

**LAW SOCIETY TRIBUNAL
HEARING DIVISION**

RULES OF PRACTICE AND PROCEDURE

Effective: May 8, 2018

LAW SOCIETY TRIBUNAL – HEARING DIVISION

RULES OF PRACTICE AND PROCEDURE

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RULE 1 APPLICATION AND INTERPRETATION

Application

1.01 These Rules apply to the following proceedings before the Hearing Division that are commenced on or after July 1, 2009:

1. A licensing proceeding.
2. A restoration proceeding.
3. A conduct proceeding.
4. A capacity proceeding.
5. A competence proceeding.
6. A non-compliance proceeding.
7. A reinstatement proceeding.
8. A terms dispute proceeding.
9. A retired judge appearing as counsel proceeding.
10. A working with or employing unauthorized persons proceeding.

Definitions and interpretation

1.02 (1) In these Rules, unless the context requires otherwise,

“Act” means the *Law Society Act*;

“capacity proceeding” means a proceeding under section 38 of the Act;

“Chair” means the Chair of the Law Society Tribunal;

“competence proceeding” means a proceeding under section 43 of the Act;

“conduct proceeding” means a proceeding under section 34 of the Act;

“deliver” means serve and file with the Tribunal with proof of service;

“document” includes a paper, book, record, account, sound recording, videotape, film, photograph, chart, graph, map, plan, survey and information recorded or stored by computer or by means of any other device;

“hearing” does not include a proceeding management conference or a pre-hearing conference;

“holiday” means,

- (a) any Saturday or Sunday,
- (b) New Year’s Eve Day, and where New Year’s Eve Day falls on a Saturday or

- Sunday, the preceding Friday,
- (c) New Year's Day, and where New Year's Day falls on a Saturday or Sunday, the following Monday,
 - (d) Family Day,
 - (e) Good Friday,
 - (f) Victoria Day,
 - (g) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday,
 - (h) Civic Holiday,
 - (i) Labour Day,
 - (j) Thanksgiving Day,
 - (k) Christmas Eve Day, and where Christmas Eve Day falls on a Saturday or Sunday, the preceding Friday,
 - (l) 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,
 - (m) Boxing Day, and
 - (n) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

"licensing proceeding" means a proceeding under section 27 of the Act;

"moving party" means a person who makes a motion;

"non-compliance proceeding" means a proceeding under section 45 of the Act;

"non-party participant" means a person who is not a party to a proceeding who is permitted to participate in a proceeding or a part thereof;

"panel" means the panelist or, collectively, the panelists assigned to a hearing;

"panelist" means a member of the Hearing Division;

"party" includes a moving party and a responding party;

"reinstatement proceeding" means a proceeding under section 49.42 of the Act;

"representative" means a person authorized under the *Law Society Act* to represent a person in a proceeding;

"responding party" means a person against whom a motion is made;

"restoration proceeding" means a proceeding under section 31 of the Act;

“retired judge appearing as counsel proceeding” means a proceeding under Rule 7.7-1.1 of the *Rules of Professional Conduct*;

“subject of the proceeding” means,

- (a) in a licensing proceeding, the person referred to, in subsection 27 (5) of the Act, as the applicant,
- (b) in a restoration proceeding, the person referred to, in subsection 31 (4) of the Act, as the person whose licence is in abeyance,
- (c) in a conduct proceeding, the person referred to, in subsection 34 (2) of the Act, as the licensee who is the subject of the application,
- (d) in a capacity proceeding, the person referred to, in subsection 38 (2) of the Act, as the licensee who is the subject of the application,
- (e) in a competence proceeding, the person referred to, in subsection 43 (2) of the Act, as the licensee who is the subject of the application,
- (f) in a non-compliance proceeding, the person referred to, in subsection 45 (2) of the Act, as the licensee who is the subject of the application,
- (g) in a reinstatement proceeding, the person referred to, in subsection 49.42 (4) of the Act, as the applicant,
- (h) in a retired judge appearing as counsel proceeding, the retired judge as the applicant,
- (i) in a terms dispute proceeding, the person referred to, in subsection 49.43 (3) of the Act, as the applicant, and
- (j) in a working with or employing unauthorized persons proceeding, the licensee applying for approval to work with or employ an unauthorized person as the applicant;

“terms dispute proceeding” means a proceeding under section 49.43 of the Act.

“Tribunal” means the Law Society Tribunal established under the *Law Society Act*, R.S.O. 1990, c. L.8;

“Vice-Chair” means the Vice-Chair of the Hearing Division,

“working with or employing unauthorized persons proceeding” means a proceeding under Rule 7.6-1.1 of the *Rules of Professional Conduct* or subrule 6.01(6) of the *Paralegal Rules of Conduct*;

(2) A word or phrase used in these Rules that is defined in the Act bears the definition contained in the Act;

Interpretation of Rules

1.03 (1) These Rules shall be liberally construed to secure the just and expeditious determination of every proceeding on its merits.

(2) Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

RULE 2 NON-COMPLIANCE WITH RULES

Effect of non-compliance

2.01 (1) A failure to comply with a procedural requirement in these Rules is an irregularity and does not render a proceeding or a step or document in a proceeding a nullity.

Orders on motion attacking irregularity

(2) On the motion of a party to attack a proceeding or a step or document in a proceeding for irregularity, an order may be made,

- (a) granting any relief necessary to secure the just determination of the real matters in issue; or
- (b) dismissing the proceeding or setting aside a step or document in the proceeding in whole or in part only where and as necessary in the interests of justice.

Attacking irregularity

(3) A motion to attack a proceeding or a step or document in a proceeding for irregularity shall not be made, except with leave,

- (a) after the expiry of a reasonable period of time after the moving party knows or ought reasonably to have known of the irregularity;
- (b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity; or
- (c) if the moving party has otherwise consented to the irregularity.

Order dispensing with compliance

2.02 (1) On the motion of a party or a non-party participant, or on a panel's own motion, an order dispensing with compliance with any procedural requirement in these Rules may be made where it is necessary in the interests of justice.

Consent to non-compliance

(2) A party may dispense with compliance with any procedural requirement in these Rules with the consent of all other parties.

RULE 3 TIME

Computing time

3.01 In computing time under these Rules, or under an order made under these Rules,

- (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;
- (b) where a period of less than seven days is prescribed, holidays shall not be counted;
- (c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and
- (d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.

Extension or abridgment of time periods

3.02 (1) On the motion of a party or a non-party participant, an order extending or abridging any time prescribed by these Rules, or by an order made under these Rules, may be made where it is just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

RULE 4 REPRESENTATION

Change in representation

Notice of change of representative

4.01 (1) A party or a non-party participant who has a representative of record may change the representative of record by serving on the representative and every other party and non-party participant and filing with the Tribunal with proof of service, a notice of change of representative giving the name, address, telephone number, fax number and e-mail address of the new representative.

Form 4A

(2) The notice mentioned in subrule (1) may be in Form 4A.

Notice of appointment of representative

(3) A party or a non-party participant acting in person may appoint a representative of record by delivering a notice of appointment of representative giving the name, address, telephone number, fax number and e-mail address of the representative.

Form 4B

(4) The notice mentioned in subrule (3) may be in Form 4B.

Notice of intention to act in person

(5) A party or a non-party participant who has a representative of record may elect to act in person by serving on the representative and every other party and non-party participant and filing with the Tribunal, with proof of service, a notice of intention to act in person that sets out the person's address for service, telephone number, fax number, if any, and e-mail address, if any.

Form 4C

(6) The notice mentioned in subrule (5) may be in Form 4C.

Removal of representative of record

4.02 On the motion of a representative, a party or another person, an order may be made removing the representative as the representative of record.

