



THE REGULATIONS  
OF THE  
LAW SOCIETY OF PRINCE EDWARD ISLAND

Made by the Law Society of Prince Edward Island,  
under and by virtue of the  
***Legal Profession Act***, S.P.E.I. 1992, Cap. 39

Proclaimed on August 1, 1992  
and amended on:

January 15, 1993	October 15, 2005
June 18, 1993	February 11, 2006
January 21, 1994	September 14, 2006
June 18, 1994	February 3, 2007
January 20, 1995	February 9, 2008
January 26, 1996	November 1, 2008
June 26, 1996	March, 2009
January 24, 1997	July 11, 2009
June 21, 1997	July 3, 2010
January 23, 1998	August 20, 2011
June 20, 1998	February 18, 2012
January 29, 1999	April 28, 2013 (Form 1)
June 19, 1999	July 27, 2013
January 28, 2000	July 5, 2014
June 24, 2000	February 21, 2015
February 2, 2001	February 13, 2016
June 16, 2001	July 2, 2016
February 2, 2002	July 15, 2017
June 15, 2002	July 27, 2019
January 31, 2003	

## **LEGAL PROFESSION ACT REGULATIONS**

### Interpretation

1. In these Regulations, “*Act*” means the *Legal Profession Act*, S.P.E.I. 1992, Cap. 39;

### **PART I**

#### **THE SOCIETY**

2. The offices of the Society shall be in the City of Charlottetown.
3.
  - (1) The seal of the Society now in use shall continue to be the seal of the Society.
  - (2) The seal of the Society shall be in the custody of the Secretary-Treasurer. Every instrument to which the seal is affixed, except the annual certificates, shall be signed by the President or Vice-President, and countersigned by the Secretary-Treasurer. Annual certificates shall be signed by the Secretary-Treasurer.
4.
  - (1) The President shall preside at all meetings of the society and of the Council, and in the President’s absence, the Vice-President, and in the absence of both, the senior barrister present who is a member of the Council, shall be Chair. If at any meeting of the Society no member of the Council is present, the meeting shall appoint a Chair.
  - (2) All questions proposed for consideration by the members shall, unless otherwise provided, be determined by the majority of votes duly cast on the question.
  - (3) Meetings of the Council may be conducted by telephone conference call, and those members of Council participating in the call shall be considered present at such meeting.
5. Proceedings at meetings of the Society and the Council shall be conducted in accordance with parliamentary procedure. Committees of the Society may, subject to the *Act* and these Regulations establish procedures for the conduct of their meetings.
6.
  - (1) Each new Council shall appoint the following committees:
    - (a) two Discipline Committees designated to be Committee A and Committee B to be responsible for the implementation of the disciplinary functions of the Society;
    - (b) a Legislation Committee to review any legislation, regulations or rules which may be special interest to the members of the Society;
    - (c) a Library Committee to have the general charge of the library and the purchase of books for the same;

- (d) a Credentials Committee to examine the character and fitness of applicants pursuant to Section 16 of these Regulations;
- (e) a Nominating Committee consisting of the President, Past President of the Society and a member elected by the Society, to present to the annual meeting a slate of officers and members of Council for the Society;
- (f) an Articling and Admissions Committee to administer courses for the admission of articled clerks to membership in the Society and to review the requirements for enrolment and registration as an articled clerk;
- (g) a Practice Standards Committee to establish practice standards for members and to conduct evaluations of compliance by members with respect to these standards; and
- (h) such other committee s as the Council shall consider appropriate.

- (2) Each committee shall consist of at least 3 members, except for the Discipline Committees which shall each consist of at least 6 members.
- (3) The President is a member ex officio of each committee, with the exception of the Discipline Committee.

7.

- (1) The Secretary-Treasurer or, in the Secretary-Treasurer's absence or temporary disability, such other member as the Council may appoint for that purpose shall:
- (a) attend all meetings of the Society and of the Council;
- (b) keep minutes of the proceedings of the meetings of the Society and of the Council;
- (c) conduct all necessary correspondence of the Society;
- (d) keep all records and documents of the Society and of the Council;
- (e) receive all monies payable to the Society and hold the same subject to the order of the Council;
- (f) perform all other services incidental to the office or which may be assigned to the Secretary-Treasurer by the Regulations of the Society.

- (2) The Secretary-Treasurer shall keep proper books of account and record therein all fees, levies, assessments and other financial transactions between the Society and its members whereby the state of the member's account at any time can be readily ascertained.

8. (1) Any chartered bank, trust company or financial institution duly authorized by the Council shall be the bankers of the Society, and the Secretary-Treasurer shall, from time to time, deposit with the said institution to the credit of the Society all moneys received for and on account of the Society, and for that purpose shall have authority to endorse or deposit all cheques or money orders payable to the Society.
- (2) All moneys of the Society deposited with the institution, when required, shall be drawn out and paid upon a cheque signed by such persons as may be authorized by the Council from time to time to sign on behalf of the Society.
9. The members shall appoint an auditor at the annual meeting of the Society to audit the books of the Society and to give or file a report at the next annual meeting. Notwithstanding anything herein contained, the Council may require an audit at any time.
10. (1) Librarians for the Law Libraries at Charlottetown and Summerside may be appointed by the Council.
- (2) The Library Committee established under section 6(1) of these Regulations shall:
  - (a) have immediate charge of and may make rules respecting the use of the library;
  - (b) report the condition of the libraries and the books purchased during the year to the annual meeting of the Society.
- (3) Subject to any agreement with the Minister of Justice pursuant to Section 54 of the *Act*, use of the library shall be open to members of the Society, their articled clerks, the judges of the Supreme and Provincial Courts, and to the public, in accordance with rules established by the Library Committee.
- (4) No materials or books shall be removed from the Law Libraries, except in accordance with policies established by the Library Committee from time to time;
- (5) The Chairman of the Library Committee or the Chairman's nominee may inspect the office of any member authorized to use the library at any reasonable time for the purpose of determining whether the person has contravened any of these Regulations or rules made respecting Law Libraries.
- (6) Any person who contravenes any regulation respecting a law library or any rule made by the Library Committee shall be subject to or pay such penalty, not to exceed \$2,000.00, as the Council may determine.

## **PART II**

### **ADMISSIONS**

11. A person applying to be enrolled and registered as an articled clerk shall:

- (a) be a Canadian citizen or a permanent resident of Canada;
- (b) except for a person serving articles or clerkship pursuant to the requirements of subsection 18(1),
  - (i) have received a law degree in common law from a Canadian law school, as approved by the Federation of Law Societies of Canada;
  - (ii) have successfully completed the following courses in obtaining such Degree:
    - Canadian Constitutional Law
    - Civil Procedure
    - Contracts
    - Criminal Law
    - Property Law
    - Torts
    - Ethics/Professional Responsibility
  - (iii) and have successfully completed 4 of 7 courses in the following subject areas in obtaining such Degree:
    - Criminal Procedure
    - Commercial Law
    - Corporate Law
    - Evidence
    - Family Law
    - Wills/Trusts
    - Administrative Law;

- (c) file with the Secretary-Treasurer a petition for enrolment as an articled clerk and present a certificate of qualifications in Form 1;
- (d) present a copy of the articles of clerkship in Form 2;
- (e) deposit the proper fees payable upon enrolment as an articled clerk with the Secretary-Treasurer;
- (f) present such further information and evidence as the Council may require.

11.1 Notwithstanding sub-section 11(b)(ii) & (iii), Council may, upon application, permit a person who has not successfully completed the said course requirements to enroll and register as an articling clerk subject to any terms Council considers appropriate, if, in the discretion of Council, it is not contrary to the public interest to do so.

- 12. (1) The principal of an articled clerk shall be a member in good standing who is and has been in actual practice within the Province for the five (5) years preceding the application.
  - (2) A principal may not have more than one articled clerk at any one time.
- 13. (1) Articles of clerkship may be assigned to another principal by an assignment on Form 3 which shall be filed with the Secretary-Treasurer.
  - (2) In the event a principal dies or otherwise ceases to be qualified to be the principal of an articled clerk, the articled clerk, with the approval of the Council, may be articled to another principal and the Council may determine the time remaining to be served under articles.
- 14. (1) The Articling and Admissions Committee may organize and conduct a P.E.I. bar admission course for articled clerks, which shall include such programs as may be prescribed by the Council upon the recommendation and advice of the Articling and Admissions Committee from time to time. This course may be organized and held in conjunction with a bar admission course of a common law province of Canada.*[ADDED JUN 19]*
  - (2) Council may, on the advice of the Articling and Admissions Committee, stipulate mandatory articling criteria for the assistance of principals and articled clerks.
- 15. (1) The term of service of an articled clerk shall be computed from a date fixed by the Council.
  - (2) After enrolment as an articled clerk and before admission as a member, an articled clerk shall serve under articles of clerkship with one or more principals for a period of twelve months, which shall include the period of time required for the bar admission course. The term of service under the articles of clerkship may be extended to cover the

time, if any, between the completion of twelve months of articles and completion of the bar admission course.

(3) Articled clerks shall complete the requirements of the bar admission course.

(4) *[DELETED JUN 19]*

(5) Except for a person serving articles of clerkship pursuant to the requirements of subsection 18(1), an articled clerk shall serve under articles only after the clerk has obtained such degrees in law from a Canadian common law school approved by the Federation of Law Societies of Canada, which period of articles shall be twelve months.

(6) During the required term of service, an articled clerk shall bona fide serve exclusively in the office of the clerk's principal and shall not engage in any other employment which, in the opinion of the Council, would interfere with the clerk's reasonable attendance and service.

(6.1) Notwithstanding sub-section 15(6) Council may, upon application by an articling student, and with the consent of the student's principal, permit an articling student to serve his or her articles on a part time basis during such periods of time and upon such terms as Council may in its discretion direct; provided that the articles shall include the same education and training as full time articles and shall be completed within twenty-four months of their commencement. *[ADDED JUN 94]*

(7) The articled clerk may serve with a Judge of the Supreme Court of Canada, of the Federal Court of Canada or of the Supreme Court of Prince Edward Island for a period of up to five months in substitution for articles of the same duration with a principal described in Section 12(1). *[AMENDED JUN 93]*

(7.1) An articled clerk who has served a period of articles in another province or territory in Canada may transfer credit for not more than six months articling from that other jurisdiction on the basis that the time spent articling in the other province will be credited as an equal amount of time spent articling in the Province, if the period of articles in the other province is in the period immediately preceding or following the articles in the Province. *[ADDED JAN 97]*

(8) No reduction in any articling period under subsection (7) shall be accumulated with any reduction provided under subsection (7.1). *[AMENDED JUN 97]*

(9) Upon completion of the required period of articles, an articled clerk and the clerk's principal must complete the Articling Checklist approved by Council and submit it with his or her petition for admission to practice as a barrister, solicitor and attorney. *[ADDED FEB 01]*

(10) A person who has applied under Section 11 may be approved by the Council for admission to practice as a barrister, solicitor and attorney if the applicant for admission produces evidence to the satisfaction of the Council that the applicant has paid all fees

herein and has satisfied every other requirement of the Council and these Regulations, and the applicant, in the case of an articled clerk who holds a law degree from any Canadian common law school approved by the Federation of Law Societies of Canada, has completed a course of studies approved by the Council, has complied with this section and produces a certificate of good moral character from the individuals with whom he or she has articled.

16. (1) A Credentials Inquiry may be held where there are issues about the good character or fitness of an applicant.
- (2) In making a determination about the good character or fitness of an applicant, the Council or Credentials Hearing Panel is not bound by certificates of character, certificates of standing or any other material regarding the application and may make such inquiries, require such evidence and hold such hearings as are appropriate in the circumstances.
- (3) When a Credentials Inquiry is to be held, the Council shall instruct the Secretary-Treasurer to conduct an investigation.
- (4) The Secretary-Treasurer's investigation shall be conducted by a person or persons appointed by the Secretary-Treasurer and in a manner and to the extent which the Secretary-Treasurer believes is appropriate.
- (5) When the Secretary-Treasurer determines that substantial costs will be incurred to conduct the investigation, the Secretary-Treasurer shall report that to the Council, which may require the applicant to post security in a form and amount acceptable to the Council.
- (6) The security posted under sub-regulation 16(5) shall be dealt with after any hearing in accordance with this regulation.
- (7) The Secretary-Treasurer shall provide the results of an investigation to the Council, which may
  - (a) enrol, admit, change the category of membership or reinstate the applicant;
  - (b) order a hearing; and
  - (c) take such other steps as the Council deems fit and proper.
- (8) If a hearing is ordered the Council shall
  - (a) appoint three members of the Credentials Committee, who have not participated in the matter, to act as a Credentials Hearing Panel;
  - (b) if three members are not available, Council shall appoint the required number of members of the Society to serve on the Credentials Hearing Panel, to make a total of three;

- (c) appoint a chair of the Credentials Hearing Panel;
- (d) provide a copy of the results of the investigation to the applicant;
- (e) notify the applicant of the purpose of the hearing, with a clear statement of the issue to be determined by the Credentials Hearing Panel; and
- (f) determine what sum the applicant must deposit with the Society as security for the costs of the hearing.

(9) The Credentials Hearing Panel shall

- (a) fix a time and place for the hearing;
- (b) require the Secretary-Treasurer to give notice to the applicant; and
- (c) require the Secretary-Treasurer to give notice to the public of the hearing.

(10) The Society shall, at least 10 days prior to the hearing, make full disclosure to the applicant, which includes providing

- (a) an opportunity to examine any written or documentary evidence in the possession of the Society;
- (b) a copy of any expert's report or a summary of an expert's opinion, if there is no report; and
- (c) the identity of any witnesses to be called by the Society together with the summary of their evidence.

(11) A hearing by a Credentials Hearing Panel shall be conducted in accordance with the rules of natural justice in order to ensure a fair hearing based on all relevant evidence.

(12) A hearing under this regulation shall be open to the public unless the Credentials Hearing Panel orders that all or a portion of the hearing shall be closed.

(13) If an applicant fails to attend a hearing the Credentials Hearing Panel may proceed with the hearing in any event.

(14) At the conclusion of the hearing, the Credentials Hearing Panel:

- (a) within thirty days, shall render a written decision with reasons which:
  - (i) allows the application under the particular sub-regulation on such terms as the panel deems fair and proper, or

- (ii) dismisses the application and fixes a time before which the applicant may not submit another application
- (b) shall provide a copy of the decision to the Secretary-Treasurer and the applicant; and
- (c) shall assess costs, if any, to be paid by the applicant and how the security and deposit provided pursuant to sub-regulation 15(5) shall be credited towards the cost or refunded to the applicant as the case may be.

17. (1) In this section, unless the context otherwise requires:

- (a) “governing body” means the Law Society or Barrister’s Society in a Canadian common law jurisdiction, and the Barreau du Quebec;
- (b) “National Mobility Agreement” means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;
- (c) “reciprocal governing body” means a governing body that has
  - (i) signed the National Mobility Agreement, and
  - (ii) adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement.
  - (iii) that the applicant is a member in good standing of that governing body,

(2) This section applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a reciprocal governing body of which the applicant is a member.

(3) An applicant under this section must:

- (a) have a common law degree from a Canadian law school or its equivalent as certified by the National Committee on Accreditation of the Federation of Law Societies;
- (b) be a Canadian citizen or a permanent resident of Canada and of the full age of 18 years;
- (c) not be an undischarged bankrupt; and
- (d) have filed a certificate satisfactory to the Council from the appropriate officer of every governing body of which the applicant is a member certifying:

- (i) that the applicant is a member in good standing of that governing body,
- (ii) that no complaint is pending against the applicant for which the applicant could be struck off the roll, suspended or reprimanded, and
- (iii) that the applicant has not been the subject of any previous disciplinary action by that governing body or, if the applicant has been, certifying as to the particulars thereof;

- (e) have filed two certificates of good character in the prescribed form from members in good standing of this society or of a governing body of which the applicant is a member, or from judges of the Superior Court of record in the jurisdiction of such governing body;
- (f) have completed a personal information questionnaire in a form approved by the Council;
- (g) have paid the prescribed fees; and
- (h) have complied with any condition prescribed by the Council.

- (4) To qualify for admission, an applicant under this section must certify in a prescribed form that he or she has familiarized himself or herself with Prince Edward Island law and he or she has reviewed and understands all of the materials required in the reading list required by the Secretary-Treasurer.
- (5) A lawyer admitted under this section has no greater rights as a member of the Society than
  - (a) the lawyer has as a member of the governing body of his or her home jurisdiction, or
  - (b) any other member of the Society in similar circumstances.
- (6) Every candidate for admission under this section shall submit the affidavits and certificates substantially as set out in the forms appended to these Regulations.
- (7) Upon the applicant complying with subsections (2), (3), (4) and (6), the Council shall determine whether the applicant is a fit and proper person to be admitted to the bar and shall grant or refuse admission accordingly.

17.1 (1) A member of the Barreau du Québec or the Chambre des notaires du Québec may apply for admission on transfer as a Canadian Legal Advisor by delivering to the Secretary-Treasurer the following:

- (a) a completed application for admission for transfer as a Canadian Legal Adviser in the prescribed form, including a personal questionnaire and written consent for the release of relevant information to the Society;
- (b) has filed two certificates of good character in the prescribed form from members in good standing of this Society or of a law society or comparable body of which the applicant is a member, or from judges of the Superior Court of Record in the jurisdiction of such society or body;
- (c) has filed a certificate of standing satisfactory to the Council from the appropriate officer of the Barreau du Québec or the Chambre des notaires du Québec, and every Law Society of which the applicant is a member certifying
  - (i) that the applicant is a member in good standing of that governing body;
  - (ii) that no complaint is pending against the applicant for which the applicant could be struck off the roll, suspended or reprimanded;
  - (iii) that the applicant has not been the subject of any previous disciplinary action by that governing body or, if the each other body regulating the legal profession, in any jurisdiction, in which the applicant is or as been a member of the legal profession;
- (d) has paid the prescribed fees; and
- (e) has complied with any condition prescribed by the Council.

