

**RULE 6.07(2) AND RULE 6.01(6) APPLICATIONS**  
**A GUIDE TO THE SOCIETY'S POLICY AND PROCEDURES**

**Introduction**

This Guide describes the Law Society's policies and procedures relating to applications by members who wish to enter into employment and other arrangements with a person who has been disbarred, suspended, revoked, or permitted to resign because of disciplinary action. Rule 6.07(2) of the Society's *Rules of Professional Conduct* governs this process and provides as follows:

Without the express approval of a committee of Convocation appointed for the purpose, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law or provision of legal services any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has had his or her license to practise law or to provide legal services revoked, has been suspended, has had his or her license to practise law or to provide legal services suspended, has undertaken not to practise law or to provide legal services, or who has been involved in disciplinary action and been permitted to resign or to surrender his or her license to practise law or to provide legal services, and has not had his or her license restored.

**Rule 6.01(6)** of the Society's *Paralegal Rules of Conduct* governs this process and provides as follows:

Without the express approval of a committee of Convocation appointed for the purpose, a paralegal shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the provision of legal services any person who, in Ontario or elsewhere,

(a) is disbarred and struck off the Rolls,

(b) is a person whose license to practice law or to provide legal services is revoked,

(c) as a result of disciplinary action, has been permitted to resign his or her membership in the Law Society or to surrender his or her licence to practise law or to provide legal services, and has not had his or her license restored,

(d) is suspended,

(e) is a person whose license to practise law or to provide legal services is suspended, or

(f) is subject to an undertaking not to practise law or to provide legal services.

The Society's Hearing Panel has been designated as the committee of Convocation referred to in the rule. The application process does not result in a hearing. However, the Hearing Panel was chosen because it includes all benchers with the exception of those who authorize disciplinary actions against members, and because a group of members of the Panel can be convened easily for review of applications on an ongoing basis, in accordance with existing practice.

In this guide, "applicant" refers to a Law Society licensee in good standing applying for permission to hire a disbarred or suspended person, a person who has had their license revoked, or the person who has undertaken not to practice, or who has been involved in disciplinary action and been permitted to resign. This person is referred to in the guide as the "person".

### **The Policy Objectives Of Rules 6.07(2) and 6.01(6)**

These rules are designed to protect the public. As the public places significant trust in lawyers and paralegals, those who deal with a licensee and the licensee's practice should be protected from unregulated exposure to a person who, in Ontario or elsewhere, has been disbarred or suspended, has had their license revoked, has undertaken not to practice, or who has been involved in disciplinary action and been permitted to resign

To protect the public and to ensure effective supervision, the Society has adopted certain policies and procedures for applications under rule 6.07 and/or rule 6.01.

### **The Criteria For Licensed Applicants**

Entering into arrangements described in the rule places significant responsibility on the "applicant".

“Applicants” under rule 6.07 and rule 6.01 must satisfy the Society that they can effectively supervise a disbarred or suspended person, a person who has had their license revoked, or the person who has undertaken not to practice, or who has been involved in disciplinary action and been permitted to resign. In order to protect the public interest, “applicants” who cannot meet this threshold will be denied the privilege of entering into an arrangement with the “person”.

“Applicants” are assessed on their experience, competence and ethical standards. Such “applicants” must demonstrate a dedication to professional excellence and an awareness of and commitment to ethical standards and behaviour. The Society will consider information provided by the “applicant” as well as information in the Society’s possession and that obtained from the public. Information about the “applicant” will be obtained from all relevant Society departments including Professional Development and Competence, Complaints Resolution, Investigations and Discipline. “Applicants” with an extensive history of complaints or discipline may not be approved. The Society may also receive information of which it becomes aware relevant to the “applicant” from other investigatory and regulatory bodies and agencies.

The approval granted to an applicant is only for the particular arrangement requested. The approval does not follow the “applicant” to a new office, for example, nor does the approval follow the disbarred or suspended person, a person who has had their license revoked, or the person who has undertaken not to practice, or who has been involved in disciplinary action and been permitted to resign, to a new employment situation.