RULE 5 COMMUNICATION WITH PANEL AND CASE MANAGEMENT

5.01 No party, non-party participant, representative or other person who attends at or participates in a hearing shall communicate with a panel outside of the hearing with respect to the subject matter of the hearing except,

- (a) in the presence of all parties and all non-party participants, who have been permitted to participate in the hearing with respect to the subject matter of the communication, or their representatives; or
- (b) in writing by sending the written communication to the Tribunal Office and a copy of the written communication to all parties and all non-party participants, who have been permitted to participate in the hearing with respect to the subject matter of the communication, or their representatives.

5.02 By endorsement, a panel may make case management directions following written communications under Rule 5.01(b) or at any other time.

RULE 6 ADDING PARTIES

Adding parties

6.01 (1) On the motion of a person, an order may be made adding a person as a party to a proceeding where the person is entitled under the *Law Society Act* or otherwise by law to be a party to the proceeding.

Time for bringing motion

(2) A motion under this Rule shall be made prior to the hearing on the merits of the proceeding.

RULE 7 JOINDER OR SEVERANCE OF PROCEEDINGS

Hearing proceedings together or consecutively

7.01 (1) On the motion of a party, an order may be made that the merits of two or more proceedings, in whole or in part, be heard at the same time or one immediately after the other if,

- (a) the proceedings have a question of fact, law or mixed fact and law in common;
- (b) the proceedings involve the same parties;
- (c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or
- (d) for any other reason an order ought to be made under this Rule.

Time for bringing motion

- (2) A motion under this Rule shall be made,
 - (a) prior to the hearing on the merits of any affected proceeding; or
 - (b) at any time, with leave.

Effect of hearing proceedings together or consecutively

(3) Where an order is made under subrule (1), the panel shall determine the effects of hearing the merits of the proceedings together or one immediately after the other and may give such directions as it deems just with respect to those effects.

Separating proceedings

(4) Where an order is made under subrule (1), if hearing the merits of the proceedings together or one immediately after the other unduly complicates or delays the proceedings or causes prejudice to a party, on the motion of a party or on its own motion, the panel may order separate hearings for all or any part of the proceedings.

Dividing proceeding

7.02 (1) On the motion of a party, or on a panel's own motion, an order may be made that a proceeding be divided into two or more proceedings.

Effect of order

(2) Where an order is made under subrule (1), the panel shall determine the effects of making the order, including how the merits of the separate proceedings shall be heard, and may give such directions as it deems just with respect to the division of the proceeding.

RULE 8 NON-PARTY PARTICIPATION

Non-party participation

8.01 (1) On the motion of a person, an order may be made permitting a person who is not a party to a proceeding to participate in the proceeding or a part thereof if the participation of the person is in the interests of justice.

Extent of participation

(2) Where an order is made under subrule (1), the panel shall determine the extent of the person's participation and may give such directions as it deems just with respect to the person's participation.

Intervening as “friend of the court”

8.02 A panel may invite a person, without becoming a party to a proceeding, to participate in the proceeding or a part thereof for the purpose of rendering assistance to the Tribunal by way of argument.

RULE 9 ORIGINATING PROCESS

Service

9.01 (1) A proceeding is commenced by serving and filing the appropriate Information Sheet and originating process: Notice of Application, Notice of Referral for Hearing or Notice of Motion – Interlocutory Suspension or Restriction (Forms 9A-9O).

(2) An originating process and Information Sheet must be served by:

- (a) hand delivery to the person being served;
- (b) regular mail, registered mail or courier; or
- (c) any other method agreed to by the person being served or directed by the Tribunal.

(3) The Law Society of Ontario must file originating processes and Information Sheets electronically.

Amendment

9.02 (1) The applicant may amend an originating process no later than 10 days before the hearing on the merits, without leave, by serving and filing an amended version that clearly indicates the nature of the changes.

(2) The applicant may amend an originating process at any time with consent of the other party or with leave of the Tribunal.

Abandonment

9.03 (1) The applicant may, at any time, abandon the proceeding by serving and filing a Notice of Abandonment (Form 9P).

(2) After a proceeding is abandoned, the respondent may bring a motion for costs under Rule 25.

RULE 10 SERVICE OF DOCUMENTS

Manner of service

10.01 A document other than an originating process may be served by:

- (a) hand delivery;
- (b) regular mail, registered mail or courier;
- (c) fax, only if the document is 20 pages or less;
- (d) e-mail; or
- (e) any other method agreed to by the person being served or directed by the Tribunal.

Effective date of service

10.02 Service is deemed to be effective:

- (a) if the document is faxed, e-mailed, hand delivered or delivered by courier before 5 p.m. on a business day, on that day;
- (b) if the document is faxed, e-mailed, hand delivered or delivered by courier after 5 p.m. on a business day, on the next business day;
- (c) if the document is faxed, e-mailed, hand delivered or delivered by courier on a weekend or holiday, on the next business day; or
- (d) if the document is mailed, on the fifth business day after mailing.

Proof of service

10.03 When a document is filed, service must be confirmed by including:

- (a) a Confirmation of Service (Form 10A);
- (b) an affidavit of the person who served it; or
- (c) written acceptance of service.

Contact information in the Society's records

10.04 For this Rule and Rule 9, service on a licensee using contact information provided to the Society under By-Law 8, ss.3 and 4 shall be deemed effective unless otherwise ordered by the Tribunal.

RULE 11 SCHEDULING

Hearing on merits of proceeding

11.01 (1) A hearing may be scheduled by a panelist or by the Tribunal Office.

Endorsement

(2) An endorsement of every scheduled hearing on the merits of a proceeding shall be made on the originating process by the panelist, if the hearing is scheduled by a panelist, or by the Tribunal Office, if the hearing is scheduled by the Tribunal Office.

Notice of hearing on merits of proceeding

11.02 (1) The Tribunal shall send to all parties and all non-party participants who have been permitted to participate in the hearing on the merits of a proceeding a notice of the hearing on the merits of the proceeding.

Oral hearing

- (2) A notice of an oral hearing shall include,
- (a) a statement of the date, time, place and purpose of the hearing; and
 - (b) a statement that if a person notified does not attend at the hearing, the panel may proceed in the person's absence and the person will not be entitled to any further notice in the proceeding.

Electronic hearing

- (3) A notice of an electronic hearing shall include,
- (a) a statement of the date, time and purpose of the hearing and details about the manner in which the hearing will be held; and
 - (b) a statement that if a person notified does not participate in the hearing in accordance with the notice, the panel may proceed without the person's participation and the person will not be entitled to any further notice in the proceeding.

Effect of non-attendance at or non-participation in hearing after due notice

(4) Where notice of a hearing has been given to a person in accordance with subrule (2) or (3), and the person does not attend at or does not participate in the hearing, the panel may proceed in the absence of the person or without the person's participation and the person is not entitled to any further notice in the proceeding.

Hearing of motion

- 11.03** A motion may be scheduled for hearing on,
- (a) any day on which the merits of the proceeding to which the motion relates is scheduled to be heard; or

(b) a day obtained from the Tribunal Office.

RULE 12 PROCEEDINGS MANAGEMENT

Proceeding management conference

12.01 (1) A proceeding management conference shall be conducted by a panelist on the date specified in the originating process unless, by that date,

- (a) a hearing on the merits of the proceeding has been scheduled; and
- (b) if a pre-hearing conference is required under clause 22.02 (a), the pre-hearing conference has been scheduled.

Request for proceeding management conference

(2) A party to a proceeding may, at any time, request to attend before a panelist for a proceeding management conference.

Request to Tribunal Office

(3) A request to attend before a panelist for a proceeding management conference shall be made to the Tribunal Office.

Notice of proceeding management conference

(4) Where a request to attend before a panelist for a proceeding management conference has been made, the Tribunal shall send to all parties a notice of the date and time of the proceeding management conference.

Proceeding management conference: format

12.02 A proceeding management conference may be held in person, by telephone conference, by written submissions or by any combination of these formats.

