwise, payments on account of interlocutory costs should be repaid to the client to the extent that such payments are greater than the amount to which the licensee is ultimately entitled as the final contingent fee.**

   c. ***Appeals*: The mandatory standard form CFA should state whether the retainer includes services through to the end of trial or through appeals.**

   d. ***Costs Submissions*: Costs submissions as to partial indemnity, substantial or full indemnity costs should be made based on the hourly rate set out in**

the CFA as being the licensee's hourly rate and without reference to the fact that the licensee is retained pursuant to a CFA.

e. ***Disbursements*: The mandatory standard form CFA should be clear as to whether disbursements will be charged to the client. When chargeable, disbursements:**

   i. **may only be in respect of amounts actually paid as disbursements to arms-length third parties;**

   ii. **may not be in respect of goods or services that are ordinarily provided by firms themselves in the delivery of legal services including, for example and without limitation, the costs of other licensees, law clerks and secretaries and overtime; and**

   iii. **may, irrespective of the above, include disbursements referred to in Tariff A Lawyers' Fees and Disbursements Allowable Under Rules 57.01 and 58.05 pursuant to the *Courts of Justice Act* R.R.O. 1990, Reg. 194, or disbursements otherwise approved by a Court or adjudicative tribunal.**

f. ***Insurance and Third Party Litigation Funding*: The Working Group recommends further consideration be given to the impact of legal expense insurance and third party litigation and other third party funding on legal fees, including contingency fees. The Working Group proposes that the Law Society consider bringing together experts on relevant issues, in a symposium or otherwise, to assist the Law Society in considering the ethical and regulatory issues that are raised by these products.**

g. ***SABS*: The Law Society continues to welcome the opportunity to work with the Ontario government with respect to any proposed changes to the Statutory Accident Benefits Schedule.**

SUMMARY OF THE ISSUE UNDER CONSIDERATION

4. In this supplementary report to its Seventh Report to Convocation, the Working Group[1] reports further recommendations to enhance the operation of contingency fees in

[1] The Advertising & Fee Arrangements Issues Working Group is providing this interim report on its work. Since it was established in February 2016, the Working Group has been studying current advertising, referral fee and contingency fee practices in a range of practice settings, including real estate, personal injury, criminal law and paralegal practices, to determine whether any regulatory responses are required with respect to them. The history of the Working Group can be found on the Law Society's website at https://www.lsuc.on.ca/advertising-fee-arrangements/. The Working Group is chaired by Malcolm Mercer. Working Group members include Jack Braithwaite, Paul Cooper, Jacqueline Horvat, Michael Lerner, Marian Lippa, Virginia Maclean, Jan Richardson, Jonathan Rosenthal, Andrew Spurgeon and Jerry Udell. Benchers Robert Burd and Carol Hartman served on the Working Group until August, 2016.

Ontario regarding:

a. Partial contingency fees;
b. Interlocutory costs;
c. Costs of an appeal;
d. Costs submissions;
e. Disbursements; and
f. Legal expense insurance and third party funding.

BACKGROUND

5. The Working Group has considered the operation of contingency fees in Ontario since February 2016.[2] In the Working Group's Seventh Report to Convocation, it recommended a "series of reforms for contingency fees in order to facilitate access to justice while ensuring that contingency fees paid are fair and reasonable".[3]

6. As paragraph 12 of the Seventh Report to Convocation states, the proposed reforms:

    a. Regulate in a manner that facilitates access to justice, which is the underlying rationale for permitting contingency fees in Ontario;

    b. Safeguard to ensure that fees are clear, fair and reasonable by introducing new transparency measures at the outset of the retainer and in the final reporting to the client;

    c. Enhance the transparency of contingency fees to facilitate consumer searches for contingency fee arrangements;

    d. Enhance public and client understanding of contingency fee arrangements; and

    e. Simplify the calculation of contingency fees to enhance consumer protection.[4]

7. The Working Group noted that there are certain remaining areas that it was continuing to explore.[5] In this supplementary report to the Working Group's Seventh Report to Convocation[6], the Working Group provides its analysis and recommendations regarding these remaining areas.

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[2] The Working Group's Seventh Report to Convocation, Background section provides the detailed review of the Working Group's efforts to date (http://www.lsuc.on.ca/uploadedFiles/A dvertising-Fees-Arrangements-Issues-WG-Report-Nov-2017.pdf).
[3] Seventh Report to Convocation at Motion, paragraph 13
[4] Seventh Report to Convocation at para. 12. For the motion to Convocation, see the Seventh Report to Convocation paragraph 13.
[5] Seventh Report to Convocation at footnote 2 and paragraph 96.
[6] A track changes version of current supplementary report that shows the revisions made to the report included in the December 2017 Convocation Materials is at **Tab 4.1.1.**

DISCUSSION

a. Partial contingency fees

8. From July to September 2017 the Working Group consulted on potential recommended changes to the operation of contingency fees in Ontario ("2017 CFA Consultation"). It heard that it should consider whether partial contingency fees should be subject to reforms.

9. Partial contingency fee agreements are contingency fee agreements where part of the fee is contingent on the result. For example, some clients may enter into agreements with licensees to agree to pay a discounted hourly rate for legal services regardless of the success or failure of the matter, and a contingent or success fee based on the outcome of the matter.

10. The Working Group considered whether its recommended changes to the operation of contingency fees should apply to partial contingency fees. It concluded that a partial contingency fee should be regulated in the same manner as a full contingency fee. Partial contingency fees should, for example, be governed by the Working Group's proposed mandatory standard form CFA, with the parties' negotiated fee arrangement to be included within the CFA just as the percentage or other payment measure would be included within the CFA for a full contingency fee arrangement.

11. The Working Group therefore recommends that its proposed reforms to contingency fees should apply to partial contingency fee arrangements.

b. Interlocutory costs awarded to a party operating under a CFA

12. The Working Group was asked in its 2017 CFA Consultation how interlocutory costs (i.e. costs awarded in respect of steps taken during a proceeding such as, for example, motions costs) should be treated when they are awarded and made payable by the opposite party immediately.