(2) Upon the applicant complying with subsection (1), the Council shall determine whether the applicant is a fit and proper person to be admitted to the bar as a Canadian Legal Advisor and shall grant or refuse such admission accordingly.

(3) This Regulation does not apply to a member of the Barreau of Québec or the Chambre des notaires du Québec unless he or she has earned a bachelor's degree in civil law in Canada or a foreign degree and a certificate of equivalency from the Barreau of Quebec or the Chambre des notaires du Québec.

(4) A Canadian Legal Advisor who is a member of the Barreau du Quebec may

- (a) give legal advice on
  - (i) the law of Quebec and matters involving the law of Quebec,

- (ii) matters under federal jurisdiction, or
- (iii) matters involving public international law,

- (b) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction or
- (c) appear as counsel advocate before any tribunal with respect to matters under federal jurisdiction.

(4.1) A Canadian Legal Advisor who is a member of the Chambre des notaires du Québec may:

- (a) give legal advice and consultation on legal matters involving the law of Québec or involving matters under federal jurisdiction or public international law,
- (b) prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations,
- (c) plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.

(5) A Canadian Legal Advisor must not engage in the practice of law except as permitted under subsection (4) and (4.1)

(6) A Canadian Legal Advisor has all the duties and responsibilities of a practising lawyer under the Act, these Regulations and the *Code of Professional Conduct*.

(7) A Canadian Legal Advisor must

- (a) be a member in good standing of the Barreau du Québec or the Chambre des notaires du Québec authorized to practice law in the Province;
- (b) undertake to comply with subsection (5), and
- (c) immediately notify the Secretary-Treasurer in writing if he or she ceases to be authorized to practise law in Quebec.

(8) (a) A Canadian Legal Advisor may apply to the Secretary-Treasurer for exemption from the requirement to maintain professional liability insurance.

- (b) On an application under subsection (a), the Secretary-Treasurer must grant the exemption, provided the Canadian Legal Advisor maintains the full mandatory professional liability insurance coverage required by the Barreau or the Chambre des notaires du Québec that extends to the lawyer's practice in this Society.

18. (1) An individual who has obtained a law degree in the British Commonwealth, other than Canada, or in any state in the United States of America or has a Canadian civil law degree, may apply for admission as a member in good standing if the applicant:

- (a) is a Canadian citizen or permanent resident or Canada and is the full age of eighteen years;
- (b) produces to Council a certificate of qualification issued by the National Committee on Accreditation of the Federation of Law Societies of Canada (established to assess the equivalence of foreign degrees to Canadian law degrees) confirming that the applicant:
  - (i) possesses a degree equivalent to a Canadian Common Law Degree, or
  - (ii) does not possess a degree equivalent to a Canadian Common Law Degree but has successfully completed the requirements stipulated by the National Committee on Accreditation to attain equivalency;
- (c) subsequent to obtaining a certificate of qualification,
  - (i) the applicant successfully completes a six month term of articles of clerkship, if the applicant has been engaged full-time in the actual practice of law for at least three years in the five years in the five year period immediately preceding the date of his or her application, or
  - (ii) successfully completes a term of articles of clerkship of twelve months;
- (d) has successfully completed the bar admission course;
- (e) has filed a certificate satisfactory to the Council from the appropriate officer of the Law Society of each bar of which the applicant is a member certifying that:
  - (i) the applicant is a member in good standing of the Society;

- (ii) no complaint is pending against the applicant for which the applicant could be struck off the roll, suspended or reprimanded,
- (iii) has not been the subject of any previous disciplinary action by the Society or, if the applicant has been, certifying as to the particulars thereof, and
- (iv) it is the belief of the officer that the applicant is apparently fit to engage in the practice of law; and

(f) has paid the fees prescribed by the Regulations.

(2) Every applicant under this section shall submit the affidavits and certificates as set out in the forms appended to these Regulations.

(3) Upon the applicant complying with subsections 18(1) and 18(2), the Council shall determine whether the applicant is a fit and proper person to be admitted to the bar and shall grant or refuse admission accordingly.

19. (1) Every applicant for admission to practice to the bar as a member shall file with the Secretary-Treasurer the documents required by the Regulations.

(2) Every applicant upon being called to the bar shall appear in the proper dress of a barrister and be presented to the Supreme Court:

- (a) by the applicant's principal or, in the principal's inability to act, any member of the principal's firm or a member of Council, or
- (b) where no service under articles was required, by a member of Council.

### **INTER-JURISDICTIONAL PRACTICE**

20. (1) In sections 21 to 31, unless the context indicates otherwise,

(a) “day” means any calendar day or part of a calendar day in which a lawyer provides legal services;

(b) “discipline” includes a finding by governing body of any of the following:

- (i) professional misconduct;
- (ii) incompetence;
- (iii) conduct unbecoming a lawyer;
- (iv) lack of physical or mental capacity to engage in the practice of law;
- (v) conduct deserving of sanction;
- (vi) any other breach of a lawyer’s professional responsibilities;

(c) “disciplinary record” includes any of the following, unless reversed on appeal or review:

- (i) any action taken by a governing body as a result of discipline;
- (ii) disbarment;
- (iii) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;
- (iv) restrictions or limits on a lawyer’s entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;
- (v) any interim suspension or restriction or limits on a lawyer’s entitlement to practise imposed pending the outcome of a discipline hearing;

(d) “entitled to practise law” means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

(e) “governing body” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, and the Barreau du Quebec;

- (f) “home governing body” means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and “home jurisdiction” has a corresponding meaning;
- (g) “IJP” means the Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada signed February 18, 1994 in Jasper, Alberta, as amended;
- (h) “IJP governing body” means a governing body that has signed the IJP and adopted regulatory provisions giving effect to the requirements of the IJP;
- (i) “lawyer” means a member of a governing body;
- (j) “legal matter” includes any activity or transaction that constitutes the practice of law and any other activity or transaction ordinarily conducted by members in Prince Edward Island in the course of practising law, whether or not persons other than lawyers are legally capable of conducting it;
- (k) “liability insurance” means compulsory professional liability errors and omissions insurance required by a governing body;
- (l) “National Mobility Agreement” or “NMA” means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;
- (m) “National Registry” means the National Registry of Practising Lawyers established under the National Mobility Agreement;
- (n) “permit” means an inter-jurisdictional practice permit;
- (o) “provide legal services” means to engage in the practice of law
  - (i) physically in Prince Edward Island, except with respect to the law of a home jurisdiction, or
  - (ii) with respect to the law of Prince Edward Island physically in any jurisdiction, and includes to provide legal services respecting federal jurisdiction in Prince Edward Island;
- (p) “reciprocating governing body” means a governing body that has
  - (i) signed the National Mobility Agreement, and
  - (ii) adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement;

- (q) “resident” has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada);
- (r) “visiting lawyer” means a lawyer who is entitled to practise law in a Canadian jurisdiction other than Prince Edward Island.

- (2) A permit is a permission for the purpose of subsection 20(4) of the *Act*.
- (3) A visiting lawyer who is allowed under this section to practise law in Prince Edward Island without a permit is a person who is deemed to hold permission for the purpose of subsection 20(4).

#### **Conditions Precedent to Any Visiting Lawyer Providing Legal Services**

- 21.
  - (1) All visiting lawyers must:
    - (a) be entitled to practise law in a home jurisdiction;
    - (b) subject to subsection (2), carry liability insurance that:
      - (i) is reasonably comparable in coverage and limits that is required under section 67; and
      - (ii) extends to the lawyer’s temporary practice in Prince Edward Island; and
    - (c) have defalcation compensation coverage from a governing body that extends to the lawyer’s practice in Prince Edward Island.
  - (2) The requirement in subsection 21 does not apply to a visiting lawyer who is exempt from compulsory liability insurance under section 67 with respect to legal services to be provided in Prince Edward Island.
  - (3) Visiting lawyers who do not meet the requirements of this Regulation shall not provide legal services in Prince Edward Island with or without a permit.

#### **Obligations of All Visiting Lawyers Providing Legal Services**

- 22.
  - (1) The *Act*, these Regulations and the Code of Professional Conduct apply to and bind a visiting lawyer providing legal services.
  - (2) A visiting lawyer shall not hold out nor allow himself or herself to be held out as willing or qualified to practise law in Prince Edward Island, except as a visiting lawyer.
  - (3) It is the responsibility of a visiting lawyer providing legal services to:

- (a) record and verify the number of days in which he or she provides legal services; and
- (b) prove that he or she has complied with these Regulations.

(4) A visiting lawyer shall not open or maintain a trust account in Prince Edward Island and shall:

- (a) promptly remit funds received in trust to the visiting lawyer's trust account in the home jurisdiction, or
- (b) ensure that trust funds are handled
  - (i) by a member of the Society entitled to practise law in Prince Edward Island in a trust account controlled by that member of the Society, and
  - (ii) in accordance with the *Act* and these Regulations.

#### **Visiting Without a Permit – Permission and Additional Requirements**

23. (1) In addition to the requirements of section 21, a visiting lawyer shall only qualify to provide legal services without a permit if the visiting lawyer

- (a) has no conditions or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction imposed as the result of or in connection with proceedings related to discipline, competency, capacity, admission or reinstatement;
- (b) is not the subject of:
  - (i) criminal proceedings, or
  - (ii) disciplinary proceedings in which a matter has been directed to a hearing in any jurisdiction;
- (c) has no disciplinary record in any jurisdiction;
- (d) has not established an economic nexus with Prince Edward Island as set out in section 24, and
- (e) is entitled to practise law in the jurisdiction of an IJP governing body or an NMA governing body of which the visiting lawyer is a member.

(2) Subject to the requirements of sections 21, 22 and 23, a visiting lawyer may provide legal services without a permit:

- (a) for a maximum of one hundred (100) days in any calendar year if the visiting lawyer is entitled to practise law in the jurisdiction of an NMA governing body of which the visiting lawyer is a member, or
- (b) for no more than ten (10) legal matters and not more than twenty (20) days in total during any calendar year if the visiting lawyer is entitled to practise law in the jurisdiction of an IJP governing body of which the visiting lawyer is a member.

(3) A visiting lawyer who qualifies under subsection (2) or (4) but, due to a change in circumstances while providing legal services no longer meets the requirements of subsection (1), shall stop providing legal services without a permit and may apply for a permit under section 26.

(4) On application of a visiting lawyer who otherwise qualifies under subsection (2), the Secretary-Treasurer may allow the visiting lawyer to provide legal services without a permit beyond the limits set in subsection (2).

(5) Notwithstanding sections 21 to 31, a member of the Canadian Forces who is entitled to practise law in a home jurisdiction in which he or she is a member of the governing body:

- (a) may provide legal services for or on behalf of the Office of the Judge Advocate General without a permit, and
- (b) does not establish an economic nexus with Prince Edward Island under section 24, provided that he or she provides legal services exclusively for or on behalf of the Office of the Judge Advocate General.

(6) (a) This subsection applies to visiting lawyers practising law as counsel in proceedings in:

- (i) the Supreme Court of Canada
- (ii) the Federal Court of Canada;
- (iii) the Tax Court of Canada;
- (iv) a federal administrative tribunal;
- (v) service tribunals as defined in the *National Defence Act*; and
- (vi) the Court Martial Appeal Court of Canada;

in relation to those proceedings.

- (b) Subject to disqualification for economic nexus under section 24, a visiting lawyer practising under this subsection may do so without a permit regardless of the number of days involved.
- (c) A visiting lawyer practising under this subsection:
  - (i) shall comply with the liability insurance and defalcation coverage requirements of the home governing body; and
  - (ii) is subject to all of the provisions of these Regulations that apply to other visiting lawyers practising in Prince Edward Island without a permit with the exception of:
    - (I) paragraphs 21(1)(b) and (c);
    - (II) paragraph 22(3)(a);
    - (III) paragraphs 23(1)(a), (b), (c), (e), 23(2); and
    - (IV) paragraph 24(2)(a).

#### **Visiting Without a Permit – Economic Nexus Disqualification**

- 24. (1) Subject to subsection (5), a visiting lawyer who has established an economic nexus with Prince Edward Island shall not provide legal services without a permit.
- (2) For the purposes of this section, an economic nexus is established by actions inconsistent with a temporary basis for providing legal services, including, but not limited to doing any of the following in Prince Edward Island:
  - (a) providing legal services beyond those permitted by subsection 23(2) or (4);
  - (b) opening an office from which legal services are offered or provided to the public;
  - (c) becoming a resident;
  - (d) opening or operating a trust account, or accepting trust funds, except as permitted under subsection 22(4);
  - (e) holding oneself out or allowing oneself to be held out as willing or qualified to practise law in Prince Edward Island, except as a visiting lawyer.
- (3) A visiting lawyer who provides legal services in or from an office that:

- (a) is the office of one or more resident members of the Society;
- (b) is affiliated with the lawyer's law firm in his or her home jurisdiction does not, for that reason alone, establish an economic nexus with Prince Edward Island.

(4) A visiting lawyer who becomes disqualified under this section shall cease providing legal services immediately, but may apply under section **17** for admission or under section 26 for a permit.

(5) On application by a visiting lawyer, the Secretary-Treasurer may allow the visiting lawyer to continue to provide legal services pending consideration of an application under section **17** or section 26.

### **Circumstances that Require a Permit**

25. (1) A visiting lawyer who does not meet the requirements of subsections 23(1) or (3), or who is disqualified under section 24, shall obtain a permit in order to provide legal services in Prince Edward Island.

(2) In order to provide legal services in Prince Edward Island beyond the limits set out in subsection 23(2), a visiting lawyer must obtain the permission of the Secretary Treasurer under subsection 23(4) or obtain a permit.

### **Permit Application**

26. (1) A visiting lawyer applying for a permit shall deliver to the Secretary-Treasurer:

- (a) a completed permit application in a form acceptable to the Secretary-Treasurer, including a written consent for the release of relevant information to the Society;
- (b) any required permit fee or renewal fee;
- (c) Certificates of Standing issued by each governing body of which the visiting lawyer is a member, dated not more than thirty calendar days before the date of the application and in a form acceptable to the Secretary-Treasurer;
- (d) proof of professional liability insurance that
  - (i) is reasonably comparable in coverage and amount to that required of members of the Society; and
  - (ii) extends to the visiting lawyer's practice in Prince Edward Island; and
- (e) proof that the visiting lawyer has defalcation coverage from a governing body that extends to the visiting lawyer's practice in Prince Edward Island.

(2) On application under this section, the Secretary-Treasurer may issue a permit, subject to any conditions and restrictions that the Secretary-Treasurer considers appropriate if, in the discretion of the Secretary-Treasurer, it is consistent with the public interest to do so.

(3) An appeal lies to Council from:

- (a) a refusal by the Secretary-Treasurer to issue or renew a permit; or

- (b) any conditions or restrictions imposed by the Secretary-Treasurer under subsection (2),

and Council, on considering the appeal, may confirm the Secretary-Treasurer's decision or direct the Secretary-Treasurer to issue or renew the permit, or remove or vary the conditions or restrictions, as the case may be.

- (4) The appeal under subsection (3) shall be filed with the Society within thirty days after receiving the Secretary-Treasurer's decision.
- (5) If an appeal under subsection (3) is dismissed, Council shall, at the written request of the appellant, give written reasons for the decision.
- (6) A permit issued or renewed under this section:
  - (a) in the case of a visiting lawyer who is entitled to practise law in the jurisdiction of an NMA governing body of which the visiting lawyer is a member, is valid for one year from the date it was issued or renewed; and
  - (b) allows a visiting lawyer to provide legal services for not more than one hundred days in that year,

subject to any conditions or restrictions imposed under this section and subject to section 27.

- (7) Before expiry of a permit under subsection 26(6), the holder of the permit may apply for its renewal.

#### **Automatic Termination of Permission to Practise**

- 27. (1) A visiting lawyer, with or without a permit, automatically ceases to be able to provide legal services if the visiting lawyer:
  - (a) fails to meet the requirements of section 21;
  - (b) is suspended or disbarred by any extra-provincial law society;
  - (c) is no longer in good standing with any home governing body; or
  - (d) fails to meet or satisfy any other condition, limitation or requirement imposed under sections 21 to 31 on the visiting lawyer.

#### **Enforcement – Visiting Lawyers Practising in Prince Edward Island**

- 28. (1) The *Act*, these Regulations, and the Code of Professional Conduct apply to and bind a visiting lawyer practising law in Prince Edward Island and without limiting the foregoing, a visiting lawyer may be disciplined by the Society if the visiting lawyer

- (a) wilfully contravenes any of the conditions on which the visiting lawyer has been allowed to practise law in Prince Edward Island; or
- (b) is guilty of any conduct in Prince Edward Island that, if committed by a member, would be conduct deserving of sanction under the *Act* and these Regulations.

(2) The provisions of these Regulations and the *Act* dealing with discipline shall apply to the visiting lawyer as though the visiting lawyer was a member and with all other necessary changes.

(3) Without limiting the generality of subsection (2),

- (a) an order of suspension shall prevent the visiting lawyer from practising law in Prince Edward Island during the period of suspension, and
- (b) an order of disbarment shall prevent the visiting lawyer from practising law in Prince Edward Island.

