

REINSTATEMENT

Members who are inactive, suspended or even disbarred may apply to practice again. In the case of a member whose status is inactive or suspended Rules 115–118 and the corresponding Guidelines outline the protocol for an application to become active again. In the case of a lawyer who has been disbarred, a separate Guideline, Part 4 of the Rules and S. 86 of the Act outline the protocol to be followed.

Counsel are not involved in all of these matters but will always be involved in cases of lawyers applying to be reinstated following suspension or disbarment. Re-instatement of lawyers coming back from suspension or disbarment is an area that calls upon the Counsel Department to not only act as Hearing Counsel but perhaps more importantly, identify and communicate effectively on the issue of risk. Various different areas of the Law Society will interact on these matters and it is crucial that all of the relevant and admissible material is put before the panel of Benchers so that they can make the most informed decisions; it is up to the Counsel Department ultimately to ensure that happens. Obviously, a lawyer who has been suspended or disbarred presents a very different risk than a new lawyer and evidence must be presented to show that the factors that led to that status are either no longer a risk or are a manageable risk.

All of the principles that apply to new admissions also apply to re-admissions with the objective always being protection and promotion of the public's confidence in the legal profession.

By Tracy Davis, Counsel, Law Society of Alberta

LawSocietyofAlberta

**Counsel Positions Serve
the Public Interest and
Protect Principles of Justice**



The Law Society of Alberta is seeking experienced lawyers to join its outstanding Counsel team. To read the complete job descriptions, please visit www.lawsociety.ab.ca. This is an exclusive search. For more information or to apply, contact Sameera Sereda at 403-444-1763.



**SERVING
the PUBLIC
INTEREST**

The Law Society values diversity in its workforce and equal access to opportunity. All inquiries and applications will be handled with the highest level of confidentiality.

Lawyers seeking to make a difference are encouraged to explore Counsel positions at the Law Society of Alberta which offer law practitioners an opportunity to serve the public interest and protect the fundamental principles of justice.



THE ROLE OF THE COUNSEL DEPARTMENT AT THE LAW SOCIETY

The role of Counsel at the Law Society of Alberta is unique in that it combines a litigation role with corporate counsel responsibilities. The purpose of this brochure is to better familiarize you with the role of the Counsel Department in supporting the Law Society in fulfilling its mission to be a model regulator by protecting the public interest and preserving the fundamental principles of justice.

A UNIQUE OPPORTUNITY TO EXCEL

While many organizations which require legal advice or consultation choose to retain outside Counsel to assist them, the Law Society has adopted the model of developing a specialized in-house Counsel Department. Most organizations that require litigation services employ outside Counsel to represent their interests whether it be before administrative tribunals or in court.

The Law Society's Counsel Department is also tasked with the responsibility of representing the Law Society at many different types of hearings and at all levels of court. This enables Counsel to be better positioned to understand the guiding principles of the organization and provide adjudicators with assistance to enable them to make consistent and well reasoned decisions. This duality represented in the Counsel Department provides a unique opportunity for Counsel to represent and advise the Law Society with an eye to the values of the organization as well as an understanding of what is required of Counsel at various hearings.

THE LITIGATION ROLE

At the Law Society, the bulk of the litigation role is not done in courtroom settings, but before panels of Benchers. Part of the role of the elected Bencher is to serve as a judge in Law Society proceedings, that's because it has been deemed

that no one is better equipped to judge the conduct of a lawyer than another lawyer who will have the necessary background and expertise to determine if the conduct is something that is "deserving of sanction".

The Act, Rules and Guidelines provide for many different types of hearings: Assurance, Discipline, CPLED Appeals, Suitability of Principal, Good Character, Transfer and Re-instatement are a few. In all of those matters, the Law Society requires a lawyer to represent them, and that is the other role of the Counsel Department.

DISCIPLINE HEARINGS

Once a complaint has gone through a Conduct Committee Panel and citations have been directed, the matter is directed to a Hearing and is assigned to Counsel who will review the material and decide upon the best course of action for proving the citations. The Hearings themselves look much like a trial although in this setting the rules of evidence are relaxed; the procedure is outlined in the Law Society's Hearing Guide.

First, Counsel for the Law Society goes through a series of exhibits that will have been pre-distributed to the Benchers to prove that the panel has the jurisdiction to hear the matter. Then the issue of whether the Hearing should be conducted in private or in public is addressed (public Hearings are the norm, but there are certain situations where a Hearing or part of a Hearing will be held in private).

From there, Counsel for the Law Society will make an opening statement that briefly outlines the case for the panel, and then the presentation of evidence starts. Witnesses swear to tell the truth and they are asked a series of questions about what they know about the matter and are then examined by opposing counsel (and sometimes panel members too).

Once the witnesses for the Law Society have completed their evidence, Counsel for the lawyer makes an opening

statement and the witnesses for the lawyer testify, as does the lawyer (they are compellable). Once all the evidence is before the panel each counsel will argue as to why their version of events is most correct.

The Benchers then retire to review the evidence, deliberate and reach their decision. If the lawyer is found guilty both Counsel will make submissions about what the appropriate sanction should be. In all cases, the panel will write a report that outlines their interpretation of the evidence, their findings and their decision on sanction if the Member is found guilty. Issues such as costs, the removal of private information from records that would be available to the public as well as what if any notices should be sent out are also addressed at the completion of the Hearing.

CREDENTIALS AND EDUCATION MATTERS

The Law Society is a statutory corporation, created by the *Legal Profession Act* to regulate the legal profession in Alberta. Only lawyers authorized by the Law Society of Alberta may practice law in Alberta. Thus, the Law Society has the responsibility to set standards for admission, not only for students-at-law but also for members who transfer from other jurisdictions.

Generally, these matters fall within Part 2 of the *Legal Profession Act*, and Part 2 of the Rules. The Counsel Department are involved in matters of suitability of a potential principal, CPLED appeals and character hearings. These pre-admission issues are of utmost importance because the Law Society is responsible to guarantee the entry level competence, which includes good character, of every new lawyer practising in Alberta. In this way we achieve our mission to serve the public interest by promoting a high standard of legal services and professional conduct.