



The Law Society of
Upper Canada | Barreau
du Haut-Canada

TRIBUNALS COMMITTEE

HEARINGS PROCESS REPORT

Tribunals Committee

Raj Anand (Chair)

Adriana Doyle (Vice-Chair)

Jack Braithwaite

Christopher Bredt

Paul Dray

The Honourable Lee Ferrier

Howard Goldblatt

Jennifer Halajian

Dow Marmor

Wendy Matheson

Linda Rothstein

Mark Sandler

Beth Symes

Robert Wadden

Peter Wardle

Hearings Process Working Group

Raj Anand (Chair)

Marion Boyd

Christopher Bredt

Paul Dray

Howard Goldblatt

Wendy Matheson

Mark Sandler

Purpose of Report: Decision

**Prepared by Policy Secretariat
(Sophia Spurdakos 416-947-5209)**

EXECUTIVE SUMMARY

The Law Society's primary responsibility as regulator of Ontario's lawyers and paralegals is public protection. Central to the responsibility to protect the public is a hearing process that is fair, transparent and efficient. As hearings become more complex and the number of cases increases, it is important to enhance the way in which the Law Society meets its regulatory mandate at the tribunal level.

Over the last 13 years the Law Society has implemented a coherent *operational* structure for adjudicative processes to ensure a transparent and modernized hearings process and the separation of the tribunals administration from that of investigations and prosecution. It has also made a number of individual enhancements to the *adjudicative* functions of the Hearing and Appeal Panels directed at streamlining and enhancing quality, fairness and consistency and has introduced improved adjudicative practices. However, to carry out its commitment to an adjudicative system that is as effective and transparent as possible, and to continue the ongoing process of reform that the Law Society has followed over the last decade, it is essential that the Law Society develop a more systematic and effective structure and greater quality assurance measures for its adjudication functions. In doing so it should pay attention to the principles that govern both administrative justice and professional regulation and to the important role of benchers in the process.

The Model

The Tribunals Committee, with the assistance of its Hearings Process Working Group, has developed a proposal for an enhanced adjudicative model whose component parts will operate together as an integrated whole. The model will consist of,

- effective and dedicated leadership of the Tribunal through the appointment of a non-bencher full-time lawyer Chair and two part-time bencher Vice-Chairs of the Hearing and Appeal Panels;
- an adjudicator application and appointment process that continues to reflect the regulatory role of the Law Society's benchers in adjudication as well as a commitment to broaden its base of adjudicators to include non-bencher lawyers and paralegals and lay appointees who meet the many needs of the Tribunal;
- the development and implementation of consistent criteria for appointment to the Tribunal and an evaluation process for re-appointment;
- the continuation of the Tribunals Committee as the policy conduit by which the Chair, Vice-Chairs and committee members facilitate and provide policy proposals to Convocation; and
- processes to ensure timely adjudication and decision-making.

The Chair

A professional statutory tribunal requires effective and independent leadership. As a regulatory body the Law Society's overall policy leadership is provided by Convocation, presided over by the Treasurer. Within that larger framework the Law Society's Tribunal operates to provide a fair and transparent process to address regulatory conduct, capacity and competence issues, independent from the investigative and disciplinary side of the Law Society. The independence and effectiveness of the Tribunal is best fostered, enhanced, and implemented through the

appointment of a full-time non-bencher lawyer Chair. Such an appointment will further the Law Society's commitment to a mature hearing process that is independent, dedicated to professionalism, quality appointments, performance and results coupled with operational accountability on financial and other matters and a commitment to the important role that benchers will continue to play in the adjudicative function. The recommended term of appointment is four years, subject to renewal.

The Vice-Chairs

The positions of a part-time bencher Vice-Chair of each of the Hearing and Appeal Panel will be continued under the new model. The Vice-Chairs will support and assist the Chair with the responsibilities of the Hearing and Appeal Panels, including adjudicator training, composition of panels, development of policy recommendations and monitoring of tribunals issues. Through their role as elected benchers, they will also provide input to the Chair on the interplay between the Law Society's policy and adjudicative responsibilities. The recommended term of appointment is two years, subject to renewal.

The Tribunals Committee

The Tribunals Committee will continue to be an essential forum for the development and communication of policy proposals relating to Tribunals structure and process. As the Chair develops systems for the new model and makes recommendations for Convocation's consideration and approval, he or she will benefit from the input and policy guidance of the Tribunals Committee. The Chair will be an *ex officio* member of the Committee and the Vice-Chairs of the Hearing and Appeal Panels will be members. The Committee's current mandate will continue, subject to the addition that in developing policy options it will do so in collaboration with the Chair. Bencher and non-bencher adjudicators will be eligible for appointment to the Committee.

Adjudicator Appointment Process

Qualified and available adjudicators play a central role in the effectiveness, reliability, transparency and fairness of the Tribunal. Self-regulation necessitates that lawyers and paralegals will preside over regulatory proceedings concerning their peers. To ensure the added input of the public, lay appointees are also an integral part of the hearings process. Traditionally, only benchers sat as adjudicators, but since 2006 the *Law Society Act* has provided that benchers, licensees and persons approved by the Attorney General are eligible to sit on hearing and appeal panels.

The Committee affirms the view that benchers should continue to have an important "hands-on" role and responsibility for adjudication. They add a dimension of familiarity with the Law Society's regulatory requirements and policy decisions that inform the regulatory process. Moreover their adjudicative work provides an important context for the policy decisions Convocation makes. At the same time, the self-regulatory mandate is strengthened by the additional involvement of lawyers and paralegals who are not benchers in the adjudicative process. The profession is interested in the operations of its regulator. Indeed, during the consultations that were held on governance reform, participants and legal organizations suggested this expanded approach to adjudication. In 2007 Convocation approved the appointment of lawyer and lay appointees who are not benchers. The experience with these

additional adjudicators has been positive and illustrates the merits of a model that includes non-bencher adjudicators as an integral component of both the Hearing and Appeal Panels.

The use of bencher adjudicators should be predicated not just on the fact of their election, but on the basis of quality and availability. This is essential to a Tribunal that is effective, independent, and transparent. Expanding the pool of adjudicators available for both the Hearing and Appeal Panels strengthens the Law Society's twin commitment to the quality and availability of its adjudicator pool. The effectiveness of the proposed model is enhanced by cross-pollination of the different perspectives that bencher and non-bencher adjudicators bring to the process. As the Law Society undertakes an improved model that will involve a number of significant changes the Committee believes that change should be implemented decisively, but in a measured fashion to allow for a smooth transition.

The Committee recommends a two-pronged approach to enlarging the pool of non-bencher adjudicators. As a first step Convocation will approve an increase in the number of non-bencher lawyer, non-bencher paralegal and non-bencher lay adjudicators to reflect the commitment to a model of bencher and non-bencher adjudicators. The Committee is proposing that Convocation approve the addition as members of the Hearing Panel of 6 non-bencher lawyers, 3 non-bencher paralegals and 4 non-bencher lay appointees, with eligibility to be appointed to the Appeal Panel.

Once the Chair is appointed, he or she will assess the number and availability of current bencher adjudicators who apply to be on the Hearing Panel, the overall adjudicative needs of the Panel based on the principles discussed in this report, and the current pool of non-bencher adjudicators available to sit on long matters and will determine the number of additional non-bencher adjudicators who may be required.

Panel Appointments

Populating panels will be an integral part of the Chair's role, with the assistance of the Vice-Chairs. The Committee recommends that Regulation 167/07, which articulates a general panel composition structure, remain essentially the same with one proposed change. In the interests of effective scheduling, the Chair must have the flexibility to vary the usual assignment of both Hearing and Appeal panels in a meaningful way. The current Regulation provides the Chair with authority to deviate from the normal panel composition, but only where to comply would "unduly delay" a hearing. The Committee recommends that the Chair's ability to alter the composition as set out in the Regulation be broadened to include factors in addition to undue delay to reflect practice area expertise requirements, experience requirements, regional and other diversity perspectives, scheduling effectiveness for reasons other than "undue delay," conflicts and the public interest.

Hearing Panel Appointment Criteria

Another critical feature of an effective adjudicative model is the implementation of meaningful criteria for appointing adjudicators and evaluating their performance for the purpose of quality control and re-appointment determinations. Whereas the current Law Society structure has criteria for the appointment of non-bencher adjudicators, this is not the case for elected benchers, non-bencher members of the Paralegal Standing Committee and lay benchers, who are

essentially appointed to the Hearing Panel by virtue of their status. Further, neither benchers nor non-bencher adjudicators currently undergo an evaluation of their performance.

A newly elected bencher may have minimal or no experience as an adjudicator. While it is important for elected benchers to be involved in adjudication, all adjudicators should be required to meet appointment criteria. The Committee proposes a model that is somewhat asymmetrical as between bencher appointments to the Hearing Panel and non-bencher appointments, reflecting the reality of the electoral structure and the value of introducing benchers early on to their adjudicative role. This asymmetry would apply in two respects: grandparenting existing benchers and adopting different requirements for experience as an adjudicator.

Every bencher, current and future, who wishes to become a member of the Hearing Panel will be expected to apply. Current benchers who apply will in the usual course be grandparented, but thereafter they will be required to meet the same criteria as new benchers or other appointees and to be evaluated for re-appointment on the same basis as other appointees. In the case of new benchers, those who have had no adjudicative experience will be required to complete, to the Chair's satisfaction, adjudicator training designated by the Chair to enable them to provide competent adjudication. Those who have adjudicative experience will not, in the normal course, be required to take training before being eligible to sit, other than the mandatory orientation to the Law Society's Tribunal for all new benchers. New non-bencher adjudicators will be required to meet criteria along the lines of those appointed as non-benchers since 2007, including having adjudicator experience. The Chair will determine what additional or other criteria should be applied on a going forward basis. Adjudicators will be appointed for a two-year term, subject to re-appointment on application.

As no formal evaluation system currently exists, one of the new Chair's responsibilities will be to develop and recommend an evaluation system to Convocation to be used to assist adjudicators to improve and to determine who should be re-appointed. The introduction of an evaluation system will be a significant change to the Law Society's Tribunals structure and culture, but the Committee considers this essential to the effective operation of any model that is designed to ensure quality adjudication.

Timely Adjudication

It is not sufficient that a tribunal have good processes and quality adjudicators if scheduling of matters is drawn out, adjudicators are unable to commit to lengthy matters, or there is unreasonable delay in the rendering of decisions and reasons. To allow for the development of adjudicative experience, the range of hearing subject matter, scheduling and conflict issues, bencher and non-bencher adjudicators will be required to offer a minimum number of hearing days per session. The Chair will determine the appropriate minimum in each case, taking into account that benchers have more extensive Law Society responsibilities than non-benchers who seek out the adjudicator role.

One of the issues of concern to any Tribunal is managing long hearings in a manner that is fair to the participants and meets the public interest in resolving regulatory proceedings expeditiously. In addition to committing to a minimum number of hearings days adjudicators will indicate whether they are available for short hearings only or for both short and long hearings. A

definition of short and long hearings and a short and long hearing list roster of adjudicators will be developed.