(4) The Secretary-Treasurer may require a visiting lawyer to

- (a) account for and verify the number of days spent providing legal services, and
- (b) verify compliance with any Regulations specified by the Secretary-Treasurer.

(5) If a visiting lawyer fails or refuses to comply with a requirement under subsection (4) within twenty calendar days, or such longer time as the Secretary-Treasurer may permit in writing,

- (a) the visiting lawyer is prohibited from providing legal services without a permit,
- (b) any permit issued to the visiting lawyer under section 26 is rescinded, and
- (c) the Secretary-Treasurer shall advise the visiting lawyer's home governing body of the visiting lawyer's failure to comply and the consequences.

(6) A visiting lawyer who is affected by subsection (5) may apply to Council for restoration of any or all rights lost under that subsection and Council may, in its discretion, grant the application, subject to any conditions it considers to be in the public interest.

**Enforcement – Prince Edward Island Lawyers Visiting Elsewhere**

29. (1) A member who practises law in another Canadian jurisdiction shall comply with the applicable legislation, regulations, rules and the Code of Professional Conduct of that jurisdiction.

(2) A fine or costs imposed on a member of the Society by an IJP governing body may be enforced by the Society in accordance with paragraph 7(i) of the IJP, which provides for disciplinary proceedings against a member who fails to pay a fine or costs required to be paid to a host governing body arising out of that member's inter-provincial practice, including any penalty which the home governing body (Prince Edward Island) considers appropriate.

### **Enforcement – General**

30. (1) If there is an allegation of misconduct against a member of the Society while practising temporarily in the jurisdiction of an NMA governing body under provisions equivalent to section 23 or 26, the Society shall:

(a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and

(b) subject to subsection (2), assume responsibility for the conduct of the disciplinary proceedings.

(2) Where subsection (1) applies, the Society may agree to allow the other governing body concerned to assume responsibility for the conduct of disciplinary proceedings under that subsection, including expense of the proceedings.

(3) If there is an allegation of misconduct against a visiting lawyer while practising temporarily under section 23 or 26, and the visiting lawyer is not a member of an NMA governing body but is a member of an IJP governing body,

(a) the Society shall assume responsibility for the conduct of the disciplinary proceedings against the lawyer, including the cost of those proceedings, unless the Society and the home governing body agree to the contrary, and

(b) the Society and the home governing body shall consult respecting the manner in which the disciplinary proceedings shall be taken against the lawyer.

(4) In deciding whether to agree under subsection (2) or (3), the primary considerations shall be the public interest, convenience and cost.

(5) On the request of a governing body that is investigating the conduct of, or has initiated a disciplinary proceeding against, a member or former member of the Society, an articled clerk or former articled clerk of the Society, or a visiting lawyer who has provided legal services, to the extent that it is reasonable in the circumstances, the Secretary-Treasurer shall:

- (a) provide all relevant information, and documentation respecting the lawyer or the visiting lawyer;
- (b) co-operate fully in the investigation and any charge and hearing.

(6) Subsection (5) applies whether or not the Society agrees with a governing body under subsection (2) or (3).

(7) The Secretary-Treasurer shall provide to the National Registry the current and accurate information about members, former members, articled clerks, former articled clerks and visiting lawyers required under the National Mobility Agreement.

(8) No one may use or disclose information obtained from the National Registry except for a purpose related to enforcement of the *Act* and Regulations.

(9) A duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct is proof of the lawyer's guilt.

### **Dispute Resolution**

31. (1) The provisions of the IJP concerning claims for compensation for misappropriation apply to claims involving inter-jurisdictional practice.

(2) If a dispute arises with a governing body concerning any matter under the IJP or the National Mobility Agreement, Council may do one or both of the following:

- (a) agree with a governing body to refer the matter to a single mediator;
- (b) submit the dispute to arbitration under Appendix 5 of the IJP.

## **FOREIGN LEGAL CONSULTANTS**

32. In this Regulation,

- (a) "applicant" means an individual who submits an application to practice as a foreign legal consultant;
- (b) "foreign legal consultant" means a person qualified to practice law in a country other than Canada or in an internal jurisdiction of that country, who practices in the Province the law of that country or internal jurisdiction, as the case may be.

### **Application:**

33. A person may apply to the Council for approval to act as a foreign legal consultant in the Province upon

- (a) filing a completed application in the form approved by the Council; and
- (b) payment of the fee prescribed by Council.

### **Requirements of Applicant:**

34. The applicant may be approved to act as a foreign legal consultant if the applicant satisfies the Council that the applicant

- (a) is a member in good standing of the legal profession of his or her home country or in one of its internal jurisdictions;
- (b) is a person of good moral character and a fit and proper person to practice as a foreign legal consultant in the Province;
- (c) has practiced the law of his or her home country or one of its internal jurisdictions for at least three complete years, or undertakes in writing to work, while acting as a foreign legal consultant in the Province, only under the direct supervision of a foreign legal consultant from that country or internal jurisdiction who has satisfied the three-year practice requirement;
- (d) has provided to the Council a written undertaking that he or she will
  - (i) not accept, hold, transfer or in any other manner deal with funds which would, if accepted, held, transferred or dealt with by a member, constitute trust funds,
  - (ii) submit to the jurisdiction of the Society and will comply with the *Act*, the Regulations and the Code of Professional Conduct, and

- (iii) notify the Council promptly if he or she fails to complete satisfactorily whatever continuing legal education program is required by members of his or her home country or internal jurisdiction;
- (e) carries professional liability insurance or a bond, indemnity or other security
  - (i) in a form and amount, which is reasonably comparable with that maintained by the Society in its compulsory program, and
  - (ii) which specifically extends to the services rendered by foreign legal consultant while acting as such in the Province;
- (f) participates in a program or carries a fidelity bond or other security satisfactory to, and in the amount prescribed by Council, for the purpose of reimbursing persons who sustain a pecuniary loss as a result of the misappropriation or conversion by the foreign legal consultant of money or other real property entrusted to or received by the consultant in his or her capacity as a foreign legal consultant in the Province.

**Compliance with Conditions:**

35. The applicant must comply with any conditions prescribed by the Council.

**Period of Approval:**

36. Subject to section 37, approval under section 34 is valid from the issue date shown on it to the following thirtieth day of June.

**Approval Ceases to be Valid:**

37. Notwithstanding section 36, the approval ceases to be valid if the foreign legal consultant

- (a) is suspended as a result of proceedings under the *Act* or Regulations; or
- (b) ceases to comply with any of the requirements of sections 34 or 35.

**Qualification to Act as a Foreign Legal Consultant:**

38. Subject to subsection 39, a person may act as a foreign legal consultant in the Province only if he or she has obtained approval under this Regulation.

**Dual Qualification:**

39. A member of the Society who is also qualified to practice law in another country or in one of its internal jurisdictions need not obtain approval pursuant to this

Regulation to act as a foreign legal consultant in the Province, provided his or her activities as a consultant are insured against in a form and amount which is at least reasonably comparable with that maintained by the Society in its compulsory program.

**Marketing of Legal Services:**

40. A foreign legal consultant, when engaging in advertising or any other form of marketing activity in the Province,
  - (a) shall use the term "foreign legal consultant";
  - (b) shall state the country or internal jurisdiction in respect of which he or she is qualified to practice law, and the professional title used in that country or internal jurisdiction; and
  - (c) shall state that he or she is not a member of the Society.

**Renewal of Application:**

41. A foreign legal consultant who intends to continue to act as such in the Province shall, before his or her approval expires, apply to the Council for a renewal of the application.

**Requirements for Renewal:**

42. A renewal application shall include
  - (a) a completed renewal application in a form approved by the Council;
  - (b) evidence satisfactory to the Council that the applicant continues to comply with the requirements set out in sections 34 and 35; and
  - (c) the renewal fee fixed by Council.

**Approval of Renewal:**

43. The Council may approve a renewal application for a foreign legal consultant who has complied with this Regulation and any conditions prescribed by the Council.

**Period of Renewal:**

44. Subject to section 45, a renewal application issued pursuant to section 43 is valid for one year.

**Application of Section 37:**

45. Section 37 applies to an application which has been renewed pursuant to section 43.

## **CHANGE OF STATUS**

46. (1) Unless otherwise provided, a decision by the Council under this part is final.

(2) The Council may, when it is in the public interest to do so, vary the requirements for change of category of membership.

(3) The burden of proof shall be on the applicant to establish that it is in the public interest to vary the requirements for change of category of membership.

47. (1) A person who has been appointed to a judicial office, but is no longer in that office, may apply to be reinstated to membership in the Society in any category of membership except an articled clerk.

(2) An application under this section may be approved by the Secretary-Treasurer unless it must be referred to the Council under subsection (3).

(3) If:

(a) the application is made more than one year after the end of the applicant's term in a judicial office, or

(b) the facts disclosed in the application or otherwise known to the Society raise public interest issues which, in the opinion of the Secretary-Treasurer, require consideration by the Council,

the Secretary-Treasurer shall forward the application to the Council.

(4) The Council may require the applicant to file such additional information as it considers appropriate.

(5) Where the Council is satisfied that it is consistent with the public interest, it may approve the reinstatement to membership upon such terms and conditions as it deems fit and necessary.

(6) A change in category of membership pursuant to this subsection is effective on the date set by the Secretary-Treasurer or the Council.

48. (1) A practicing lawyer may apply to become a non-practicing member, or a retired member.

(2) An application under this regulation shall be in the prescribed form and shall provide the following:

(a) contact information;

- (b) professional history;
- (c) confirmation that:
  - (i) all clients' matters have been completed;
  - (ii) arrangements have been made to the clients' satisfaction to have their files, documents and papers returned to them or turned over to another practicing lawyer;
  - (iii) all money or other property held in trust has been accounted for and either paid over to the person entitled to them or has been transferred to another practicing lawyer for the benefit of the person or persons entitled to them;
  - (iv) the lawyer does not hold money or other property in trust for any person;
  - (v) the lawyer's trust account is closed or will be closed by a certain date;
  - (vi) the lawyer is not aware of any claim or complaint against the lawyer in the lawyer's professional capacity or in respect of the lawyer's practice;
  - (vii) the lawyer undertakes that, following approval of the application and the change in category of membership, the lawyer will not engage in the practice of law;
- (d) the location of the files from the lawyer's practice (other than those returned to clients or transferred to another practicing lawyer).

(3) Where the applicant has held money or other valuable property in trust at any time in the 12 months immediately preceding this application,

- (a) the applicant shall confirm that any trust activity will be reported by the applicant's firm in the firm's Trust Account Report;
- (b) the application shall be accompanied by a final Trust Account Report with certification by a public accountant, stating that all money or other property held in trust has been accounted for and is either
  - (i) paid over to the person entitled thereto or
  - (ii) held in trust by another practicing lawyer for the benefit of the person or persons entitled; or

- (c) the applicant shall undertake to provide a Trust Account Report Form for the period from the end of the applicant's last fiscal year to the effective date of approval of the application, which will confirm
  - (i) that the trust accounts have been closed; and
  - (ii) all trust obligations are complete.
- (4) An application under this subsection may be approved by the Secretary-Treasurer unless it must be referred to the Council under subsection (5)
- (5) If the facts disclosed in the application or otherwise known to the Secretary-Treasurer raise public interest issues which require, in the opinion of the Secretary-Treasurer, consideration by the Council, the Secretary-Treasurer shall forward the application to the Council.
- (6) The Council may require the applicant to file such additional information as it considers appropriate.
- (7) When the Council is satisfied that it is consistent with the public interest it may approve the change in category of membership upon such terms and conditions as it deems fit and necessary.
- (8) A change in category of membership pursuant to this regulation is effective on the date set by the Secretary-Treasurer or the Council.
- (9) When an application under this section has been approved, the Secretary-Treasurer shall
  - (a) notify the applicant of the change in the category of membership and the effective date for the change, and
  - (b) amend the records of the Society to reflect the change in category of membership and the effective date.

49.

- (1) A non-practicing member or a retired member, may apply to resume practicing status.
- (2) An application under subsection (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 medical fitness,
  - (d) information confirming competence to practice law,

- (e) if a 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 Secretary-Treasurer or the Council.

(3) An application received under this subsection may be approved by the Secretary-Treasurer unless it must be referred to the council under subsection (4).

(4) If

- (a) the applicant under this section has not been engaged in the practice of law in Prince Edward Island at some time within the past three years, or
- (b) the facts disclosed in the application or otherwise known to the Secretary-Treasurer raise public interest issues which require, in the opinion of the Secretary-Treasurer, consideration by the Council, the Secretary-Treasurer shall forward the application to the Council.

(5) Following consideration of the application, the Council may, when it is in the public interest to do so:

- (a) approve the application with or without conditions,
- (b) approve the application, subject to the applicant
  - (i) satisfactorily completing a period of service with a practicing lawyer, in accordance with an education plan approved by the Council
  - (ii) successfully completing all or a portion of the Bar Admission Course
  - (iii) satisfying the Council of the applicant's fitness for resumption or practice, or
  - (iv) completing such other requirements as may be required by the Council.
- (c) when there are issues about the applicant's character or medical fitness, require the applicant to be subject to a Credentials Inquiry and the provisions of Section 16 shall apply.

(6) During the period of service with a practicing lawyer, required pursuant to clause (5)(b)(i), the applicant shall be considered to be a practicing lawyer and shall be required to pay the fees of a practicing lawyer, prescribed in accordance with these regulations, for the period of service required by the Council.

- (7) When an application under this section has been approved, the Secretary-Treasurer shall:
  - (a) notify the member of the right to resume practice and the effective date for the resumption, and
  - (b) amend the records of the Society to reflect the change in category or membership and the effective date.
- 50. (1) A non-practicing member may apply to become a retired member.
- (2) An application under this section shall be in writing and shall provide the following:
  - (a) the contact information of the applicant, and
  - (b) the reasons for applying to change status.
- (3) The Secretary-Treasurer may approve an application under this section unless the Secretary-Treasurer is required to refer the application to the Council under subsection (4).
- (4) That the facts disclosed in the application or otherwise known to the Secretary-Treasurer raise public interest issues which require, in the opinion of the Secretary-Treasurer, consideration by the Council, the Secretary Treasurer shall forward to application to the Council.
- (5) When the Council is satisfied that it is consistent with the public interest, it may approve the change in category of membership upon such terms and conditions as it deems fit and necessary.
- (6) A change of category of membership pursuant to this regulation is effective on the date set by the Secretary-Treasurer or the Council.
- (7) When an application under this section has been approved the Secretary-Treasurer shall:
  - (a) notify the member of change in the category of membership and the effective date for the change, and
  - (b) amend the records of the Society to reflect the change in category of membership and the effective date.
- 51. (1) A practicing lawyer may apply to Council to resign from membership in the Society.
- (2) An application under this regulation shall be in the prescribed form and shall provide the following:

- (a) contact information,
- (b) professional history,
- (c) confirmation that
  - (i) all client's matters have been completed and disposed of, or
  - (ii) arrangements have been made to the clients' satisfaction to have their files, documents and papers returned to them or turned over to another practicing lawyer,
  - (iii) all money or other property held in trust has been accounted for and either paid over to the person entitled to them or has been transferred to another practicing lawyer for the benefit of the person or persons,
  - (iv) the applicant does not hold money or other property in trust for any person,
  - (v) the applicant's trust account is closed or will be closed by the effective date of the resignation;
- (d) the reason for applying to resign;
- (e) evidence of compliance with all conditions imposed by Council's permission to resign, if any;
- (f) the applicant is not aware of any claim or complaint against the applicant in the applicant's professional capacity or in respect of the applicant's practice;
- (g) the applicant's undertaking that following approval of the resignation by Council, the applicant will not engage in the practice of law.

(3) When the applicant has held money or other valuable property in trust at any time in the 12 months immediately preceding this application,

- (a) the applicant shall confirm that any trust activity will be reported by the applicant's firm in the firm's Trust Account Report,
- (b) the application shall be accompanied by a final Trust Account Report with certification by a public accountant, stating that all money or other property held in trust has been accounted for and
  - (i) either paid over to the person entitled to them, or

- (ii) transferred to another practicing lawyer for the benefit of the person or persons entitled to them; or
- (c) the applicant shall undertake to provide a Trust Account Report Form for the period from the end of the applicant's last fiscal year to the effective date of this application, which will confirm
  - (i) that the trust accounts have been closed, and
  - (ii) all trust obligations are complete.

(4) The Council may require the member to file additional information to allow for a determination if the application is consistent with the public interest.

(5) The Secretary-Treasurer shall advise the Council

- (a) if there are outstanding proceedings against the member under Part III of the *Act*, or
- (b) if there are outstanding claims against the member being handled by the insurers for the Society and
- (c) such other information as may be relevant to allow for a recommendation by the Council on whether or not the application is consistent with the public interest.

(6) Upon receipt by Council of a written recommendation from the Secretary-Treasurer, and upon Council being satisfied that it is consistent with the public interest to allow the member to resign, Council may, by resolution, accept the resignation of the member upon such terms and conditions, if any, as it deems appropriate.

(7) Council shall not consider an application under this section if there are any ongoing procedures under Part III of the *Act* unless the Discipline Committee consents to the resignation.

(8) When application under this regulation has been approved, the Secretary-Treasurer shall:

- (a) notify the applicant of the approval of the application to resign and the effective date of the resignation, and
- (b) amend the records of the Society to reflect the resignation and the effective date.

52. (1) A non-practicing member, or a retired member may apply to Council to resign from membership in the Society.