13. Currently under the *Solicitors Act*, all legal costs are excluded from the calculation of the contingent fee. However, the Working Group recommends amendments to the *Solicitors Act* so that "an award of costs or costs obtained as part of a settlement may be included together with all other amounts recovered by the client in the total amount based on which the contingency fee is calculated".[7]

14. The Working Group considered how to treat interlocutory costs payable to a party operating under a CFA. Consistent with the principles of facilitating access to justice, maintaining transparency, aligning licensee and client interests and ensuring that fees are both fair and reasonable, the Working Group determined that when interlocutory

[7] Seventh Report to Convocation, Motion, footnote omitted.

costs are awarded to a party operating under a CFA:

a. Interlocutory costs received on account of fees should be paid to the licensee in order to facilitate prosecution of the matter, but such payments should be treated as advance payments against the ultimate contingent fee with such payments being included in the total recovery. Interlocutory costs received on account of disbursements should be paid to whoever is responsible for paying disbursements, thereby reducing the amount ultimately payable in respect of disbursements;

b. If the matter is adjudicated on the merits and costs are determined by the court and awarded in favour of the client, the interlocutory costs should be included in the calculation of the total costs awarded; and

c. Subject to the CFA providing otherwise, payments on account of interlocutory costs should be repaid to the client to the extent that such payments are greater than the amount to which the licensee is ultimately entitled as the final contingent fee.

c. Appeals

15. CFAs should address the possibility that there may be an appeal whether by the client or the opposing party. Unless and until a judgment is final, there is no basis to calculate a fee that is contingent on the judgment.

16. The Working Group is of the view that there should be transparency as to potential for an appeal, and transparency as to whether the contingent fee includes acting on appeal at the outset of the initial retainer. Flexibility should be permitted with respect to how the licensee and client wish to approach the appeal.

17. The Working Group therefore recommends that the standard form CFA should state whether the retainer includes services through to the end of trial or through appeals.

18. This provides clarity both as to the scope of the retainer and as to the fee for the services to be provided. It also ensures that the client and licensee can consider their approaches to an appeal, having regard to the entirety of the circumstances. The decision who to retain on appeal and on what basis is commonly best decided in the context of a contemplated or actual appeal.

d. Costs submissions when a licensee is retained pursuant to a CFA

19. In the course of the 2017 CFA Consultations, questions were raised as to how costs submissions should be made when a retainer is pursuant to a CFA. Courts often require disclosure of hourly rates together with the time spent on the matter for which costs are being sought. However, counsel retained pursuant to a CFA do not bill their clients on an hourly rate.

20. The fact that counsel is retained pursuant to a CFA and the substance of a CFA is privileged and confidential. Disclosure to the court should not be required in the course of costs submissions.

21. Hourly rates for all professionals are necessarily agreed to in CFAs in order to address the prospect of termination of the CFA before completion of the matter.

22. The Working Group recommends that costs submissions should be on the basis of the hourly rate provided for in the CFA.

e. Issues related to disbursements

23. The Working Group considered issues related to disbursements. It is aware of cases where there have been issues regarding disbursements payable by clients pursuant to a CFA.[8] Further guidance is necessary to regulate what may be treated as a disbursement payable by a client under a CFA.

24. The professional conduct rules already require that disbursements are fair, reasonable and disclosed in a timely fashion.[9]

25. The Working Group is of the view that in the context of contingency fees, where the licensee and client share risk and there are different approaches as to who assumes the cost of disbursements,[10] transparency as to what will be accepted as a disbursement properly payable by the client is paramount.

26. The Working Group therefore recommends that the mandatory standard form CFA should be drafted to expressly state whether disbursements are payable by the client.

27. When disbursements are payable by the client, in general they may only relate to amounts actually paid to arms-length third parties and may not include costs which relate to the ordinary delivery of legal services. The exception to the above is that chargeable disbursements may include disbursements referred to in Tariff A Lawyers' Fees and Disbursements Allowable Under Rules 57.01 and 58.05 pursuant to the *Courts of Justice Act* R.R.O. 1990, Reg. 194 ("Tariff A"), or disbursements otherwise approved by a Court or adjudicative tribunal.

28. For example, payment to a health clinic to obtain a copy of medical records, and expert reports would be permitted disbursements as these are amounts paid to arms-length

[8] See, for example, *Hodge v. Neinstein,* 2017 ONCA 494, online at www.ontariocourts.ca/decisions/2017/2017ONCA0494.htm.
[9] Rule 3.6-1, Rules of Professional Conduct and Paralegal Rules of Conduct Rule 5.01.
[10] Disbursement costs are addressed in a range of ways. For example, they may be assumed by the licensee, by the client, or split between them. Disbursement costs are typically repaid from the proceeds of a settlement when a claim is successful. When a matter is unsuccessful, or where the recovery is less than the cost of disbursements, a CFA may provide that outstanding disbursement costs are to be assumed by the client, the licensee, or by a third party such as a legal expense insurer.

parties. Internal costs and costs that are ordinarily internal costs are not disbursements. For example, the costs of hiring a third party document reviewer, law clerk or a virtual associate, while all potentially efficient means for a licensee to staff a file, would not be expenses which could be treated as disbursements as they relate to the delivery of legal services, which is the very service for which the client has entered into a CFA. However, when internal costs are expressly payable pursuant to Tariff A, such as copies of documents prepared for the use of the court and supplied to the opposite party, or are otherwise ordered payable by a Court or adjudicative tribunal, such items may be treated as chargeable disbursements.

29. The Working Group maintains that only disbursements which are reasonable and properly recoverable may be properly chargeable to the client.

30. As demonstrated by Tariff A, the Courts recognize that there are certain types of expenses reasonably incurred in the course of a proceeding, which are not payments to arms-length third parties, and which should be treated as reimbursable disbursements. At times Courts and adjudicative tribunals similarly order payment of disbursements of this nature.