Attendance at proceeding management conference

12.03 (1) Unless otherwise directed by the panelist conducting the proceeding management conference, or the parties consent, all the parties to the proceeding, or their representatives, are required to attend at or participate in the proceeding management conference.

Failure to attend or participate

(2) Where a person who is required to attend at or participate in a proceeding management conference does not attend at or participate in the conference, the panelist conducting the conference may proceed in the absence of the person or without the person's participation.

Matters to be dealt with

12.04 (1) At a proceeding management conference, a panelist may,
(a) schedule a further proceeding management conference;

- (b) direct the parties to attend at a pre-hearing conference;
- (c) schedule or reschedule a pre-hearing conference;
- (d) schedule or adjourn a hearing; and
- (e) give directions.

Results of proceeding management conference

(2) At the conclusion of a proceeding management conference, the panelist who conducted the conference shall endorse on the originating process the results of the conference, including any future scheduled proceeding management conference and any directions given by the panelist.

RULE 13 MOTIONS

Making the motion

13.01 (1) A motion shall be made by notice of motion (Form 13A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

Contents of notice of motion: motion for order for hearing in absence of public or for non-disclosure

(2) In a motion for an order that a hearing or a part of a hearing in a proceeding be held in the absence of the public or for an order prohibiting a person from disclosing information disclosed in a hearing, the moving party shall include in the notice of motion the grounds upon which the order is sought but shall not include in the notice of motion the specific matters, document or communication in respect of which the order is sought.

Moving party's obligations

Application of rule

13.02 (1) This rule applies where a motion is made by notice of motion.

Service of motion record

(2) The moving party shall serve on every responding party at least ten days before the hearing of the motion a motion record.

(3) The moving party's motion record shall have consecutively numbered pages and shall contain,

- (a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter;
- (b) the notice of motion; and
- (c) all affidavits and other material upon which the moving party intends to rely.

Service of factum and book of authorities

(4) The moving party shall serve on every responding party at least seven days before the hearing of the motion a factum, if any, and a book of authorities, if any.

Filing documents

(5) The moving party shall file with the Tribunal, with proof of service, at least seven days before the hearing of the motion any documents served on a responding party under this rule.

Same

(6) When filing a document with the Tribunal, the moving party shall file,

- (a) two copies of the document where the motion is to be heard by a panel consisting of one panelist; and
- (b) four copies of the document where the motion is to be heard by a panel consisting of three panelists.

Responding party's obligations

Application of rule

13.03 (1) This rule applies where a motion is made by notice of motion.

Service of motion record, factum and book of authorities

(2) A responding party shall serve on the moving party and every person served with the moving party's motion record, at least three days before the hearing of the motion, its motion record, if any, its factum, if any, and its book of authorities, if any.

Responding party's motion record

(3) The responding party's motion record shall have consecutively numbered pages and shall contain,

- (a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter; and
- (b) any materials upon which the responding party intends to rely that are not contained in the moving party's motion record.

Filing documents

(4) A responding party shall file with the Tribunal, with proof of service, at least three days before the hearing of the motion any document served on a person under this rule.

Same

- (5) When filing a document with the Tribunal, a responding party shall file,
 - (a) two copies of the document where the motion is to be heard by a panel consisting of one panelist; and
 - (b) four copies of the document where the motion is to be heard by a panel consisting of three panelists.

Abandoning a motion

13.04 (1) Prior to the hearing of a motion, the moving party may abandon the motion by delivering a notice of abandonment (Form 13B).

(2) Where a moving party serves a motion record but does not file it or appear at the hearing of the motion, the motion is deemed to have been abandoned by the moving party.

(3) Where a motion is abandoned or is deemed to have been abandoned, every

responding party on whom the motion record was served is entitled to the costs of the motion.

Motion on consent

13.05 Where a motion is on consent, when filing the motion record with the Tribunal, the moving party shall also file the consent of every person served with the motion record and a draft of the formal order.

Disposition of motion

13.06 After hearing a motion, the panel may,

- (a) make the order sought;
- (b) dismiss the motion, in whole or in part;
- (c) adjourn the hearing of the motion, in whole or in part; or
- (d) if the motion is heard prior to the hearing on the merits of the proceeding in which the motion is made or to which the motion relates, adjourn the hearing of the motion to the panel presiding at the hearing on the merits of the proceeding.

RULE 14 ADJOURNMENTS

How to obtain

Before date of hearing

14.01 (1) Where a hearing is scheduled and prior to the date of the hearing a party wishes to adjourn the hearing to another date, the party shall,

- (a) request the adjournment from a panelist at a proceeding management conference that, unless it is not possible, is held at least ten days prior to the date of the hearing;
- (b) if the Tribunal Office advises the party that a proceeding management conference cannot be scheduled prior to the date of the hearing, make a motion to the panel for an order adjourning the hearing; or
- (c) in the case of a hearing of a motion, where all parties and all non-party participants who have been permitted to participate in the hearing consent to the adjournment, request the adjournment from the Tribunal Office.

On date of or during hearing

(2) Where a hearing is scheduled and on the date scheduled for the hearing or during the course of the hearing a party wishes to adjourn the hearing, or the remaining part of the hearing, to a future date, the party shall make a motion to the panel for an order adjourning the hearing, or the remaining part of the hearing, to a future date.

Adjournments by Tribunal Office

14.02 The Tribunal Office may grant a request for an adjournment of a hearing of a motion where,

- (a) all parties and all non-party participants who have been permitted to participate in the hearing consent to the adjournment; and
- (b) the parties and the non-party participants notify the Tribunal in writing of their consent.

Adjournments: Considerations

14.03 In considering whether to grant an adjournment, a panelist or a panel, as the case may be, may consider,

- (a) prejudice to a person;
- (b) the timing of the request or motion for the adjournment;
- (c) the number of prior requests and motions for an adjournment;
- (d) the number of adjournments already granted;

- (e) prior directions or orders with respect to the scheduling of future hearings;
- (f) the public interest;
- (g) the costs of an adjournment;
- (h) the availability of witnesses;
- (i) the efforts made to avoid the adjournment;
- (j) the requirement for a fair hearing; and
- (k) any other relevant factor.

RULE 15 LANGUAGE OF HEARING

Hearing in English or French

15.01 (1) A hearing in a proceeding shall be conducted in the English or French language.

Hearing in English

(2) A hearing in a proceeding shall be conducted in the English language unless a party to the proceeding requires that the hearing be conducted in the French language.

Requiring hearing in French: Society

(3) Where the subject of the proceeding speaks French, the Society may require that every hearing in the following proceedings be conducted in the French language by filing with the Tribunal the originating process in the French language:

1. A licensing proceeding.
2. A restoration proceeding.
3. A conduct proceeding.
4. A capacity proceeding.
5. A competence proceeding.
6. A non-compliance proceeding.
7. A retired judge appearing as counsel proceeding.
8. A working with or employing unauthorized persons proceeding.

Requiring hearing in French: subject of the proceeding

(4) The subject of the proceeding who speaks French may require that every hearing in the following proceedings be conducted in the French language by notifying the Tribunal of the requirement within thirty days after he or she is deemed to have been served with the originating process:

1. A licensing proceeding.
2. A restoration proceeding.
3. A conduct proceeding.
4. A capacity proceeding.
5. A competence proceeding.
6. A non-compliance proceeding.
7. A retired judge appearing as counsel proceeding.
8. A working with or employing unauthorized persons proceeding.

Requiring hearing in French: subject of the proceeding

(5) The subject of the proceeding who speaks French may require that every hearing in the following proceedings be conducted in the French language by filing with the Tribunal the originating process in the French language:

1. A reinstatement proceeding.
2. A terms dispute proceeding.

Compliance with subrule (4) not required

(6) The subject of the proceeding is not required to comply with subrule (4) if he or she was served with the originating process in the French language.