- (2) An application under this section shall be in writing and shall provide the following:
  - (a) the contact information for the applicant, and
  - (b) the reasons for applying to resign.
- (3) The Secretary-Treasurer or the Council may require the applicant to file additional information to allow for a determination if the application is consistent with the public interest.
- (4) Upon receipt by Council of a recommendation from the Secretary-Treasurer , and upon Council being satisfied that it is consistent with the public interest to allow the applicant to resign, Council may, by resolution, accept the resignation of the member upon such terms and conditions, if any, as it deems appropriate.
- (5) When the application under this section has been approved, the Secretary-Treasurer shall:
  - (a) notify the applicant of the approval of the application to resign and the effective date for the resignation, and
  - (b) amend the records of the Society to reflect the resignation and the effective date.

53.

- (1) A person who has resigned from the Society, and who is not a member of another law society in Canada, or who has been disbarred from the Society, may apply to be readmitted to membership in the Society.
- (2) An application under this section shall be in the prescribed form, accompanied by the prescribed fee, and shall provide
  - (a) contact information,
  - (b) professional history,
  - (c) information confirming good character,
  - (d) information confirming fitness,
  - (e) information confirming competence to practice law,
  - (f) if the member is or had been a member of a law society in a foreign jurisdiction, certificates of standing from each jurisdiction,
  - (g) such other information that may be required by the Secretary-Treasurer or the Council.

- (3) If an applicant under this section was disbarred or permitted to resign from the Society, the Secretary-Treasurer may:
  - (a) cause notice of the application to be published in a newspaper published in the province, or
  - (b) advise the members of the Society of the application, or
  - (c) invite submissions to the Society respecting the application.
- (4) The Secretary-Treasurer may approve an application pursuant to this section unless the Secretary-Treasurer is required under subsection (5) to refer the application to the Council.
- (5) If:
  - (a) the applicant was disbarred or permitted to resign from the Society,
  - (b) the applicant under this section has not engaged in the practice of law for at least three years, or
  - (c) the facts disclosed in the application or otherwise known to the Secretary-Treasurer, raise public interest issues which require, in the opinion of the Secretary-Treasurer, consideration by the Council, the Secretary-Treasurer shall forward to application to the Council.
- (6) Following consideration of the application, the Council may:
  - (a) approve the application without conditions,
  - (b) approve the application, subject to the applicant
    - (i) successfully completing a period of service with a practicing lawyer in accordance with an education plan, approved by the Council,
    - (ii) successfully completing all or a portion of the Bar Admission Course,
    - (iii) satisfying the Council of the applicant's fitness for admission to membership and resumption of practice;
    - (iv) completing such other requirements as may be required by the Council.
  - (c) where there are issues about the applicant's character or fitness, require the applicant to be subject to a Credentials Inquiry.

- (7) During the period of service with a practicing lawyer, required pursuant to clause (6)(b)(i), the applicant shall be considered to be a practicing lawyer and shall be required to pay the fees of a practicing lawyer, prescribed by these regulations, for the period of service required by the Council.
- (8) Where the applicant was disbarred or permitted to resign from the Society, the Council shall require the applicant to be the subject of a Credentials Inquiry into the applicant's character and fitness and the provisions of subsection (6) shall apply.
- (9) Upon approval of an application under this section, the applicant may be called to the Bar.

## **PART III**

### **DISCIPLINE**

54. (1) In this Part, “Committee” refers to each discipline committee appointed pursuant to Section 6.

(2) Each Committee may investigate allegations of unprofessional conduct by a member or conduct unbecoming an articled clerk.

(3) Each Committee may hear and adjudicate any formal complaint, but no Committee may hear or adjudicate a formal complaint which arises out of an investigation in which the Committee has participated, other than pursuant to Section 61.

(4) Notwithstanding that a Committee has ceased to hold office by reason of the appointment of a new Committee, the members of the Committee shall be seized with jurisdiction to complete any matter which the Committee has commenced so long as a quorum of the members of the Committee continue to participate, and for this purpose the members of the Committee continue to have the same powers, privileges, immunities and duties as are provided by the *Act* and the Regulations for a committee.

(5) (a) The hearing of a formal complaint in accordance with Section 60, and of a show cause hearing in accordance with Section 63, shall be conducted by a panel of at least five individuals selected from a Committee by the chair of such Committee, who shall also choose a chair from among the members of the panel.

(b) The chair of the Committee may refer any matter that is before that Committee to a panel and may refer any matter that is before a panel to the Committee or another panel.

(6) If a quorum of the Committee cannot be met, or a panel cannot be composed pursuant to Section 54(5), Council may appoint temporary Committee members from among the membership of the Society.

(7) If the chair of a Committee is absent or unable to act, the members of the Committee shall appoint an acting chair from among its members who shall have all the powers and duties imposed by these regulations.

(8) The quorum for meetings of a Committee, or a subcommittee, for all purposes shall be five individuals.

(9) Without limiting the effect of Section 37 of the *Act*, a hearing panel of a Committee may determine that conduct constitutes unprofessional conduct, or conduct unbecoming an articled clerk,

- (a) if it involves conduct in the personal or private capacity of a member or articled clerk that tends to bring discredit upon the legal profession including:
  - (i) committing a criminal act that reflects adversely on the honesty, trustworthiness, or competence of the member or articled clerk as a member of the Society,
  - (ii) taking improper advantage of the youth, inexperience, lack of education, lack of sophistication, or ill health of any person, and
  - (iii) engaging in conduct involving dishonesty;
- (b) if the member or articled clerk repeatedly fails to apply relevant knowledge, skills and attributes in a manner appropriate to matters undertaken on behalf of a client, and within the reasonable parameters of the experience and the nature and terms of the engagement of the member or articled clerk,
- (c) if it involves conduct in the professional capacity of a member or articled clerk that tends to bring discredit upon the legal profession including:
  - (i) violating or attempting to violate one of the provisions of any code or standard of ethics adopted by the Society or a requirement of the *Act* or these regulations,
  - (ii) knowingly assisting or inducing another lawyer to violate or attempt to violate the provisions of any code or standard of ethics adopted by the Society or a requirement of the *Act* or these regulations, or
  - (iii) misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property.

55.

- (1) The objects of the Committee are the protection of the public and the preservation of the reputation of the legal profession. To this end, the Committee shall seek to inhibit unprofessional conduct on the part of members of the Society, or conduct unbecoming of an articled clerk by investigating, on its own initiative or on the complaints of others, alleged instances of such conduct and reporting to Council on the results of its inquiry.
- (2) The Committee shall not permit their procedures to be used:
  - (a) by a client of a member complained of for the purpose of harassing such member into providing a relief which is beyond what the member was retained to furnish and which is ordinarily only available in a judgment concluding a successful civil action against the member;

- (b) by a party adverse in interest to a client of the member complained of for the purpose of harassing a member or a client of a member;
- (c) as a form of discovery for civil litigation;
- (d) as an abuse of process; or
- (e) for any other purpose extraneous to the objects stated herein.

56. (1) The conduct of any member or articled clerk may be investigated, upon the receipt by the Secretary-Treasurer, from a member of a Committee (acting either on the member's own volition or pursuant to a motion of the Committee), a member of the Society, or a member of the public, of a written complaint alleging unprofessional conduct on the part of a member or, in respect of an articled clerk, conduct unbecoming an articled clerk.

(2) The representative of the Society's insurer may disclose to a Committee any information not protected by solicitor-client privilege which appears to the representative to disclose unprofessional conduct.

57. (1) Upon receipt of a written complaint pursuant to Section 56, the Secretary-Treasurer may dismiss the complaint if, in the opinion of the Secretary-Treasurer:

- (a) the subject matter of the complaint is outside the jurisdiction of the Society,
- (b) the complaint is filed for one or more of the purposes described in subsection 55(2), or is otherwise frivolous, vexatious, or without foundation; or
- (c) the complaint does not allege facts which, if proven, would constitute unprofessional conduct or conduct unbecoming, or would merit a reprimand, counselling or both.

(1.1) On dismissal of a complaint under subsection (1), the Secretary-Treasurer shall advise the complainant of the dismissal by registered mail, setting forth the reasons for dismissing the complaint.

(1.2) Upon receipt of a written complaint pursuant to section 56, if the Secretary-Treasurer does not dismiss the complaint pursuant to subsection 57(1), the Secretary-Treasurer shall request a written response from the member or articled clerk complained of, and shall forward such response to the complainant.

(2) The Secretary-Treasurer shall obtain such further particulars and make such inquiries as the case requires, which may include receiving verification of the facts alleged by the complainant by statutory declaration.

- (3) Upon completion of the inquiries referred to in subsection (2), the Secretary-Treasurer may attempt to resolve the complaint if, in the opinion of the Secretary-Treasurer, the complaint may be satisfactorily resolved, consistent with the objects of the discipline process, and failure to resolve the complaint will result in the complaint being further dealt with in accordance with this section.
- (4) Notwithstanding any dismissal of a complaint pursuant to subsection (5), the Secretary-Treasurer may provide a letter to the member or articled clerk complained of reminding the member or articled clerk of the obligations of the member or articled clerk under the *Act*, the Regulations and the code of conduct adopted by the Society.
- (5) If, upon completion of the said inquiries, the Secretary-Treasurer is satisfied that:
  - (a) the complaint has been filed for one of the purposes enumerated in section 55(2), or is otherwise frivolous, vexatious, or without foundation, or
  - (b) the evidence that might reasonably be believed could not support a finding of unprofessional conduct or conduct unbecoming an articled clerk or would not merit a reprimand, counselling or both,the Secretary-Treasurer may dismiss the complaint and shall advise the complainant thereof by registered mail, setting forth the reasons for dismissing the complaint.
- (6) The complainant whose complaint has been dismissed by the Secretary-Treasurer may, within 30 days of being notified of the dismissal of the complaint, apply to a Committee for a review of the decision of the Secretary-Treasurer, but such review shall, unless otherwise directed by the Committee, be limited to a review of the record prepared by the Secretary-Treasurer and the reasons given by the Secretary-Treasurer for dismissal of the complaint.
- (7) The Committee to whom an application for review has been submitted pursuant to clause (6) shall render its decision within 60 days of the submission of the request to it, or within such further time as Council may allow, and shall provide reasons for its decision.
- (8) If a Committee determines that a complaint dismissed by the Secretary-Treasurer ought not to have been dismissed, the Committee shall proceed to investigate the complaint in the manner set out in Section 59.
- (9) If the Secretary-Treasurer does not dismiss a complaint, the Secretary-Treasurer may:
  - (a) refer the complaint, together with all materials pertaining thereto, to the Chair of one of the Committees, or

- (b) close the file where, due to lack of communication or lack of action, the Secretary-Treasurer is of the belief that the complaint has been resolved or that the complainant wishes that no further action be taken.
- 58. (1) Allegations of unprofessional conduct of a member of the Society who is the President, a member of a Committee or the Secretary-Treasurer shall be investigated in accordance with subsection (3).
  - (2) When the provisions of subsection (1) apply, the matter shall be referred by the Secretary-Treasurer to the President, unless the complaint is against the President, in which case it shall be referred to the Vice-President.
  - (3) On receipt of a referral under subsection (2), the President or the Vice-President, shall appoint as a special investigator, a practising lawyer, who is not currently a member of a Committee, to address the matter in accordance with this subsection.
  - (4) When addressing the matter, the special investigator has all the powers and authority of the Secretary-Treasurer, with respect to complaints.
  - (5) If the special investigator dismisses the complaint, in addition to those required to receive notice under subsections 57(1.1) and 57(5), the person who appointed the special investigator, shall be notified of the dismissal.
  - (6) A dismissal of a complaint by the special investigator is subject to a review under subsection 57(6), which will apply mutatis mutandis to this regulation.
  - (7) For purposes of a review under subsection (6), the body conducting such review shall be made up of the three immediate past presidents of the Society who are available to serve.
  - (8) If, as a result of an investigation, the special investigator determines that the matter should be referred to a Committee, the special investigator shall advise the person who appointed the special investigator.
- 59. (1) The Chair of a Committee shall review the information compiled by the Secretary-Treasurer pursuant to Section 57, and thereafter the investigation shall be proceeded with as determined by the Committee.
  - (2) Unless otherwise determined by the Committee:
    - (a) the investigation shall be commenced by the Committee forwarding a copy of the complaint to the member or articled clerk complained of together with all materials pertaining thereto.
    - (b) within ten days of the receipt of such complaint, the member or articled clerk complained of shall forward an answer in writing, together with such supporting material to the chair of the Committee. In lieu of such written

answer, the member or articled clerk complained of may forward a letter acknowledging the receipt of such complaint and offering to appear before the Committee or designated members thereof for the purpose of furnishing an answer orally. The chair shall furnish to the person making the complaint copies of any written answer and of any other written communication or material furnished to the Committee by the member or articled clerk complained of.

- (3) Whether or not any answer is received within the time herein provided, or at all, the investigation shall be proceeded with as determined by the Committee chair who received a copy of the complaint.
- (4) On the direction of the Committee chair, the chair or a member of the Committee may act as an Investigating Officer of the complaint.
- (5) The investigation may include:
  - (a) requests for further and additional written explanations from the member or articled clerk complained of or the complainant;
  - (b) requests for an informal interview of the member or articled clerk complained of, the complainant or any other person by one or more members of the Committee;
  - (c) if the chair of the Committee so directs, obtaining outside assistance to further the investigation;
  - (d) reviewing the member's trust account records;
  - (e) a hearing at which the Committee has and exercises the powers and privileges described in section 38(9) of the *Act*;
  - (f) such other steps as the chair of the Committee determines are necessary for a thorough investigation.
- (6) In the course of an investigation and after consideration of the prior discipline record of the member or articled clerk complained of, the Committee may adopt one or more of the following courses of action as is deemed appropriate:
  - (a) determine that the evidence disclosed by the investigation which might reasonably be believed could not support a finding of unprofessional conduct or conduct unbecoming an articled clerk, and accordingly that the complaint should not be proceeded with and that the complainant or the complainant's solicitor and the member or articled clerk complained of be so advised by the Secretary-Treasurer of the Society;

- (b) determine that the evidence discloses conduct meriting only a reprimand and/or some counsel, from the Committee, and accordingly that such reprimand and counsel be communicated to the member or articled clerk complained of, with an appropriate advice to the complainant, by the chair of the Committee making the determination;
- (c) determine that the evidence could support a finding of unprofessional conduct or conduct unbecoming an articled clerk and accordingly that the Secretary-Treasurer of the Society be instructed to lay a formal complaint against the member or articled clerk complained of in the name of the Society relating to all or any part of the subject matter of the original complaint or any matter disclosed by the investigation;
- (d) determine that the Secretary-Treasurer of the Society advise a complainant not represented by a solicitor that, while the complaint is not being proceeded with for the reason mentioned in clause (a) of this subsection, the complainant should consult a solicitor regarding a possible civil remedy against the member or articled clerk complained of;
- (e) determine to take such other appropriate action as is deemed advisable.

(7) In any determination under subsection (6), any member of the Committee acting as the Society's investigating officer may abstain from voting and, if the member does so, the minutes of the meeting shall so record, but the member shall nevertheless be counted present for quorum purposes.

(8) A Committee shall complete its investigation of a complaint and provide its recommendation pursuant to subsection (6) within four months of receipt of the complaint by the chair of the Committee or within such further time as Council may allow.

(9) Any member or articled clerk who was counselled or reprimanded pursuant to clause (b) of subsection (6), and is not satisfied with that decision, may, within thirty days of the date of that decision, request the Secretary-Treasurer to lay a formal complaint in the matter, and the Committee which did not impose the counselling or reprimand shall conduct a formal hearing into the conduct of the member or articled clerk, which Committee may quash, confirm or vary the decision of the Committee made pursuant to clause (6)(b).

(10) The Committee which conducts an investigation maintains jurisdiction over the complaint until the commencement of the formal inquiry by the other Committee and nothing in this subsection affects any order made pursuant to Section 38(6) of the *Act*.

(11) Where a Committee investigates on its own initiative or at the request of Council, the procedure followed shall be as set out in this section 59, and all provisions thereof shall apply with such modifications as are necessary. In such cases, a

written statement of the chair of the Committee setting out the subject matter of the investigation shall be deemed to be the complaint for the purposes of this section.

- (12) For the purpose of conducting an investigation of a member under this Part III, the Secretary-Treasurer, the Committee or any person designated by either of them may request, and is entitled to obtain, any file or record regarding a client or former client of the member that is reasonably required to further the investigation, whether or not the file or record or any part of it is
  - (a) subject to solicitor-client privilege; or
  - (b) the subject of a charge or complaint.
- (13) A person who, in exercising a power or performing a duty under the *Act* or Regulations, obtains information that is subject to solicitor-client privilege has the same obligation respecting the information as the member. But the person obtaining the information may disclose it for the purpose of an investigation, hearing or appeal under this Part III.
- (13.1) The Secretary-Treasurer may, either upon request or at its own initiative, disclose information about a member or articled clerk under investigation to any law society in which that member or articled clerk is also a member, provided that the disclosure of information does not contravene solicitor-client privilege. (2017)
- (14) In any legal proceeding other than one commenced under the *Act* or Regulations, a person in possession of solicitor-client privileged records that were obtained or provided to the person in the course of an investigation or proceeding under the *Act* or Regulations cannot be compelled to produce those records or to answer any question about them.

### **Conduct of Formal Inquiries**

60. (1) In this section ‘panel’ means a panel constituted pursuant to subsection 54(5).

(2) When so directed by the chair of a Committee, the Secretary-Treasurer shall retain counsel to prosecute a complaint and, with the advice of counsel, lay a formal complaint against the member or articled clerk complained of and send the copies thereof to such member or articled clerk, to the person or persons who complained originally to the Society, and to each member of the panel which is to conduct the inquiry.

