NOVA SCOTIA BARRISTERS' SOCIETY

POLICY ON DECISION MAKING IN THE "PUBLIC INTEREST"

The Nova Scotia Barristers' Society (the "Society"), through the *Legal Profession Act*, S.N.S. 2004, c.28 (the "*Act*") and its Regulations, has been given the right to regulate its own membership. In doing so, it is charged with protecting the "public interest" as it relates to the practice of law in Nova Scotia.

Accordingly, the public interest must be a foremost consideration in all Society decisions. This policy defines, in a non-exhaustive way, what constitutes the "public interest."[1]

Throughout the Regulations issued under the *Act*, the Executive Director has been given authority to approve non-contentious or straightforward applications, but must refer to the Credentials Committee ("the Committee"), applications or other matters which raise a public interest issue.

The *Act* prescribes the key public interest factors by requiring the Society to ensure that members are:

1) qualified (see s. 4(a)),
2) professionally responsible (see s. 4(b)), and
3) competent (see s.4(c)).

Under the Regulations, the Executive Director, the Credentials Committee (the "Committee"), the Credentials Review Subcommittee, and the Credentials Appeal Panel are authorized to make admissions decisions on behalf of the Society. The Regulations specify the person or group with decision-making authority on applications and other matters. For example, the Executive Director has authority to approve certain applications in the public interest but must refer to the Committee applications or other matters raising issues of good character or fitness. In deciding to refer an application, the Executive Director determines that there is a public interest issue that warrants the Committee's consideration, but does not evaluate the matter. It is the Committee's role to evaluate the information and apply the facts to its understanding of the particular public interest factor.

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1 A review of the litigation involving law societies and their regulatory obligation to uphold the public interest reveals that courts and tribunals are loathe to definitively state exactly what comprises the "public interest". Harvey J. described the difficulty in establishing a concrete definition in *B (G.L.)* v. *The Law Society of British Columbia*, 2002 B.C.S.C. 170 (CanLII). There he stated that the "public interest" is, for courts and tribunals, "...a question of fact involving a subjective discretion."

Arguably, it must be the same for law societies. Attempting to define "public interest" too precisely risks limiting the amount of protection the Society can provide. The Executive Director and the Committee should interpret this policy accordingly. This policy's function is strictly advisory and not prescriptive.

It is also worth noting, however, that in *Finney* v. *The Barreau de Quebec*, 2004 SCC 36, Justice Lebel reiterated that law societies, in return for the right to regulate themselves, must ensure the **"**honesty**"** and "competence" of their own members. This confirms that these issues are of paramount importance in all "public interest" decisions made by the Executive Director.