**LAW SOCIETY OF PRINCE EDWARD ISLAND**

**Decision-Making in the “Public Interest” Policy**

**1 Purpose**

**1.1** The purpose of this Decision-Making in the “Public Interest” Policy (“Policy”) is to outline the requirements, procedures, and expectations for individuals applying to be enrolled and registered as articled clerks with the Law Society of Prince Edward Island (“the Society”), and for articled clerks or other applicants applying to be admitted as a member of the Society.

**1.2** This Policy should be read in tandem with the *Legal Profession Act* (“*Act”)* and Regulations made pursuant to the *Act*. If there is a conflict between the Policy and the provisions of the *Act* and/or Regulations made pursuant to the *Act*, the provision of the *Act* and Regulations prevail.

**2 Authority**

**2.1** The Society, acting through the Secretary-Treasurer, Council, and/or its committees has been given in the *Act* and its Regulations, the responsibility to regulate its own membership. In doing so, it is charged with protecting the “public interest” as it relates to the practice of law on Prince Edward Island.

**2.2** The *Act* prescribes the key public interest factors by requiring the Society to ensure that members are:

1. Qualified (see 4(b))
2. Professionally responsible (see 4(b))
3. Acting with integrity (see 4(c))
4. Competent (see 4(d))

**2.3** Accordingly, the public interest must be a foremost consideration in all Society decisions. This policy defines, in a non-exhaustive way, what constitutes the “public interest.”[[1]](#footnote-1)

**3 Decisions**

**3.1** Throughout the Regulations issued under the *Act*, the Secretary-Treasurer has been given authority to approve non-contentious or straightforward applications, and must refer certain applications to Council or the Credentials Committee.

**3.2** Under the Regulations, Council, the Secretary-Treasurer, and the Credentials Committee and Credentials Hearing Panel are authorized to make admission decisions on behalf of the Society. The Regulations specify the person or group with decision-making authority on applications and other matters. For example, the Secretary-Treasurer has authority to approve certain applications in the public interest but must refer to Council applications or other matters raising issues of good character or fitness. In deciding to refer an application, Secretary-Treasurer determines that there is a public interest issue that warrants Council’s consideration, but does not evaluate the matter. It is the Council’s role to evaluate the information and apply the facts to its understanding of the particular public interest factor, and determine whether to refer the matter on further to a Credentials Hearing Panel.

**4 Decision Process**

For further clarity, the decision process is as follows:

**4.1 Approval of Application**

If it is consistent with the public interest, the Secretary-Treasurer may approve an application, with or without terms, and stipulate the effective date.

**4.2** **Terms of Approval – Decision of Secretary-Treasurer**

The Secretary-Treasurer may include in the approval of the application the following conditions:

* + - 1. that the applicant practice for a specified time under the supervision of a practicing lawyer, who qualifies to act as a principal, in accordance with an education plan approved by the Secretary-Treasurer;
      2. that the applicant successfully completes all or a portion of the Bar Admission Program;
      3. that the applicant satisfies the Secretary-Treasurer of their fitness or competence for resumption of practice; and/or
      4. that the applicant completes other requirements of the Secretary-Treasurer.

# 4.3 Denial of Application or Approval with Conditions

# The Secretary-Treasurer may deny an application where it is in the public interest to do so, except for reasons of good character or fitness, which application will go to the Council. If the Secretary-Treasurer decides to deny the application or to approve it with conditions, the Secretary-Treasurer will provide the applicant with written reasons and inform the applicant of the internal review process.

# 4.4 Referral to Council

# The Secretary-Treasurer will refer to the Council any application raising an issue of good character or fitness or, if in the Secretary-Treasurer’s sole discretion, the Secretary-Treasurer determines that such a referral is necessary.

# 4.5 Options for the Council

# After considering the application and all information provided by the Secretary-Treasurer, the Council may:

* + - 1. defer a decision and request the Secretary-Treasurer obtain new information;
      2. approve the application, with or without conditions;
      3. refer the application to a credentials inquiry under section 16 of the Regulations; or
      4. deny the application.

# 4.6 Terms of Approval – Decision of Council

# The Council may include in the approval of the application the following conditions:

* + - 1. that the applicant practice for a specified time under the supervision of a practicing lawyer, approved by the Council, in accordance with an approved education plan;
      2. that the applicant successfully completes all or a portion of the Bar Admission Program;
      3. that the applicant satisfies the Council of their fitness for admission to membership and/or resumption of practice; and/or
      4. that the applicant completes other requirements of the Council.

# 4.7 Review of Council’s Decision

If the Council’s decision denies the application, or approves the application with terms, the Council will provide the applicant with written reasons. Council’s decision is final.

**4.8 Credentials Hearing**

If Council refers an application to a Credentials Inquiry under Section 16 of the Regulations, a Credential Hearing Panel will, within 30 days of the conclusion of a hearing, render a written decision with reasons, which:

1. allows the application under the particular sub-regulation on such terms as the panel deems fair and proper, or
2. dismisses the application and fixes a time before which the applicant may not submit another application.

1. A review of the litigation involving law societies and their regulatory obligation to uphold the public interest reveals that courts and tribunals are loathe to definitively state exactly what comprises the “public interest”. Harvey J. described the difficulty in establishing a concrete definition in B (G.L.) v. The Law Society of British Columbia, 2002 B.C.S.C. 170 (CanLII). There he stated that the “public interest” is, for courts and tribunals, “...a question of fact involving a subjective discretion.” Arguably, it must be the same for law societies. Attempting to define “public interest” too precisely risks limiting the amount of protection the Society can provide. The Secretary-Treasurer, Council, and Credentials Committee/Hearing Panel should interpret this policy accordingly. This policy’s function is strictly advisory and not prescriptive. It is also worth noting, however, that in Finney v. The Barreau de Quebec, 2004 SCC 36, Justice Lebel reiterated that law societies, in return for the right to regulate themselves, must ensure the “honesty” and “competence” of their own members. This confirms that these issues are of paramount importance in all “public interest” decisions made by the Society. [↑](#footnote-ref-1)