Financial Implications

The Committee considers that the main categories of costs will be those associated with the Chair's remuneration and support for his or her office, ongoing adjudicator education and the development of an evaluation system (a one-time cost). In the Committee's view, a reasonable estimate for costs related to the Chair, including administrative support, office space and expenses and his or her remuneration, will be in the area of \$500,000 per annum. To ensure the continuation of adjudicator training that is effective and stimulating, and keeping in mind the need to train new benchers who do not have previous adjudicator experience, an ongoing annual cost of \$100,000 should be anticipated.

The Committee notes some of the challenges of the current approach result in costs being incurred that the recommended reforms are designed to reduce. It is difficult to quantify cost savings of a yet-to-be introduced system, but the Committee believes that the proposals it has put forward will in the long run result in a number of cost reductions, including,

- adjudicator cost savings as hearings are more expeditiously scheduled and completed, resulting in fewer adjudicative hours and fewer hearings that must be drawn out over many months;
- as the Chair will sit on hearings, the remuneration and expenses of another adjudicator will be saved;
- the development of enhanced training in decision-writing that will reduce the time spent on writing reasons; and
- through training, more efficient hearing processes that reduce the time needed for hearings.

The Committee has not studied whether under the enhanced and modernized system the Appeal Panel will still be necessary, but it suggests that this is something that the Chair and Convocation might well consider in the future. If this were to occur it could result in further savings to the Tribunal system. Even if the Appeal Panel continues the enhanced adjudicative model is likely to result in fewer successful appeals, thereby reducing costs. The Committee also notes the potential for the Chair to consider recommendations for increasing the number of single adjudicator hearings, which would have the potential to expedite hearings and also include cost savings. Finally, the Committee notes that if Convocation approves the proposed model, it is likely that costs will not be incurred before 2013 and for some aspects of the model not before later in that year.

Review of the New Model

The new model will include a review process to take place after there has been sufficient opportunity for the model and its new processes to be implemented. The first formal review of the model will take place at the end of the third year of the Chair's first term. Within one year of the Chair's appointment, the Tribunals Committee in conjunction with the Chair, Vice-Chairs, the CEO and the Director of Policy and Tribunals will develop the framework for the model's review, to be approved by Convocation.

Conclusion

In establishing its priorities for the 2011-2015 bencher term, Convocation recognized the importance of an effective Law Society hearings process to its overall mandate and committed itself to addressing this priority.

The Committee's proposed model is designed to provide a framework whose component parts will contribute to the fulfillment of Convocation's priority. Focused on leadership, transparency, quality adjudication and availability, objective criteria for appointment and evaluation and cost effectiveness, the model will enhance the Law Society's commitment to a hearings process that is transparent, fair and effective for both the public and affected licensees. This is central to the Law Society's proper discharge of its adjudicative responsibility.

TRIBUNALS HEARINGS PROCESS - PROPOSED MODEL

Motion

- 1. That Convocation approve an enhanced adjudicative model for the Law Society, the integrated components of which are as follows and the details of which are set out in this report:**
 - a. The establishment of the full-time non-bencher lawyer position of Tribunal Chair.**
 - b. The establishment of the part-time elected bencher positions of Vice-Chair of the Hearing Panel and Vice-Chair of the Appeal Panel.**
 - c. With respect to the Tribunals Committee,**
 - i. the appointment of the Tribunal Chair as an *ex-officio* member and the appointment of the Vice-Chairs of the Hearing and Appeal Panels as members of the Tribunals Committee;**
 - ii. the eligibility of non-bencher adjudicators to be members of the Committee as Convocation determines;**
 - iii. that lawyer members of the Tribunals Committee not be members of the Professional Regulation Committee or the Paralegal Standing Committee, and**
 - iv. that paralegals appointed as members of the Tribunals Committee not participate in any regulatory discussions of the Paralegal Standing Committee.**
 - d. The appointment of additional non-bencher adjudicators to the Hearing Panel with eligibility to be appointed to the Appeal Panel.**
 - e. The granting of the authority to the Tribunal Chair to vary the composition of hearing panels to ensure the effectiveness of adjudication.**
 - f. The development and introduction by the Tribunal Chair of criteria for the appointment and evaluation of adjudicators.**
 - g. The requirement that adjudicators apply to be assigned to the Hearing Panel and commit to a minimum number of hearing days within a scheduled session.**
 - h. The development of a roster of adjudicators for short hearings and long hearings.**

- i. **A review and evaluation of the new model in the third year of the new Chair's first term.**

Introduction and Background

2. Following its planning session in the fall of 2011 Convocation established its priorities for the 2011-2015 bench term. In recognition of the importance of an effective Law Society hearings process to its overall mandate, Convocation included the following:

TRIBUNAL ISSUES

The Law Society's primary responsibility as regulator of Ontario's lawyers and paralegals is public protection. Central to the responsibility to protect the public is a hearing process that is fair, transparent and efficient. As hearings become more complex and the number of cases increases, steps need to be taken to enhance the way in which the Law Society delivers its regulatory mandate at the tribunal level. Addressing this priority will include review and consideration of:

- a. Adjudicator training;
- b. Quality of adjudication;
- c. Use of technology in the hearing process;
- d. Enhancements to procedures and processes to improve effectiveness and efficiency; and
- e. The appropriate model for the hearing process.

As reported to Convocation in October 2011, the Tribunals Committee has created working groups that are developing policy options for consideration by the Committee, and through the Committee for Convocation's consideration, on issues related to the hearings process. The issues identified above will logically flow into these initiatives.

3. A self-regulating profession has many responsibilities to the public it serves, not the least of which is the obligation to ensure that its members meet standards of competence and conduct to ensure quality service to that public.
4. The Law Society is an integrated regulatory body, meaning that it has responsibility for the complete range of regulatory activities, including standard setting, rule making, policy development and implementation, admission to the profession, investigation and prosecution of complaints against members, adjudication of conduct, competence and capacity matters and imposition and monitoring of penalties.

5. Responsible for both prosecution and adjudication of regulatory matters, the Law Society has expended considerable effort to ensure a separation between the two branches of its responsibility. A hearings process that is transparent, fair and effective for both the public and affected licensees is central to the Law Society's proper discharge of its adjudicative responsibility.
6. Prior to 1999 Law Society discipline hearings were conducted in a manner that had not kept pace with the professionalization and modernization of administrative tribunals or state-of-the art regulatory processes. In general, a committee of benchers (usually three) presided over a hearing. The committee made a written report and recommendations to Special Convocation on appropriate disposition and penalty. Special Convocation then considered whether to accept the recommendation or make its own determination. Appeals from Convocation's decisions went to the Divisional Court.
7. Beginning in the late 1990s the Law Society began to focus on the importance of a transparent and modernized hearings process. The first step was amendments to the *Law Society Act* in 1999, which established the Hearing Panel and the Appeal Panel.
8. In the thirteen years since the *Law Society Act* amendments, the Law Society has implemented a coherent operational structure for adjudicative processes. This has enhanced both the transparency of the Tribunals process and the separation of the Tribunals administration from that of investigations and prosecution. The plan has included,
 - a. establishing a Tribunals Office;
 - b. providing staff dedicated to the adjudicative process;
 - c. locating Tribunals staff in offices within Osgoode Hall separate from those of investigative and prosecutorial department staff;
 - d. authorizing the Tribunals Office to issue all originating notices and manage all proceedings, separately from the professional regulation division;
 - e. shifting the reporting function for Tribunals from the Secretary, who was also responsible for the former discipline department, to the Counsel - Legal Affairs and since 2004 to the Director, Policy and Tribunals;
 - f. providing that the Chairs of the Hearing and Appeals Panels are available to assist Tribunals staff on issues related to Tribunals operations;

- g. creating the position of Publications Counsel, who performs a legal editor function;
 - h. creating a data base to track the progress of cases and other information relevant to the effective functioning of the Tribunal, with public reports provided to Convocation quarterly;
 - i. developing the first Practice Direction, on adjournments, to better advise parties and counsel on Tribunals practices, with a view to developing further Directions where appropriate;
 - j. posting information on the Law Society web site respecting regulatory notices and hearings; and
 - k. posting reasons for decision on Canlii.
9. The Law Society has also made a number of individual enhancements to the adjudicative functions of the Hearing and Appeal Panels. Through its Tribunals Committee, which it established in 2005, it has developed policies for Convocation's approval directed at streamlining and enhancing quality, fairness and consistency. Improved practices have also been introduced. These policies and practices have included,
- a. *Rules of Practice and Procedure* of the Hearing and Appeal Panel to support the 1999 *Law Society Act* amendments. These were revised, expanded and enhanced in 2009 and 2012 respectively;
 - b. an Adjudicator Code of Conduct introduced in 2006 and updated in 2012;
 - c. the addition of six non-bencher lawyers¹ and four non-bencher lay appointees to the Hearing Panel;
 - d. adjudicator education during Convocation and more formal, mandatory training sessions;
 - e. the expansion of the Proceedings and Appeal Management function to streamline hearings processes;
 - f. further development of the jurisprudence to enhance the consistency of decision-making;
 - g. the implementation of a public hearing process; and
 - h. the development of guidelines for the effective delivery of oral and written reasons.
10. These steps have made important incremental improvements to the quality and consistency of adjudicators' decisions. However, to carry out its commitment to an adjudicative system that is as effective and transparent as possible, and to continue the ongoing process of reform that the Law Society has followed over the last decade, it is

¹ Originally approved for four non-bencher lawyers in April 2007 this number was increased to six in January 2012.

essential for the Law Society to develop a more systematic and effective structure as well as greater quality assurance measures for its adjudicative functions.

11. To facilitate the Committee's development of recommendations on the hearing process for Convocation's approval the Committee established a Hearings Process Working Group to study the issues and report to it.² The Working Group met approximately twice monthly since September 2011 and received the Committee's views at each monthly Committee meeting since October 2011. The Working Group reported formally to the Tribunals Committee in May and June 2012 and the Committee discussed the working group's proposals. The Tribunals Committee Chair also attended the Finance Committee meeting on June 14, 2012.

Principles that Underlie the Committee's Recommendations

12. The Law Society's adjudicative process has much in common with administrative tribunals that operate across Canada, including the evolving requirements of administrative law as developed in appellate jurisprudence. As a regulatory body, however, it has a distinctive mandate and responsibilities. Accordingly, in considering how best to advance the goals of an effective regulatory administrative body, attention to the principles that govern both administrative justice and professional regulation and to the important role of benchers in the process is essential.
13. The Committee has determined the goals of an enhanced Law Society adjudicative model to be as follows:
 - a. To reflect the Law Society's commitment to regulatory processes that are transparent, fair, and cost effective.
 - b. To reflect the separation of the Tribunal from the disciplinary stream of the Law Society and an awareness of the adjudicative and policy-making functions of the Law Society.
 - c. To support and complement the current Tribunals operational structure.
 - d. To reflect the Law Society's integrated regulatory model.

² The members of the Working Group are Raj Anand (Chair), Marion Boyd, Christopher Bredt, Paul Dray, Howard Goldblatt, Wendy Matheson and Mark Sandler. Staff members to the Working Group are Grace Knakowski, Lisa Mallia and Sophia Sperdakos.

