**LAW SOCIETY OF PRINCE EDWARD ISLAND**

**PROCEDURE REGARDING AN AFFIRMATIVE ANSWER TO THE FITNESS QUESTION ON THE LAW SOCIETY OF PRINCE EDWARD ISLAND’S APPLICATION FORMS**

**1. Purpose**

**1.1** The Regulations require that to be eligible to be an articled clerk or a practising lawyer, an applicant must, among other requirements, be fit to practice law. In order to comply with this requirement, the Law Society of Prince Edward Island’s (“the Society”) articling and admissions-related application forms ask a fitness question to address the applicant’s current capacity to be an articled clerk or a practicing lawyer.

**1.2** This procedure applies to all applications processed by the Secretary-Treasurer, Council, and Credentials Committee upon receiving an affirmative answer to the fitness question.

**1.3** In striving to balance respect for human dignity with the Society’s obligation to protect the public interest, all applicants are required to answer the following question on the respective application form and, if the question is answered affirmatively, to provide a general description of the condition:

*Based upon your personal history, your current circumstance or any professional opinion or advice you have received, are you currently experiencing any condition which is reasonably likely to substantially impair your ability to competently practice law?*

**1.4** The purpose of this procedure is to guide the Secretary-Treasurer, Council, and/or the Credentials Committee (the “Committee”) when an affirmative answer to this question is received.

**2 Procedure Upon Receipt of an Affirmative Answer**

**2.1** When an applicant answers the question affirmatively, the following procedure will apply:

1. As soon as the affirmative answer and supporting documentation are received, the Secretary-Treasurer will place the affirmative answer and the supporting documentation in a separate file from the applicant’s file, which separate file will be maintained in a secure location. Only the Secretary-Treasurer, and, if required, an independent medical examiner of the Society’s choosing (the “Medical Examiner”) will have access to this information. After following the steps of this procedure, the information may also be provided to Council or the Committee on a confidential basis.
2. The Secretary-Treasurer will review the documentation provided to determine if any additional supporting information is required. If additional information is required, the Secretary-Treasurer will contact the applicant, requesting that the information be provided.
3. The Secretary-Treasurer will provide the applicant with a copy of this procedure.
4. The Secretary-Treasurer will also obtain written consent from the applicant, granting the Medical Examiner permission to contact the applicant’s physician or other professional advisor, if further information regarding the condition is required.
5. After receiving the above-referenced written consent, the Secretary-Treasurer will provide the Medical Examiner with the affirmative answer and supporting documentation as well as particulars of the respective Regulation (for example, Regulation 11 relating to articled clerk applicants and Regulation 18 relating to applicants with a law degree outside of Canada or a Quebec civil law degree). The Medical Examiner will review the information on behalf of the Secretary-Treasurer and will advise the Secretary-Treasurer if the affirmative answer raises issues which should be referred to Council.
6. To assist in giving advice to the Secretary-Treasurer, the Medical Examiner, during the course of the review, may
   1. Contact the physician or other professional advisor who has provided information relating to the affirmative answer and discuss the information provided.
   2. In writing, or orally, direct questions to the physician or other professional advisor who gave information relating to the affirmative answer and request the answers to the questions be provided in a timely manner, so as to allow for expeditious processing of the application.
   3. Following this review and obtaining information, provide the Secretary-Treasurer with their opinion and advise if, in their professional opinion,
      1. the information available from the affirmative answer and the Medical Examiner’s review of it, requires further consideration before determining if a condition is reasonably likely to substantially impair the applicant to perform the duties of an articled clerk or a lawyer; or
      2. the information available from the affirmative answer and the Medical Examiner’s review of it do not require any further action and that the condition reported is not reasonably likely to substantially impair the applicant’s ability to competently perform the duties of an articled clerk or a lawyer (as the case may be).
7. The advice of the Medical Examiner shall be considered by the Secretary-Treasurer in light of the requirements of the respective Regulation. Either the application will be allowed or the matter will be referred to Council and/or the Committee. If a referral is necessary, the Secretary-Treasurer will update the applicant on the status of the application. If the affirmative answer does not need to be further pursued, any related supporting documentation provided pursuant to the affirmative answer will be destroyed.
8. When considering the fitness of an applicant, the Council and/or the Committee shall consider any advice that has been provided to the Secretary-Treasurer when making its determination under the respective Regulation. The options available to the Council and/or Committee are set out in the Regulations and *Policy on Decision-Making in the Public Interest*. If the Council or Committee denies the application or approves it with terms, the Committee shall provide written reasons.

**3 Pre-Submission Procedure:**

**3.1** The Society often receives inquiries from prospective applicants wanting advice as to how they should answer the fitness question, as they are unsure whether their particular situation requires an affirmative answer. The following procedure will guide the Society in dealing with these types of inquiries.

1. Before the prospective applicant discloses details of their particular situation, the Secretary-Treasurer will describe situations that do not generally require an affirmative answer, such as:
   1. Long resolved situational depressions,
   2. Mental health issues for which the applicant no longer requires treatment, and/or
   3. Situational counseling.

The prospective applicant will be advised that the Society only requires information about any current circumstances which could substantially impair their ability to competently perform the duties of an articled clerk or a lawyer.

1. If the prospective applicant is still not sure how to answer the question, the Secretary-Treasurer will advise the applicant to consult with any advisor that they have seen and then to use best judgment in answering the questionnaire fully and honestly.

1. The Secretary-Treasurer will provide a copy of this procedure to prospective applicants who make an inquiry.

*Approved by Council – MM/DD, 2025*