Hearing in English

15.02 Where a hearing in a proceeding is conducted in the English language,

- (a) evidence given at the hearing in a language other than the English language shall be interpreted into the English language; and
- (b) a document with respect to the hearing filed with the Tribunal, or received by the panel presiding at the hearing, under these Rules shall be in the English language or shall be accompanied by a translation of the document into the English language certified by an affidavit of the translator.

Hearing in French

15.03 Where a hearing in a proceeding is conducted in the French language,

- (a) evidence given and submissions made in the hearing in the English or French language shall be received, recorded and transcribed in the language in which they are given or made;
- (b) a document with respect to the hearing filed with the Tribunal, or received by the panel presiding at the hearing, under these Rules may be in the French language and need not be accompanied by a translation of the document into the English language;
- (c) on the request of the subject of the proceeding who speaks French but not French and English, the panel presiding at the hearing shall cause anything given orally at the hearing in a language other than the French language to be interpreted into the French language;
- (d) on the request of the subject of the proceeding who speaks French but not French and English, the Tribunal may cause any document with respect to the hearing filed with the Tribunal, or received by the panel, in the English language to be translated into the French language; and
- (e) the Tribunal shall cause an endorsement, a decision, an order or reasons for a decision or an order with respect to the hearing written in the English language to be translated into the French language, unless the parties to the proceeding agree otherwise.

RULE 16 FORM OF HEARING

Oral hearing

16.01 Subject to rules 16.02, 16.03 and 29.02(1), a hearing shall be held as an oral hearing with the parties, non-party participants, if any, and their representatives, if any, appearing in person.

Electronic hearing

Motions

16.02 (1) The following motions may, without a motion or an order being made, be heard as an electronic hearing:

1. A motion on consent.
2. A motion for an adjournment.

Order for electronic hearing

(2) On the motion of a party, or on a panel's own motion, an order may be made that a hearing or a part of a hearing be held as an electronic hearing.

Matters to consider in making order

(3) In deciding whether to order that a hearing be held as an electronic hearing, a panel may consider,

- (a) the suitability of an electronic hearing to the subject matter of the hearing;
- (b) the nature of the evidence to be called at the hearing and whether credibility is in issue;
- (c) whether the matters in dispute in the hearing are questions of law;
- (d) the convenience of the parties;
- (e) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;
- (f) the avoidance of delay or unnecessary length;
- (g) the fairness of the process;
- (h) public accessibility to the hearing;
- (i) the fulfilment of the Society's statutory mandate; and
- (j) any other matter relevant in order to secure the just and expeditious determination of the subject matter of the hearing or of the proceeding in which the hearing is being held.

Conduct of electronic hearing

(4) An electronic hearing shall be conducted by telephone or other electronic means

and all the parties and all the non-party participants who have been permitted to participate in the hearing and the panel must be able to hear one another and any witnesses throughout the hearing.

Arrangements for electronic hearing

(5) Where a hearing is to be held as an electronic hearing, the Tribunal shall make all the necessary arrangements for the hearing and shall give notice of those arrangements to all the persons participating in the hearing and their representatives, if any.

Written hearing

16.03 (1) Subject to subrule (3) and subrules 16.02 (1) and (2), the following hearings shall be held as a written hearing:

1. The hearing of a motion for an order that a hearing be held as an electronic hearing.

Written hearing of motions

(2) The following motions may be heard as a written hearing:

1. A motion on consent.
2. A motion for an adjournment.

Order for oral hearing

(3) On the motion of a party, or on a panel's own motion, an order may be made that a hearing mentioned in subrule (1) be held as an oral hearing.

Conduct of written hearing

(4) A written hearing shall be conducted by the exchange of documents and all the parties and all the non-party participants who have been permitted to participate in the hearing are entitled to receive every document that the panel receives in the hearing.

Arrangements for written hearing

(5) Where a hearing is to be held as a written hearing, the Tribunal shall make all the necessary arrangements for the hearing and shall give notice of those arrangements to all the persons participating in the hearing and their representatives, if any.

Motion under Rule 21

No notice required

16.04 The notice requirement in subrule 16.02 (5) and in subrule 16.03 (5) does not apply in the case of a hearing of a motion for an order mentioned in rule 21.01 where an order was made dispensing with service of the motion record.

RULE 17 LOCATION OF HEARING

Location of Hearings

17.01 (1) Subject to subrules (2) and (3), every hearing shall be held at the Law Society Tribunal in Toronto.

(2) Where all parties consent to a hearing being held at a place other than the Law Society Tribunal in Toronto, the hearing shall be held at that place.

(3) On the motion of a party, an order may be made that a hearing be held at a place other than the Law Society Tribunal in Toronto.

(4) In deciding whether to order that a hearing be held at a place other than the Law Society Tribunal in Toronto, a panel may consider,

- (a) the convenience of the parties;
- (b) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;
- (c) the avoidance of delay or unnecessary length;
- (d) the fairness of the process;
- (e) public accessibility to the hearing;
- (f) the fulfilment of the Society's statutory mandate; and
- (g) any other matter relevant in order to secure the just and expeditious determination of the subject matter of the hearing or of the proceeding in which the hearing is being held.

(5) An order that a hearing be held at a place other than the Law Society Tribunal in Toronto shall be made only after consultation with the Tribunal Office.

RULE 18 ACCESS TO HEARING

Hearing to be public

18.01 Subject to rule 18.02, every hearing in a proceeding shall be open to the public.

Hearing in the absence of the public

18.02 On the motion of a party, an order may be made that a hearing or a part of a hearing in a proceeding shall be held in the absence of the public where,

- (a) matters involving public security may be disclosed;
- (b) it is necessary to maintain the confidentiality of a privileged document or communication;
- (c) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or
- (d) in the case of a hearing or a part of a hearing that is to be held as an electronic hearing, it is not practical to hold the hearing or the part of the hearing in a manner that is open to the public.

Attendance at hearing held in the absence of the public

18.03 Where a hearing or a part of a hearing is held in the absence of the public, unless otherwise ordered by the panel, the hearing may be attended by,

- (a) subject to rule 24.01, any witness the nature of whose testimony gave rise to the order that the hearing or the part of the hearing be held in the absence of the public;
- (b) the parties and their representatives;
- (c) the non-party participants who have been permitted to participate in the hearing or the part of the hearing and their representatives; and
- (d) such other persons as the panel considers appropriate.

Non-disclosure of information: hearing held in the absence of the public

18.04 (1) Subject to subrule (2), where a hearing or a part of a hearing is held in the absence of the public, no person shall disclose, except to his, her or its representative or to another person who attends at or participates in the hearing or the part of the hearing that is held in the absence of the public,

- (a) any information disclosed in the hearing or the part of the hearing that is held in the absence of the public; and

- (b) if and as specified by the panel, the panel's reasons for a decision or an order arising from the hearing or the part of the hearing that is held in the absence of the public, other than the panel's reasons for an order that a subsequent hearing or a part of the subsequent hearing be held in the absence of the public.

Order for disclosure: hearing held in the absence of the public

(2) On the motion of a person, an order may be made permitting a person to disclose any information mentioned in subrule (1).

Order for non-disclosure: hearing open to the public

18.05 On the motion of a party, or on a panel's own motion, if any of clauses 18.02 (a), (b) and (c) apply, an order may be made prohibiting a person who attends at or participates in a hearing or a part of a hearing that is open to the public from disclosing, except to his, her or its representative or to another person who attends at or participates in the hearing or the part of the hearing, any information disclosed in the hearing or the part of the hearing.

Review of order

18.06 If an order is made in respect of any matter dealt with in this Rule, on the motion of a person, the panel may at any time review all or a part of the order and may confirm, vary, suspend or cancel the order.

Prohibition against photography, etc. at hearing

- 18.07** (1) Subject to subrules (2) and (3), no person shall,
- (a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,
 - (i) at a hearing,
 - (ii) of any person entering or leaving the room in which a hearing is to be or has been convened, or
 - (iii) of any person in the building in which a hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;
 - (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or
 - (c) broadcast or reproduce an audio recording made as described in clause (2) (b).

