



NOVA SCOTIA BARRISTERS' SOCIETY

## **PROCEDURE REGARDING AN AFFIRMATIVE ANSWER TO THE FITNESS QUESTION ON THE NOVA SCOTIA BARRISTERS' SOCIETY APPLICATION FORMS**

The Regulations require that to be eligible to be an articled clerk or a practising lawyer, an applicant must, among other requirements, be a fit and proper person. In order to comply with this requirement, the Nova Scotia Barrister's Society's (the "Society") articling and admissions-related application forms ask a fitness question to address the applicant's current capacity to be an articled clerk or a practising lawyer.

This procedure applies to all applications processed by the Admissions and Professional Development Department upon receiving an affirmative answer to the fitness question.

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

*"Based on your personal history, your current circumstances or any professional opinion or advice you have received, are you currently experiencing any condition which is reasonably likely to substantially impair your ability to perform the duties of an articled clerk or a lawyer (as the case may be)?"*

The purpose of this procedure is to guide the Society and the Credentials Committee (the "Committee") when an affirmative answer to this question is received.

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

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

1. As soon as the affirmative answer and supporting documentation are received, the Admissions Officer will place the affirmative answer and the supporting documentation in a separate file from the applicant's file, which separate file will be maintained in a secure location. Only the Director of Admissions and Professional Development (the "Department Director"), the Admissions Officer, the Executive Director and, if required, an independent medical examiner of the Society's choosing (the "Medical Examiner") will have access to this information. After following the steps of this procedure, the information may also be provided to the Committee on a confidential basis.
2. The Admissions Officer will review the documentation provided to determine if any additional supporting information is required. If additional information is required, the Admissions Officer will contact the applicant, requesting that the information be provided.
3. The Admissions Officer will provide the applicant with a copy of this procedure.
4. The Admissions Officer will also obtain written consent from the applicant, granting the Medical Examiner permission to contact the applicant's physician or other professional advisor, if further information regarding the condition is required.

5. After receiving the above-referenced written consent, the Executive Director will provide the Medical Examiner with the affirmative answer and supporting documentation as well as particulars of the respective Regulation (for example, Regulation 3.3.2 relating to Articled Clerk applicants, 5.6.3 relating to Change Category applicants and 6.2.5 relating to applications from lawyers from other jurisdictions). The Medical Examiner will review the information on behalf of the Executive Director and will advise the Executive Director if the affirmative answer raises issues which should be referred to the Committee.
6. To assist in giving advice to the Executive Director, the Medical Examiner, during the course of the review, may
  - a. Contact the physician or other professional advisor who has provided information relating to the affirmative answer and discuss the information provided.
  - b. In writing, or orally, direct questions to the physician or other professional advisor who gave information relating to the affirmative answer and request the answers to the questions be provided in a timely manner, so as to allow for expeditious processing of the application.
  - c. Following this review and obtaining information, the Medical Examiner will provide the Executive Director with his or her opinion and advise if, in the Medical Examiner's professional opinion,
    - i. the information available from the affirmative answer and the Medical Examiner's review of it, requires further consideration before determining if a condition is reasonably likely to substantially impair the applicant to perform the duties of an articled clerk or a lawyer; or
    - ii. the information available from the affirmative answer and the Medical Examiner's review of it do not require any further action and that the condition reported is not reasonably likely to substantially impair the applicant's ability to perform the duties of an articled clerk or a lawyer (as the case may be).
7. The advice of the Medical Examiner shall be considered by the Executive Director in light of the requirements of the respective Regulation. Either the application will be allowed or the matter will be referred to the Committee. If a referral is necessary, the Executive Director will inform the Department Director of this decision at least ten days before the Committee meets. The Department Director will update the applicant of the status of the application. If the affirmative answer does not need to be further pursued, any related supporting documentation provided pursuant to the affirmative answer will be destroyed.
8. When considering the fitness of an applicant, the Committee shall consider any advice that has been provided to the Executive Director when making its determination under the respective Regulation. The options available to the Committee are set out in the respective Regulation. If the Committee denies the application or approves it with terms, the Committee shall provide written reasons. The applicant may appeal to the Credentials Appeal Panel.

### **Pre-Submission Procedure**

The Admissions Department often receives inquiries from prospective applicants wanting advice as to how they should answer the fitness question, as they are unsure whether their particular situation requires an affirmative answer.

The following procedure will guide the Department Director and Admissions Officer in dealing with these types of inquiries.

1. Before the prospective applicant discloses details of her or his particular situation, the Department Director or Admissions Officer will describe situations that do not generally require an affirmative answer, such as:
  - a. Long-resolved situational depressions,

- b. Mental health issues for which the applicant no longer requires treatment, and
- c. Situational counselling.

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

2. If the prospective applicant is still not sure how to answer the question, the Department Director or Admissions Officer will advise the applicant to consult with any advisor that he or she has seen and then to use best judgment in answering the questionnaire fully and honestly.
3. The Department Director or Admissions Officer will provide a copy of this procedure to prospective applicants who make an inquiry.

*Approved by the Credentials Committee – December 14, 2007*

*Revised by the Credentials Committee – December 10, 2009*