31. As a matter of practice, defendants in actions in the Superior Court are also often willing to settle a matter for an amount that takes the other side's Tariff A disbursements into account, because such disbursements could be ordered payable at a hearing.

32. By permitting these types of disbursements under the mandatory standard form CFA, the Working Group maintains a consistent approach between what the Courts treat as reasonable disbursements and what disbursements may be seen as reasonable and which may be charged to the client.

33. The Working Group's recommendation adds transparency as to whether disbursements are or are not included in the contingency fee agreement. When disbursements are included in the contingency fee agreement, it adds transparency as to what types of items may be charged to the client as disbursements. These measures provide consumers with greater knowledge and enhanced protections to ensure that only reasonable disbursements are charged.

34. Finally, the Working Group notes that its recommended approach to enhance transparency with respect to disbursements at the outset of the retainer will work in concert with transparency measures adopted by Convocation in December 2017 to protect consumers from unreasonable disbursements. In particular, new disclosure requirements on completion of the contingency fee retainer will provide a clear breakdown of the final settlement or award, the net amount going to the client, disbursements, costs, legal fees and taxes, and a statement that the client has the right to assess the account.

f. Issues related to legal expense insurance and third party funding

35. The legal services market is rapidly changing, and so are the means of financing these services.

36. Legal expense insurance products can provide people with access to counsel in the event that they need to commence a claim and/or cover the risk of having to pay the other side's costs and disbursements. Legal expense insurance products may also protect the client from paying disbursements if the case is unsuccessful. There are differences between legal expense insurance products, different costs associated with them, and different models of marketing these products to the public, some of which involves licensees providing information or advice regarding the availability of such products.

37. Third party litigation funding is available to cover part or all legal costs, and protect against adverse cost awards, in exchange for a percentage of any settlement or adjudicated award. Litigation financing is being offered both where matters are being pursued pursuant to contingency fee agreements, including with respect to personal plight matters, class action and commercial litigation matters, and in traditional hourly rate or block fee arrangements.

38. The emergence of legal expense insurance and litigation financing operating in tandem with CFAs presents a further layer of risk sharing and costs. While these tools can enhance client choice, protect clients from risk, and potentially even lower the cost of litigation, they may present new challenges for licensees and clients and it is unclear how these products are impacting the operation of contingency fees at this time.

39. The Working Group recommends that these areas are considered further.

40. The Working Group recommends further consideration be given to the impact of legal expense insurance and third party litigation and other third party funding on legal fees, including contingency fees. The Working Group proposes that the Law Society consider bringing together experts on relevant issues, in a symposium or otherwise, to assist the Law Society in considering the ethical and regulatory issues that are raised by these products.

NEXT STEPS

41. The Working Group reiterates that the Law Society is available and interested in sharing its expertise with the Ontario government with respect to potential changes to Ontario's motor vehicle Statutory Accident Benefits Schedule.

42. The Working Group also continues to explore issues regarding lawyers receiving compensation or other benefits and related practices with respect to title insurance and other services, and will report to Convocation regarding this issue.

TAB 4.1.1

FOR DECISION

REVISED SUPPLEMENTARY REPORT TO THE SEVENTH REPORT OF THE ADVERTISING & FEE ARRANGEMENTS ISSUES WORKING GROUP

MOTION

3. **That Convocation approve the following recommendations of the Advertising and Fee Arrangements Issues Working Group ("Working Group"):**

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   b. ***Interim/Interlocutory Costs*: If interim or interlocutory costs ("interlocutory costs") are awarded to a party operating under a contingency fee agreement ("CFA"):**

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      ii. **If the matter is adjudicated on the merits and costs are determined by the court and awarded in favour of the client, the interlocutory costs should be included in the calculation of the total costs awarded; and**

      iii. **Subject to the CFA providing otherwise, payments on account of interlocutory costs should be repaid to the client to the extent that such payments are greater than the amount to which the licensee is ultimately entitled as the final contingent fee.**

   c. ***Appeals*: ~~Costs of anappeal should be addressed in the~~ The mandatory standard form CFA should state whether the retainer includes services through to the end of trial or through appeals. ~~and the CFA~~:**

      i. ~~**may provide for an increased contingent fee in the event of an**~~

~~appeal;~~

ii. ~~will provide that, if there is an appeal, the licensee will act as appellate counsel, or the licensee and the client will agree who to retain as appellate counsel; and~~

iii. ~~will provide, where new appellate counsel is retained, that in the event of recovery after an appeal the ultimate contingent fee is to be shared between counsel on the basis agreed between them when appellate counsel was retained.~~

d. ***Costs Submissions*: Costs submissions as to partial indemnity, substantial or full indemnity costs should be made based on the hourly rate set out in the CFA as being the licensee's hourly rate and without reference to the fact that the licensee is retained pursuant to a CFA.**

e. ***Disbursements*:** The mandatory standard form CFA should **be clear as to whether disbursements will be charged to the client. When chargeable, disbursements: ~~provide that disbursements chargeable to the client~~:**

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ii. **may not be in respect of goods or services that are ordinarily provided by firms themselves in the delivery of legal services including, for example and without limitation, ~~the costs of photocopying, binding, scanning, telephone and fax costs, or~~ the costs of other licensees, law clerks and secretaries and overtime~~.~~; and**

iii. **may, irrespective of the above, include disbursements referred to in Tariff A Lawyers' Fees and Disbursements Allowable Under Rules 57.01 and 58.05 pursuant to the *Courts of Justice Act* R.R.O. 1990, Reg. 194, or disbursements otherwise approved by a Court or adjudicative tribunal.**

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g. ***SABS*: The Law Society continues to welcome the opportunity to work with the Ontario government with respect to any proposed changes to the Statutory Accident Benefits Schedule.**

SUMMARY OF THE ISSUE UNDER CONSIDERATION

4. In this supplementary report to its Seventh Report to Convocation, the Working Group[1] reports further recommendations to enhance the operation of contingency fees in Ontario regarding:

    a. Partial contingency fees;
    b. Interlocutory costs;
    c. Costs of an appeal;
    d. Costs submissions;
    e. Disbursements; and
    f. Legal expense insurance and third party funding.