Exceptions

- (2) Nothing in subrule (1),
 - (a) prohibits a person from unobtrusively making written notes or sketches at a hearing; or
 - (b) prohibits a party, a party's representative or a journalist from unobtrusively making an audio recording at a hearing, in the manner that has been approved by the panel presiding at the hearing, for the sole purpose of supplementing or replacing written notes.

Exceptions

- (3) Subrule (1) does not apply to a photograph, motion picture, audio recording or record made with the authorization of the panel presiding at a hearing,
 - (a) where required for the presentation of evidence or the making of a record or for any other purpose of the hearing; or
 - (b) with the consent of the parties and witnesses, for such educational, instructional or other purposes as the panel approves.

RULE 19 DISCLOSURE

Obligations of the Society

19.01 (1) In a proceeding, the Society, as a party, shall make such disclosure to the subject of the proceeding as is required by law and, without limiting the generality of the foregoing, the Society shall provide to the subject of the proceeding, not later than ten days before the hearing on the merits of the proceeding,

- (a) a copy of every document upon which the Society intends to rely as evidence and the opportunity to examine any other relevant document;
- (b) a signed witness statement for every witness or, where there is no signed witness statement for a witness, a summary of the anticipated oral evidence of the witness; and
- (c) a list of witnesses that the Society intends to call.

Obligations of subject of the proceeding

(2) In a licensing proceeding, a restoration proceeding, a reinstatement proceeding a terms dispute proceeding, a retired judge appearing as counsel proceeding, or a working with or employing unauthorized persons proceeding, the subject of the proceeding shall provide to the Society, not later than ten days before the hearing on the merits of the proceeding,

- (a) a copy of every document upon which the subject of the proceeding intends to rely as evidence;
- (b) for every witness upon whose oral evidence the subject of the proceeding intends to rely, a signed witness statement or, where there is no signed witness statement for a witness, a summary of the anticipated oral evidence of the witness; and
- (c) a list of witnesses that the subject of the proceeding intends to call.

Summary of evidence

- (3) A summary of the oral evidence of a witness shall be in writing and shall contain,
 - (a) the substance of the evidence of the witness;
 - (b) a list of documents or things, if any, to which the witness will refer; and
 - (c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness may be contacted.

Expert Reports

19.02 (1) Every party and non-party participant shall provide to every other party and non-party participant,

- (a) not later than ninety days before the hearing on the merits of a

proceeding,

- (i) a list of the expert witnesses that the person intends to call,
 - (ii) a copy of the curriculum vitae of every expert witness included in the list mentioned in subclause (i), and
 - (iii) a summary of the anticipated oral evidence of every expert witness included in the list mentioned in subclause (i); and
- (b) not later than thirty days before the hearing on the merits of a proceeding, a copy of the written report of every expert witness included in the list mentioned in subclause (a) (i), if the person intends to rely on the written report in the hearing.

Summary of evidence

- (2) A summary of the oral evidence of an expert witness shall be in writing and shall contain,
- (a) the substance of the evidence of the expert witness;
 - (b) a list of documents or things, if any, to which the expert witness will refer; and
 - (c) the expert witness's name and address.

Failure to disclose: consequences

Evidence may not be introduced

19.03 Evidence that is not disclosed as required under rule 19.01 or 19.02 may not be introduced as evidence in a proceeding, except with leave of the panel.

RULE 20 ADMISSIONS

Interpretation

20.01 In this Rule, “authenticity” includes the fact that,

- (a) a document that is said to be an original was printed, written or otherwise produced and signed or executed as it purports to have been;
- (b) a document that is said to be a copy is a true copy of the original; and
- (c) where the document is a copy of a letter, telegram or telecommunication, the original was sent as it purports to have been sent and received by the person to whom it is addressed.

Request to admit fact or document

20.02 (1) In a proceeding, a party may, at any time but not later than thirty days before the hearing on the merits of the proceeding, request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document.

Form of request to admit

- (2) A request to admit shall be in Form 20A.

Service of request to admit

(3) A party making a request to admit to another party shall serve on that other party,

- (a) the request to admit; and
- (b) a copy of any document mentioned in the request to admit, unless a copy is already in the possession of that other party.

Response to request to admit

20.03 (1) A party on whom a request to admit is served shall respond to it within twenty days after it is served by serving on the requesting party a response to the request to admit.

Form and content of response

- (2) A response to a request to admit shall be in Form 20B and shall,
 - (a) admit the truth of a fact or the authenticity of a document mentioned in the request to admit;
 - (b) specifically deny the truth of a fact or the authenticity of a document mentioned in the request to admit; or
 - (c) refuse to admit the truth of a fact or the authenticity of a document mentioned in the request to admit and set out the reason for the refusal.

Effect of request to admit

Deemed admission where no response

20.04 (1) Where a party on whom a request to admit is served fails to serve a response as required by subrule 20.03 (1), the party shall be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

Deemed admission where insufficient response

(2) Subject to subrule (3), where a party on whom a request to admit is served serves a response as required by subrule 20.03 (1) but does not comply with subrule 20.03 (2) in respect of a fact or a document mentioned in the request to admit, the party shall be deemed, for the purposes of the proceeding only, to admit the truth of that fact or the authenticity of that document.

Deemed admission where non-attendance at or non-participation in hearing

(3) Where a party on whom a request to admit is served does not attend at or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party shall be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

Costs on denial or refusal to admit

20.05 Where a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved at a hearing in the proceeding, the panel may take the denial or refusal into account in exercising its discretion respecting costs under section 49.28 of the *Law Society Act* and rule 25.01.

Withdrawal of admission

20.06 (1) On the motion of a party who admits or is deemed to admit the truth of a fact or the authenticity of a document, an order may be made withdrawing the admission.

Time for bringing motion

- (2) A motion under this rule shall be made,
- (a) prior to the hearing on the merits of the proceeding; or
 - (b) at any time, with leave.

RULE 21 INTERLOCUTORY SUSPENSION OR RESTRICTION

Authority

21.01 On the motion of the Society, the Hearing Division may make an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

Rule 13 Applies

21.02 Rule 13 applies with necessary modifications to an interlocutory suspension or restriction motion.

Authorization by PAC required in certain circumstances

21.03 The Society shall obtain the authorization of the Proceedings Authorization Committee to make an interlocutory suspension or restriction motion if the motion relates to a proceeding that has not been commenced or if the motion is being made in a proceeding where the Hearing Division has not commenced a hearing on the merits of the proceeding.

Making the motion

21.04 (1) The Society shall serve and file its Notice of Motion, Information Sheet, motion record, factum and book of authorities at least three days before the hearing of the motion, unless the Tribunal orders otherwise.

(2) The Society shall serve and file its Notice of Motion and Information Sheet electronically as set out in Rule 9.

(3) The Tribunal may order that service is not necessary:

- (a) when it is not practical; or
- (b) the delay it could cause may lead to serious consequences.

Licensee's Materials

21.05 (1) The licensee shall serve and file his or her motion record, factum and book of authorities, if any, not later than 2 p.m. on the day before the hearing of the motion.

Admissibility of evidence

What is admissible

21.06 (1) Despite Rules 24.02, 24.06 and 24.07, and subject to subrule (2), the following may be admitted as evidence and may be acted on at the hearing of a motion for an order mentioned in Rule 21.01, whether or not given or proven under oath or affirmation or admissible as evidence in a court:

1. Any oral testimony that is relevant to the subject-matter of the hearing.

2. Any document or other thing that is relevant to the subject-matter of the hearing.

What is inadmissible

- (2) Unless permitted by the Act, nothing shall be admitted in evidence at the hearing:
 - (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
 - (b) that is inadmissible under any statute.