- e. To recognize, continue and support the benchers' role as adjudicators as part of the profession's responsibility to regulate itself in the public interest.
- f. To retain and enhance the positive features of the current adjudicative approach.
- g. To deliver high quality administrative law decisions that withstand the close scrutiny that Law Society decisions receive from courts, the public and the profession.
- h. To foster high quality adjudication, including a commitment to ongoing adjudicator education and training.
- i. To develop a system that fosters and facilitates the effective use of technology in the hearing process.
- j. To make more effective and efficient use of Law Society resources through an enhanced adjudicative structure.

14. The Committee has concluded that the following criteria are essential to an enhanced Tribunal adjudicative model:

Process

- a. The process is independent, transparent and accountable. Accountability in the adjudicative structure encompasses among other factors,
 - i. the avoidance of bias, whether perceived or real;
 - ii. the opportunity for parties to participate in the hearing and be heard;
 - iii. adherence to the principle that those who hear the matter decide it;
 - iv. access to an appellate process; and
 - v. processes to address quality of adjudication.
- b. The organization and administration are effective. This includes, among other components,
 - i. leadership;
 - ii. a transparent and consistent structure for recruitment or appointment and evaluation of adjudicators; and
 - iii. an efficient and effective Tribunals Office with enhanced duties related to non-adjudicative matters.

Adjudicators

- c. Adjudicators,
 - i. are open-minded and vigilant to conflicts and bias, whether perceived or real;
 - ii. are committed to developing and maintaining knowledge, skill and expertise; and

- iii. display the appropriate skills, expertise and temperament required for sound adjudication.
- d. There is a requirement for ongoing education and professional development for adjudicators.
- e. Adjudicators adhere to the Adjudicator Code of Conduct.
- f. Within the pool of available adjudicators there is a range of expertise, including features such as content expertise, representation of different practice structures, and litigators and solicitors.
- g. Adjudicators make a time commitment to participate in the range of activities of an adjudicator within an effective administrative tribunal.
- h. Adjudicators are committed to timely adjudication, which includes being available to preside at hearings and write decisions in a timely manner and adhering strictly to any guidelines and benchmarks for writing reasons.
- i. The pool of adjudicators includes,
 - i. bencher lawyers and paralegals;
 - ii. non-bencher lawyers and paralegals;
 - iii. lay representatives;
 - iv. lay, lawyer and paralegal adjudicators qualified to hear cases in the French language; and
 - v. adjudicators reflecting the diversity of the population and the profession.

Quality of Decision Making

- j. Adjudicators are proficient in the Rules of Practice and Procedure and relevant legislation.
 - k. There is consistency and coherence in both procedure and substantive decision-making, while ensuring that discretion is not fettered and natural justice is observed.
 - l. Adjudicators are trained in conducting a hearing and in effective decision writing.
 - m. There is an evaluative process to ensure quality of adjudication and decision writing.
15. To the extent that the Tribunal adjudication model continues to be premised on the use of part-time adjudicators, the challenge for the enhanced approach is to ensure that

within a framework of part-time adjudication the Law Society's responsibility for an effective, timely and competent adjudication process is achieved.

16. The challenges that the current adjudicative structure presents, which are identified in this report, also have resource implications. The Committee believes that the model it proposes here will improve the efficiency and effectiveness of the hearings process and thereby contribute to the reduction of unnecessary costs. So, for example, an adjudicative model that reduces the number of times a long matter must be adjourned for additional hearing dates that are weeks or months apart is likely to reduce adjudicator travel and hearing time and the attendant costs.

Overview to Proposed Model

17. Keeping these principles and criteria in mind, the Committee has developed an adjudicative model for Convocation's approval. The model consists of the following components that operate together as an integrated whole:
 - a. Effective leadership through,
 - i. the appointment of a full-time non-bencher Chair who will be responsible for the overall implementation of the strategic direction and performance of the Tribunal, including its Hearing and Appeal Panels, in conformity with the provisions of the *Law Society Act* and Convocation's policies respecting the Tribunal. The Chair will be accountable to Convocation to provide leadership to the Tribunal to ensure that it operates fairly, efficiently and effectively within its mandate.
 - ii. The appointment of a Vice-Chair of the Hearing Panel and a Vice-Chair of the Appeal Panel,³ who will be elected benchers and whose responsibilities will include the following:
 - To assist the Chair in his or her numerous tasks, including the implementation of adjudicator training, the composition of panels, the development of policy recommendations and the monitoring of Tribunals issues.
 - Through their role as benchers to provide input to the Chair on the interplay between the policy component and adjudicative component of the Law Society.
 - At the Chair's direction to sit as adjudicators on hearings and appeals.

³ The current *Law Society Act* provides for a Chair of the Hearing Panel and a Chair of the Appeal Panel.

- To be available to assume tasks where the Chair has a conflict.
 - iii. The continuation of the Tribunals Committee as the policy conduit by which the Chair, Vice-Chairs and committee members facilitate and provide policy proposals to Convocation. Lawyer members of the Committee should not also be members of the Professional Regulation Committee or the Paralegal Standing Committee. Paralegal members of the Committee will not participate in regulatory discussions at the Paralegal Standing Committee.
 - b. Effective adjudication through,
 - i. an application and appointment process that continues to reflect the regulatory role of the Law Society's benchers in adjudication as well as a commitment to broaden its base of adjudicators to include non-bencher lawyers and paralegals and also lay appointees who meet the many needs of the Tribunal;
 - ii. scheduling of individual panels with a view to availability and expertise;
 - iii. the development and implementation of consistent criteria for appointment to the Hearing and Appeal Panel as set out in paragraph 14 (c) - (i); and
 - iv. the development and implementation of an effective evaluation process for re-appointment to the Hearing and Appeal Panel.
 - c. Timely adjudication through,
 - i. the commitment of adjudicators to be available for a minimum number of hearing days per session; and
 - ii. the development of a roster of adjudicators for long and short hearings.
18. Implementation of some of the recommendations in this report will require amendments to the *Law Society Act* and Regulation 167/07. These will be pursued if Convocation adopts the report.

EFFECTIVE LEADERSHIP

APPOINTMENT OF A TRIBUNAL CHAIR

19. A professional statutory tribunal requires effective and independent leadership. As a regulatory body the Law Society's overall policy leadership is provided by Convocation, presided over by the Treasurer. This is a statutory authority and is integral to the Law

Society's overall mandate to regulate the profession in the public interest. Within that larger framework the Law Society's Tribunal operates to provide a fair and transparent process to address regulatory conduct, capacity and competence issues. The independence of the Tribunal from the investigative and disciplinary side of the Law Society is essential to the Tribunal's effectiveness. The Committee is of the view that the independence and effectiveness of the Tribunal is best fostered, enhanced and implemented through the appointment of a full-time Chair.

20. The Committee has considered the role that Chairs play in many of Ontario's important administrative tribunals such as the Ontario Labour Relations Board, the Workplace Safety and Insurance Appeals Tribunal, the Criminal Injuries Compensation Board and many others and agrees that the time has come to pursue a similar approach for the Law Society's Tribunal.
21. The activities of the benchers who have acted as Chairs of the Hearing and Appeal Panels, and the policy proposals the Tribunals Committee has brought to Convocation, have fostered useful improvements to the Law Society's adjudicative process. Through the establishment of the position of Chair, Convocation will recognize that its Tribunal has evolved to the next level of its development. Such an appointment will further the Law Society's commitment to a mature hearing process that is independent, dedicated to professionalism, quality appointments, performance and results coupled with accountability on financial and other operational matters. Part of the Chair's role, in collaboration with the Tribunals Committee and staff, will be to consider procedural improvements to benefit the adjudicative process and possible technological assistance for adjudicators in the production of reasons (e.g. transcription services for the typing of reasons).
22. The Committee strongly recommends the appointment of a full-time Chair who is a non-bencher lawyer, with qualifications and administrative law experience that will enable him or her to fulfil responsibilities to promote a hearing process that is timely, coherent,

consistent and effective for the parties, the public and others with an interest in the adjudicative proceedings.

23. A description of the Chair's position is set out at **TAB 9.1.1: CHAIR POSITION DESCRIPTION**. The description sets out the overall purpose of the appointment and a detailed enumeration of the leadership functions of the Chair, the accountability of the position to the Tribunal and the Law Society and the qualifications of the successful candidate. The scope of the Chair's authority and accountability and the features of the position that will support the independence of the Tribunal are part of the description. The Committee is of the view that the depth and breadth of the Chair's position and responsibilities make a full-time appointment essential.
24. The importance of a full-time commitment is also one of the reasons for which the Committee recommends that the Chair not be a bencher. Benchers undertake policy and other Law Society commitments as part of their duties that will make it difficult to assume the full-time responsibilities of the Chair. Moreover, a non-bencher Chair will not be subject to the annual appointment process that takes place when Convocation populates committees and other offices. Other reasons militate against the Chair being a bencher:
 - a. The independence of the Chair respecting adjudicative decisions is an important feature of the position. There may be a perception that an elected bencher with policy responsibilities to Convocation could run into conflicts between his or her dual roles.
 - b. Since benchers are, by virtue of the Law Society's structure, equal members of Convocation, a Chair who is a sitting bencher might have difficulty asserting the kind of leadership role that the position envisages and necessitates to ensure the goals of the model are being met.
 - c. The Tribunal itself should be seen as uncompromisingly professional and, within the context of self-regulation, independent in its decision-making function. A non-bencher Chair in a leadership role will help to promote this understanding.
25. This does not mean that a bencher will be precluded from applying for the position of Chair, but rather that if successful he or she will be required to resign as a bencher.

26. The Committee's recommendation that the full-time appointed Chair be a lawyer is, in its view, essential to the success of the proposed model. A lawyer appointment provides an opportunity to seek out an individual with significant adjudicative and administrative law experience whose expertise and authority will engender the respect of the benchers, the legal profession and the public and meet the position appointment criteria.
27. The Chair, while independent of the Society's bencher structure, will still be a member of the legal profession and will oversee a Tribunal that continues to draw its members from lawyers and paralegals, including benchers, in addition to the lay appointees. The Chair will also be expected to have an understanding of the Law Society's culture and a commitment to the important role that benchers will continue to play in the adjudicative function. These important features of self-regulation will be preserved and enhanced through the changes to the adjudicative model.
28. In considering the role of the Chair, the Committee discussed how the position should be situated within the Law Society structure. The Chair must enjoy independence on matters of adjudication. The nature of his or her term of appointment will support such independence. The Chair will be ultimately accountable to Convocation and will be charged with bringing Tribunal policy matters that require decision to Convocation through the Tribunals Committee. In this way, the Tribunals Committee will interact with the Chair and continue to be the forum for bringing policy matters to Convocation for its ultimate consideration. The Chair will provide direction to the Senior Counsel & Manager of the Tribunals Office on hearing and other adjudicative matters. The Senior Counsel & Manager of the Tribunals office will continue to report to the Director, Policy and Tribunals, with respect to Tribunals Office operational issues. Where hearing and adjudicative issues overlap with operational issues the Director, Chair and Senior Counsel & Manager will consult to determine a resolution. The Chair will also provide an annual report to Convocation relating to adjudication by the Hearing and Appeal Panels.