BACKGROUND

5. The Working Group has considered the operation of contingency fees in Ontario since February 2016.[2] In the Working Group's Seventh Report to Convocation, it recommended a "series of reforms for contingency fees in order to facilitate access to justice while ensuring that contingency fees paid are fair and reasonable".[3]

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[3] Seventh Report to Convocation at Motion, paragraph 13.

e. Simplify the calculation of contingency fees to enhance consumer protection.[4]

7. The Working Group noted that there are certain remaining areas that it was continuing to explore.[5] In this supplementary report to the Working Group's Seventh Report to Convocation[6], the Working Group provides its analysis and recommendations regarding these remaining areas.

DISCUSSION

a. Partial contingency fees

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9. Partial contingency fee agreements are contingency fee agreements where part of the fee is contingent on the result. For example, some clients may enter into agreements with licensees to agree to pay a discounted hourly rate for legal services regardless of the success or failure of the matter, and a contingent or success fee based on the outcome of the matter.

10. The Working Group considered whether its recommended changes to the operation of contingency fees should apply to partial contingency fees. It concluded that a partial contingency fee should be regulated in the same manner as a full contingency fee. Partial contingency fees should, for example, be governed by the Working Group's proposed mandatory standard form CFA, with the parties' negotiated fee arrangement to be included within the CFA just as the percentage or other payment measure would be included within the CFA for a full contingency fee arrangement.

11. The Working Group therefore recommends that its proposed reforms to contingency fees should apply to partial contingency fee arrangements.

b. Interlocutory costs awarded to a party operating under a CFA

12. The Working Group was asked in its 2017 CFA Consultation how interlocutory costs (i.e.

[4] Seventh Report to Convocation at para. 12. For the motion to Convocation, see the Seventh Report to Convocation paragraph 13.
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costs awarded in respect of steps taken during a proceeding such as, for example, motions costs) should be treated when they are awarded and made payable by the opposite party immediately.

13. Currently under the *Solicitors Act*, all legal costs are excluded from the calculation of the contingent fee. However, the Working Group recommends amendments to the *Solicitors Act* so that "an award of costs or costs obtained as part of a settlement may be included together with all other amounts recovered by the client in the total amount based on which the contingency fee is calculated".[7]

14. The Working Group considered how to treat interlocutory costs payable to a party operating under a CFA. Consistent with the principles of facilitating access to justice, maintaining transparency, aligning licensee and client interests and ensuring that fees are both fair and reasonable, the Working Group determined that when interlocutory costs are awarded to a party operating under a CFA:

    a. Interlocutory costs received on account of fees should be paid to the licensee in order to facilitate prosecution of the matter, but such payments should be treated as advance payments against the ultimate contingent fee with such payments being included in the total recovery. Interlocutory costs received on account of disbursements should be paid to whoever is responsible for paying disbursements, thereby reducing the amount ultimately payable in respect of disbursements;

    b. If the matter is adjudicated on the merits and costs are determined by the court and awarded in favour of the client, the interlocutory costs should be included in the calculation of the total costs awarded; and

    c. Subject to the CFA providing otherwise, payments on account of interlocutory costs should be repaid to the client to the extent that such payments are greater than the amount to which the licensee is ultimately entitled as the final contingent fee.

c. Appeals ~~Costs of an appeal awarded to a party operating under a CFA~~

15. CFAs should address the possibility that there may be an appeal whether by the client or the opposing party. Unless and until a judgment is final, there is no basis to calculate a fee that is contingent on the judgment.

16. ~~A first question is who will act on behalf of the client on the appeal. In some cases, the licensee who acted at first instance will continue to represent the client on the appeal. In other cases, appellate counsel may be retained.~~

17. The Working Group is of the view that there should be transparency as to ~~effect of an appeal on the contingent fee at the outset of the initial retainer, and that~~ potential for an

[7] Seventh Report to Convocation, Motion, footnote omitted.

appeal, and transparency as to whether the contingent fee includes acting on appeal at the outset of the initial retainer. ~~and~~ Fflexibility should be permitted with respect to how the licensee and client wish to approach the appeal.

18. The Working Group therefore recommends that~~:~~ the standard form CFA should state whether the retainer includes services through to the end of trial or through appeals.

19. This provides clarity both as to the scope of the retainer and as to the fee for the services to be provided. It also ensures that the client and licensee can consider their approaches to an appeal, having regard to the entirety of the circumstances. The decision who to retain on appeal and on what basis is commonly best decided in the context of a contemplated or actual appeal.

~~a. The CFA may provide for an increased contingent fee in the event of an appeal.~~

~~b. Costs of an appeal should be addressed in the mandatory standard form CFA.~~

~~c. The CFA will provide that, if there is an appeal, the licensee will act as appellate counsel, or the licensee and the client will agree who to retain as appellate counsel.~~

~~d. In the event of recovery after an appeal, the ultimate contingent fee is to be shared between counsel on the basis agreed between them when appellate counsel was retained.~~

d. Costs submissions when a licensee is retained pursuant to a CFA

20. In the course of the 2017 CFA Consultations, questions were raised as to how costs submissions should be made when a retainer is pursuant to a CFA. Courts often require disclosure of hourly rates together with the time spent on the matter for which costs are being sought. However, counsel retained pursuant to a CFA do not bill their clients on an hourly rate.

21. The fact that counsel is retained pursuant to a CFA and the substance of a CFA is privileged and confidential. Disclosure to the court should not be required in the course of costs submissions.

22. Hourly rates for all professionals are necessarily agreed to in CFAs in order to address the prospect of termination of the CFA before completion of the matter.

23. The Working Group recommends that costs submissions should be on the basis of the hourly rate provided for in the CFA.

e. Issues related to disbursements

24. The Working Group considered issues related to disbursements. It is aware of cases

where there have been issues regarding disbursements payable by clients pursuant to a CFA.[8] Further guidance is necessary to regulate what may be treated as a disbursement payable by a client under a CFA.