Order

21.07 (1) An order mentioned in Rule 21.01 shall specify that the order shall be in effect until the earliest of the following:

- (a) Where an order was made dispensing with service of the motion record, a panel varies or cancels the order on the basis of evidence that is brought by the licensee to the panel within 30 days of service of the order on the licensee.
- (b) A panel varies or cancels the order on the consent of the Society and the licensee prior to the hearing on the merits of the proceeding to which the motion relates.
- (c) A panel varies or cancels the order on the basis of fresh evidence or a material change in circumstances that is brought by the Society or the licensee to the panel prior to the hearing on the merits of the proceeding to which the motion relates.
- (d) The panel presiding at the hearing on the merits of the proceeding to which the motion relates, prior to disposing of the proceeding, varies or cancels the order.
- (e) The panel presiding at the hearing on the merits of the proceeding to which the motion relates disposes of the proceeding.

(2) Where an order was made that service of the motion record is not necessary, the Society shall serve on the licensee: any order made by the panel, a copy of the motion record, and all other documents used in the hearing of the motion.

(3) On the motion of the Society, an order may be made that the service mentioned in subrule (2) is not necessary.

RULE 22 PRE-HEARING CONFERENCES

Purpose of pre-hearing conference

22.01 (1) The purpose of a pre-hearing conference is to facilitate the just and most expeditious disposition of a proceeding.

(2) Without limiting the generality of subrule (1), in a pre-hearing conference, the panelist or other person conducting the pre-hearing conference may discuss with the parties,

- (a) the identification, limitation or simplification of the issues in the proceeding;
- (b) the identification and limitation of evidence and witnesses;
- (c) the possibility of settlement of any or all of the issues in the proceeding;
- (d) the possibility of the parties entering into an agreed statement of facts with respect to all or part of the facts in issue in the proceeding; and
- (e) directions to be given to the parties with respect to the conduct of the proceeding or a motion in the proceeding.

Pre-hearing conference to be conducted

22.02 A pre-hearing conference shall be conducted in a proceeding where,

- (a) one party to the proceeding estimates that the hearing on the merits of the proceeding will be longer than two days;
- (b) a panelist or panel directs the parties to a proceeding to attend at a pre-hearing conference; or
- (c) the parties agree to attend at a pre-hearing conference.

Who presides at pre-hearing conference

22.03 A pre-hearing conference shall be conducted by a panelist or another person assigned by the Chair or Vice-Chair.

Timing of pre-hearing conferences

22.04 All pre-hearing conferences in a proceeding shall be conducted prior to the completion of the hearing on the merits of the proceeding and, unless otherwise directed, shall be conducted prior to the commencement of the hearing on the merits of the proceeding.

Method of conducting pre-hearing conference

22.05 (1) Subject to subrule (2), a pre-hearing conference shall be conducted in person.

Pre-hearing conference by telephone conference

(2) A pre-hearing conference may be conducted by telephone conference,

- (a) if the parties consent; or
- (b) the panelist or other person conducting the pre-hearing conference permits it.

Scheduling of pre-hearing conference: by panelist

22.06 (1) A pre-hearing conference may be scheduled by a panelist or by the Tribunal Office.

Endorsement

(2) An endorsement of every scheduled pre-hearing conference shall be made on the originating process by the panelist, if the pre-hearing conference is scheduled by a panelist, or by the Tribunal Office, if the pre-hearing is scheduled by the Tribunal Office.

Notice of pre-hearing conference

(3) The Tribunal shall send to all parties a notice of the date and time of every pre-hearing conference in the proceeding, including the name of the panelist or other person conducting the pre-hearing conference.

Notice not required

- (4) Subrule (3) does not apply if,
 - (a) a panel directs the parties to a proceeding to attend at a pre-hearing conference,
 - (b) a member of the panel that gave the direction will conduct the pre-hearing conference, and
 - (c) the pre-hearing conference will be conducted immediately after the direction has been given.

Pre-Hearing Conference Memoranda

22.07 (1) Each party shall prepare a pre-hearing conference memorandum containing a statement of the facts the party relies upon and its position on the issues in the proceeding.

(2) A pre-hearing conference memorandum is without prejudice and only for the purpose of the pre-hearing. It is not retained by the Tribunal Office, does not form part of the record of proceeding and may not be referred to or relied upon in the proceeding or in any other proceeding.

(3) Each party's memorandum shall be sent by e-mail to the other parties and to the person conducting the pre-hearing conference. If the licensee does not have access to e-mail, the memorandum may be sent by regular mail. The Law Society of Ontario's memorandum must be received by the person conducting the pre-hearing conference at least seven days prior to the pre-hearing conference. The licensee's memorandum must be received by the person conducting the prehearing conference at least two days prior to the pre-hearing conference.

(4) The requirement to file a pre-hearing conference memorandum may be waived by the panelist scheduling the pre-hearing conference or by the Registrar, if the preparation of the memorandum would not be practical or of assistance in the circumstances. A request to waive this requirement shall be made, together with reasons in support, no later than one week after the prehearing conference is scheduled, absent exceptional circumstances.

Attendance at pre-hearing conference

22.08 Unless otherwise directed by the panelist or other person conducting the pre-hearing conference, all parties to the proceeding, or their representatives, are required to attend at or participate in the pre-hearing conference.

Results of pre-hearing conference

22.09 (1) At the conclusion of the pre-hearing conference, the panelist or other person conducting the pre-hearing conference shall endorse on the originating process,

- (a) who attended at or participated in, and who did not attend at or participate in, the pre-hearing conference;
- (b) any agreement reached; and
- (c) any directions given to the parties with respect to the conduct of the proceeding or a motion in the proceeding.

(2) Any agreement reached at the pre-hearing conference, as endorsed on the originating process, is binding on the parties.

No disclosure to panel

22.10 (1) No communication shall be made to the panel presiding at the hearing on the merits of the proceeding or at the hearing of a motion in the proceeding with respect to any statement made at the pre-hearing conference, except as disclosed in the endorsement made under rule 22.09.

Pre-hearing conference panelist cannot preside at hearing

(2) A panelist conducting a pre-hearing conference in a proceeding shall not preside at the hearing on the merits of the proceeding, except with the consent of the parties to the proceeding. The parties may agree to the assignment of the pre-hearing panelist to the hearing of the merits by filing a consent (Form 22A),

- (a) sent to the Tribunal, as early as possible but not later than three days before the hearing on the merits of the proceeding; or
- (b) with the panel, immediately prior to the commencement of the hearing on the merits of the proceeding.

RULE 22.1 FILING OF CONSENT DOCUMENTS BEFORE HEARING

Documents to be filed

22.1.01 (1) The parties shall file with the Tribunal, prior to the date of a hearing, all documents, including any agreed statements of fact that the parties have agreed may be used or referred to at the hearing.

Timing of filing

(2) Except in exceptional circumstances, the parties shall file documents with the Tribunal under this rule at least two days prior to the date of the hearing.

Confirmation of agreement to be filed

(3) When filing a document with the Tribunal under this rule, the parties shall file, together with the document, written confirmation of their agreement that the document may be used or referred to at the hearing.

Number of copies to be filed

- (4) When filing a document with the Tribunal under this rule, the parties shall file,
- (a) two copies of the document where the hearing is before a panel consisting of one panelist; and
 - (b) four copies of the document where the hearing is before a panel consisting of three panelists.

Documents to be made available to panel

(5) Whenever possible, all documents filed with the Tribunal under this rule shall be made available to the panel presiding at the hearing prior to the hearing.

No relief from other requirements

(6) Nothing in this rule relieves a party from any other requirements under these Rules or from the consequences of failing to comply with those other requirements.

Filing document with panel at hearing not prevented

(7) Nothing in this rule prevents a party from filing a document with the panel presiding at the hearing in accordance with these Rules.