29. The Chair must be accountable and report to the CEO, who is ultimately responsible to Convocation, on the Tribunal's operational issues. The Law Society has well-developed operational structures that include the Tribunals functions. For example, there are systems in place related to staff hiring, ongoing employment and budgetary matters that are dealt with uniformly across the Law Society and Information Systems and Communications structures that apply to all departments. The CEO will consult fully and regularly with the Chair on operational issues related to the Tribunal.
30. To reflect the importance of an independent Chair on adjudicative matters the Committee recommends that the Chair be appointed by Convocation for a fixed term, subject to renewal as Convocation decides. The term should be long enough to enable the Chair to develop the systems and carry out the responsibilities set out in the position description. The term should also be of sufficient length to provide continuity. In the Committee's view four (4) years is an appropriate length to accomplish this balance.
31. The Committee recommends that the Chair be eligible for re-appointment. The term of any re-appointment(s) will be up to four years, as Convocation determines. The process to determine renewal will begin at least one year before the end of the Chair's term, and will be completed no less than six months before the conclusion of that term.
32. At the same time there must be a process to remove a Chair during his or her term if necessary. That process must meet standards of procedural fairness and its results must be approved by Convocation. The exact nature of the process will be set out in the terms of the Chair's contract.
33. To attract a candidate qualified for the position with the experience, judgment and leadership skills that are mandated by the position description, it will be important for the position to be competitively remunerated. The Committee recommends that the Law Society undertake a recruitment process, as it does for other senior positions. That recruitment process will include the benchmarking of remuneration within the Law

Society and will consider external positions in administrative tribunals and government of a comparable nature. Convocation will approve the ultimate appointee.

APPOINTMENT OF VICE-CHAIRS

(i) Elected Bencher Appointees

34. Currently the *Law Society Act* provides for the appointment of a Chair and Vice-Chair of each of the Hearing Panel and Appeal Panel. The role of the Chair as described in this report will be different from the one described in the current *Act* since one person will have overall responsibility for the Tribunal (including the Hearing and Appeal Panels) and will not be a bencher.
35. The Committee recommends that under the new model the positions of Vice-Chair of each of the Hearing and Appeal Panel will continue. The elected bencher Vice-Chairs will support and assist the Chair with the responsibilities of the Hearing and Appeal Panels. The Vice-Chairs' responsibilities will be somewhat fluid, depending upon the Chair's priorities and responsibilities at any given time, and each Vice-Chair may at times carry out the other Vice-Chair's responsibilities. The proposed general purpose, responsibilities and qualifications of the positions are set out at **TAB 9.1.2: VICE-CHAIR POSITION DESCRIPTION**. The description outlines the purpose of the position, as informed by the list of key responsibilities and qualifications.
36. The Committee discussed whether the Vice-Chairs, like the Chair, should be non-benchers. The Committee is of the view that, particularly at the outset of implementation of the new model, there is merit in the Vice-Chairs being elected benchers, for the following reasons:
 - a. Given the other changes that will be part of the new model, elected bencher Vice-Chairs will provide continuity as the system is established.
 - b. As members of Convocation directly involved in policy making the two elected bencher Vice-Chairs will provide valuable context and background to the Chair.
 - c. Elected bencher Vice-Chairs will provide the non-bencher Chair with valuable assistance on issues related to adjudicators.

- d. Elected benchers Vice-Chairs will demonstrate the continued importance and value of benchers adjudicators in the Tribunals process.

(ii) Nature of the Appointments

37. The Committee recommends that the Vice-Chair positions be assigned by the Treasurer as part of the regular Committee appointments he or she recommends to Convocation. It will be important for the Treasurer to consider the time commitment the position requires when determining the Vice Chairs' other committee assignments or responsibilities. It will also be important to allow the Vice-Chairs to remain in the position over a number of years for continuity. For these reasons the Committee recommends that the Treasurer consult with the Chair on the appointments. The Committee also recommends that once appointed the Vice-Chairs take direction from the Chair in their capacity as Vice-Chairs.
38. The normal committee appointment process is yearly. A longer term for the Vice-Chairs will be beneficial to achieve continuity and efficiency. While Convocation should be free to appoint a Vice-Chair for a term it considers appropriate, the Committee's view is that two years is not unreasonable. The Committee recommends that each Vice-Chair be appointed for a two-year term, with eligibility for re-appointment. The Vice-Chairs should continue to be remunerated for their work in the same manner as benchers are otherwise remunerated for Law Society activities.
39. The Committee also recommends that in furtherance of the separation between the regulatory and adjudicative functions of the Law Society, the Vice-Chairs of the Hearing and Appeal Panels not be members of the Professional Regulation Committee and, if they are lawyers, not be members of the Paralegal Standing Committee. Although the Paralegal Standing Committee also has responsibility over professional regulation matters that affect paralegals, a complete prohibition against Vice-Chairs of the Hearing and Appeal Panels being members of that Committee would preclude a paralegal from being a Vice-Chair. This is because the *Law Society Act* provides that all five paralegals specified under the Act must be on the Paralegal Standing Committee. To address this

issue, the Committee recommends that a paralegal be eligible for appointment as Vice-Chair, but if so appointed he or she will not participate in any regulatory discussions of the Paralegal Standing Committee.

CONTINUATION OF THE TRIBUNALS COMMITTEE

40. The Tribunals Committee is an essential forum for the development and communication of policy proposals relating to the Tribunals structure and process. As the Chair develops systems for the new model and makes recommendations for Convocation's consideration and approval, he or she will benefit from the input and policy guidance of the Tribunals Committee. The Chair will be an *ex officio* member of the Committee. The Committee's current mandate will continue, subject to the addition that in developing policy options it will do so in collaboration with the Chair.
41. The Committee is of the view that the Vice-Chairs of the Hearing and Appeal Panel should both be members of the Committee, to provide input on the areas in which they provide assistance to the Chair. The Committee does not consider it essential that they be the Committee Chairs or Co-Chairs, but does not preclude that possibility.
42. Benchers and non-benchers should be eligible for appointment to the Committee. In the Committee's view it will be important to include representation from among non-benchers to ensure that the breadth of perspectives is taken into account.
43. The Committee is not recommending a change to the Committee's size. It is not intended that all adjudicators be members of the Committee.
44. In furtherance of the separation of the Tribunals process from the disciplinary stream, lawyer members of the Tribunals Committee will not also be members of the Professional Regulation Committee or of the Paralegal Standing Committee. For the reasons discussed above, paralegals appointed as members of the Tribunals Committee

will not participate in any regulatory discussions at the Paralegal Standing Committee meetings.

EFFECTIVE ADJUDICATION

ADJUDICATOR APPOINTMENT PROCESS

45. Qualified and available adjudicators play a central role in the effectiveness, reliability, transparency and fairness of the Tribunal. As a regulatory body the Law Society's Tribunal has an added layer of responsibility as a component in the Law Society's overall mandate to regulate the profession in the public interest. Self-regulation necessitates that lawyers and paralegals will preside over regulatory proceedings concerning their peers. To ensure the added input of the public, lay appointees are also an integral part of the hearings process.
46. In 2007 the Law Society considered the issue of who should sit on regulatory hearings. The Tribunals Composition Task Force considered whether it should recommend a model of bencher-only adjudicators, non-bencher-only adjudicators, or a mixture of bencher and non-bencher adjudicators.
47. The 2007 Task Force decided against recommending a model that excluded benchers from the process, believing that the governors of the Law Society should have a "hands-on" responsibility for regulating this aspect of the profession's standards. The Committee agrees. Benchers add a dimension of familiarity with the Law Society's regulatory requirements and policy decisions that inform the regulatory process. Moreover their adjudicative work provides an important context for the policy decisions Convocation makes.
48. The existence of an Adjudicator Code of Conduct addresses any conflict issues that may arise in individual instances with all adjudicators, including benchers. In addition, jurisprudence governing regulatory bodies and government has settled that integrated regulatory models do not present systemic bias. As such there is no reason to exclude

benchers on the Hearing and Appeal Panels, and many important reasons to include them.

49. At the same time, the use of bencher adjudicators should be predicated not just on the fact of their election, but on the basis of quality and availability. This is essential to a Tribunal that is effective, independent and transparent. Expanding the pool of adjudicators available for both the Hearing and Appeal Panels strengthens the Law Society's commitment to quality and to an adjudicator pool developed on the additional basis of availability.
50. The exclusive use of benchers limits the Law Society's ability to ensure timeliness of scheduling and delivery of reasons, particularly as a number of the cases before the Tribunal increase and become increasingly complex and lengthy. In 2011, 471 Hearing Panel hearings were scheduled on 232 of the 248 available calendar days or approximately 94% of days available, often with multiple hearings proceeding at the same time. Moreover, the number of non-continuous hearings, that is those that must be adjourned numerous times to accommodate schedules, has resulted in a number of matters taking substantial amounts of time to complete.
51. An examination of the active Tribunal files currently before the Hearing Panel for which there have been 10 or more days of hearing scheduled reveals 17 files listed, 15 of which involve lawyers licensees and two of which involve paralegal licensees. Of these, the oldest active file is 933 days and the youngest is 197 days from the first hearing date scheduled, with an average length of 595 days. Most of the hearing blocks are scheduled for fewer than five days with many at only one day. Longer hearing blocks would facilitate moving these matters along. Expansion of the Hearing Panel to include non-benchers who have time to devote to lengthy and continuous hearings may assist. A three-member hearing panel was assigned in all of the 17 files listed. Seventeen non-bencher appointees were assigned to 13 of these files with 34 benchers making up the balance.

52. The increasing length of proceedings is a function of the increasing complexity of the subject matter of the proceedings. The pool of available elected benchers currently in practice to hear these complex matters is limited in number by the unavailability of many elected benchers to devote multiple weeks to law society proceedings. This limitation must be taken seriously in any discussion about furthering the long term effectiveness of the Tribunal.
53. There are important additional reasons for an expanded pool of adjudicators. The availability of non-bencher adjudicators will make it possible to broaden the pool of those with practice-area expertise, regional and other diversity interests and experience as litigators or solicitors. Further, given the part-time adjudicator model the Law Society employs, an expansion of the pool is essential to ensure effective operation. Non-bencher adjudicators will also be required to make a dedicated time commitment and in doing so will greatly enhance the Tribunal's ability to schedule hearings efficiently.
54. The self-regulatory mandate is strengthened by the additional involvement of lawyers and paralegals who are not benchers in the adjudicative process. The profession is interested in the operations of its regulator. Indeed, during the consultations that were held on governance reform, participants and legal organizations suggested this expanded approach to adjudication. Lawyers and paralegals volunteer their time to engage in Law Society educational, mentoring, duty counsel, and other activities. At the same time, however, the Law Society can be viewed as opaque to much of the profession. What goes on at the Law Society? How does the regulatory system work? How are proceedings handled and decided?
55. By involving non-bencher lawyers and paralegals in the hearings and appeals process, the Law Society broadens the profession's appreciation of the regulatory issues that the Law Society must handle on a regular basis. It also sends an important message that self-regulation is represented not just through the elected governors, but by the members of the profession at large. To be an effective addition, the non-bencher adjudicators must be

scheduled regularly so that they can develop the expertise in the subject matter of the Tribunal's work that is acquired by experience.