25. The professional conduct rules already require that disbursements are fair, reasonable and disclosed in a timely fashion.[9]

26. The Working Group is of the view that in the context of contingency fees, where the licensee and client share risk and there are different approaches as to who assumes the cost of disbursements,[10] transparency as to what will be accepted as a disbursement properly payable by the client is paramount.

27. The Working Group therefore recommends that the mandatory standard form CFA should be drafted to expressly state whether ~~that~~ disbursements are payable by the client.

28. When disbursements are payable by the client, in general they may only relate to amounts actually paid to arms-length third parties and may not include ~~that such third party disbursements may not include~~ costs which relate to the ordinary delivery of legal services. The exception to the above is that chargeable disbursements may include disbursements referred to in Tariff A Lawyers' Fees and Disbursements Allowable Under Rules 57.01 and 58.05 pursuant to the *Courts of Justice Act* R.R.O. 1990, Reg. 194 ("Tariff A"), or disbursements otherwise approved by a Court or adjudicative tribunal.

29. For example, payment to a health clinic to obtain a copy of medical records, and expert reports would be permitted disbursements as these are amounts paid to arms-length parties. Internal costs and costs that are ordinarily internal costs are not disbursements. ~~Costs related to photocopying or faxing would not be permitted, for example, as these costs relate to general overhead. Similarly,~~ For example, the costs of hiring a third party document reviewer, law clerk or a virtual associate, while all potentially efficient means for a licensee to staff a file, would not be expenses which could be treated as disbursements as they relate to the delivery of legal services, which is the very service for which the client has entered into a CFA. However, when internal costs are expressly payable pursuant to Tariff A, such as copies of documents prepared for the use of the court and supplied to the opposite party, or are otherwise ordered payable by a Court or adjudicative tribunal, such items may be treated as chargeable disbursements.

30. The Working Group maintains that only disbursements which are reasonable and

[8] See, for example, *Hodge v. Neinstein,* 2017 ONCA 494, online at www.ontariocourts.ca/decisions/2017/2017ONCA0494.htm.
[9] Rule 3.6-1, Rules of Professional Conduct and Paralegal Rules of Conduct Rule 5.01.
[10] Disbursement costs are addressed in a range of ways. For example, they may be assumed by the licensee, by the client, or split between them. Disbursement costs are typically repaid from the proceeds of a settlement when a claim is successful. When a matter is unsuccessful, or where the recovery is less than the cost of disbursements, a CFA may provide that outstanding disbursement costs are to be assumed by the client, the licensee, or by a third party such as a legal expense insurer.

properly recoverable may be properly chargeable to the client.

31. As demonstrated by Tariff A, the Courts recognize that there are certain types of expenses reasonably incurred in the course of a proceeding, which are not payments to arms-length third parties, and which should be treated as reimbursable disbursements. At times Courts and adjudicative tribunals similarly order payment of disbursements of this nature.

32. As a matter of practice, defendants in actions in the Superior Court are also often willing to settle a matter for an amount that takes the other side's Tariff A disbursements into account, because such disbursements could be ordered payable at a hearing.

33. By permitting these types of disbursements under the mandatory standard form CFA, the Working Group maintains a consistent approach between what the Courts treat as reasonable disbursements and what disbursements may be seen as reasonable and which may be charged to the client.

34. The Working Group's recommendation adds transparency as to whether disbursements are or are not included in the contingency fee agreement. When disbursements are included in the contingency fee agreement, it adds transparency as to what types of items may be charged to the client as disbursements. These measures provide consumers with greater knowledge and enhanced protections to ensure that only reasonable disbursements are charged.

35. Finally, the Working Group notes that its recommended approach to enhance transparency with respect to disbursements at the outset of the retainer will work in concert with transparency measures adopted by Convocation in December 2017 to protect consumers from unreasonable disbursements. In particular, new disclosure requirements on completion of the contingency fee retainer will provide a clear breakdown of the final settlement or award, the net amount going to the client, disbursements, costs, legal fees and taxes, and a statement that the client has the right to assess the account.

36. ~~For example, payment to a health clinic to obtain a copy of medical records, and expert reports would be permitted disbursements. Costs related to photocopying or faxing would not be permitted, for example, as these costs relate to general overhead. Similarly, the costs of hiring a third party document reviewer, law clerk or a virtual associate, while all potentially efficient means for a licensee to staff a file, would not be expenses which could be treated as disbursements as they relate to the delivery of legal services, which is the very service for which the client has entered into a CFA.~~

f. Issues related to legal expense insurance and third party funding

37. The legal services market is rapidly changing, and so are the means of financing these services.

38. Legal expense insurance products can provide people with access to counsel in the event that they need to commence a claim and/or cover the risk of having to pay the other side's costs and disbursements. Legal expense insurance products may also protect the client from paying disbursements if the case is unsuccessful. There are differences between legal expense insurance products, different costs associated with them, and different models of marketing these products to the public, some of which involves licensees providing information or advice regarding the availability of such products.

39. Third party litigation funding is available to cover part or all legal costs, and protect against adverse cost awards, in exchange for a percentage of any settlement or adjudicated award. Litigation financing is being offered both where matters are being pursued pursuant to contingency fee agreements, including with respect to personal plight matters, class action and commercial litigation matters, and in traditional hourly rate or block fee arrangements.

40. The emergence of legal expense insurance and litigation financing operating in tandem with CFAs presents a further layer of risk sharing and costs. While these tools can enhance client choice, protect clients from risk, and potentially even lower the cost of litigation, they may present new challenges for licensees and clients and it is unclear how these products are impacting the operation of contingency fees at this time.

41. The Working Group recommends that these areas are considered further.

42. The Working Group recommends further consideration be given to the impact of legal expense insurance and third party litigation and other third party funding on legal fees, including contingency fees. The Working Group proposes that the Law Society consider bringing together experts on relevant issues, in a symposium or otherwise, to assist the Law Society in considering the ethical and regulatory issues that are raised by these products.