RULE 23 CONDUCT OF HEARING

Consent to hearing by one panelist

23.01 For the purposes of paragraph 2 of subsection 2 (1) of Ontario Regulation 167/07, the parties to a conduct proceeding may consent to having one panelist preside at the hearing on the merits of the proceeding by filing a consent (Form 23A),

- (a) sent to the Tribunal, as early as possible but not later than three days before the hearing on the merits of the proceeding; or
- (b) with the panelist, immediately prior to the commencement of the hearing on the merits of the proceeding.

Transcripts

Production of transcript

23.02 (1) The Tribunal shall cause every oral and electronic hearing to be recorded by a reporting service to permit the production of a transcript of the hearing.

Ordering transcript

(2) A person wishing to have a copy of the transcript of a hearing shall order it from the reporting service that recorded the hearing.

Costs of transcript

(3) The costs of acquiring a transcript of a hearing shall be borne solely by the person wishing to have a copy of the transcript of the hearing.

Requirement to file transcript

(4) The first party to obtain a transcript of a hearing shall file a copy of the transcript with the Tribunal.

Interpreter

23.03 (1) Where a witness does not understand the language or languages in which an examination at a hearing is to be conducted, the Tribunal shall provide an interpreter.

Notice to Tribunal

(2) A person intending to call a witness who will require interpretation shall notify the Tribunal of the witness' requirement for an interpreter as early as possible and, in any event, not later than five days before the hearing at which the witness will be examined.

Interpreter to be competent

(3) An interpreter shall be competent and independent.

Interpreter to take oath or affirmation

(4) Where an interpreter is required under subrule (1), before the witness is called,

the interpreter shall take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and the witness' answers.

Accommodation required

23.04 A party or a non-party participant shall notify the Tribunal as early as possible of any needs of the party or the non-party participant or his, her or its witnesses that may require accommodation.

Limitation on examination of witness

23.05 A panel may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

RULE 24 EVIDENCE

Exclusion of witness

24.01 (1) Subject to subrule (2), on the motion of a party, an order may be made excluding a witness from a hearing until the witness is called to give evidence.

Order not to apply to party or witness instructing representative of party

(2) An order under subrule (1) may not be made in respect of a party or a witness whose presence is essential to instruct the representative of the person calling the witness, but an order may be made requiring any such party or witness to give evidence before other witnesses are called to give evidence on behalf of the party or the person calling the witness.

No communication with excluded witness

(3) Subject to subrule (4), where an order is made excluding a witness from a hearing, there shall be no communication to the witness of any evidence given during the witness' absence from the hearing until after the witness has been called to give evidence and has given evidence.

Order permitting communication with excluded witness

(4) On the motion of the person calling a witness who has been excluded from a hearing, an order may be made permitting communication to the witness of any evidence given during the witness' absence from the hearing.

Rules of evidence

24.02 Subject to this Rule, at a hearing, the rules of evidence applicable in civil proceedings apply.

Evidence by affidavit: hearing on the merits of a proceeding

24.03 (1) At the hearing on the merits of a proceeding, the evidence of a witness or proof of a particular fact or document may be given by affidavit, subject to the panel ordering otherwise.

Cross-Examination

(2) Where the evidence of a witness or proof of a particular fact or document is given by affidavit, if a party adverse to the party tendering the affidavit evidence wishes to cross-examine the deponent,

- (a) the deponent shall attend at the hearing on the merits of the proceeding for the purposes of cross-examination; or
- (b) the deponent shall attend before an official examiner for the purposes of cross-examination and the transcript of the cross-examination may be admitted in evidence at the hearing on the merits of the proceeding.

(3) A cross-examination conducted under clause (2) (b) shall be conducted in

accordance with the Rules of Civil Procedure applicable to oral examinations and, where necessary, the parties may seek direction from the panel.

Agreed facts

24.04 At a hearing on the merits of a proceeding, the panel may receive and act on any facts agreed to by the parties without further proof or evidence.

Admissibility of evidence from former proceeding

Interpretation

24.05 (1) In this rule, “previously admitted evidence” means evidence that was admitted in a proceeding before a court or tribunal, whether in or outside Ontario, at a hearing that occurred before the hearing in which the evidence is now sought to be admitted.

When may be admitted

(2) At a hearing on the merits of a proceeding, previously admitted evidence may be admitted if,

- (a) the parties to the proceeding consent to its admission; or
- (b)
 - (i) the panel is satisfied that there is a reasonably accurate transcript of the previous hearing,
 - (ii) the previously admitted evidence is relevant to the current proceeding,
 - (iii) the party against whose interest the evidence is sought to be admitted was or is a party to the other proceeding,
 - (iv) if the party against whose interest the evidence is sought to be admitted was not a witness at the previous hearing, the party had the opportunity to cross-examine the witness at the previous hearing, and
 - (v) a material issue in the other proceeding is substantially similar to a material issue in the current proceeding.

Proof of prior commission of offence

24.06 (1) Proof that a person has been found by an adjudicative body in Canada to have committed an offence is proof, in the absence of evidence to the contrary, that the offence was committed by the person if,

- (a) no appeal of the finding was taken and the time for an appeal has expired; or
 - (b) an appeal of the finding was taken but was dismissed or abandoned and no further appeal is available.
- (2) Subrule (1) applies whether or not the person is a party to the proceeding.

(3) For the purposes of subrule (1), a document certifying the finding, purporting to be signed by the official having custody of the records of the adjudicative body, is sufficient evidence of the finding.

Proof of prior facts

24.07 (1) Specific findings of fact contained in the reasons for decision of an adjudicative body in Canada are proof, in the absence of evidence to the contrary, of the facts so found if,

- (a) no appeal of the decision was taken and the time for an appeal has expired; or
- (b) an appeal of the decision was taken but was dismissed or abandoned and no further appeal was taken.

(2) If the findings of fact mentioned in subrule (1) are with respect to an individual, subrule (1) only applies if the individual is or was a party to the proceeding giving rise to the decision.

Transcript of proceeding

24.08 (1) At a hearing, a transcript of a hearing before an adjudicative body may be admitted as evidence.

Reasons

(2) At a hearing, the reasons for decision of an adjudicative body may be admitted as evidence.

Taking official notice of facts

24.09 The panel may,

- (a) take notice of facts that may be judicially noticed; and
- (b) take notice of any generally accepted technical facts, information or opinions within its specialized knowledge.

Bank and business records

24.10 Any proof that must be given or any requirement that must be met prior to a bank record or a business record being received or admitted in evidence under any common law or statutory rule may be given or met by the oral testimony or affidavit of an individual given to the best of the individual's knowledge and belief.

Documentary evidence

24.11 At a hearing, a party or a non-party participant tendering a document as evidence shall provide,

- (a) a copy of the document to every other party and non-party participant;

and

- (b) four copies of the document to the panel, where the panel consists of three panelists, or two copies of the document to the panel, where the panel consists of one panelist.

Copies

24.12 Where the panel is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

Summonses

- 24.13** (1) The Tribunal may, by summons, require any person,
- (a) to give evidence on oath or affirmation at a hearing; and
 - (b) to produce in evidence at a hearing specified documents and things.

Form of summons

- (2) A summons shall be in Form 24A.

Signing of summons

- (3) A summons may be signed by the Registrar.

Summons may be issued in blank

(4) On the request of a person, the Tribunal shall issue to the person a blank summons and the person may complete the summons and insert the name of the witness to be summoned.

Service of summons

(5) Subject to subrule (7), the person who obtains a summons shall serve the summons on the witness to be summoned.

Attendance money

(6) Subject to subrule (7), the person who obtains a summons shall pay or tender to the witness to be summoned, at the same time that the person serves the summons on the witness, attendance money calculated in accordance with Tariff A under the Rules of Civil Procedure.

Service and attendance money not required

(7) If a witness is in attendance at a hearing, a person who obtains a summons is not required to serve the summons on the witness or to pay or tender to the witness attendance money in order to call the witness at the hearing.

Certain information not admissible

24.14 Despite any rule, information obtained by the Discrimination and Harassment Counsel

as a result of the performance of his or her duties under clause 19 (1) (a) of By-Law 11 shall not be used and is inadmissible in a hearing.