56. Lawyers and paralegals have a collective responsibility for compliance with regulatory standards in the public interest. More than just benchers have an integral role to play in adjudicating Law Society issues. Through this expansion the Law Society will also be sending a message to the profession that the elected governors value the contribution that the profession as a whole, and the pool of lawyer and paralegal talent within it, can add to the quality of administrative justice that the Law Society must deliver.
57. The need and benefits of an expanded pool extends beyond lawyers and paralegals to include lay appointees. The lay appointees play a fundamental role in the Law Society's three member Hearing Panels and on the Appeal Panel. They will continue to do so under the proposed new model. The Law Society is committed to having lay representation on these hearings. To the extent that lay benchers are unable or unwilling to sit or do not speak French the need for non-bencher lay appointees becomes that much more critical. The Law Society will not schedule three or five member hearings without the requisite lay appointee.
58. As a matter of policy, Convocation has already accepted that benchers should not be the only adjudicators. Since 2006, the *Law Society Act* has provided that benchers, licensees and persons approved by the Attorney General are eligible to sit on hearing and appeal panels. In 2007 Convocation determined that the Hearing Panel should include 4 non-bencher lawyers and 4 non-bencher lay appointees. In January 2012 it expanded the number of non-bencher lawyers to 6. The experience with this initial expansion has been very positive. The additional lay appointees have also enabled the expeditious scheduling of hearings when the complement of lay benchers was insufficient. In the case of the lawyer appointees they have provided additional expertise, particularly as it relates to ability to conduct hearings in French, and greater options for scheduling, particularly of long hearings.

59. The Committee has concluded that the non-bencher adjudicator initiative has benefited the Law Society's Tribunal process by,
- a. enhancing the Law Society's ability to effectively adjudicate and manage its hearings process in the public interest, through an expanded pool of adjudicators;
 - b. offering an opportunity for non-benchers to play a valuable role in Law Society matters and become more engaged in the issues of self-regulation; and
 - c. facilitating the hearing of French language matters.
60. The existence of an additional pool of adjudicators has provided the Chair of the Hearing Panel with additional scheduling flexibility. On occasion these adjudicators have made it possible to schedule a hearing when the time commitment involved or a last minute change in scheduling made it impossible to assign a bencher adjudicator or where the hearing was to be conducted in French.
61. At the same time, however, the 2007 expansion was based on the additional adjudicators being thought of as an adjunct to the primary model of bencher adjudication. Moreover, in 2007 the appointment of non-bencher adjudicators was limited to the Hearing Panel.
62. The Committee believes that the experience with the non-bencher additional adjudicators illustrates the merits of a model that includes non-bencher adjudicators as an integral component of both the Hearing and Appeal Panels.
63. Moreover, it is essential to the effectiveness of any administrative tribunal, including the Committee's proposed model, that adjudicators have the opportunity to adjudicate on a regular basis to ensure the ongoing development of their skills.
64. In the Committee's view the effectiveness of its proposed model is enhanced by cross-pollination of the different perspectives that bencher and non-bencher adjudicators bring to the process. There should be an expansion of the pool of non-bencher adjudicators, lawyer, paralegal and lay appointees, to ensure adjudication based on optimum quality

and availability and to engage others in the profession beyond benchers in professional regulation.

65. As the Law Society undertakes an enhanced model that will involve a number of significant changes the Committee believes that change should be implemented decisively, but in a measured fashion to allow for a smooth transition. As the new system is implemented the pool of benchers who apply or are available to adjudicate may vary. It is too soon to determine whether the bencher pool will be smaller and the Chair will need time to evaluate the needs of the new model.
66. Accordingly, the Committee recommends a two-pronged approach to enlarging the pool of non-bencher adjudicators:
- a. As a first step, Convocation approves an increase to the number of non-bencher lawyer, non-bencher paralegal and non-bencher lay adjudicators to reflect the commitment to a model of bencher and non-bencher adjudicators.
 - b. Once the Chair is appointed, he or she will,
 - i. assess the number and availability of current bencher adjudicators who apply to be on the Hearing Panel, the adjudicative needs of the Panel overall based on the principles discussed in this report, and the current pool of non-bencher adjudicators available to sit on long matters;
 - ii. consider any other factors that are relevant to determining the appropriate size of the adjudicative pool; and
 - iii. having taken into consideration the addition of non-bencher adjudicators approved by Convocation as a first step under (a), further adjust the size of the non-bencher adjudicative pool to meet those needs as he or she determines appropriate.
67. Currently there are 6 non-bencher lawyer adjudicators, 3 non-bencher elected paralegal adjudicators and 4 non-bencher lay adjudicators. The Committee is of the view that doubling the non-bencher lawyer adjudicators (from 6 to 12) and adding 3 paralegal adjudicators for a total of 8⁴ will provide a reasonable starting point for the enhanced

⁴ Of the five current Paralegal Standing Committee members, one is on the Proceedings Authorization Committee and accordingly does not adjudicate.

model and provide the new Chair with a meaningful pool against which to assess additional needs. With respect to the lay adjudicators, in addition to the 4 non-bencher lay adjudicators there are 4 temporary adjudicators who are regularly scheduled to sit and are essential to the Law Society being able to meet its commitment to having lay participants sit on the hearings. The Committee recommends that in addition to the eight lay benchers, the number of non-bencher lay adjudicators be increased from the current 4 to 8 for a total of 16 lay hearing panel members.⁵

68. In summary, the Committee is proposing the addition as members of the Hearing Panel of,
- a. 6 non-bencher lawyers, for a total of 12 non-bencher Hearing Panel lawyers taking into account the current 6 non-bencher lawyers;
 - b. 3 non-bencher paralegals for a total of 8 Hearing Panel paralegals, taking into account the current 2 paralegal benchers and 3 elected paralegals; and
 - c. 4 non-bencher lay appointees for a total of 16 lay Hearing Panel members, taking into account the current 8 government appointed lay appointees and 4 non-bencher lay appointees;

with eligibility to be appointed to the Appeal Panel.

69. This approach leaves room for the Chair's assessment of additional adjudicator requirements in keeping with the model's goals and his or her consideration of the most effective way forward.

PANEL APPOINTMENTS

70. If quality and availability are to be the key to an effective adjudicative model, then it is important to consider this additional pool of non-bencher adjudicators as an integral part of the Hearing and Appeal Panels, not just as a backstop when bencher adjudicators are unavailable to sit. At the same time, the Committee is of the view that the assignment of

⁵ Adding these additional appointees to the current roster of sitting adjudicators would result in a roster of 57 lawyer benchers (elected, former Treasurer and *ex officio*), 16 lay benchers and appointees, 8 paralegal benchers and appointees and 12 non-bencher lawyer appointees.

adjudicators to panels should keep in mind the valuable perspective benchers adjudicators bring to the process, as discussed above.

71. Populating Hearing and Appeal panels will form an integral part of the Chair's role, with the assistance of the Vice-Chairs. In furtherance of his or her responsibility to ensure an effective Tribunal that focuses on quality and availability, the Chair should balance a number of factors including,
 - a. appointing panels best able to accomplish those goals;
 - b. reflecting a commitment to ensuring that benchers play a hands-on role in adjudication; and
 - c. treating the pool of available adjudicators as a collective source for scheduling.
72. These criteria will apply equally to Hearing and Appeal panel scheduling.
73. Regulation 167/07, set out at **TAB 9.1.3: REGULATION 167/07**, currently provides that panels that hear matters in which a lawyer is the subject of the proceeding should have one elected bencher and one lay appointee. The source for the third member is not specified. For panels that hear matters in which a paralegal is the subject of the proceeding one member is to be a paralegal licensee, one a lay appointee and one a lawyer licensee. The Regulation applies the same principles to Appeal Panel composition, but adjusted to reflect five member panels.
74. Pursuant to Regulation 167/07, the Chair has the authority to deviate from this panel composition, but only where to comply would "unduly delay" a hearing.
75. The general principle of flexibility in scheduling is reflected in Regulation 167/07, both in the flexibility that exists with respect to the appointment of the third Hearing Panel member and the fifth Appeal Panel member in lawyer hearings and through the ability of the Chair to deviate from the Regulation's provisions where to comply will unduly delay the hearing. Flexible scheduling is an essential component of ensuring that the most appropriate panels are scheduled to conform to the Tribunal goals described above.

76. The Committee considered whether to recommend a panel composition structure of one bencher, one non-bencher and one lay adjudicator, with the Chair in the normal course selecting from each of these categories of adjudicators, but recommends a more flexible approach.
77. The Committee recommends that the general composition structure set out in Regulation 167/07 remain the same. It does, however, believe that in the interests of effective scheduling, the Chair's flexibility must be meaningful for the assignment of both Hearing and Appeal panels. As such, the Chair's ability to alter the composition as set out in the Regulation should be broadened to include factors in addition to undue delay to reflect,
- a. practice area expertise requirements;
 - b. experience requirements;
 - c. regional and other diversity perspectives;
 - d. scheduling effectiveness for reasons other than "undue delay;"
 - e. conflicts; and
 - f. the public interest.
78. The Committee recommends that amendments be proposed to Regulation 167/07 to provide authority and discretion in the Chair to vary the composition of the Hearing and Appeal panels to ensure effectiveness of adjudication as set out in paragraph 77.

HEARING PANEL APPOINTMENT CRITERIA

79. Another critical feature of an effective adjudicative model is the implementation of meaningful criteria for appointing adjudicators and evaluating their performance for the purpose of quality control and re-appointment determinations.
80. Whereas the current Law Society structure has criteria for the appointment of non-bencher adjudicators, this is not the case for elected benchers, non-bencher members of the Paralegal Standing Committee and lay benchers, who are essentially appointed to the Hearing Panel by virtue of their status. In the Committee's view this appointment as of

right does not always result in adjudicators who are the most suited to or interested in adjudication. Similarly, some of the lay benchers appointees may have no experience with or interest in adjudication.

81. Moreover, neither benchers nor non-benchers currently undergo an evaluation process following their initial appointment to determine whether on the basis of quality, competence, availability or other criteria they should be re-appointed to the Hearing Panel.
82. At the same time, some efforts have been made to introduce quality assurance into the system through required orientation sessions for new adjudicators, ongoing and regular education sessions in Convocation and, more recently, the development of a training curriculum, the first program of which covered decision-writing.
83. An adjudicative system dedicated to quality must have meaningful evaluative criteria. In the Committee's view this should include,
 - a. criteria for appointment;
 - b. criteria for ongoing training requirements and competencies; and
 - c. criteria for re-appointment.
84. In addition, benchers should be free to choose not to put their names forward for the Hearing and Appeal Panels if they are more interested in policy work, have insufficient time to devote to hearings, are unable to write reasons for decision in a timely manner, or have other issues that make them unsuitable or unable, whether permanently or temporarily, to adjudicate.
85. The issue of appointment criteria is complicated somewhat by the fact that a newly elected benchers may have minimal or no experience as an adjudicator. Since the Committee has expressed the view that it is important for elected benchers to be involved hands-on in adjudication it has considered how best to articulate appointment criteria that will address this issue.