NEXT STEPS

43. The Working Group reiterates that the Law Society is available and interested in sharing its expertise with the Ontario government with respect to potential changes to Ontario's motor vehicle Statutory Accident Benefits Schedule.

44. The Working Group also continues to explore issues regarding lawyers receiving compensation or other benefits and related practices with respect to title insurance and other services, and will report to Convocation regarding this issue.

Tab 4.2

FOR DECISION

AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT AND BY-LAW 7.1 REGARDING ELECTRONIC REGISTRATION OF TITLE DOCUMENTS

MOTION

43. **That Convocation:**

    a. **approve amendments to Rules 6.1-5 and 6.1-6 (Electronic Registration of Title Documents) as set out at Tab 4.2.1 (English) and Tab 4.2.2 (French); and**

    b. **make the amendments to By-Law 7.1 as set out in the motion at Tab 4.2.5 regarding the supervision of assigned tasks and functions and obligations resulting from suspension.**

Nature of the Issue

44. Teraview enables lawyers, paralegals, and others to access data in Government of Ontario's land records database. In January 2018, Teraview launched a web-based application for accessing the database, which will replace the current desktop version. As a result of these changes, further described in this report, it is necessary to amend the *Rules of Professional Conduct* (the "*Rules*") and the Law Society's By-Law 7.1.

45. The current regulatory framework, which was last amended in November 2007, refers to accessing the system using a personalized encrypted diskette, and restricts lawyers from sharing their diskette with others. Since 2007, diskettes have become a less commonly-used means of accessing the land registry system, and according to a Bulletin published by the Ministry of Government and Consumer Services, Teraview's new web-based application will require either a soft or hard RSA token to sign instruments for completeness and/or release.[1] Teraview's website explains that "the Tokens generate an authentication code at fixed intervals which is then used to provide secure login access".[2]

46. The web-based application, which will be launched on a rolling basis throughout the province began on January 8, 2018. Given that the *Rules* and the By-Law describe a lawyer's

[1] Ontario, Ministry of Government and Consumer Services, Bulletin No. 2017-07, November 20, 2017, online at http://www.teraview.ca/wp-content/uploads/2017/11/2017-07-Teraview-WebFinalEnglish.pdf. The bulletin was issued by Jeffrey W. Lem, Director of Titles.
[2] Teraview, Getting Started Tasks – Request and Register Your RSA Token, online at http://www.teraview.ca/en/getting-started-tasks-request-and-register-your-rsa-token/

professional obligations in this area, it is important to ensure that the language used reflects current practice. As such, it is necessary to amend *Rules* 6.1-5 and 6.1-6 and subsection 6(2) and section 15 of By-Law 7.1 to replace the word "diskette" with language that more accurately describes the means by which lawyers are accessing the system.

Current Regulatory Framework

Rules of Professional Conduct

47. Rule 6.1-5 of the *Rules of Professional Conduct* provides:

> 6.1-5 When a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents ("e-reg"™), the lawyer
>
> (a) shall not permit others, including a non-lawyer employee, to use the lawyer's diskette; and
>
> (b) shall not disclose their personalized e-reg pass phrase to others.

48. *Rule* 6.1-6 requires that a lawyer ensure that any non-lawyer employees who have a diskette do not permit others to use their diskette or disclose their personalized e-reg pass phrase to others.

49. Paragraphs [1] and [2] of the Commentary to *Rule* 6.1-5 and 6.1-6 provide additional guidance and emphasize the role of lawyers in maintaining the integrity and security of the electronic land registry system.

By-Law 7.1

50. Subsection 6(2) of By-Law 7.1 provides that "a licensee who holds a Class L1 licence shall not permit a non-licensee to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents".[3]

51. Section 15 of By-Law 7.1 provides that "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."[4]

[3] By-Law 7.1 under the Law Society Act, online at http://www.lsuc.on.ca/uploadedFiles/By-Law-7.1-Operational-Obligations-03-02-17.pdf.
[4] Ibid.

Proposed Amendments

52. A redline, showing proposed amendments to the *Rules* is shown at **Tab 4.2.1 (English)** and **Tab 4.2.2 (French)**. Clean versions are shown at **Tab 4.2.3 (English)** and **Tab 4.2.4 (French)**. "Personalized security package" would be a defined term in the *Rules*. If approved by Convocation, the definition would provide:

> 'personalized security package' means the diskette, key, RSA token, token number and/or personalized e-reg™ pass phrase to access the system for the electronic registration of title documents.

53. The proposed definition is broad enough to include other means of accessing the system.

54. A redline at **Tab 4.2.6 (English)** and **Tab 4.2.7 (French)** shows proposed amendments to By-Law 7.1. If these amendments are approved, the reference to "diskette" in subsection 6(2) would be removed and replaced with a reference to the licensee's "personalized security package", while the reference to "disk" in section 15 would be replaced with a more general direction that the Law Society cancel a suspended licensee's access to "the Teranet system" for the period of the suspension.

Stakeholder Response/Reaction

55. As noted above, the Ministry has already been communicating with users of the land registry system regarding the changes.

TAB 4.2.1

Excerpt from the Rules of Professional Conduct – proposed amendments re: Teraview web-based application are shown redlined – February 2018

SECTION 1.1 DEFINITIONS

(. . .)

"Personalized Security Package" means the diskette, key, RSA token, token number and/or personalized e-reg™ pass phrase to access the system for the electronic registration of title documents.

(. . .)

