



TAB 5

Report to Convocation November 9, 2016

Professional Regulation Committee

Committee Members

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

Purpose of Report: Decision

**Prepared by the Policy Secretariat
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COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on October 6, 2016. In attendance were William C. McDowell (Chair), Jonathan Rosenthal (Vice-Chair), Malcolm Mercer (Vice-Chair), Suzanne Clément, Seymour Epstein, Carol Hartman (by telephone), Michael Lerner (by telephone), Brian Lawrie, Virginia MacLean, and Jerry Udell.
2. The following Law Society staff members attended the meeting: Karen Manarin, Naomi Bussin, Jennifer Khor, and Margaret Drent.

FOR DECISION

**EXPANDED USE OF REGULATORY MEETINGS BY THE
PROCEEDINGS AUTHORIZATION COMMITTEE**

Motion

3. **That Convocation expand the circumstances in which the Proceedings Authorization Committee (“PAC”) may authorise the invitation of a licensee to a Regulatory Meeting by removing the requirement that the conduct has been the subject of comment in a public forum.**

Introduction

4. The Regulatory Meeting was approved by Convocation in January 2006. A Regulatory Meeting is distinct from an Invitation to Attend (ITA). The ITA, which may also be authorized by PAC, is a confidential meeting with a licensee to discuss an issue or issues of professional misconduct. Because of the confidential nature of an ITA, there is no public statement about the outcome of an investigation.
5. Participants in a Regulatory Meeting include the licensee and a panel of benchers. Following the meeting, in contrast to the ITA, there is a public statement that the meeting occurred which identifies both the licensee and the issues. This statement is placed on the Law Society’s website and published in the Ontario Reports.

Criteria Applied by PAC to Authorize a Regulatory Meeting

6. Convocation approved the following criteria to be applied by PAC in considering whether a Regulatory meeting should be held:
 - (a.) The Law Society has conducted an investigation of the licensee’s conduct and the evidence indicates that the licensee may have breached their obligations under the Rules of Professional Conduct (or Paralegal Rules of Conduct) but in the opinion of PAC, the circumstances are such that a conduct application may not be warranted if the licensee agrees to a meeting.
 - (b.) The conduct to be discussed is not substantially in dispute.
 - (c.) It is not in the public interest to deal with the matter by way of an Invitation to Attend, given its confidential nature, because the conduct of the licensee has been the subject of comment in a public forum (i.e. by a court as a matter of

public record, in a news report, at a conference or other public gathering, or other comment in a public forum).

7. The Committee has considered a PAC request that the criterion described in paragraph (c) be removed. PAC would like to have the ability to respond to certain types of misconduct with a Regulatory Meeting in all cases. Regulatory Meetings are a stronger remedial response than a confidential ITA. However, currently, PAC is prevented from holding such meetings in circumstances in which the licensee's conduct has not been the subject of public comment.
8. The Committee agrees with PAC's request. The Paralegal Standing Committee also considered this request at its October 5 meeting and is in agreement with it.

Current Regulatory Framework

9. Pursuant to [By-Law 11](#) under s. 62(0.1) of the *Law Society Act*, the function of the PAC is to review all matters referred to it, and to determine whether any of various actions should be taken.
10. The actions that may be taken are listed in s. 51(1) of By-Law 11. The options include authorizing the Law Society to apply to the Law Society Tribunal for a determination by the Hearing Division that the licensee has contravened s. 33 of the Law Society Act (which refers to professional misconduct or conduct unbecoming); a determination that a licensee is incapacitated, or a determination that a licensee has failed to meet standards of professional competence.
11. Under s. 51(1) above, and pursuant to Convocation Policy, PAC has three options where it wishes to take remedial action. The first two options (a Regulatory Meeting and an Invitation to Attend) are described above. The third remedial option is a Letter of Advice.
12. None of the three options is considered to be disciplinary, and they do not form part of a licensee's discipline record.

13. The following table compares the features of a Letter of Advice, an ITA, and a Regulatory Meeting.

| Option | Attendance by Licensee Required | Public/Private Nature |
|--------------------|--|---|
| Letter of Advice | No, the letter arrives in the mail. | <p>Only the complainant is told that the letter was sent.</p> <p>The complainant does not receive a copy of the letter, although he or she is told at a high level what issues were addressed.</p> |
| ITA | Yes. | <p>Only the complainant is told that the meeting was conducted.</p> <p>The complainant does not receive details about what was discussed, although he or she is told at a high level what issues were addressed.</p> <p>A summary of the advice given at ITAs is published in the Ontario Reports for the benefit of the profession, but the information is anonymized and the licensees who attended are not identified.</p> |
| Regulatory Meeting | Yes. | <p>That the meeting occurred is a matter of public record at the Law Society and a public statement on the Law Society's website and in the Ontario Reports identifies both the licensee and the issues discussed.</p> |

The Committee's View

14. The Committee is of the view that PAC should have the ability to respond to certain types of professional misconduct with a Regulatory Meeting in all cases, as a Regulatory Meeting is considered to be a stronger remedial response than a confidential ITA. ITAs would continue to be held in appropriate circumstances.