86. The Committee considered the option of recommending identical criteria for the appointment of benchers and non-benchers to the Tribunal, in keeping with the equality of all Tribunal members within the Committee's proposed model. The Committee is of the view, however that it is acceptable for the model to be somewhat asymmetrical as between bencher appointments to the Hearing Panel and non-bencher appointments. This reflects the reality of the electoral structure and the value of introducing benchers early on to their adjudicative role. This asymmetry would apply in two respects: grandparenting existing benchers and adopting different requirements for experience as an adjudicator.
87. If Convocation approves the new model for appointments, as part of the transition process the current members of the Hearing and Appeal Panels will be grandparented if they apply to continue as adjudicators.
88. The Committee's proposal for appointment is as follows:
- a. Every bencher, current and future, who wishes to become a member of the Hearing Panel will be expected to apply.⁶ It will be made clear to benchers that they do not have to apply to sit as an adjudicator if they prefer to do more policy work than adjudicative work or have other reasons for not sitting on the Hearing Panel.
 - b. As part of his or her application, the interested bencher will,
 - i. agree to a minimum amount of availability;
 - ii. agree to attend whatever training and education is required of adjudicators;
 - iii. agree to appropriate timelines for producing written reasons for decision.

Those unable to make such commitments will not be eligible for that round of appointments, but will be free to re-apply when their schedule permits such commitments.
 - c. As part of a transition to the new system, current benchers who apply will in the usual course be grandparented. From that point on and on a going forward basis, however, they will be required to meet the same criteria as new benchers or other

⁶ The Committee is not recommending that candidates for elected bencher would have to declare whether they wish to be adjudicators as part of their election platform. The decision to apply to sit on the Hearing Panel would be made once the bencher is elected.

appointees and to be evaluated for re-appointment on the same basis as other appointees.

- d. In the case of new benchers, those who have had no adjudicative experience will be eligible to sit, but before being scheduled for any hearings will be required to complete, to the Chair's satisfaction, adjudicator training designated by the Chair to enable them to provide competent adjudication. The time required for this training will not count as part of the commitment to a minimum amount of availability. Those who have adjudicative experience will not, in the normal course, be required to take training before being eligible to sit, other than the mandatory orientation to the Law Society's Tribunal for all new benchers.
- e. New non-bencher adjudicators will be required to meet criteria along the lines of those appointed as non-benchers since 2007, including having adjudicator experience. As an illustration, **TAB 9.1.4: CRITERIA FOR NON-BENCHER LAWYER ADJUDICATORS**, sets out the appointment criteria applied to non-bencher lawyer adjudicator applicants in 2008. The Chair will determine what additional or other criteria should be applied on a going forward basis.
- f. Adjudicators will be appointed for a two-year term, subject to re-appointment on application.
- g. As no formal evaluation system currently exists, one of the new Chair's responsibilities will be to develop and recommend an evaluation system to Convocation. The evaluation process will be used to assist adjudicators to improve and to determine who should be re-appointed. Based on the outcome of the evaluation process, the Chair will make recommendations to Convocation for the re-appointment of adjudicators.
- h. Without seeking to circumscribe the development of the evaluation process, the Committee is of the view that it should include,
 - i. observation of adjudicators in hearings;
 - ii. review of adjudicators' orders and reasons for decision;
 - iii. peer review - adjudicators evaluating others adjudicators with whom they have sat on panels;
 - iv. self-review;
 - v. establishment of a list of competencies for adjudicators and evaluation of performance against those competencies. These could include competencies in the following areas:
 - Communication
 - Analytical thinking
 - Conceptual thinking
 - Decision making/judgment
 - Organizational skills
 - Advance preparation
 - Ethics and values

- Interpersonal skills
- Listening skills
- Collegiality/teamwork
- Civility
- Stamina/stress resistance.

89. Developing the evaluation system will be a complex process. The Chair should be given a reasonable time frame to do so and the possibility of doing so in increments.⁷ The Committee recommends that within six months of the effective date of his or her appointment the Chair will present a proposal to Convocation for the evaluation system and a timeline for implementation.
90. The introduction of an evaluation system will be a significant change to the Law Society's Tribunals structure and culture, but the Committee considers this essential to the effective operation of any model that is designed to ensure quality adjudication.

TIMELY ADJUDICATION

91. The third component of the proposed model involves a structural commitment to timely adjudication. It is not sufficient that a tribunal have good processes and quality adjudicators if scheduling of matters is drawn out, adjudicators are unable to commit to lengthy matters, or there is unreasonable delay in the rendering of decisions and reasons.
92. One of the features that a new model can develop is a more rigorous approach to scheduling that is fair to licensees and counsel and ensures that the public interest in addressing outstanding regulatory matters is also a priority.
93. There are two components to timely adjudication that the Committee addresses:
- a. The commitment of adjudicators to be available for a minimum number of hearing days per session.
 - b. The development of a roster of adjudicators for long and short hearings.

⁷ The development of evaluation systems are beginning in other tribunals. This may provide guidance for the Chair.

94. The Law Society's Tribunal operates within a part-time adjudicator structure. Unlike other tribunals that have a combination of full and part-time members, all the Law Society's panels must be scheduled around adjudicators' other work responsibilities. Benchers and non-bencher adjudicators have varying degrees of availability to act as adjudicators.
95. In furtherance of an effectively-operated Tribunal the Committee considers there to be a number of scheduling processes that the Chair will implement as follows:
- a. To allow for the development of adjudicative experience, the range of hearing subject matter, scheduling and conflict issues, benchers and non-bencher adjudicators will be required to offer a minimum number of hearing days per session. The Chair will determine the appropriate minimum in each case, taking into account that benchers have more extensive Law Society responsibilities than non-benchers who seek out the adjudicator role. The Chair will require the former to offer fewer dates.
 - b. One of the issues of concern to any Tribunal is managing long hearings in a manner that is fair to the participants and meets the public interest in resolving regulatory proceedings expeditiously. One of the difficulties with a part-time Tribunal of adjudicators is that it is difficult to allocate a sufficient number of hearings days together. The Committee is of the view that in addition to committing to a minimum number of hearings days adjudicators will indicate whether they are available for short hearings only or for both short and long hearings. A definition of short and long hearings and a short and long hearing list roster of adjudicators will be developed.

FINANCIAL IMPLICATIONS OF THE MODEL

96. The Committee's focus has been on developing an integrated adjudicative model that will enhance the Law Society's adjudicative structure. This includes introducing leadership that is devoted to adjudication and developing and implementing systemic approaches to ensure quality adjudication, timeliness of hearings and effective decision-making. In the Committee's view the components of the model proposed here are essential to the continued viability and increased effectiveness of the Law Society's Tribunal.

97. The Committee has considered the potential costs of its recommendations. Given that the Chair will implement the model and given the role the search committee will play in determining the ultimate remuneration of the Chair, it would be premature for the Committee to provide exact cost figures at this time. Having said that, it considers that the main categories of costs will be those associated with,
- a. the Chair's remuneration and the support of his or her office;
 - b. ongoing adjudicator education; and
 - c. the development of an evaluation system (a one-time cost).
98. As mentioned above, the Law Society will undertake a recruitment process, as it does for other senior positions, to find an appropriate Chair. That recruitment process will include the benchmarking of remuneration within the Law Society and externally to consider positions in administrative tribunals and government of a comparable nature. There will be a one-time expense for setting up the Chair's office, such as for providing equipment and furniture, and ongoing expenses for the Chair's administrative support, office space and remuneration. In the Committee's view, a reasonable estimate for annual costs, including the Chair's remuneration, will be in the area of \$500,000.
99. The Committee has discussed the importance of ongoing adjudicator training as an essential component of the new model. Convocation has already approved enhanced adjudicator training. The 2012 adjudicator education training budget is \$55,000. The Committee estimates that to ensure the continuation of adjudicator training that is effective and stimulating, and keeping in mind the need to train new benchers who do not have previous adjudicator experience and per diem costs for attending training, an ongoing annual cost of \$100,000 should be anticipated.
100. The model anticipates regular and meaningful evaluation of adjudicators with the Chair developing a proposed approach for an evaluation system within the first six months of his or her appointment. Without anticipating what the Chair might develop, the Committee is of the view that it would be prudent to assume that there will be one time developmental costs for such a scheme and some modest ongoing expense, although it is

not in a position to speculate on what those costs might be. The Chair's evaluation proposal and its proposed budget will be provided to Convocation for approval.

101. While the new model will have cost implications, in the Committee's view some of the challenges of the current approach result in costs being incurred that the recommended reforms are designed to reduce. It is difficult to quantify cost savings of a yet to be introduced system, but the Committee believes that the proposals it has put forward will in the long run result in a number of cost reductions, including,
 - a. adjudicator cost savings as hearings are more expeditiously scheduled and completed, resulting in fewer adjudicative hours and fewer hearings that must be drawn out over many months;
 - b. as the Chair will sit on hearings, the remuneration and expenses of another adjudicator will be saved;
 - c. the development of enhanced training in decision-writing that will reduce the time spent on writing reasons; and
 - d. through training, more efficient hearing processes that reduce the time needed for hearings.

102. The Committee also notes the unique role of the Appeal Tribunal in the Law Society model. In most administrative tribunals appeals are taken to the Divisional Court. The Appeal Panel was introduced when the Law Society moved from using Discipline Convocation as part of its adjudicative model and at a time when there was virtually no Law Society jurisprudence governing the adjudicative model.

103. The Committee has not considered in depth whether under the enhanced and modernized system it is recommending the Appeal Panel will still be necessary, but it suggests that this is something that the Chair and Convocation might well consider in the future. If the Appeal Panel were phased out, this could result in further savings to the Tribunal system. Even if the Appeal Panel continues, the enhanced adjudicative model is likely to result in fewer successful appeals, thereby reducing costs. For example, a Hearing Panel matter that involves 15 days divided into 5 sets of hearing dates with two non-Toronto

adjudicators that does not have to be reheard will result in cost saving in remuneration and expenses alone of approximately \$50,000.

104. The Committee also notes the potential for the Chair to consider recommendations for increasing the number of single adjudicator hearings, which would have the potential to expedite hearings and also include cost savings.
105. Finally, the Committee notes that if Convocation approves the proposed model, it is likely that costs will not be incurred before 2013 and for some aspects of the model not before later in that year.

REVIEW OF THE NEW MODEL

106. The new model will include a review process. The purpose of the review will be to consider,
 - a. whether and how the new model is addressing the goals and criteria set out in paragraphs 13 and 14;
 - b. its impact on the Tribunals processes; and
 - c. its cost effectiveness.
107. It is important that the review take place only after there has been sufficient opportunity for the model and its new processes to be implemented. This includes the appointment of the new Chair and Vice-Chairs, the development and implementation of an adjudicator appointment and adjudicator evaluation system and enhanced adjudicator training, and the appointment of additional non-bencher adjudicators.
108. The Chair will provide annual reports to Convocation. In the Committee's view, the first formal review of the model should take place in the third year of the Chair's first term. Within one year of the Chair's appointment, the Tribunals Committee in conjunction with the Chair, the Vice-Chairs, the CEO and the Director of Policy and Tribunals will develop the framework for the model's review, to be approved by Convocation. The

framework will include any general Law Society program review criteria that Convocation has approved and are in place at that time.