Electronic Registration of Title Documents

6.1-5 When a lawyer has a ~~p~~Personalized Security Package, ~~specially encrypted diskette to access the system for the electronic registration of title documents ("e-reg" ™~~), the lawyer

~~(a)~~ shall not permit others, including a non-lawyer employee, to use the lawyer's Personalized Security Package. ~~diskette~~; ~~and~~

~~(b) shall not disclose their personalized e-reg ™ pass phrase to others.~~

6.1-6 When a non-lawyer employed by a lawyer has a Personalized Security Package, ~~specially encrypted diskette to access the system for the electronic registration of title documents~~, the lawyer shall ensure that the non-lawyer

~~(a)~~ does not permit others to use the Personalized Security Package ~~diskette, and~~

~~(b) does not disclose their personalized e-reg ™ pass phrase to others.~~

Commentary

[1] The implementation across Ontario of a system for the electronic registration of title documents imposes special responsibilities on lawyers and others using the system. Each person in a law office who accesses the e-reg ™ system must have a Personalized Security Package ~~personalized specially encrypted diskette and personalized e-reg ™ pass phrase~~. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Moreover, under the system, only lawyers entitled to practise law may make certain prescribed statements. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. Only lawyers entitled to practise law may approve electronic documents containing these statements. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the Personalized Security Package ~~personalized specially encrypted diskette used to access the system and the personalized electronic registration pass phrase~~. When in a real estate practice it is permissible for a lawyer to delegate

responsibilities to a non-lawyer who has a Personalized Security Package ~~personalized specially encrypted diskette and a personalized electronic registration pass phrase~~, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the Personalized Security Package ~~personalized specially encrypted diskette and the pass phrase~~.

[2] In real estate transactions using the e-reg ™ system, a lawyer who approves the electronic registration of title documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

[*Amended - November 2007*]

Tab 4.2.2

Extrait du Code de déontologie – modifications proposées soulignées quant à l'application Web Teraview – février 2018

ARTICLE 1.1 INTERPRÉTATIONS

(. . .)

« Trousse personnelle de sécurité » s'entend de la disquette, clé, jeton RSA, numéro de jeton ou mot de passe personnalisé pour accéder au système d'enregistrement électronique de titres de propriété « e-reg »[MD].

(. . .)

Enregistrement électronique de titres de propriété

6.1-5 Lorsque l'avocat a une trousse personnelle de sécurité ~~disquette personnalisée et codée pour accéder au système d'enregistrement électronique de titres de propriété (« e-reg MC »),~~ il :

~~(a)~~ ne doit pas autoriser d'autres personnes, y compris les employés non juristes, à utiliser sa ~~disquette~~ trousse personnelle de sécurité

~~(b) ne doit pas divulguer son mot de passe personnalisé à d'autres personnes.~~

6.1-6 Lorsqu'un non-avocat embauché par un avocat a une trousse personnelle de sécurité ~~disquette personnalisée et codée pour accéder au système d'enregistrement électronique de titres de propriété~~, l'avocat doit s'assurer que le non-avocat :

~~(a)~~ n'autorise pas d'autres personnes à utiliser la ~~disquette~~ trousse personnelle de sécurité

~~(b) ne divulgue pas son mot de passe personnalisé à d'autres personnes.~~

Commentaire

[1] La mise en œuvre d'un système visant l'enregistrement électronique de titres de propriété en Ontario impose des responsabilités particulières aux avocats et à toute autre personne qui utilise le système. Toute personne qui travaille dans un cabinet d'avocats et qui a accès au système électronique e-reg[MC] doit avoir une trousse personnelle de sécurité ~~disquette personnalisée et codée et un mot de passe personnalisé~~. L'intégrité et la sécurité du système sont assurées, en partie, en conservant un registre des utilisateurs pour toute opération. En outre, le système permet uniquement aux avocats autorisés à exercer le droit de faire certaines déclarations prescrites. Seuls les avocats en règle peuvent faire des déclarations de conformité à la loi sans enregistrer des documents à l'appui. Seuls les avocats autorisés à exercer le droit peuvent approuver des documents électroniques qui contiennent ces déclarations. Il est donc important que les avocats assurent la sécurité et l'utilisation exclusive de la trousse personnelle de sécurité ~~disquette personnalisée et codée pour accéder au système, et du mot de passe au~~

~~système électronique de dépôt des titres~~. Dans un cabinet spécialisé en droit immobilier où un avocat peut déléguer des tâches à un non-avocat qui a une trousse personnelle de sécurité ~~disquette personnalisée et codée et un mot de passe personnalisé~~, l'avocat doit veiller à ce que le non-avocat comprenne l'importance d'assurer la sécurité de la trousse personnelle de sécurité ~~disquette personnalisée et codée, et du mot de passe~~.

[2] Dans les opérations de droit immobilier utilisant le système électronique e reg^{MC}, l'avocat qui approuve l'enregistrement électronique de titres de propriété par un non-avocat est responsable du contenu de tout document qui contient la signature électronique du non-avocat.

[*Modifié – novembre 2007- janvier 2018*]

TAB 4.2.3

Excerpt from the Rules of Professional Conduct – proposed amendments re. Teraview web-based application – February 2018

SECTION 1.1 DEFINITIONS

(. . .)

"Personalized Security Package" means the diskette, key, RSA token, token number and/or personalized e-reg™ pass phrase to access the system for the electronic registration of title documents.

(. . .)

Electronic Registration of Title Documents

6.1-5 When a lawyer has a Personalized Security Package, the lawyer shall not permit others, including a non-lawyer employee, to use the lawyer's Personalized Security Package.

6.1-6 When a non-lawyer employed by a lawyer has a Personalized Security Package, the lawyer shall ensure that the non-lawyer does not permit others to use the Personalized Security Package

Commentary

[1] The implementation across Ontario of a system for the electronic registration of title documents imposes special responsibilities on lawyers and others using the system. Each person in a law office who accesses the e-reg ™ system must have a Personalized Security Package. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Moreover, under the system, only lawyers entitled to practise law may make certain prescribed statements. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. Only lawyers entitled to practise law may approve electronic documents containing these statements. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the Personalized Security Package. When in a real estate practice it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has a Personalized Security Package, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the Personalized Security Package

[2] In real estate transactions using the e-reg ™ system, a lawyer who approves the electronic registration of title documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

[*Amended - November 2007*]

Tab 4.2.4

Extrait du Code de déontologie – modifications proposées quant à l'application Web Teraview – février 2018

ARTICLE 1.1 INTERPRÉTATIONS

(. . .)

« Trousse personnelle de sécurité » s'entend de la disquette, clé, jeton RSA, numéro de jeton ou mot de passe personnalisé pour accéder au système d'enregistrement électronique de titres de propriété « e-reg »[MD].