(3) Where one Committee has conducted an investigation, the other Committee shall hear and adjudicate the formal complaint.

(4) Within 14 days after the formal complaint has been laid, the chair of the panel shall hold a pre-hearing conference with counsel for the Society and the member or articled clerk, or counsel on their behalf, for purposes of setting the dates for the hearing.

(5) If counsel for the Society and the member or articled clerk do not agree on dates for the hearing, the chair may fix the time and place for the hearing.

(6) After the time and place for the hearing have been set, the Secretary-Treasurer shall cause written notice of the hearing to be given to the member or articled clerk, to the person or persons who originally complained to the Society and to such others, if any, as the chair of the investigating Committee may direct, at least 14 days prior to its commencement of the hearing.

(7) The inquiry shall be open to the public, unless the panel rules, upon application, that, for good cause, all or a portion of the inquiry shall be conducted in camera.

(8) Evidence before the panel may be given by oral examination or by declaration under the *Canada Evidence Act* or the *Evidence Act* or partly by both, provided that a true copy of any declaration to be so used, other than a declaration of service of any document, shall be mailed by ordinary mail not less than ten days prior to the hearing to the person complained of, or if it is tendered by the person complained of, then to the counsel for the Society.

(9) The panel may from time to time adjourn an inquiry and give notice thereof to the member or articled clerk complained of, the complainant and to the Society. If such member or articled clerk fails to appear at the time and place appointed for an inquiry or for the resumption of an adjourned inquiry after notice thereof, the panel may proceed with the inquiry in the member’s or articled clerk’s absence.

(10) The panel may, at any time before or during an inquiry, amend or alter any complaint either to correct an alleged defect in substance or form, or to make the

complaint conform to the evidence where there appears to be a variance between the evidence and the complaint, or where the evidence discloses unprofessional conduct or conduct unbecoming an articled clerk that is not alleged in the complaint.

61.
  - (1) After a formal complaint is prepared pursuant to subsection 60(2), the member or articled clerk may, at any time prior to the commencement of the hearing, tender to the investigating Committee a proposed settlement agreement, consented to by counsel for the Society, that includes a statement of sufficient facts in relation to the complaint against the member or articled clerk to support the admitted charges and proposed disposition, an admission of guilt by the member or articled clerk to one or more of the charges and the consent of the member or articled clerk to a specified disposition, conditional upon the acceptance of the agreement by the investigating Committee.
  - (2) The investigating Committee may, in its discretion, accept or refuse to accept the proposed settlement agreement.
  - (3) If the investigating Committee refuses to accept the proposed settlement agreement, the hearing shall proceed without reference to the proposed settlement agreement.
  - (4) If the investigating Committee accepts the proposed settlement agreement, it shall, by resolution signed by the chair on behalf of the investigating Committee, confirm acceptance of the settlement agreement.
  - (5) Following receipt of the resolution made by the investigating Committee pursuant to subsection (4), the Secretary-Treasurer may release the settlement agreement in accordance with section 62(3).
62.
  - (1) Upon completion of an inquiry, the panel shall dispose of the complaint as provided in Section 38 of the *Act*.
  - (2) Within sixty days of the completion of the inquiry, the panel shall provide to the Secretary-Treasurer a copy of its written resolution and decision on the matter.
  - (3) The disposition of the complaint shall be communicated to the complainant, and a copy of the disposition shall be circulated to each sole practitioner and firm of members of the Society.
63.
  - (1) If a Committee:
    - (a) learns that a member or articled clerk has been subjected to a penalty under any legislation governing the legal profession in another jurisdiction in Canada;

- (b) has furnished the member or articled clerk with such notice as it may prescribe of a show cause hearing together with a copy of the relevant decision and order rendered in the other jurisdiction, requiring the member or articled clerk to show cause why the member or articled clerk should not be subjected to any disciplinary action in the province; and
- (c) has heard such evidence offered by the member or articled clerk at the show cause hearing as to why the member or articled clerk should not be disciplined by the Society,

the Committee may take any of the actions contemplated by Section 38 of the *Act*.

- (2) If a member or an articled clerk has been found guilty of a criminal offence, a Committee may, by such notice as it prescribes, require the member or articled clerk to attend a show cause hearing to establish why the member or articled clerk should not be subjected to any disciplinary action. A person so found guilty shall report the finding of guilt forthwith to the Secretary-Treasurer.
- (3) The show cause hearings pursuant to subsections (1) and (2) shall be open to the public, unless the Committee rules, upon application, that, for good cause, all or a portion of the hearing shall be conducted in camera.
- (4) When the Committee has concluded a hearing pursuant to subsections (1) or (2), it may, if it deems proper, take any of the actions contemplated by Section 38 of the *Act*.
- (5)
  - (a) For the purposes of subsection (1), a certified copy of a disciplinary decision of another governing body concerning a member or articled clerk is proof of the disciplinary action taken against the member or articled clerk and may be used by the Society to prove that fact in a proceeding under this part.
  - (b) For the purposes of subsection (2), a certified copy of the finding of guilt of the member or articled clerk is conclusive evidence that the person has committed the crime or offence stated therein, unless it is shown that the finding has been quashed or set aside.
- (6) The Committee may set its own procedure when conducting a show cause hearing pursuant to subsections (1) and (2).
- (7) A member or an articled clerk shall notify the Secretary-Treasurer forthwith if the member or clerk had a judgment for a liquidated sum entered against the member or clerk in the Supreme Court of Prince Edward Island, and accompany such notice with a letter setting out the circumstances of the judgment.
- (8) The material received by the Secretary-Treasurer in accordance with subsection (7) may result in the Secretary-Treasurer imposing restrictions on the handling of

trust money if, in the judgment of the Secretary-Treasurer, there is a risk to the public.

- (9) Restrictions imposed pursuant to subsection (8) may include:
  - (a) an audit of the firm's trust account or requiring that the firm carry out an audit at its expense with a report made to the Law Society,
  - (b) limiting the member's signing authority over trust money, and
  - (c) any other steps required to protect trust money.
- 64. (1) (a) Irrespective of any other pending or ongoing proceeding concerning a member, if the Committee at any time, including during the course of an investigation or any inquiry, has reasonable cause to believe that a member is absconding, mentally incompetent, so dependent upon alcohol or drugs that it adversely affects his or her practice, insolvent or guilty of dishonesty in his or her practice, or is persistently neglecting his or her client's business, the chair of the Committee shall so advise the Secretary-Treasurer in writing, and the Council may, by resolution, appoint a receiver to take possession of all or any deeds, wills, documents of title, papers, books of account, records, vouchers, files and other documents in the possession or control of the member or the member's firm, or relating to any trust of which the member is sole trustee or is co-trustee with a partner, clerk or servant only, and to receive all monies that the member is entitled or becomes entitled to receive from any person.
  - (b) Where a Committee or Council resolves that a member be suspended or that the member's name be struck from the rolls, Council may by resolution appoint a receiver in the same manner and with the same effect as set out in this section, and the provisions thereof apply with such modifications as are necessary.
- (2) The Prothonotary, upon receipt of a copy of the resolution under subsection (1) certified by the Secretary-Treasurer shall sign it with the seal of the Court, and it shall thereupon become an Order of the Supreme Court.
- (3) No one who has received notice of the resolution may thereafter, while it is in force, discharge a money obligation to the member except by paying it to the receiver or to the order of the receiver.
- (4) Upon the application of the Society or any interested person after ten days' notice to the Society, the Supreme Court or a judge thereof, may vary or vacate the order or may confirm it; and the Court or judge may give such direction as it deems just to the receiver for the due disposal of the documents, monies and assets received by the receiver.

- (5) Upon being appointed receiver under this Section, a receiver shall be empowered to deal with client files in the possession of the member at the time of the appointment of the receiver, and to release such files to clients upon payment of the fee for services rendered and disbursements incurred on behalf of the client to the date of appointment. The receiver may engage counsel to advise the receiver on appropriate fees to be charged to clients. Monies received by the receiver from clients shall be applied in the following priorities:
  - (a) reimbursement or any shortfall in the trust account of the member;
  - (b) receiver's fees and disbursements, including counsel fees;
  - (c) debts of the member relating to the member's practice;
  - (d) the balance, if any, to the credit of the member.
- (6) Should the revenues of the member not be sufficient to pay the receiver's fees and disbursements, such fees and disbursements shall be paid by the Society, which shall be entitled to reimbursement of same from the member.
- (7) In addition to the foregoing, where a Committee, after due inquiry, finds that a member is absconding, mentally incompetent, insolvent or guilty of dishonesty in connection with his or her practice, or is persistently neglecting client's business, it shall dispose of the matter as provided in Section 38 of the *Act*.

65.

- (1) A Committee may at any time direct an investigation to be made by a chartered accountant or other person designated by the Committee (referred to in this regulation as the "investigator") of the books, records and accounts of the member for the purposes of ascertaining and reporting whether the requirements respecting accounts have been and are being complied with.
- (2) A Committee may at any time direct investigation to be made by an investigator of some or all of the records and files of a member for the purpose of ascertaining and reporting whether the member is practising law in a competent manner that is consistent with the public interest.
- (3) The investigator in subsection (2) shall be a member of the Society but shall not be a member of the Council or a member of the Committee.
- (4) The member shall produce for the investigator all the books, records, vouchers, papers and evidence which the investigator requires for the purposes of the investigation.
- (5) The investigation, where practicable, shall be made in the office of the member whose accounts are the subject of the investigation.
- (6) The investigator shall report the results of the investigation to a Committee and

- (a) if the investigator finds that the requirements have been complied with, shall file a certificate to that effect with the Secretary-Treasurer; or
- (b) if the investigator finds that the requirements have not been complied with, shall specify the nature of the breaches, and where any trust account has been overdrawn, as a whole or with respect to any client, shall state at what time, for how long each time, and by what amount each time it has been overdrawn ; and
- (c) if a member or the member’s employees or associates have, in any way, failed to comply with the investigator’s request for information or records or have otherwise impeded the investigation, shall report the circumstances; and
- (d) if the investigator has been unable to make or complete the investigation, shall state the reasons therefor.

(7) The investigator’s report may be made the subject of disciplinary proceedings against a member and may be used in evidence in the proceedings.

(8) The Council may exercise all and any of the functions of a Committee under this regulation.

### **Service of Notice**

66.

- (1) Except as otherwise explicitly stated, whenever any notice is required by the *Act* or the Regulations to be given to the member complained of, such notice may be personally served on such member or mailed by ordinary mail or left at the member’s last-known business address.
- (2) The failure of any person to receive the notice to which such person is entitled hereunder shall not invalidate the ensuing proceedings.
- (3) An affidavit of service shall be sufficient proof of service.

## **PART IV**

### **INSURANCE**

67. (1) (a) The Council shall fix annual insurance fees at amounts which in the opinion of Council is sufficient to pay the premiums, reserves, loss prevention costs, adjusting costs and insurance committee costs or other costs connected with the mandatory plan or scheme of indemnification of the members for professional liability insurance arranged by the Society.

(b) The Council, in determining the amount of the fees under subparagraph (i), may include a surcharge to certain members or classes of members based on their paid claims record.

(2) Every member who contracts with the Society for the provision of professional liability insurance other than the mandatory liability insurance coverage referred to in subsection (1) shall be bound by the terms and conditions of such contract as if such optional insurance coverage were mandatory coverage and the payment to be made for such optional insurance coverage shall for all purposes of the Act and the Regulations be fees payable to the Society.

(3) Unless exempted under subsection (4), every member, other than a non-practising member or a retired member, shall carry professional liability insurance coverage issued by or under the authority of the Society from time to time in the amounts and subject to the terms established by the Society.

(4) The following classes of members may apply to Council for exemption from mandatory insurance coverage under subsection (3)

(a) a member who is employed by the Government of Canada, the Province of Prince Edward Island, any city, town or municipality, any agency of such Government or is an employee of any corporation and who does not practice law outside such employment;

(b) a member who is a member of another Canadian Law Society and maintains a principal office in another province, as long as the member is insured under a similar mandatory plan in such other province which covers claims arising in Prince Edward Island.

(5) A member applying for an exemption under subsection (4) shall submit a statutory declaration in the form required by Council.

(6) A member who has been granted exemption from professional liability insurance coverage under subsection (4) shall not otherwise engage in the practice of law without first obtaining insurance and paying the required fee, unless the member applies for and obtains exemption under another paragraph of subsection (4).

- (7) The fees payable by a member under Subsection (1) shall include the amount of any deductible owed by the member where
  - (a) the deductible or any part of it is unpaid as of the 1st day of June immediately preceding the practicing year for which the assessment is levied, and
  - (b) the member
    - (i) has not made an agreement with the Secretary-Treasurer for payment of the outstanding amount, or
    - (ii) has breached an agreement made between the member and the Secretary-Treasurer respecting payment of the deductible.

68.

- (1) The Council is empowered to make arrangements respecting plans or schemes of indemnification for professional liability for the members of the Society.
- (2) For the purpose of enabling the Society to provide mandatory or optional insurance coverage referred to in Section 67, the Council may enter into one or more reciprocal insurance arrangements for the provision of all or any part of such mandatory and optional insurance coverage and any reference in the Act or the Regulations to insurance coverage provided by or issued by the Society shall be deemed to include insurance coverage provided or issued under a reciprocal insurance arrangement in which the Society is a participant.
- (3) The Council shall from time to time set the fees payable for mandatory and optional insurance coverage referred to in Section 67 including retrospective or retroactive assessments, surcharges based on individual, group or reciprocal claims experience, and subject to such deductibles as the Council may determine.
- (4) All previous arrangements entered into by the Society with respect to providing professional liability insurance for the members of the Society are hereby ratified and confirmed; and in particular, the reciprocal insurance exchange agreement entered into between the Law Society of Prince Edward Island and various other Law Societies on June 22, 1988, to establish the Canadian Lawyers Insurance Association, together with all other related documents and agreements pertaining thereto are hereby ratified and confirmed as and from the date of the agreement being entered, and shall continue in force in accordance with the terms thereof.
- (5) The Council, in determining levels of deductibles payable by members, may establish different levels of deductibles payable by certain members or classes of members based on their paid claims record.

**PART V**

**FEES**

69. The following fees shall be payable to the Society in respect of the matters hereinbefore set out:

- (a) filing articles of clerkship - \$50.00;
- (b) admission as a member pursuant to Sections 16 and 18 of these Regulations - \$100.00;
- (c) admission as a member pursuant to Section 17 of these Regulations - \$1,000.00;
- (d) entering every judgment on warrant of attorney - \$3.00;
- (e) issuing every process and entering every defence pursuant to the Civil Procedure Rules where a fee is payable to the Supreme Court - \$6.00;
- (f) Certificate of Standing - \$50.00;

**PART VI**  
**FORMS**

70. The forms and the schedules shall be used with such variations as the circumstances may require.

**PART VII**  
**TRUST ACCOUNTS**

71. In this part:

- (a) “accountant” means such classes of persons designated by the Society, from time to time, as it considers qualified to carry out the functions of an accountant under this Regulation;
- (b) “client” means any person or body of persons, corporate or unincorporated, from whom or on whose behalf a member, in connection with the member’s practice, receives money or other property;
- (c) “financial institution” means those institutions legally entitled to conduct their activities in the jurisdiction of the Society, and includes chartered banks, trust or loan companies, credit unions and Caisses Populaires;
- (d) “firm” includes an individual member, a professional corporation, and a partnership of members carrying on the practice of law where one set of books or accounts is maintained;
- (e) “general account” means a deposit account, other than a trust account, in a financial institution authorized by law to receive money on deposit, maintained by a member in connection with the practice of law;
- (f) “general trust account” means a deposit account in a financial institution authorized by law to receive money on deposit, maintained and designated by a member as a trust account into which the member deposits money received in trust from or on account of more than one client;
- (g) “member” includes an individual member of the Society, a firm and an association of members who carry on the practice of law together other than as a firm and, in Nova Scotia, means a barrister;
- (h) “money” means value received by a member by way of currency, cheques, drafts, money orders, credit card slips and electronic funds transfer, all of which may be in Canadian or foreign funds;
- (i) “specific trust account” means a separate deposit account or instrument in a financial institution authorized by law to receive money on deposit, maintained by a member and designated as a trust account on behalf of a specific client, into which the member deposits money received in trust;

- (j) “Society” includes, as the context requires, the Law Society of New Brunswick, Newfoundland and Labrador, Prince Edward Island, or the Nova Scotia Barristers’ Society;
- (k) “trust account” means a general trust account or a specific trust account;
- (l) “trust money” includes
  - (i) money received in trust belonging in whole or in part to a client, or to be held on behalf of the client or at the direction or order of the client or another;
  - (ii) money advanced to a member for fees for services not yet rendered or for disbursements not yet made; and
  - (iii) money over which the member, as a guardian or under a power of attorney, has sole signing authority or control in any capacity with respect to the administration of an estate or a trust;
- (m) “trust property” includes any property of value belonging to a client, other than trust money, received by a member in trust, or to be held on behalf of or at the direction or order of the client, and over which the member, as a guardian or under a power of attorney, has sole signing authority or control in any capacity with respect to the administration of an estate or a trust.

