

NOVA SCOTIA BARRISTERS' SOCIETY

Policy Relating to Change of Membership Category to Practising Lawyer (Regulation 5.6)

1.1 Application to Change Category to Practising Lawyer

1.1.1 Pursuant to Regulation 5.6.1, a non-practising member, a retired member or a life member may apply to change membership category to practising lawyer.

Application Requirements

1.1.2 Regulation 5.6.2 sets out the application requirements:

Content of Application

5.6.2 An application under subregulation 5.6.1, accompanied by the prescribed fee shall be in the prescribed form and shall provide

- (a) professional history,
- (b) information confirming good character,
- (c) information confirming fitness,
- (d) information confirming competence to practise law,
- (e) if the member is a member of a law society in a foreign jurisdiction, certificates of standing from each jurisdiction,
- (f) such other information that may be required by the Executive Director or the Committee.

2.1 Options of the Executive Director

2.1.1 Good Character or Fitness

Where it is in the public interest to do so, the Executive Director may obtain additional information regarding the applicant's good character or fitness from the applicant or any other person.

Approval of Application

2.1.2 The Executive Director may approve the application, with or without terms, and stipulate the effective date, if it is consistent with the public interest.

Terms of Approval

2.1.3 The Executive Director may include in the approval of the application the following terms:

- (a) that the applicant satisfactorily complete a period of service with a practising lawyer, in accordance with an education plan approved by the Executive Director [**Note - See *Policy Relating to Education Plans Pursuant to Regulation 5.6.5***];
- (b) that the applicant successfully complete all or a portion of the Bar Admission Program;
- (c) that the applicant satisfy the Executive Director of the applicant's fitness or competence for resumption of practice, or
- (d) that the applicant complete other requirements of the Executive Director.

Supervision by Practising Lawyer

2.1.4 During any required period of supervision, the applicant is considered a practising lawyer and must be fully insured and pay the fees of a practising lawyer.

Denial of Application

2.1.5 Where it is in the public interest to do so, the Executive Director may deny an application for any reason, except for reasons of good character or fitness, which shall go to the Credentials Committee.

Application Denied or Approved with Terms

2.1.6 If the Executive Director makes a decision denying the application or approving it with terms, the Executive Director will provide the applicant with a written decision with reasons and inform the applicant of the internal review process.

3.1 Referral to Credentials Committee

3.1.1 Where it is in the public interest to do so, the Executive Director may refer to the Credentials Committee any application raising an issue of good character or fitness.

Options for the Committee

3.1.2 After considering the application and all information provided by the Executive Director, the Committee may:

- (a) defer a decision and request that the Executive Director obtain new information;
- (b) approve the application, with or without terms, and stipulate the effective date of reinstatement; or
- (c) deny the application.

Review of the Committee's Decision

3.1.3 If the Committee's decision denies the application, or approves the application with terms, the Committee will:

- (a) provide the applicant with a written decision with reasons, and
- (b) inform the applicant of the right to appeal to the Credentials Appeal Panel.

4.1 Notification

4.1.1 When an application under Regulation 5.6 has been approved, the Executive Director will notify the member, and amend the Society's records to reflect, the following:

- (a) the right to resume practice; and
- (b) the effective date for the resumption.

5.1 Guiding Principle—The Public Interest

5.1.1 Applications are determined based on the public interest. The Executive Director or Committee will evaluate each Change Category Application on a case by case basis, and will consider all available options, from the perspective of public protection and the ability to limit risk. In considering the criteria identified in Regulation 5.6.5, the Executive Director or Committee will take into account that the goal of the criteria is to confirm the competence of the member. Rather than being guided by arbitrary timelines, the Executive Director or Committee will consider the member's experience when determining what, if any, conditions are required for resumption of practice. In reaching a decision about competence, the Executive Director shall consider the following factors:

1. the applicant's overall practice experience prior to changing to non-practising;
2. the length of time the applicant has held non-practising status;
3. what the applicant has been doing during the non-practising period;
4. whether the applicant has been engaged in activities that would be equivalent to the practice of law;
5. whether the applicant has kept their legal knowledge current;
6. what the applicant intends to do when they return to practising status.

Changes from Old Regime

5.1.2 Under the old regime, the Bar Examination was required for all applicants who had been non-practising for greater than three years, unless there were exceptional circumstances. Under the current regime, there is no Bar Examination and when considering applications from members over the three year threshold, the Executive Director or Committee has more options and combinations of options at its disposal, only one option of which is requiring the applicant to challenge the Capstone (the final evaluation of the Practice Readiness Education Program (PREP)).

Logical Connection for PREP Requirement

5.1.3 The Executive Director or Committee must consider if there is a connection between the applicant's circumstances and the Capstone itself, or whether the public interest may be protected through other options available under Regulation 5.6.5.

Non-Practising Members Practising in Another Canadian Jurisdiction

5.1.4 If the applicant has been practising in another Canadian jurisdiction, and but for maintaining non-practising membership in Nova Scotia would have been eligible to apply for transfer under the provisions of the National Mobility Agreement, the application will be reviewed as if the applicant were a mobility transfer.

Approved by the Credentials Committee – April 29, 2011

Revised by the Credentials Committee – March 28, 2014

Revised by the Credential Committee – March 26, 2020