### **Consideration of the “Person”**

Disbarment, permission to resign as a result of discipline and a disciplinary suspension arise from serious professional misconduct or conduct unbecoming a barrister and solicitor. Disciplinary sanctions are imposed to protect the public, maintain high professional standards and preserve public confidence in the legal profession. Members may also be subject to administrative suspensions imposed for non-compliance with

reporting and payment obligations to the Society. Rule 6.07 and rule 6/01 applies to all suspended persons including members administratively suspended.

An “applicant’s” proposal to enter into an arrangement with a “person” will involve consideration of that person’s character, attitudes and abilities, including

- Pre-discipline character, standing and professional reputation
- Ethical standards while in practice
- The type of misconduct that led to discipline/suspension
- Allegations of misconduct/conduct unbecoming that were not resolved prior to the conclusion of the discipline or conduct hearing, including unresolved complaints
- Post-discipline attitude, conduct and reformation
- The elapsed time since the discipline
- Ability and capacity to perform tasks as proposed by the applicant
- Sincerity and frankness in discussing issues relating to his or her circumstances, including any discipline
- Pre- and post-discipline cooperation with the Society
- Outstanding obligations to the Society, LawPRO or other insurance providers, clients and other investigatory and regulatory bodies and agencies
- Status history with respect to administrative suspensions

In assessing the “person”, the Society will review its records and may review other relevant information, for example, records of other investigatory and regulatory bodies and agencies.

## **The Application and Reapplication Process**

The application process is initiated by a written request from a licensed member in good standing. The Society will forward to the “applicant” general information relating to Rule 6.07 and Rule 6.01 applications, together with blank forms to be completed by the “applicant” and the “person”. Both parties must consent to disclosure of information from other sources.

The “applicant” and the “person” must complete and return the forms to the Law Society with an application fee of \$200.00 plus HST. The “applicant” will be asked to submit a proposed plan of supervision of the “person” (more fully addressed below).

The “applicant” will also be required to place a notice, at his or her cost, in the *Ontario Reports* indicating that he or she is applying or reapplying under rule 6.07 or rule 6.01 to hire the named “person”, and that anyone having comments on the application should respond to the Society by a date indicated in the notice. The notice will include a generic statement that information about plans of supervision that are approved by the Hearing Panel in rule 6.07 and rule 6.01 applications can be obtained from the Society. The notice should only be published when all material relevant to the application has been filed and the Society’s review of the application is about to begin.

Upon the receipt of the completed forms, Law Society staff will prepare summaries of information contained in the Law Society’s records and that received from LawPRO or other investigatory and regulatory bodies and agencies about the applicant and the “person”. Upon completion, both summaries of information about the “applicant” and the “person” will be forwarded to the “applicant”, with the prior consent of the “person”. The “person” will receive only his or her information summary.

“Applicants” must carefully review the Society’s summary of information on the “person”, as they may not be aware of details about a “person’s” prior discipline. Upon considering all of the information, “applicants” may wish to amend their proposed Plan of Supervision.

After the summaries have been prepared and sent, Law Society staff will incorporate the summaries in a memorandum for the Hearing Panel. A copy of the memorandum will be sent to the “applicant”, for comment within a specified time, before the materials are provided to the Hearing Panel. The “applicant” may choose to share the memorandum with the “person”, in the knowledge that the memorandum may contain information about the “applicant’s” history with the Society that the “person” may not have previously known. The memorandum will include the plan of supervision, conditions for the arrangement recommended by Law Society’s Professional Regulation staff and discussion of issues relevant to approval of the application that staff believe should be brought to the attention of the Hearing Panel.

The materials submitted by the “applicant” and the “person” are confidential. The application will be reviewed by a Hearing Panel in camera. The final decision of the Hearing Panel will be made public, together with any approved plan of supervision.

Applications under Rule 6.07 and Rule 6.01 are generally approved for a defined term of three years. During that term, the applicant must report quarterly within each year to the Society on adherence to the plan of supervision and conditions. Each report must be accompanied by a fee of \$50.00 plus HST. At the end of the term, if the quarterly reports show ongoing compliance and no regulatory issues have arisen between the Society and the “applicant”, or the Society and the “person”, the application, if requested in writing by both parties, may be renewed for a further three years after a supervisory review by the chair of the Hearing Panel.