RULE 25 COSTS

Costs

Costs against the Society

- 25.01** (1) Costs may only be awarded against the Society,
- (a) in a licensing, conduct, capacity, competence or non-compliance proceeding,
 - (i) where the proceeding was unwarranted; or
 - (ii) where the Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default; and
 - (b) in a proceeding not mentioned in clause (a), where the Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Costs against the subject of a proceeding

- (2) Costs may be awarded against the subject of a proceeding,
- (a) where a determination adverse to the subject of the proceeding was made; or
 - (b) where the subject of the proceeding caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Costs against a non-party participant

(3) Costs may be awarded against a non-party participant where the non-party participant caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

(4) REVOKED

Amount of costs: tariff of fees for services

(5) When a panel awards costs, it shall consider, but is not bound by, the tariff of fees for services.

Security for costs

Application

- 25.02** (1) This rule applies to the following proceedings:
- 1. A licensing proceeding, if the subject of the proceeding was previously licensed to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario.

2. A restoration proceeding.
3. A reinstatement proceeding.
4. A terms dispute proceeding.

Where available

(2) On the motion of the Society, an order may be made for security for costs as is just where it appears that,

- (a) the subject of the proceeding has an order against him or her for costs in the same or another proceeding under the Act that remain unpaid in whole or in part;
- (b) in the case of a reinstatement or terms dispute proceeding, there is good reason to believe that the proceeding is without merit and the subject of the proceeding has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made; or
- (c) in the case of a licensing or restoration proceeding, there is good reason to believe that the subject of the proceeding has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made.

Effect of order

(3) Subject to subrule (4), the subject of the proceeding against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding.

Order permitting taking of step

(4) On the motion of a party, or on a panel's own motion, an order may be made permitting the subject of the proceeding to take a step in the proceeding.

Default of subject of the proceeding

(5) Where the subject of the proceeding defaults in giving the security required by an order for security for costs, on the motion of the Society, an order may be made dismissing the proceeding.

RULE 26 DECISIONS, ORDERS AND REASONS

Decisions

Effective date

26.01 (1) A decision is effective from the date on which it is made.

Endorsement

- (2) An endorsement of every decision shall be made by the chair of the panel,
- (a) on the originating process; or
 - (b) on a separate sheet of paper that is attached to the originating process.

Where written reasons delivered

(3) Where written reasons are delivered, the endorsement may consist of a reference to the reasons.

Orders

Orders issued by panel of one panelist

26.02 (1) A panel consisting of one panelist shall not make an order revoking a licensee's licence or permitting a licensee to surrender his or her licence.

Order for fine

- (2) If a panel makes an order imposing a fine on the subject of the proceeding, the panel shall specify in the order,
- (a) the principal sum; and
 - (b) if interest is payable, the rate of interest, which shall be the postjudgment interest rate within the meaning of the *Courts of Justice Act* in effect on the effective date of the order, and the date from which it is to be calculated.

Order for costs

- (3) If a panel makes an order for costs, the panel shall specify in the order,
- (a) the principal sum; and
 - (b) the rate of interest, which shall be the postjudgment interest rate within the meaning of the *Courts of Justice Act* in effect on the effective date of the order, and the date from which it is to be calculated.

Effective date

(4) An order is effective from the date on which it is made, unless it provides otherwise.

Endorsement

- (5) An endorsement of every order shall be made by the chair of the panel making it,
- (a) on the originating process or a separate sheet of paper that is attached to the originating process; or
 - (b) if the order relates to a motion, on the motion record or a separate sheet of paper that is attached to the motion record.

Where written reasons delivered

(6) Where written reasons are delivered, the endorsement may consist of a reference to the reasons.

Formal order

Preparation of draft formal order

26.03 (1) Any party affected by an order may prepare a draft of the formal order.

Form of formal order

- (2) A formal order shall be in Form 26A, 26B, 26C or 26D.

Signing of formal order

(3) A party that has prepared a draft of a formal order may submit it to the panel that made the order at the end of the hearing.

(4) The panel shall review all drafts submitted under subrule (3) and the chair of the panel shall, with or without amending it, sign one of the drafts.

(5) Where a formal order is not prepared by any party, it shall be prepared by the Tribunal Office and a panelist on the panel that made the order shall sign it.

Written reasons

Where required

26.04 A panel shall give written reasons for,

- (a) its decision or order in a capacity proceeding; and
- (b) its order if,
 - (i) an oral request for written reasons is made by a party immediately after the order is made, or
 - (ii) a written request for written reasons is made by a party within sixty days after the order is made.

Correction of errors

26.05 The Registrar or the panel may at any time correct a typographical error, error of calculation or similar minor error made in a decision, an order, or reasons of a panel.

Notice of decisions

- 26.06** (1) The Tribunal shall send to each party or to the representative of each party,
- (a) who participated in a proceeding,
 - (i) a copy of the formal order,
 - (ii) a copy of the written reasons, if any, for the decision, or order, and
 - (iii) a copy of a corrected decision, corrected order, or corrected reasons; or
 - (b) who participated in a motion in a proceeding,
 - (i) a copy of the formal order,
 - (ii) a copy of the written reasons, if any, for the order, and
 - (iii) a copy of a corrected order, corrected formal order or corrected reasons.

RULE 27 RECORD OF PROCEEDING

Requirement to compile record

27.01 (1) The Tribunal shall compile a record of every proceeding.

Contents of record

(2) A record of a proceeding shall contain the following:

1. Every document filed with the Tribunal under these Rules in respect of the proceeding or a step in the proceeding.
2. Every document received by a panel under these Rules in respect of the proceeding or a step in the proceeding.
3. The notice of a hearing on the merits of a proceeding.
4. The endorsement of the order in the proceeding and of the order in a motion in the proceeding.
5. The formal order in the proceeding and the formal order in a motion in the proceeding.
6. The reasons, if any, for the decision or order in the proceeding and for the order in a motion in the proceeding.
7. The transcript of a hearing in the proceeding or in a motion in the proceeding that is obtained by the Tribunal.

Record is public record

(3) Subject to subrule (4), the record of a proceeding is a public record.

Documents not available for public inspection

(4) A document or a part of a document contained in the record of a proceeding that contains information that may not be disclosed under rule 18.04 or 18.05 is not available for public inspection.

RULE 28 REPRIMANDS

Time for administration

28.01 (1) A reprimand shall not be administered before the time for serving a notice of appeal has expired unless the parties have waived their rights of appeal.

Who may administer

(2) A reprimand may be administered by any panelist comprising the panel that ordered the reprimand.

Administration in hearing

(3) Subject to subrule (4), a reprimand shall be administered at a hearing that is open to the public.

Administration in writing

(4) A reprimand may be administered in writing.

(5) The document containing a written reprimand shall be considered to be part of the record of the proceeding in which the reprimand was ordered.

RULE 29 RETIRED JUDGE APPEARING AS COUNSEL PROCEEDINGS AND WORKING WITH OR EMPLOYING UNAUTHORIZED PERSONS PROCEEDINGS

Filing of materials

29.01 This rule applies to Retired Judge Appearing as Counsel Proceedings and Working with or Employing Unauthorized Persons Proceedings.

Proceeding on consent

29.02 (1) Where a proceeding under this Rule is on consent, the proceeding may be heard in writing. The written consent of the parties and a draft order shall be filed with the Tribunal at the time the notice of referral for hearing is filed or as soon thereafter as possible.

(2) In a proceeding under this Rule that is on consent, the Society shall file, together with the notice of referral for hearing:

- i. a copy of the licensee's application filed with the Law Society,
- ii. any undertakings given or draft plan of supervision prepared, and
- iii. a memorandum setting out the Society's position on the application.

(3) The applicant may file any additional materials no later than 7 days after the Society files its materials under this Rule.