### **Maintenance of Records**

72. (1) Every member shall maintain, so as to be clearly distinguishable from the record of money received and disbursed in the member’s general account, books, records and accounts to record all trust money and trust property received and disbursed in connection with the member’s practice, and as a minimum requirement every member shall maintain:

- (a) a book of original entry, or data source, showing the date of receipt and source of trust money for each client and identifying the client on whose behalf the trust money is received,
- (b) a book of original entry, or data source, showing all disbursements out of trust money for each client and showing each cheque number or Electronic Fund Transfer identifier, the date of each disbursement, the name of each recipient, and identifying the client on whose behalf each disbursement is made out of trust money,
- (c) a client’s trust ledger, showing separately for each person on whose behalf trust money has been received, all such money received and disbursed and any unexpended balance,

- (d) a record showing all transfers of money between clients' trust ledger accounts and explaining the purpose for which each transfer is made,
- (e) a book of original entry, or data source, showing the date of receipt and source of all money received other than trust money,
- (f) a book of original entry, or data source, showing all disbursements of money other than trust money and showing each cheque or voucher number, the date of each disbursement and the name of each recipient,
- (g) a book, data source or chronological file of copies of billings showing all fees charged and other billings to clients, the dates such charges are made and identifying the clients so charged,
- (h) a record showing a comparison made monthly of the total of balances held in all trust accounts and the total of all unexpended balances of funds held in trust for clients as they appear from the books and records, together with the reasons for any differences between the totals, and supported by
  - (i) a detailed listing made monthly showing the amount of trust money held for each client and identifying each client for whom trust money is held, and
  - (ii) a detailed reconciliation made monthly of each trust account in a financial institution,

and such detailed listings and reconciliations shall be retained as records supporting the monthly trust comparisons,

- (i) a record showing all trust property held in trust from time to time for all clients, and identifying the client on whose behalf the property is held, and
- (j) bank statements or passbooks, cashed cheques and detailed deposit slips or EFT written confirmation forms for all trust and general accounts.

(2) The entries in the books, records, data sources and accounts required to comply with subsection (1)

- (a) shall be entered and posted forthwith, and the trust comparison required by paragraph (1)(h) shall be made monthly within thirty days from the effective date of each comparison,
- (b) shall be entered and posted in ink, or a duplication thereof, or electronically, and shall be preserved for at least seven years from the most recent fiscal year end of the member.

## **Deposits in Trust Accounts**

73. (1) Subject to subsection (6), a member who receives money in trust for a client shall forthwith, but no later than the first banking day following receipt, pay it into an account which

- (a) is designated as a trust account,
- (b) is kept in the name of the member,
- (c) is kept at a financial institution, and
- (d) bears interest which is computed and payable in accordance with the requirements applicable to the Society, except as payable to the client on money deposited in a specific trust account.

(2) Notwithstanding subsection (1), trust money received by means of an electronic funds transfer is deemed to be deposited in a trust account when the member receives written confirmation from the financial institution providing details of the electronic funds transfer.

(3) A member shall seek the written confirmation referred to in subsection (2) no later than the close of the banking day immediately following the day on which the member was notified of the electronic funds transfer into the member's trust account.

(4) A member may keep more than one trust account.

(5) A member shall only pay into a trust account

- (a) trust money,
- (b) money which has been drawn inadvertently from the trust account in contravention of this section, and
- (c) money received by the member representing in part money belonging to a client and in part money belonging to the member if it is not practicable to divide the payment, provided that money belonging to the member shall be drawn from the trust account as soon as reasonably possible.

(6) A member need not pay trust money into a trust account if

- (a) in the ordinary course of business, upon its receipt, it is paid forthwith in the form in which it is received to or on behalf of the client,
- (b) the client in writing requests the member to pay the trust money into a specific trust account opened in the name of the client, a person named by the client, or the authorized agent of the client, provided the member shall keep a record of the receipt and disbursement of such money, or

- (c) the money is received by a member under escrow conditions whereby the money is required to be held without deposit.

(7) A member shall not pay into a trust account

- (a) money which belongs to the member unless intended for payment to a third party for the purpose of completing a personal transaction being handled by the firm on behalf of the member, or
- (b) money received by the member
  - (i) for fees for which a billing has been delivered
  - (ii) for services already performed for which a billing is delivered forthwith thereafter, or
  - (iii) to reimburse the member for disbursements made or expenses incurred on behalf of a client.

(8) Money held in trust for or on account of a client with respect to the practice of law in a specific province shall be maintained in compliance with the National Mobility Agreement or such other mobility protocols as apply to the Society, unless instructed otherwise by the client in writing.

#### **Withdrawals and Transfers from Trust Accounts**

74.

- (1) Subject to subsection (2), a member who becomes entitled to money in a trust account shall withdraw it as soon as reasonably possible after becoming entitled.
- (2) A member shall not withdraw or transfer money from a trust account except
  - (a) money properly required for payment on behalf of a client,
  - (b) money required to reimburse the member for money properly expended, or for expenses properly incurred, on behalf of a client
  - (c) money properly required for or toward payment of the member's fees for which a billing or other written notification has been delivered to the client
  - (d) money that is directly transferred into another trust account and held on behalf of a client, or
  - (e) money that has been deposited inadvertently into a trust account in contravention of these Regulations.

but in no case shall withdrawals or transfers exceed the balance of the money held in trust for the client.

- (3) Other than allowed by subsection (2), money shall not be withdrawn or transferred from a trust account unless a person designated by the Society specifically authorizes its withdrawal or transfer in writing.
- (4) A member shall only withdraw money from a trust account
  - (a) by a cheque made in compliance with subsection (6), or
  - (b) by means of an electronic funds transfer completed in accordance with subsection (8).
- (5) A member shall not sign a blank trust cheque. Details including the date, the payee, and the amount shall be completed prior to signing.
- (6) A cheque drawn on a trust account shall
  - (a) be marked as a trust cheque,
  - (b) be payable to a named payee,
  - (c) not be payable to cash or to bearer,
  - (d) be signed by at least two persons.
  - (e) not be released from the member's office until there are funds on deposit to the credit of the client on whose behalf the cheque is drawn.
- (7) Notwithstanding paragraph 74(6)(d), where a member practices alone and without any partners or associates, that member may be the sole signatory on a cheque drawn on a trust account. When the member is unavailable, arrangements should be made for another member to sign the trust cheque.
- (8) A member shall only withdraw money from a trust account by means of electronic funds transfer if the following conditions are met:
  - (a) the electronic transfer system used by the member does not permit an electronic transfer of funds without a password or access code to authorize a financial institution to carry out the transfer;
  - (b) the member retains the password or access code referred to in paragraph (a);
  - (c) the electronic transfer system will produce, no later than the close of the banking day immediately following the day on which the electronic transfer of funds was authorized, a written confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer was received;

- (d) the confirmation referred to in paragraph (c) contains
  - (i) the number of the trust account from which the trust money is drawn,
  - (ii) the name, branch name and address of the financial institution where the account to which the money is transferred is kept,
  - (iii) the name of the person or entity in whose name the account to which money is transferred is kept,
  - (iv) the number of the account to which money is transferred or such other identifying reference as may be required to confirm the payment on account of the client as requested,
  - (v) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and
  - (vi) the time and date that the confirmation from the financial institution was sent to the member;
- (e) before any data describing the details of the electronic funds transfer, or authorizing the financial institution to carry out the transfer, is entered into the electronic funds transfer system, an electronic funds transfer requisition in a form approved by the Society is completed and signed by the member, and
- (f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer is as specified in the electronic funds transfer requisition.

(9) No later than the close of the banking day immediately following the day on which the confirmation referred to in paragraph (8)(c) is sent to a member, the member shall

- (a) produce a printed copy of the confirmation,
- (b) compare the printed copy and the signed electronic funds transfer requisition relating to the transfer to verify whether the money was withdrawn from the trust account as specified in the signed requisition,
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which trust money was withdrawn from the trust account, and
- (d) after complying with paragraphs (a) to (c), sign and date the printed copy of the confirmation.

- (10) For greater certainty, a member shall not make cash withdrawals from a trust account by means of a debit card or similar instrument.
- (11) At all times a member shall maintain sufficient balances on deposit in trust to meet the member's obligations with respect to money held in trust for clients, and all shortages shall be restored immediately by the member.

### **Reporting Overdrafts**

- 75.
  - (1) Subject to subsection (2), the member shall report immediately to the Secretary-Treasurer any overdrafts in the member's trust account either in relation to any one client's trust funds or to the entire balance of the pooled trust account, and such report shall include a full explanation for how the overdraft occurred.
  - (2) Any transaction which creates an overdraft in a trust account and which causes the balance of that account to fall below an amount sufficient to meet all of the member's obligations shall not be a violation of these Regulations and does not have to be reported if the transaction which caused the overdraft resulted from:
    - (a) a debit memo for financial institution charges or service charges,
    - (b) an error on the part of the financial institution,
    - (c) a delay by the financial institution in posting a cheque deposited to the account, or
    - (d) a cheque deposited to the account being returned by the financial institution it was drawn upon,

provided the member, within three banking days of notification of the overdraft, deposits sufficient money in the trust account to offset the shortage.

- (3) An accountant shall not be required to report an incident referred to in subsection (2) if the overdraft in the trust account was less than one hundred dollars.

### **Reporting**

- 76.
  - (1) Upon the opening or closing of a general trust account every member shall forthwith give written notice to the Secretary-Treasurer, or Executive Director, of the Society in which jurisdiction the members is engaged in practice.
  - (2) Where a member gives notice under subsection (1) of opening a trust account, the member shall also file with the Secretary-Treasurer a certificate from an accountant certifying that the member has in place a trust accounting system that will enable the member to comply with the trust account regulations and that the member has been instructed in the procedures to be followed in order to operate the trust accounting system.

- (3) Every member shall complete and file with the Secretary-Treasurer not later than a date fixed by the Society, a Trust Account Report in Form 17 and a Statutory Declaration in Form 6.
- (4) The Trust Account Report filed under subsection (3) shall be signed by the member(s) as designated by the Society.
- (5) If, in the opinion of the Secretary Treasurer, a member fails to provide sufficient information in the Trust Account Report to confirm that the member is complying with these Regulations, the Secretary-Treasurer may request the member in writing to provide additional information by such time and to such extent as the Secretary-Treasurer considers necessary, including filing a further Report on a fixed or periodic basis.
- (6) Every member who is subject to exemption under section 78 shall complete and file with the Secretary-Treasurer, not later than a date fixed by the Society, a Declaration in Form 6 confirming the exemption.

### **Suspension for Failure to File**

- 77. If a member fails to file Form 17 and/or a Declaration in Form 6 on or before the 1st day of July in each year, or fails to provide additional information in compliance with a request under subsection 76(5), the Secretary-Treasurer shall suspend the member from practice until such time as the member is in compliance.

### **Exemptions**

- 78. These Regulations do not apply to a member who,
  - (a) has not engaged in the private practice of law or is registered as a non-practising member in the province in which the member would be required to comply with these Regulations,
  - (b) has practised exclusively as an employee of government, an agency of government, a local government authority, a corporation or other non-member of the Society, or
  - (c) by reason of the nature of the member's practice it is not necessary to maintain a trust account.

### **Investigations and Audits**

- 79. (1) The Secretary-Treasurer may initiate an investigation or audit of the books, records, accounts and transactions of a member or former member to determine compliance with these Regulations.

- (2) The Secretary-Treasurer shall select the investigator or auditor to conduct an investigation or audit under subsection (1) from a list of auditors approved by the Society or designated for the particular investigation or audit.
- (3) For the purpose of ensuring that all members comply with these Regulations, the Secretary-Treasurer may implement and direct a continuing program of unannounced investigations or audits of the books, records, accounts and transactions of members.
- (4) The Secretary-Treasurer may conduct a program referred to in subsection (3) by randomly selecting members whose accounts are to be investigated or audited or by dividing the members into categories and, within each category, randomly selecting members for investigation or audit.
- (5) Where an investigation or audit is to be conducted under this section, the member shall produce to the person conducting the investigation or audit all evidence, books, records, papers, accounts, vouchers, files, clients' files and explanations which may be required for the investigation or audit, and failure of the member to co-operate constitutes professional misconduct.
- (6) The Secretary-Treasurer shall provide a copy of the report of an investigator or auditor to the member whose accounts have been investigated or audited.
- (7) An accountant conducting an investigation or audit under this section shall, before doing so, complete and file with the Secretary-Treasurer an undertaking to maintain strict confidentiality with respect to all matters connected with the investigation or audit.
- (8) If the investigator or auditor reports that these Regulations have not been complied with, the Secretary-Treasurer
  - (a) may order the member in writing to take all necessary steps to comply with these Regulations as specified in the order and within the time fixed for doing so, and
  - (b) may initiate whatever disciplinary action is appropriate, in which case the investigator or auditor's report may be used as the basis for disciplinary proceedings, including being used as evidence.
- (9) Whenever an investigation or audit is carried out under this Regulation the member whose books and records are being investigated shall pay the Society costs, or part of the costs, of the investigation and the member shall pay that amount in full within the terms and dates fixed or extended by the Secretary-Treasurer.
- (10) If a member fails to comply with an order under paragraph (8)(a) or fails to pay the amount determined under subsection (9) within the terms and dates fixed or

extended, the Secretary-Treasurer shall suspend the member until the member is in compliance.

### **Preservation of Rights**

80. Nothing in these Regulations deprives a member of any recourse or right, whether by way of lien, set-off, counter-claim, charge or otherwise, against money standing to the credit of a client in the member's trust account or with respect to trust property.

### **Borrowing**

81. A member shall not borrow money from, or lend money to, a client during the existence of a solicitor and client relationship unless
  - (a) the client is carrying on the business of lending money to, or borrowing from, the public, or
  - (b) Council, because of other circumstances, authorizes the transaction in writing.

### **Bankruptcy and Insolvency**

82. (1) Every member or articled clerk admitted as such by the Society shall immediately notify the Secretary-Treasurer upon
  - (a) receipt of a petition under the *Bankruptcy and Insolvency Act* in which the court is asked to make a receiving order with respect to the property of the member or articled clerk,
  - (b) the making by the member or articled clerk of an assignment under the *Bankruptcy and Insolvency Act*,
  - (c) the making by the member or articled clerk of a proposal under the *Bankruptcy and Insolvency Act*,
  - (d) the issuance of any enforcement order under the Rules of Court, provided that the member or articled clerk shall not be required to comply with this section if the matter for which the enforcement order has been issued is under appeal, or
  - (e) the making of an order for costs against the member personally under the Rules of Court.
- (2) The Secretary-Treasurer may require the member or articled clerk to submit additional information for more complete examination outlining the circumstances relating to any of the matters referred to in subsection (1) and the member or articled clerk shall be obliged to respond fully to the Secretary-

Treasurer's request within ten days after receiving the request for further information.

(3) From the date of the event set out in subsection (1), until the petition, assignment, proposal or enforcement order has been satisfied, withdrawn, discharged or is otherwise of no further force or effect, the member and the trustee of the estate of the member in bankruptcy shall not, without written permission of the Secretary-Treasurer, accept from or on behalf of clients any money or other property, except in payment of costs and fees of the member, and then only on such conditions imposed by the Secretary-Treasurer.

### **Non-Observation of Regulations**

83. (1) Non-observance by a member of any of the Regulations respecting accounts may amount to unprofessional conduct.

(2) Council may at any time exercise any of the powers of a discipline committee in respect to the investigation of the books, records and accounts of any member as provided for in Section 59 of these Regulations.

(3) If the Board of the Law Foundation is of the opinion that a member is not complying with any provisions of Part V of the Act, or of this Part, the Board shall report such non-compliance to the Secretary-Treasurer.

### **Estates Less Than \$20,000/ Family Members**

84. (1) The provisions of Regulations 73, 76, 80 and 83 do not apply to monies referred to in paragraph (iii) of sub-regulation 72 (should be 71)(1) where:

(a) the member has sole signing authority or control in the capacity of executor or administrator over funds of a deceased person, and the total value of the assets under the member's authority or control during the member's annual form 17 reporting period in relation to the deceased person's estate equals \$20,000 or less; or

(b) all or substantially all of the trust money is used or disbursed for, or paid to persons in the member's own family as defined in sub-section 84(2), and the persons in the family of the member have provided in the prescribed form, written waivers and certificates of independent legal advice to the effect that the monies do not need to be held in accordance with Regulations 73, 76, 80 and 83.

(2) For the purpose of this Regulation, "family" means spouses, including common-law and same sex partners, and those related to the member by consanguinity or adoption.

- (3) The effect of signing the written consent referred to in sub-section 84(1)(b) is that the person in the member's family waives the protections provided by Regulations 73, 76, 80 and 83 as well as any protection provided by the reimbursement fund.
- (4) For greater certainty, a waiver and certificate referred to in sub- section 84(1)(b) must be given by a person who is of the age of majority and competent to sign a waiver or certificate and, where a guardian has been appointed for a person, that guardian may give or sign a waiver or certificate.

### **Cash Transactions**

85. (1) In this part

- (a) "cash" means current coin and government bank notes;
- (b) "funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them;
- (c) "public body" means
  - (i) a department or agent of Her Majesty in right of Canada or of a province;
  - (ii) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them; and
  - (iii) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* or agent of the organization.

(2) This Regulation applies to a member when engaged in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

- (a) receiving or paying funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail;
- (b) purchasing or selling securities, real property or business assets or entities;
- (c) transferring funds or securities by any means.