CONCLUSION

109. In establishing its priorities for the 2011-2015 bench term, Convocation recognized the importance of an effective Law Society hearings process to its overall mandate and committed itself to addressing this priority.

110. The Committee's proposed model is designed to provide a framework whose component parts will contribute to the fulfillment of Convocation's priority. The model is focused on leadership, transparency, quality adjudication and availability, objective criteria for appointment and evaluation and cost effectiveness. It will enhance the Law Society's commitment to a hearings process that is transparent, fair and effective both for the public and for the affected licensees who are subject to the proceedings. This is central to the Law Society's proper discharge of its adjudicative responsibility.

CHAIR POSITION DESCRIPTION

PURPOSE

The Chair is responsible for the overall implementation of the strategic direction and performance of the Tribunal, including its Hearing and Appeal Panels, subject to the provisions of the *Law Society Act* and Convocation's policies. The Chair shall be accountable to Convocation to provide leadership to the Tribunal to ensure that it operates fairly, efficiently and effectively within its mandate.

KEY RESPONSIBILITIES

Law and Procedure

- Establishes and monitors adjudicative processes, including the efficient assignment of cases and effective case management practices and the streamlining of adjudicator involvement in proceedings management.
- Assists Convocation in the development of Tribunal policies and procedures and provides oversight to the implementation of those policies to ensure efficiency, quality and timeliness in the resolution of proceedings and rendering of decisions, orders and reasons.
- In conjunction with the Tribunals Committee and in keeping with the Law Society's mandate to regulate the profession in the public interest, develops recommendations for Convocation's consideration and approval respecting the Tribunal's goals and policies, effective processes, and quality and performance of adjudicators.
- Supervises the Tribunal's adjudicative decision-making process to ensure consistent quality and cogent decision-making.
- Arranges and chairs meetings of the Vice-Chairs and adjudicators to discuss emerging issues, jurisprudence, policy and process change (in consultation with the Tribunals Committee and Convocation), engages in professional development, and promotes clarity and predictability in the exercise of independent decision-making.
- Participates in the hearing and appeal process as an adjudicator, particularly in matters involving complex or novel issues of law and procedure.
- Is responsible for the evaluation of adjudicators and provides recommendations on the appointment and re-appointment of adjudicators to ensure consistent quality of adjudication including the maintenance of high standards in,
 - conducting hearings pre-hearings and case management functions;
 - delivering reasons;

- chairing hearing panels;
 - timeliness of hearings and decisions; and
 - training and education.
- Ensures effective implementation of policy and procedures and operation of the Tribunal through a dynamic and collaborative interaction with the Tribunals Office.

Leadership

- Mentors and develops Vice-Chairs and adjudicators by,
 - providing oversight and advice;
 - discussing and implementing the professional development requirement among appointees; and
 - managing the adjudicator evaluation system in a professional, effective and objective manner to ensure that issues respecting quality of adjudicators and timeliness of reasons are managed in the best interest of the Tribunal and the public interest.
- Subject to the Treasurer's and, on operational issues, the CEO's direction, represents the Tribunal as the liaison and spokesperson on Tribunal processes and procedures, including seeking input where the Tribunals Committee or Convocation seeks to consult with stakeholders.
- Ensures independence in adjudicative functions by developing recommended standards of interaction with the public, stakeholders and government.
- Remains current in developments in administrative law and related matters in Ontario, Canada and other jurisdictions.
- Provides direction to the Senior Counsel & Manager of the Tribunals Office on hearing and other adjudicative matters.
- Maintains open, effective and regular communication with the Treasurer, CEO, the Tribunals Committee, the Tribunals Office and Convocation so that plans and initiatives are appropriately developed and implemented.
- Fosters and facilitates the effective use of technology in the hearing process.
- Develops and maintains an effective scheduling system that reflects the goals of the Tribunal and takes into account adjudicator competence and quality, availability both to sit on hearings and produce written reasons expeditiously, conflict issues, French language requirements, lengthy hearings, experiential requirements, diversity,

representativeness across practice structures and challenges of operating a Tribunal with part-time membership. In furtherance of this, considers and recommends innovative approaches to scheduling and case resolution through alternative dispute resolution techniques, case management, and agreements on factual and legal issues.

- Develops standards for timing of delivery and quality of reasons and effectively manages compliance.
- Acts with integrity and honesty, with actions guided by the Law Society's mandate to regulate the profession in the public interest.

Governance

- Liaises and advises the Tribunals Committee and Convocation on issues affecting the Tribunal to advance sound Tribunal processes.
- Establishes the Tribunal's operational policies and procedures within the Law Society's mandate to regulate the profession in the public interest.
- Notifies the Tribunals Committee and Convocation of adjudicator vacancies and makes recommendations for appointments or re-appointments that promote and respect principles of high quality adjudication, including considerations of equity, diversity, experience, training, availability and regional representation.
- Provides an annual report to the Tribunals Committee and Convocation on the operations of the Tribunal.
- Keeps the Tribunals Committee and Convocation informed in a timely fashion on issues affecting the Tribunal.
- Oversees and reviews preparation of Tribunal budget and allocation of resources as part of the Law Society budget process, reporting to the CEO.
- Ensures adjudicators act in accordance with the Adjudicator Code of Conduct.

QUALIFICATIONS

- An experienced leader with ability to set strategic direction, articulate and work toward goals, oversee implementation of plans and strategies to deliver efficient, effective and high quality services.
- A law degree and membership in a law society in a Canadian common law jurisdiction.
- A proven ability in results management.

- Thorough understanding of the administrative justice system, including the relevant legal principles of administrative law and practice.
- Strong background and experience in adjudication and alternative dispute resolution.
- Comprehensive knowledge of the *Law Society Act* and Reg. 167/07, the *Statutory Powers and Procedures Act* and related laws and legal processes or the ability to acquire such understanding.
- In-depth understanding of the professional, institutional, policy and community context in which the Tribunal operates, or the ability to acquire such understanding.
- Understanding of the Tribunal's Rules of Practice and Procedure and Appeal Rules and supporting procedures.
- Superior dispute resolution and analytical skills to resolve complex matters involving multiple interests, under public scrutiny.
- Effective communication and interpersonal skills to positively influence and communicate with staff, stakeholders and the public.
- Understanding of the legal profession's values and a commitment to working within Law Society's accountability structure.
- Understanding of sound financial and operational business processes and practices.
- Commitment to the protection of the public interest, within the Law Society's mandate.
- Commitment to respect diversity and to maintain fair, transparent processes that meet the highest professional standards.
- Knowledge of and commitment to sound governance practices.
- Availability to devote full-time to the appointment.

VICE-CHAIR POSITION DESCRIPTION

PURPOSE

To provide support and assistance to the Chair related to the functioning and responsibility of the Hearing Panel and the Appeal Panel and act as substitute Chair in the absence of the Chair or as requested by the Chair.

KEY RESPONSIBILITIES

- At the Chair's direction, assists with the functioning and responsibilities of the Hearing/ Appeal Panels related to,
 - scheduling;
 - training adjudicators;
 - Adjudicator Code of Conduct issues; and
 - provision of advice and assistance to adjudicators.
- Participates as a member of the Tribunals Committee, liaising with the Chair of the Tribunal, Tribunals Office and Convocation.
- At the Chair's direction, and on an "as needed basis" consults with and advises the Tribunals Office regarding interpretation of legislation and rules.
- In the case of the Chair's conflict on a matter, acts in place of the Chair.
- In the Chair's absence or at the Chair's direction, performs such of the Chair's functions as required.
- Collaborates with the Chair to develop and implement processes and practices that support the Tribunal's operations to enhance effectiveness and efficiency.
- At the Chair's direction, takes on cases or assignments that may have a higher profile, are more complex and may involve multiple parties or stakeholders.
- At the Chair's direction, mentors new appointees and provides oversight and advice to ensure quality and clarity.
- Participates in professional development opportunities.
- Prepares head-notes of Hearing Panel/ Appeal Panel decisions and reasons.

QUALIFICATIONS

- In-depth understanding of the professional, institutional, policy and community context in which the Tribunal operates.
- Understanding of the Tribunal's Rules of Practice and Procedure for Hearing and Appeal Panels, supporting procedures and jurisprudence.
- Effective communication and interpersonal skills.
- Commitment to respect diversity and to maintain fair, transparent processes that meet high professional standards and comply with the Adjudicator Code of Conduct.
- Commitment to the protection of the public interest within the Law Society's mandate.
- Ability to work collaboratively and under direction of the Chair.

Law Society Act

ONTARIO REGULATION 167/07

HEARINGS BEFORE THE HEARING AND APPEAL PANELS

Consolidation Period: From March 15, 2010 to the [e-Laws currency date](#).

Last amendment: O. Reg. 68/10.

This is the English version of a bilingual regulation.

HEARINGS BEFORE THE HEARING PANEL

Proceedings to be heard by three members

1. (1) The chair or, in the absence of the chair, the vice-chair shall assign three members of the Hearing Panel to a hearing to determine the merits of any proceeding other than an application listed in subsection 2 (1). O. Reg. 167/07, s. 1 (1).

(2) If the person who is the subject of the proceeding is a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,

(a) at least one of the members assigned under subsection (1) shall be an elected bencher licensed to practise law in Ontario as a barrister and solicitor; and

(b) at least one of the members assigned under subsection (1) shall be,

(i) a lay bencher, or

(ii) a person approved by the Attorney General for Ontario under clause 49.21 (3) (c) of the Act. O. Reg. 167/07, s. 1 (2).

(3) If the person who is the subject of the proceeding is a person licensed or applying to be licensed to provide legal services in Ontario,

(a) one of the members assigned under subsection (1) shall be,

(i) until the first election of benchers under subsection 16 (1) of the Act takes place, one of the two persons referred to in subsection 16 (6) of the Act,

(ii) a person appointed by the Attorney General for Ontario under clause 25.2 (2) (a) of the Act and approved by him or her under clause 49.21 (3) (c) of the Act, or

(iii) a person licensed to provide legal services in Ontario;

(b) one of the members assigned under subsection (1) shall be a person licensed to practise law in Ontario as a barrister and solicitor; and

(c) one of the members assigned under subsection (1) shall be,

(i) a lay bencher, or

(ii) a person approved by the Attorney General for Ontario under clause 49.21 (3) (c) of the Act. O. Reg. 167/07, s. 1 (3).

(4) If the chair or, in the absence of the chair, the vice-chair is of the opinion that compliance with subsection (2) or (3), as the case may be, would unduly delay a hearing, the subsection does not apply. O. Reg. 167/07, s. 1 (4).

(5) The chair or the vice-chair shall not assign more than one life bencher to a hearing to determine the merits of a proceeding. O. Reg. 167/07, s. 1 (5).

(6) The chair or the vice-chair shall not assign more than one benchler who holds office under section 14 of the Act to a hearing to determine the merits of a proceeding. O. Reg. 167/07, s. 1 (6).