(. . .)

Enregistrement électronique de titres de propriété

6.1-5 Lorsque l'avocat a une trousse personnelle de sécurité, il ne doit pas autoriser d'autres personnes, y compris les employés non juristes, à utiliser sa trousse personnelle de sécurité.

6.1-6 Lorsqu'un non-avocat embauché par un avocat a une trousse personnelle de sécurité, l'avocat doit s'assurer que le non-avocat n'autorise pas d'autres personnes à utiliser la trousse personnelle de sécurité.

Commentaire

[1] La mise en œuvre d'un système visant l'enregistrement électronique de titres de propriété en Ontario impose des responsabilités particulières aux avocats et à toute autre personne qui utilise le système. Toute personne qui travaille dans un cabinet d'avocats et qui a accès au système électronique e-reg[MC] doit avoir une trousse personnelle de sécurité. L'intégrité et la sécurité du système sont assurées, en partie, en conservant un registre des utilisateurs pour toute opération. En outre, le système permet uniquement aux avocats autorisés à exercer le droit de faire certaines déclarations prescrites. Seuls les avocats en règle peuvent faire des déclarations de conformité à la loi sans enregistrer des documents à l'appui. Seuls les avocats autorisés à exercer le droit peuvent approuver des documents électroniques qui contiennent ces déclarations. Il est donc important que les avocats assurent la sécurité et l'utilisation exclusive de la trousse personnelle de sécurité. Dans un cabinet spécialisé en droit immobilier où un avocat peut déléguer des tâches à un non-avocat qui a une trousse personnelle de sécurité, l'avocat doit veiller à ce que le non-avocat comprenne l'importance d'assurer la sécurité de la trousse personnelle de sécurité.

[2] Dans les opérations de droit immobilier utilisant le système électronique e reg[MC], l'avocat qui approuve l'enregistrement électronique de titres de propriété par un non-avocat est responsable du contenu de tout document qui contient la signature électronique du non-avocat.

[*Modifié – novembre 2007- janvier 2018*]

Tab 4.2.5

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 7.1
[OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JANUARY 25, 2018

MOVED BY

SECONDED BY

THAT By-Law 7.1 [Operational Obligations and Responsibilities], in force immediately before this motion is moved, be amended as follows:

1. Subsection 6 (2) of the English version of the By-Law is revoked and the following substituted:

Tasks and functions that may not be assigned by Class L1 licensee

(2) A licensee who holds a Class L1 licence shall not permit a non-licensee to access the system for the electronic registration of title documents by using the personalized security package assigned to the licensee for purposes of the licensee accessing the system for electronic registration of title documents.

2. Subsection 6 (2) of the French version of the By-Law is revoked and the following substituted:

Tâches et fonctions qui ne peuvent être assignées par les titulaires de permis de la catégorie L1

(2) Il est interdit aux titulaires de permis de la catégorie L1 d'autoriser un non-titulaire de permis à accéder au système d'enregistrement électronique de titres de propriété en utilisant la trousse personnelle de sécurité assignée au titulaire de permis aux fins d'accéder au système d'enregistrement électronique des titres de propriété.

3. Section 15 of the English version of the By-Law is revoked and the following substituted:

Real estate law: direction re Teranet access

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 access to the Teranet system for the period of the suspension.

4. Section 15 of the French version of the By-Law is revoked and the following substituted:

Droit immobilier : directive concernant l'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 accès à Teranet pendant la durée de la suspension.

Tab 4.2.6

Excerpt from By-Law 7.1 – proposed amendments re: Teraview web-based application are shown with underling – February 2018

BY-LAW 7.1

Made: October 25, 2007
Amended: November 22, 2007
January 24, 2008
April 24, 2008
June 26, 2008
October 30, 2008
January 29, 2009
January 29, 2009 (editorial changes)
March 20, 2009 (editorial changes)
October 28, 2010
November 10, 2010 (editorial changes)
September 25, 2013
June 25, 2015
February 23, 2017
March 2, 2017 (editorial changes)

OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

PART I

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Tasks and functions that may not be assigned by Class L1 licensee

6(2) A licensee who holds a Class L1 licence shall not permit a non-licensee to access the system for the electronic registration of title documents by using the personalized security package assigned to the licensee for purposes of the licensee accessing ~~use the licensee's personalized specially encrypted diskette in order to access~~ the system for the electronic registration of title documents.

PART II

OBLIGATIONS RESULTING FROM SUSPENSION

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 to the Teranet system ~~disk~~ for the period of the suspension.

Tab 4.2.7

Extrait du Règlement administratif nº 7.1 – modifications proposées soulignées quant à l'application Web Teraview – février 2018

RÈGLEMENT ADMINISTRATIF Nº 7.1

Fait le : 25 octobre 2007
Modifié les : 22 novembre 2007
24 janvier 2008
24 avril 2008
26 juin 2008
30 octobre 2008
29 janvier 2009
29 janvier 2009 (changements de la rédaction)
20 mars 2009 (changements de la rédaction)
28 octobre 2010
10 novembre 2010 (changements de la rédaction)
25 septembre 2013
25 juin 2015
2 mars 2017

OBLIGATIONS ET RESPONSABILITÉS OPÉRATIONNELLES

PARTIE I

SURVEILLANCE DES TÂCHES ET FONCTIONS

Tâches et fonctions qui ne peuvent être assignées par les titulaires de permis de la catégorie L1

6 (2) Il est interdit aux titulaires de permis de la catégorie L1 d'autoriser un non-titulaire de permis à accéder au système d'enregistrement électronique de titres de propriété en utilisant la trousse personnelle de sécurité assignée au titulaire de permis ~~utiliser leurs disquettes personnalisées et encodées~~ afin d'accéder au système d'enregistrement électronique des titres de propriété.

PARTIE II

OBLIGATIONS DÉCOULANT D'UNE SUSPENSION

Droit immobilier : directive concernant ~~le disque d~~ l'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.