(3) This Regulation does not apply to a member when

- (a) engaged in activities referred to in sub regulation (2) on behalf of his or her employer, or

- (b) receiving or accepting currency
  - (i) from a peace officer, law enforcement agency or other agent of the Crown, pursuant to a court order, or
  - (ii) in his or her capacity as executor of a will or administrator or an estate.
- (4) While engaged in an activity referred to in sub regulation (2), a lawyer must not receive or accept an amount in cash of \$7,500 or more in the course of single transaction.
- (5) For the purposes of this Regulation,
  - (a) foreign currency is to be converted into Canadian dollars based on
    - (i) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Noon Rates in effect at the relevant time, or
    - (ii) if no official conversion rate is published as set out in paragraph (a), the conversion rate that the client would use for that currency in the normal course of business at the relevant time, and
  - (b) two or more transactions made within 24 consecutive hours constitute a single transaction if the lawyer knows or ought to know that the transactions are conducted by, or on behalf of, the same client.

### **Client Identification and Verification**

86. (1) In this part,

- (a) “electronic funds transfer” means an electronic transmission of funds conducted by and received at a financial institution or a financial entity headquartered in and operating in a country that is a member of the Financial Action Task Force, where neither the sending nor the receiving account holders handle or transfer the funds, and where the transmission record contains a reference number, the date, transfer amount, currency and the names of the sending and receiving account holders and the conducting and receiving entities.
- (b) “financial institution” means
  - (i) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which the *Bank Act* applies;

- (ii) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act;
- (iii) an association that is regulated by the *Cooperative Credit Associations Act* (Canada);
- (iv) a company to which the *Trust and Loan Companies Act* (Canada) applies;
- (v) a trust company or loan company regulated by a provincial Act; or
- (vi) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public;
- (vii) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

- (c) “funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;
- (d) “lawyer” means, in the Province of Quebec, an advocate or a notary and, in any other province, a barrister or solicitor;
- (e) “organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;
- (f) “proceedings” means a legal action, application or other proceeding commenced before a court of any level, a statutory tribunal in Canada or an arbitration panel or arbitrator established pursuant to provincial, federal or foreign legislation and includes proceedings before foreign courts.

- (g) “public body” means
  - (i) a department or agent of Her Majesty in right of Canada or of a province;
  - (ii) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them; and
  - (iii) a local board of a municipality incorporated by or under an Act of a Province or Territory of Canada including any local board as defined in the *Municipalities Act* or similar body incorporated under the law of another province or territory;

- (iv) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* or agent of the organization;
- (v) a body incorporated by or under the law of an Act of a Province or Territory of Canada for a public purpose; or
- (vi) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

(h) “reporting issuer” means an organization that is a reporting issuer within the meaning of the securities laws of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange that is prescribed by the *Income Tax Regulations* (Canada) and operates in a country that is a member of the Financial Action Task Force, and includes a subsidiary of that organization or corporation whose financial statements are consolidated with those of the organization or corporation.

(i) “securities dealer” means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services.

### **Client Identity**

(2) (a) Subject to subparagraph (c), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule.

(b) A lawyer’s responsibilities under this Rule may be fulfilled by any member, associate or employee of the lawyer’s firm, wherever located.

(c) Sub-sections (3) through (6) do not apply to

- (i) a lawyer when he or she provides legal services and engages in or gives instructions in respect of the receiving, paying or transferring of funds on behalf of his or her employer; or
- (ii) a lawyer
  - (I) who is engaged as an agent by the lawyer for a client to provide legal services to the client, or
  - (II) to whom a matter for the provision of legal services is referred by the lawyer for a client,

when the client’s lawyer has complied with sub-sections (3) through (6),

or

- (iii) a lawyer providing legal services as part of a duty counsel program sponsored by a non-profit organization, except where the lawyer engages in or gives instructions in respect of the receiving, paying or transferring of funds other than an electronic funds transfer.

(3) A lawyer who is retained by a client as described in subparagraph (2)(a) shall obtain and record the following information:

- (a) the client's full name;
- (b) the client's business address and business telephone number, if applicable;
- (c) if the client is an individual, the client's home address and home telephone number;
- (d) if the client is an organization, other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable;
- (e) if the client is an individual, the client's occupation or occupations;
- (f) if the client is an organization,
  - (i) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
  - (ii) the name, position and contact information for those individuals authorized to give instructions with respect to the matter for which the lawyer is retained;
- (g) if the client is acting for or representing a third party, information about the third party as set out in paragraphs (a) to (f) as applicable.

### **Client Identity and Verification**

(4) Subject to sub-section (5), sub-section (6) applies where a lawyer who has been retained by a client to provide legal services engages in or gives instructions in respect of the receiving, paying or transferring of funds, other than an electronic funds transfer.

### **Exemptions Re: Certain Funds**

(5) (a) Sub-section (6) does not apply where the client is a financial institution, public body or reporting issuer.

- (b) Sub-section (6) does not apply in respect of funds
  - (i) paid by or to a financial institution, public body or a reporting issuer;
  - (ii) received by a lawyer from the trust account of another lawyer;
  - (iii) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
  - (iv) paid or received pursuant to a court order or to pay a fine or penalty;
  - (v) paid or received as a settlement of any legal or administrative proceedings; or
  - (vi) paid or received for professional fees, disbursements, expenses or bail.
- (6) (a) When a lawyer is engaged in or gives instructions in respect of any of the activities described in sub-section (4), including non-face-to-face transactions, the lawyer shall take reasonable steps to verify the identity of the client, including the individual(s) described in clause (3)(f)(ii), and, where appropriate, the third party, using what the lawyer reasonably considers to be reliable, independent source documents, data or information.

#### **Examples of Independent Source Documents**

- (b) For the purposes of subparagraph (a), independent source documents may include
  - (i) if the client or third party is an individual, valid original government issued identification, including a driver's license, birth certificate, passport or similar record;
  - (ii) if the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors, where applicable, such as
    - (I) a certificate of corporate status issued by a public body,
    - (II) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or

- (III) a copy of a similar record obtained from a public body that confirms the organization's existence; and
- (iii) if the client or third party is an organization, other than a corporation or society, that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

### **Identifying Directors, Shareholders and Owners**

- (c) When a lawyer is engaged in or gives instructions in respect of any of the activities in sub-section (4) for a client or third party that is an organization referred to in subparagraph (b)(ii) or (iii), the lawyer shall make reasonable efforts to obtain, and if obtained, record
  - (i) the name and occupation of all directors of the organization, other than an organization that is a securities dealer; and
  - (ii) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.

### **Client Identity and Verification in Non-Face-to-Face Transactions**

- (d) (i) When a lawyer engages in or gives instructions in respect of any of the activities in sub-section (4) for a client or third party who is an individual who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the client's identity by obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subparagraph (b)(i).
- (ii) When a lawyer who engages in or gives instructions in respect of any of the activities in sub-section (4) for a client that is an organization is instructed by an individual described in clause (3)(f)(ii), who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the individual's identity by obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subparagraph (b)(i).
- (e) For the purpose of subparagraph (d), an attestation shall be produced on legible photocopy of the document and shall include

- (i) the name, profession and address of the person providing the attestation;
- (ii) the signature of the person providing the attestation; and
- (iii) the type and number of the identifying document provided by the client, third party or instructing individual(s).

(f) For the purpose of subparagraph (s), a guarantor must be a person employed in one of the following occupations in Canada:

- (i) dentist;
- (ii) medical doctor;
- (iii) chiropractor;
- (iv) judge;
- (v) magistrate;
- (vi) lawyer;
- (vii) notary (in Quebec);
- (viii) notary public;
- (ix) optometrist;
- (x) pharmacist;
- (xi) professional accountant (APA, CA, CGA, CMA, PA or RPA);
- (xii) professional engineer; or
- (xiii) veterinarian.
- (xiv) peace officer;
- (xv) paralegal licensee in Ontario;
- (xvi) nurse; or
- (xvii) school principal.

#### **Use of Agent**

(g) A lawyer may, and where an individual client, third party or individual described in clause (3)(f)(ii) is not physically present and is outside of

Canada, shall, rely on an agent to obtain the information described in subparagraph (b) to verify the person's identity, which may include, where applicable, an attestation described in this section, provided the lawyer and the agent have an agreement or arrangement in writing for this purpose.

(h) A lawyer who enters into an agreement or arrangement referred to in subparagraph (g) shall obtain from the agent the information obtained by the agent under that agreement or arrangement.

#### **Timing of Verification for Individuals**

(i) A lawyer shall verify the identity of

- (i) a client who is an individual; and
- (ii) the individual or individuals authorized to provide and give instructions on behalf of an organization with respect to the matter for which the lawyer is retained, upon engaging in or giving instructions in respect of any of the activities described in sub-section (4).

(j) Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity if the lawyer recognizes that person.

#### **Timing of Verification for Organizations**

(k) A lawyer shall verify the identity of a client that is an organization within 60 days of engaging in or giving instructions in respect of any of the activities described in sub-section (4).

(l) Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subparagraph (6)(c), the lawyer is not required to subsequently verify that identity or obtain that information.

#### **Record Keeping and Retention**

(m) (i) A lawyer shall obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of subparagraph 6(a).

- (ii) The documents referred to in subparagraph (6)(a) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.
- (iii) A lawyer shall retain a record of the information and any documents obtained for the purposes of subsection (3) and subparagraph (6)(c) and copies of all documents received for the purposes of subparagraph (6)(a) for the longer of
  - (I) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing service to the client; and
  - (II) a period of at least six years following completion of the work for which the lawyer was retained.

### **Application**

- (n) Subsections (2) through (6)(m) do not apply to matters in respect of which a lawyer was retained before this Regulation comes into force but they do apply to all matters for which he or she is retained after that time regardless of whether the client is a new or existing client.

### **Criminal Activity, Duty to Withdraw at Time of Taking Information**

- (o) (i) If, in the course of obtaining the information and taking the steps required in subsection (3) and subparagraphs (6)(a) or (6)(c), a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.
- (ii) This section applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Regulation comes into force.

### **Criminal Activity, Duty to Withdraw after being Retained**

- (p) (i) If while retained by a client, a lawyer knows or ought to know that he or she is or would be assisting the client in fraud or other illegal conduct the lawyer must withdraw from representation of the client.
- (ii) This section applies to all matters for which a lawyer was retained before this Regulation comes into force and to all matters for which he or she is retained after that time.

### **Unclaimed Trust Funds**

87. (1) An application to the Society under section 44.1 (1) of the *Act* shall be in Form 19.

(2) An application to the Society under section 44.1 (1) of the *Act* shall

- (a) show the name of the member making the application and the name, address and phone number of the law firm holding the trust money that is the subject of the application,
- (b) show the aggregate amount of the trust money that is the subject of the application, and
- (c) contain a certification by the applicant that the statements made in the application are true and correct.

(3) If the application relates to trust money to which one or more persons are entitled, the application shall state, in respect of each person so entitled,

- (a) the amount of the trust money to which the person is entitled, according to the trust account records of the law firm;
- (b) the name of the person so entitled and that person's last known address according to the law firm's records;
- (c) if the person so entitled was a corporation in existence at the commencement of the 2-year period preceding the date of filing of the application, whether the corporation still exists according to the official records of the government of the jurisdiction in which it was incorporated or continued;
- (d) the name of the person who paid the money to the law firm, the last known address of that person according to the law firms' records and the date on which the money was paid to the law firm;
- (e) the details of the transaction under which the trust money was received by the law firm and the name and last known address of the client concerned;
- (f) a description of the efforts made during the 2-year period preceding the date of filing of the application to locate the person entitled to the trust money, including the date of the last uncashed cheque or the date of the last attempt to contact that person;
- (g) the name of the member in the law firm currently responsible for the file, if the applicant is not a sole practitioner;
- (h) that there are no trust conditions to which the trust money is subject.

- (4) If the application relates to trust money that cannot be attributed to any client or other person, the application shall state
  - (a) the amount of the unattributed trust money;
  - (b) the period of time during which the trust money has been held in the trust account;
  - (c) the reason, if known, why the money was credited to the trust account and why the money cannot be attributed to any particular client or other person.
- (5) A claim made under section 44.1(6) of the *Act* shall be in Form 20.
- (6) A claim made under 44.1(6) of the *Act* shall be adjudicated by
  - (a) the Secretary-Treasurer, if the claim does not exceed \$500, or
  - (b) the Council, in any other case.
- (7) The Council or the Secretary-Treasurer may, for the purpose of coming to a decision respecting a claim,
  - (a) request of the claimant any further information and documents related to the claim that may be reasonably required;
  - (b) make or authorize any inquiries or investigations considered necessary;
  - (c) rely wholly or partly on the information and documents received.
- (8) The Council or the Secretary-Treasurer shall, on considering a claim,
  - (a) approve the claim, with or without conditions, or
  - (b) reject the claim.
- (9) The Secretary-Treasurer shall report any decisions made by the Secretary-Treasurer to the Council in accordance with the directions of the Council.
- (10) When submitting money to the Law Foundation of P.E.I. pursuant to subsection 44.1 (4) of the *Act*, the Society shall not communicate any information to the Law Foundation which might identify the person or persons to whom the money relates, or which might otherwise result in a breach of solicitor-client confidentiality, but shall provide the Law Foundation with a unique file identifier in relation to each sum of money so transferred.

## **PART VIII**

### **INFORMATION IN RELATION TO LEGAL SERVICES**

#### **General**

88. (1) Lawyers or firms may make information about themselves or their legal services available to any client, potential client or the public generally, subject to the limitations contained herein.

(2) A lawyer or firm may initiate contact with a prospective client, subject to the limitations as contained herein.

(3) Advertising, promotion and other marketing activities, in competition by and among lawyers or firms must be in good taste<sup>1</sup>, accurate, and not capable of misleading the public<sup>2</sup>. Any conduct, either directly, or through any medium or agent that:

- (a) misrepresents law or fact;
- (b) compares either directly, indirectly or by innuendo, the lawyer's services or abilities with that of any other lawyer or firm, or promises more effective service or better results than those already obtained;
- (c) deprecates another lawyer or firm as to service, ability or fees<sup>3</sup>;
- (d) creates an unjustified expectation about the results the lawyer can achieve;
- (e) is made under any false or misleading guise, or takes advantage of the weakened state, either physical or emotional, of the client, or uses coercion, duress or harassment;
- (f) is undignified, in bad taste or otherwise offensive, so as to be incompatible with the best interests of the public or the members of the Society or tends to harm the standing of the legal profession generally; or

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<sup>1</sup> The question of whether good taste has been exercised must be judged in each situation; crass commercialism, attention-getting devices and creation of unrealistic expectations are but some illustrations of limitations.

<sup>2</sup> A communication is false or misleading if it contains a material misrepresentation of fact or omits a fact reasonably necessary to make the communication, considered as a whole, not materially misleading.

<sup>3</sup> This is not to prevent a lawyer from advising a client or potential client on the reasonableness of another lawyer's fees, either for comparison purposes or for taxation. This is not intended to prevent a lawyer from giving demonstrably accurate information about the quality of lawyer's, or any other lawyer's services, provided it is in the interest of such person to receive the information and it is fair in all respects to the other lawyer.

(g) discloses conduct contrary to the interests of the public or the profession; is prohibited as such conduct is contrary to the interests of the public and the profession.

(4) A lawyer shall retain a copy of every advertisement for one year after the last publication.

(5) A lawyer shall not give anything of value to a person for recommending a lawyer's services, and in any advertising shall not use an endorsement from any person or firm<sup>4</sup>.

### **Firm Name**

89. (1) Lawyers should not hold themselves out as being members of a firm which has as part of the firm name the words "and Company", "and Co." or "and Associates" unless, in fact, the firm has lawyers other than those shown in the firm name who are in active practice with the firm.

(2) It is improper to include the name of a Judge as being a predecessor or former member of a firm or to include the Judge's name in the firm name.

(3) Lawyers are not permitted to use their firm letterhead in canvassing for charitable or political funds unless the canvass is directed only to the members of the profession and members of the Bench.

(4) A firm may include the name of a deceased or retired member so long as the letterhead indicates through some manner that the deceased partner is no longer living or the retired member is retired.

(5) A lawyer or firm of lawyers shall not use a firm letterhead which lists a living person not authorized to practice law in Prince Edward Island unless that person retired from active practice or has gone on the inactive list and is so designated.

(6) Where a lawyer or firm purchases or continues a practice they may use the words "Successor to" in small print under his/her or its own name for a period of one year.

### **Media**

90. (1) A lawyer shall not solicit a media interview, invite or connive attendance of the media on any judicial, quasi-judicial or other proceeding at which the lawyer appears in a legal or professional capacity.

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<sup>4</sup> Shall not prevent the use of representative client list in legal directories.

(2) A lawyer may, with the consent of the lawyer's client, indicate to the media that the lawyer acts in a proceeding or a possible proceeding for a particular client, and may succinctly and fairly state the issues.

**Endorsements**

91. (1) It is undignified and accordingly improper for a member as a lawyer knowingly to publicly endorse a product or service.

(2) A lawyer or firm may participate in or donate services to charitable endeavors.

**Ethics Committee**

92. In the event that a lawyer or firm is in doubt as to the propriety of anything to be done under these Regulations, it is recommended that the lawyer refer the matter to the Ethics Committee through the Secretary-Treasurer of the Law Society.

## **PART IX**

### **PREPAID LEGAL SERVICES**

#### **Definitions**

93. In this Part,

- (a) “Code” means the Code of Professional Conduct together with any supplementary ethical or practice standards adopted by the Law Society of Prince Edward Island,
- (b) “plan” means an agreement or arrangement whereby a member agrees to provide legal services to a plan beneficiary according to the terms of the plan,
- (c) “plan administrator” means any person or persons including any trade union, association, corporation or co-operative which agrees to provide prepaid legal services to a plan beneficiary,
- (d) “plan beneficiary” means any person who is eligible to receive legal services from a lawyer by virtue of and pursuant to the terms of a plan,

94. No member may participate in a plan which requires that the member provide any fee or consideration of any kind directly or indirectly to the plan administrator as a condition of the member’s participation in the plan.