Proceedings to be heard by one member

2. (1) Subject to subsection (2), the chair or, in the absence of the chair, the vice-chair, shall assign either one member or three members of the Hearing Panel to a hearing to determine the merits of any of the following applications:

1. An application under subsection 34 (1) of the Act for a determination of whether a licensee has contravened section 33 of the Act by one or more of the following means (but not by other means):
 - i. Practising law in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may practise law in Ontario while his or her license is suspended.
 - ii. Providing legal services in Ontario, or holding himself or herself out as, or representing himself or herself to be, a person who may provide legal services in Ontario while his or her license is suspended.
 - iii. Breaching an undertaking to the Society.
 - iv. Failing to honour a financial obligation to the Society.
 - v. Failing to maintain an investment authority or a report on an investment as required by the by-laws.
 - vi. Failing to maintain financial records as required by the by-laws.
 - vi.1 Failing to register an address with the Society or to notify the Society of any changes in the address, as required by the by-laws.
 - vi.2 Failing to provide the Society with information or to file certificates, reports or other documents with the Society, as required by the by-laws.
 - vii. Failing to respond to inquiries from the Society.
 - viii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act.
 - ix. Failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel.
 - x. In the case of a person licensed to practise law in Ontario as a barrister and solicitor, failing to report a claim, or the circumstances of an error, omission or negligent act that a reasonable person would expect to give rise to a claim, to an insurer through which indemnity for professional liability is provided under section 61 of the Act, as required under a policy for indemnity for professional liability.
 - xi. In the case of a person licensed to provide legal services in Ontario, failing to report a claim, or the circumstances of an error, omission or negligent act that a reasonable person would expect to give rise to a claim, to an insurer, as required under a policy for indemnity for professional liability.
2. An application under subsection 34 (1) of the Act, if the parties to the application consent, in accordance with the rules of practice and procedure, to the application being heard by one member of the Hearing Panel.
3. An application under subsection 45 (1) of the Act.
4. An application under subsection 49.42 (1) of the Act, if the order giving rise to the application was made by one member of the Hearing Panel.
5. An application under subsection 49.42 (3) of the Act.
6. An application under subsection 49.43 (1) of the Act. O. Reg. 167/07, s. 2 (1); O. Reg. 68/10, s. 1.

(2) If one member of the Hearing Panel is assigned to a hearing under subsection (1), the member assigned to the hearing may, on motion by a party to the application or on his or her own motion, transfer the hearing to three members assigned by the chair or, in the absence of the chair, the vice-chair, and subsections 1 (2) to (6) apply for that purpose. O. Reg. 167/07, s. 2 (2).

(3) If a hearing of a proceeding is transferred under subsection (2) to three members of the Hearing Panel, the hearing shall begin anew. O. Reg. 167/07, s. 2 (3).

Motions in proceedings to be heard by three members

3. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair assigns three members of the Hearing Panel to the hearing to determine the merits of the proceeding. O. Reg. 167/07, s. 3 (1).

(2) If the motion relates to any of the following matters, the chair or, in the absence of the chair, the vice-chair shall assign the same three members of the Hearing Panel who are to determine the merits of the proceeding to the hearing of the motion:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
2. The jurisdiction of the Society to initiate the proceeding.
3. The exclusion of the public from all or part of a hearing.
4. A stay of the proceeding.
5. The exclusion of witnesses from all or part of a hearing.
6. A constitutional issue. O. Reg. 167/07, s. 3 (2).

(3) If the motion is for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services, the chair or, in the absence of the chair, the vice-chair shall assign three members of the Hearing Panel to the hearing of the motion, and is not required to assign any of the members who are to determine the merits of the proceeding. O. Reg. 167/07, s. 3 (3).

(4) If the motion is not described in subsection (2) or (3), the chair or, in the absence of the chair, the vice-chair shall assign either one member or three members of the Hearing Panel to the hearing of the motion, and is not required to assign any of the members who are to determine the merits of the proceeding. O. Reg. 167/07, s. 3 (4).

(5) If three members of the Hearing Panel other than the three members who are to determine the merits of the proceeding are assigned under subsection (3) or (4) to the hearing of a motion, the members assigned to the hearing of the motion may, on motion by a party to the motion or on their own motion, transfer the hearing of the motion to the three members who are to determine the merits of the proceeding. O. Reg. 167/07, s. 3 (5).

(6) If one member of the Hearing Panel is assigned to the hearing of a motion, the member may, on motion by a party to the motion or on his or her own motion, transfer the hearing,

(a) to the three members of the Hearing Panel who are to determine the merits of the proceeding; or

(b) to three other members of the Hearing Panel assigned by the chair or, in the absence of the chair, the vice-chair. O. Reg. 167/07, s. 3 (6).

(7) If a hearing of a motion is transferred under subsection (5) or (6), the hearing shall begin anew. O. Reg. 167/07, s. 3 (7).

(8) If three members of the Hearing Panel are assigned to the hearing of a motion under this section, the chair or the vice-chair shall not assign to the hearing,

(a) more than one life bencher; or

(b) more than one bencher who holds office under section 14 of the Act.
O. Reg. 167/07, s. 3 (8).

Motions in proceedings to be heard by one member

4. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair assigns one member of the Hearing Panel to the hearing to determine the merits of the proceeding. O. Reg. 167/07, s. 4 (1).

(2) If the motion relates to any of the following matters, the chair or, in the absence of the chair, the vice-chair shall assign the same member of the Hearing Panel who is to determine the merits of the proceeding to the hearing of the motion:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
2. The jurisdiction of the Society to initiate the proceeding.
3. The exclusion of the public from all or part of a hearing.
4. A stay of the proceeding.
5. The exclusion of witnesses from all or part of a hearing.
6. A constitutional issue. O. Reg. 167/07, s. 4 (2).

(3) If the motion is for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services, the chair or, in the absence of the chair, the vice-chair shall assign three members of the Hearing Panel to the hearing of the motion, and is not required to assign the member who is to determine the merits of the proceeding. O. Reg. 167/07, s. 4 (3).

(4) If the motion is not described in subsection (2) or (3), the chair or, in the absence of the chair, the vice-chair shall assign one member of the Hearing Panel to the hearing of the motion, and is not required to assign the member who is to determine the merits of the proceeding. O. Reg. 167/07, s. 4 (4).

(5) If a member of the Hearing Panel other than the member who is to determine the merits of the proceeding is assigned under subsection (4) to the hearing of a motion, the member assigned to the hearing of the motion may, on motion by a party to the motion or on his or her own motion, transfer the hearing of the motion to the member who is to determine the merits of the proceeding. O. Reg. 167/07, s. 4 (5).

(6) If a hearing of a motion is transferred under subsection (5), the hearing shall begin anew. O. Reg. 167/07, s. 4 (6).

HEARINGS BEFORE THE APPEAL PANEL

Appeals to be heard by five members

5. (1) The chair or, in the absence of the chair, the vice-chair shall assign five members of the Appeal Panel to a hearing of an appeal if the appeal is from any of the following:

1. A final decision or order made in a proceeding before the Hearing Panel to which three members were assigned to determine the merits of the proceeding.

2. A costs order made in a proceeding before the Hearing Panel to which three members were assigned to determine the merits of the proceeding.
3. An interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services. O. Reg. 167/07, s. 5 (1).

(2) If a party to the appeal is a person who is or was licensed to practise law in Ontario as a barrister and solicitor, or a person applying to be so licensed,

- (a) at least three of the members assigned under subsection (1) shall be elected benchers licensed to practise law in Ontario as barristers and solicitors; and
- (b) at least one of the members assigned under subsection (1) shall be,
 - (i) a lay bencher, or
 - (ii) a person approved by the Attorney General for Ontario under clause 49.29 (3) (c) of the Act. O. Reg. 167/07, s. 5 (2).

(3) If a party to the appeal is a person who is or was licensed to provide legal services in Ontario, or a person applying to be so licensed,

- (a) two of the members assigned under subsection (1) shall each be,
 - (i) until the first election of benchers under subsection 16 (1) of the Act takes place, one of the two persons referred to in subsection 16 (6) of the Act,
 - (ii) a person appointed by the Attorney General for Ontario under clause 25.2 (2) (a) of the Act and approved by him or her under clause 49.29 (3) (c) of the Act, or
 - (iii) a person licensed to provide legal services in Ontario;
- (b) two of the members assigned under subsection (1) shall be persons licensed to practise law in Ontario as barristers and solicitors; and
- (c) one of the members assigned under subsection (1) shall be,
 - (i) a lay bencher, or
 - (ii) a person approved by the Attorney General for Ontario under clause 49.29 (3) (c) of the Act. O. Reg. 167/07, s. 5 (3).

Appeals to be heard by three members

6. (1) The chair or, in the absence of the chair, the vice-chair shall assign three members of the Appeal Panel to a hearing of an appeal if the appeal is from any of the following:

1. A final decision or order made in a proceeding before the Hearing Panel to which one member was assigned to determine the merits of the proceeding.
2. A costs order made in a proceeding before the Hearing Panel to which one member was assigned to determine the merits of the proceeding.
3. An order made under section 46, 47, 47.1, 48 or 49 of the Act. O. Reg. 167/07, s. 6 (1).

(2) If a party to the appeal is a person who is or was licensed to practise law in Ontario as a barrister and solicitor, or a person applying to be so licensed,

- (a) at least one of the members assigned under subsection (1) shall be an elected bencher licensed to practise law in Ontario as a barrister and solicitor; and
- (b) at least one of the members assigned under subsection (1) shall be,
 - (i) a lay bencher, or
 - (ii) a person approved by the Attorney General for Ontario under clause 49.29 (3) (c) of the Act. O. Reg. 167/07, s. 6 (2).

(3) If a party to the appeal is a person who is or was licensed to provide legal services in Ontario, or a person applying to be so licensed,

- (a) one of the members assigned under subsection (1) shall be,
 - (i) until the first election of benchers under subsection 16 (1) of the Act takes place, one of the two persons referred to in subsection 16 (6) of the Act,
 - (ii) a person appointed by the Attorney General for Ontario under clause 25.2 (2) (a) of the Act and approved by him or her under clause 49.29 (3) (c) of the Act, or
- (iii) a person licensed to provide legal services in Ontario;
 - (b) one of the members assigned under subsection (1) shall be a person licensed to practise law in Ontario as a barrister and solicitor;
 - (c) one of the members assigned under subsection (1) shall be,
 - (i) a lay bencher, or
 - (ii) a person approved by the Attorney General for Ontario under clause 49.29 (3) (c) of the Act. O. Reg. 167/07, s. 6 (3).

7. OMITTED (REVOKES OTHER REGULATIONS). O. Reg. 167/07, s. 7.

8. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 167/07, s. 8.

**CRITERIA FOR NON-BENCHER LAWYER ADJUDICATORS
(2008 AND 2011 APPOINTMENTS)**

Consideration will be given to the following qualifications:

- Adjudicative experience and legal expertise.
- Commitment to the public interest.
- Understanding of the role of an adjudicator.
- Familiarity with administrative tribunals.
- Open-mindedness, empathy and the ability to consider persuasive argument.
- Commitment to preparing timely and reasoned decisions.
- Willingness to be trained as an adjudicator and to attend mandatory training sessions.
- Commitment to tribunal standards of procedure, consistency, quality and performance.
- Good oral and written communication skills.

In 2011 the O.R. Notice advertising for adjudicators also noted: “Preference will be given to applicants who are able to conduct hearings in English and French.”