If issues have arisen, generally, the “applicant” may be required to reapply with a formal reapplication (and republish) at the end of the three-year period, and pay a reapplication fee of \$150.00 plus HST.

The materials submitted on a formal reapplication will update materials submitted at the time of the original application, and will include a report on the activities and supervision of the “person” over the past term. On a reapplication, the “applicant” must submit either a letter confirming his or her general information on the form previously submitted or an

amended form. The material will also include the Society's updated summary for the applicant and his or her term end report about the "person". In the reapplication, the "applicant" must affirm that the approved Plan of Supervision was followed, and request that the existing Plan continue or request that it be altered. If the request is that the plan be altered, the "applicant" must provide support for that request. The "applicant" should identify how the public interest will be protected, how the request will assist in the rehabilitation of the "person" and what supervisory controls the "applicant" intends to implement. In the reapplication form, the "applicant" must provide and respond to any concerns or complaints about the "person" during the past term and reaffirm that the "applicant" will comply with the Plan of Supervision for the next term, if approved. As noted above, the "applicant" must also publish a notice of the reapplication.

### **The Plan of Supervision**

The "applicant" must file a plan outlining the tasks that the "person" will perform together with the supervisory procedures to be implemented. The plan of supervision is customized for the situation. The choice of tasks to be delegated will be primarily influenced by the disciplinary history of the "person" and past and current work history. The plan must provide for safeguards and controls for the protection of the public, and demonstrate effective measures for rehabilitation through supervision, monitoring and evaluation. In formulating the plan, the "applicant" must ensure that the delegated tasks do not cross the line to legal practice.

Generally a plan of supervision will identify

- the areas of law in which tasks will be delegated to the "person", and identify the nature and types of tasks to be performed within each area of law.
- any other non-legal tasks or functions expected to be performed by the "person".
- the procedure whereby the "person" reports to the applicant. Preferably this will be written or computerized report, either generated weekly or daily, in

which the “person” reports on the nature of tasks and services performed and identifies the files worked on.

- the “applicant’s” proposed monitoring and evaluation procedures. The “applicant” should meet regularly with the “person” to review and evaluate the past performance of delegated tasks and supervise ongoing and newly delegated tasks. The “applicant” must identify how the “person” will be supervised in the event that the “applicant” is out of the office for an extended period of time (more than five days).
- guidelines and procedures to ensure that the “person” does not have access to the applicant’s bank accounts or accounting records.
- guidelines and procedures to ensure that the “applicant’s” staff, other personnel occupying or sharing office space with the “applicant’s” practice and clients, as required, are advised of the history and current status of the “person”.
- guidelines and procedures to ensure that the “applicant’s” staff, other personnel occupying or sharing office space with the applicant’s practice and clients, as required, are aware of the nature and types of tasks that the “person” is to perform.

After expiry of the publication notice period, the proposed Plan of Supervision will be reviewed by Law Society staff, who may suggest modifications before it is sent to the Hearing Panel for review. Staff will then submit the application, together with any responses to the notice, to the Hearing Panel for review and it will either accept or reject it.

“Applicants” who wish to amend a plan of supervision that has been approved by the Hearing Panel must apply in writing, and subject to review by Law Society staff, to the Hearing Panel for the amendment.

Only the approved plan of supervision, as noted above, is available to interested members of the public or the profession upon written request.

### **Follow Up Monitoring**

As noted above, initial applications are usually approved for a term of three years during which quarterly reports, with the appropriate fee, must be filed by the applicant on compliance with the plan of supervision and conditions attached to approval of the arrangement. The reports give the Society and the applicant an opportunity to assess and evaluate the performance of the “person”, and to monitor the effectiveness of the supervision. This also affirms the responsibility that the “applicant” assumes when entering such arrangements with “persons”.

The reports are due within 15 days of the end of each quarter. Failure to file the reports may result in revocation of the permission granted to the applicant to continue in the arrangement with the “person”. The reporting procedures may be altered at the discretion of the Hearing Panel. Reports will only usually be required at the end of the term (within 15 days of the end of the term) if a further reapplication is sought.