95. Prior to participating in a plan, every member shall execute with the plan administrator a written agreement containing the following provisions or their equivalent:

- (a) A stated recognition by the plan administrator that there is no solicitor/client relationship between the plan administrator and the member; the plan beneficiary, in all cases, is the client; and

Agreement that:

- (b) After referral by the plan administrator of a plan beneficiary to a member, the plan administrator shall not communicate with the plan beneficiary concerning the matters upon which the plan beneficiary is seeking legal advice.
- (c) The plan administrator shall not purport to direct the member with respect to the conduct of the plan beneficiary’s affairs or in any way attempt to influence the plan beneficiary or the member, respecting legal matters. Specifically, and without limiting the generality of the foregoing, monies paid into trust by or on behalf of a plan beneficiary are not subject to direction by the plan administrator.

- (d) All information received by the member in the due course of his or her representation of a plan beneficiary shall be confidential and, subject to (e) below, shall not be communicated to the plan administrator.
- (e) The member may release information to the plan administrator which, in the opinion of the member, is necessary for the purposes of billing or paying of fees or for statistical purposes, upon execution by the plan beneficiary of a written authorization for such release.
- (f) It shall not be a requirement of participation in the plan by a plan beneficiary that any information other than that mentioned in (e) above shall be released to the plan administrator.
- (g) A member may withdraw from representation of the plan beneficiary where it is appropriate to do so having regard to the Code.
- (h) Any complaints against a member involving that member's professional conduct by either the plan beneficiary or the plan administrator will be referred to the Law Society of Prince Edward Island.
- (i) In case of any dispute with respect to a member's fees, taxation is available in all cases.

96. A member shall not participate in a plan which interferes with the member's duties and obligations with respect to conflicts of interest as defined by the Code.

97. A member may only participate in the plan if the plan's advertising and promotional material conforms to Part VIII of these regulations and the Code.

98. A member shall not participate in a plan which attempts to limit his or her duty to report unauthorized practice to the Law Society of Prince Edward Island.

99. A member shall ensure that every plan administrator is aware of and accepts the member's responsibilities pursuant to the Code and this Part.

100. Every agreement between a member and a plan beneficiary retaining the member through a plan shall contain a notice to the plan beneficiary that all members are subject to the governance of the Law Society of Prince Edward Island.

101. A member shall not participate in a plan which attempts to circumvent any of the provisions of this part.

## **PART X**

### **PRACTICE STANDARDS**

#### **Establishment and Objectives**

102. (1) Council may appoint a practice standards committee from among the members.

(2) The objectives of the practice standards committee are:

- (a) to recommend standards of competence for members,
- (b) to develop programs which will assist all members to practise law competently,
- (c) to identify those members who are practising law in an incompetent manner, and to recommend remedial measures to assist those members to improve their knowledge or skill in carrying on the practice of law.

#### **Consideration by Committee**

103. (1) The practice standards committee shall, provided it has reasonable and probable grounds to believe that a member is practising law in an incompetent manner, consider any matter referred to it by Council, a member, or by any other committee of the Society.

(2) The practice standards committee may make or authorize such inquiries and investigations as it considers desirable.

(3) A member who is being investigated under subsection (2) shall

- (a) answer any inquiries, and
- (b) provide the committee conducting the investigation with any information, files or records within the member's possession or power that the practice standards committee may reasonably require.

(4) The practice standards committee may decline to consider any matter if it is satisfied that the referral is

- (a) not made in good faith,
- (b) frivolous and vexatious, or
- (c) designed to supplant or further a discipline complaint.

104. After its consideration under Section 103, the practice standards committee shall:

- (a) decide that no further action shall be taken on the complaint or matter, or
- (b) do one or more of the following:
  - (i) direct that a law office management review of the member's practice be conducted;
  - (ii) direct that a member of the Society conduct a review of some or all of the member's files;
  - (iii) direct that the member attend a hearing before a competency review panel to inquire into whether the member is practising law in an incompetent manner;
  - (iv) accept the member's written application to participate in a remedial program tendered under Section 106;
- (c) recommend to the member that the member obtain a psychiatric or psychological assessment or counselling, or both, or obtain a medical assessment or assistance, or both, and report to the practice standards committee the results of such actions;
  - (i) refer the matter to a discipline committee; or
  - (ii) make any other recommendations to the member which are intended, if carried out, to improve the knowledge or skill of the member in carrying on his or her practice of law.

### **Law Office Management and File Reviews**

105. (1) Where the practice standards committee, under Section 104(b), has directed a law office management review or a file review, it shall, after consultation with the member and the person appointed by the practice standards committee to perform the review, set the date, time and place for the review.

(2) A person who has completed a law office management or file review shall deliver to the practice standards committee and to the member a written report of his or her findings and recommendations.

### **Consent to Remedial Program**

106. (1) A member in respect of whom a matter has been referred to the practice standards committee under Section 103 may, at any time prior to the practice standards committee making a recommendation under Section 110(1)(c), apply to the practice standards committee in writing to participate in a remedial program.

- (2) If the practice standards committee accepts the member's application made under subsection (1), it shall adjourn any competency review panel hearing directed under Section 104(b)(iii), and shall advise the member of that disposition.
- (3) When a member completes satisfactorily a remedial program referred to in subsection (1), the practice standards committee shall:
  - (a) instruct the Secretary to record the remedial program in which the member participated, and
  - (b) cancel any competency review panel ordered under Section 104(b)(iii).
- (4) When a member does not complete satisfactorily a remedial program referred to in subsection (1), the practice standards committee shall:
  - (a) complete any competency review panel hearing which had been adjourned under subsection (2), or
  - (b) take or complete any other action under Section 104.

### **Competency Review Panels**

107. (1) The practice standards committee shall maintain a roster of members to be used as members of competency review panels to carry out competency investigations hereunder.
- (2) When the practice standards committee directs, pursuant to Section 104(b)(iii), that a member attend before a competency review panel, the Secretary shall appoint a panel from among the roster maintained under subsection (1), and shall designate one of them as the Chairperson.
- (3) A competency review panel appointed under subsection (2):
  - (a) shall consist of 3 people from the roster,
  - (b) shall not include a person who has performed a law office management or file review of the member arising out of the same matter.

### **Panel Hearings**

108. (1) The Chairperson of the competency review panel shall, after consultation with the member involved, set the date, time and place for the hearing, and shall promptly notify such member, and the members of the panel, in writing.
- (2) Upon application by the member involved or on the panel's own initiative,
  - (a) the Chairperson of the panel may, before the hearing commences, or

- (b) the panel may, after the hearing has commenced adjourn the hearing to a specified date, time and place.
- (3) The member involved shall personally attend the entire hearing, unless the competency review panel orders otherwise.
- (4) Every hearing shall be held in private, unless the competency review panel orders otherwise.
- (5) A member and the Society may have counsel at a hearing.
- (6) The competency review panel may appoint a member of the Society to act as an advisor to it during the hearing.
- (7) Subject to the *Act* and this Regulation, the competency review panel may determine the practice and procedure to be followed at a hearing.
- (8) The competency review panel may, at any time before it delivers its report under Section 109,
  - (a) direct that a law office management review of the member's practice be conducted, or
  - (b) direct that a member of the Society conduct a review of some or all of the member's files, and order that the person conducting the review report in writing to the panel and to the member.

### **Panel Report**

- 109. Following the hearing, the competency review panel shall deliver to the practice standards committee a written report of its findings and recommendations.

### **Action by Committee**

- 110. (1) After considering a competency review panel's report delivered under Section 109, the practice standards committee may:
  - (a) decide to take no further action,
  - (b) refer the member involved to a discipline committee, or
  - (c) recommend that the member involved:
    - (i) restrict voluntarily the member's practice to specified areas of law until the member's remedial program, if any, has been completed,
    - (ii) complete satisfactorily a remedial program which may include one or more of the following:

- (I) one or more continuing legal education courses approved by the practice standards committee or its designate,
- (II) a remedial course approved by the practice standards committee or its designate,
- (III) one or more courses approved by the practice standards committee or its designate, which is or are offered by an approved educational institution,
- (IV) a mentor program approved by the practice standards committee or its designate, or
- (V) any other remedial program specified by the practice standards committee which is intended, if carried out, to improve the knowledge or skill of the member in carrying on the practice of law,

- (iii) complete satisfactorily an examination approved by the practice standards committee or its designate,
- (iv) appear before a panel of examiners appointed by the practice standards committee or its designate,
- (v) obtain a psychiatric or psychological assessment or counselling, or both, and if the practice standards committee requests, provide a report on that assessment or counselling to the practice standards committee,
- (vi) obtain a medical assessment or assistance, or both, and if the practice standards committee requests, provide a report on that assessment or assistance to the practice standards committee,
- (vii) practise in a setting approved by the practice standards committee,
- (viii) take such other steps as the practice standards committee directs which are intended to improve the knowledge or skill of the member in carrying on the practice of law.

(2) When making recommendations under subsection (1)(c), the practice standards committee may set one or more dates by which the member involved shall complete the recommendations.

(3) The practice standards committee may, on application by the member involved or the Society, extend the date by which a recommendation shall be completed.

(4) The practice standards committee's recommendations under subsection (1)(c) and the competency review panel's report under Section 109 shall be delivered to the member involved.

### **Confidentiality**

111. Subject to Section 112:

- (a) all of the information and documents which form part of a committee's or panel's investigation into a complaint,
- (b) any action taken or decision made by the practice standards committee, and
- (c) any report prepared for the practice standards committee or for a panel,

shall be treated confidentially, and shall not be disclosed except for the purpose of complying with the objects of the *Act* or in responding to an enquiry made for the purpose of a potential judicial appointment.

### **Report to Council**

112. the practice standards committee shall notify the Council in writing of its decision under Section 110(1).

### **Continuing Professional Development**

112.1 (1) The Council may make mandatory continuing professional development policy requirements (in this part, the "policy").

(2) The Secretary-Treasurer may, with respect to any member who fails to comply with the policy,

- (a) refuse to issue a practising certificate to the member; or
- (b) give notice to the member that the member's practising certificate will cease to be valid and the member will be suspended upon the expiry of 30 days from the date of such notice unless the member complies with the policy.

(3) A member who has been suspended or to whom a practicing certificate has not been issued due to non-compliance with the policy, may apply to the Secretary-Treasurer for reinstatement:

- (a) by certifying completion of the minimum education requirements; and
- (b) by submitting the required fees.

- (4) Members are responsible for retaining records of continuing professional development activities and to make the records available to the Law Society upon request.

## **PART XI**

### **LAW CORPORATIONS**

113. In this part:

- (a) “corporation” means a company incorporated pursuant to the laws of the Province and resident in the Province; and
- (b) “law corporation” means a corporation issued a permit by the Society to carry on the practice or profession of a barrister, solicitor and attorney in the Province.

#### **Register of Law Corporations**

114. (1) The Secretary Treasurer shall maintain a register of law corporations containing the following information with respect to each law corporation:

- (a) the name, registered office of the corporation and the number on the register attributed to the law corporation;
- (b) the date of issuance of the initial permit to the law corporation;
- (c) the dates of the renewal of the permit of the law corporation; and
- (d) any other particulars specified by Council or these Regulations.

(2) The Secretary Treasurer shall prepare any other records with respect to the law corporations as specified by Council.

#### **Applicant for Permit**

115. A corporation may apply to the Secretary Treasurer for a permit to carry on the practice or profession of a barrister, solicitor and attorney in the Province pursuant to Section 36.1 of the *Act* by submitting:

- (a) an application for a permit in Form 12;
- (b) a true copy of a corporation’s Letters Patent, or, if the Letters Patent is not yet available, confirmation, satisfactory to the Secretary Treasurer, that all documents and fees necessary for incorporation have been filed with the Director of Corporations together with an original solicitor’s declaration that all the requirements of the *Companies Act* in respect of registration of the corporation and of matters precedent and incidental thereto have been complied with and confirmation that a true copy of the corporation’s Letters Patent will be provided to the Secretary Treasurer forthwith upon receipt of same by the applicant;

- (c) if the corporation intends to carry on the practice or profession of a barrister, solicitor and attorney under a business or partnership name, a true copy of the certificate or declaration of the business or partnership name, or, if the certificate is not yet available, confirmation, satisfactory to the Secretary-Treasurer, that all the documents and fees necessary for the registration of the business or partnership name have been filed with the Director of Corporations, and confirmation that a true copy of the certificate of registration of the business or partnership name will be provided to the Secretary Treasurer forthwith upon receipt of same by the applicant;
- (d) a true copy of the corporation's bylaws;
- (e) the application fee prescribed by Council.

### **Issue of Permit**

116. (1) Upon being satisfied that all the requirements of the *Act* and these Regulations in respect of law corporations have been fulfilled by a corporation, the Secretary Treasurer shall issue to the corporation a permit in Form 14.

(2) A law corporation issued a permit in accordance with the *Act* and these regulations shall, subject to the *Act* and these Regulations, be permitted to carry on the practice or profession of a barrister, solicitor and attorney in the Province.

(3) A permit issued to a law corporation or renewed or reinstated shall, subject to the *Act* and these Regulations, be valid until the 1st day of July of the calendar year immediately ensuing the date of issue or renewal of the permit.

### **Renewal of Permit**

117. (1) The Secretary Treasurer shall in each year mail to each law corporation then holding a subsisting permit, a written notice in Form 15 respecting the renewal of its permit.

(2) A law corporation wishing to have its permit renewed shall furnish to the Secretary Treasurer on or before the 15 day of June in each year:

- (a) a statement of particulars in Form 13; and
- (b) payment of the renewal fee prescribed by Council.

(3) Upon compliance with subregulations 117(2) by a law corporation, the Secretary Treasurer shall, if satisfied that all the requirements of the *Act* and these Regulations in respect of law corporations have been fulfilled by the law corporation, issue an annual renewal certificate to the law corporation in Form 16.

### **Expiry of Permit**

118. If a permit of a law corporation expires and is not renewed, the Secretary Treasurer shall promptly enter in the register of law corporations a memorandum respecting the expiration of such permit.

### **Name and Business Name of Law Corporation**

119. (1) The name of a law corporation and the business name or partnership name, if any, under which it carries on the practice or profession of a barrister shall be in good taste, dignified and professional.

(2) The name and business name or partnership name, if any, of a law corporation shall not contain the words “and Company”, “and Associates”, or “and Partners”, or similar words denoting more than one lawyer, if in fact the only member or members of the firm are those indicated in the law corporation’s name, business name or partnership name.

(3) If the name of a law corporation does not contain words which denote that the law corporation carries on the practice or profession of a barrister, solicitor and attorney, then the law corporation shall carry on the practice or profession of barrister, solicitor and attorney under a business or partnership name and style that includes “Barrister and Solicitor”, “Law Practice”, “Legal Practice”, “Law Office”, “Legal Office”, “Legal Counsel”, “Attorney”, “Lawyer”, “Law Corporation”, or similar words denoting that the law corporation carries on the practice or profession of a barrister, solicitor and attorney.

(4) A permit shall not be issued to a corporation or renewed or reinstated, unless the Secretary Treasurer is satisfied that the name of the corporation, or the name under which it is carrying on the practice or profession of a barrister, solicitor and attorney complies with these Regulations.

(5) No law corporation shall change its name or the name under which it carries on the practice or profession of a barrister, solicitor and attorney without first having obtained written confirmation from the Secretary Treasurer that the proposed name complies with these Regulations.

### **Objects of Law Corporation**

120. (1) A permit shall not be issued to a corporation if the objects of the corporation do not permit it to carry on the practice or profession of a barrister, solicitor and attorney and all related and incidental activities and acts required by the *Act* and these Regulations.

(2) A law corporation shall not, while it is the holder of a permit, carry on any act or business other than the practice of a barrister, solicitor or attorney, but may hold real estate or securities as defined in the *Securities Act*, R.S.P.E.I. 1988, Cap. S-3.

### **Notice of Changes**

121. (1) A law corporation shall inform the Secretary Treasurer of any change in the particulars set forth in the application furnished pursuant to Section 115, by delivering to the Secretary Treasurer a statement of particulars in Form 13 within fifteen (15) days of such change together with any fee prescribed by Council.

(2) A law corporation shall inform the Secretary Treasurer of any change in the particulars set forth in the statement of particulars most recently delivered to the Secretary Treasurer by delivering to the Secretary Treasurer a statement of particulars in Form 13 within fifteen (15) days of such change together with any fee prescribed by Council.

### **Revocation, Suspension or Cancellation of Permit**

122. (1) The permit of a law corporation, which, by the 1st day of July of any year, fails to pay the fees prescribed by Section 121, unless the Council in its sole discretion grants an exemption, shall be suspended and while the permit is suspended the corporation shall not carry on the practice or profession of a barrister, solicitor and attorney.

(2) The permit of a law corporation may be revoked, suspended or cancelled by Council upon fifteen (15) days notice in writing to the law corporation where it appears to Council that the law corporation fails to meet any of the requirements of the *Act* or these Regulations.

(3) Notwithstanding subregulation (2), if a law corporation holding a subsisting permit ceases to fulfill any of the requirements of the *Act* or these Regulations by reason only of the death, suspension, disbarment or the cessation of practice of a voting shareholder of that law corporation, the law corporation shall have ninety (90) days from the date of such death, suspension or disbarment of the voting shareholder, as the case may be, in which to satisfy all the requirements of the *Act* and these Regulations, failing which Council may, upon thirty (30) days notice in writing, revoke, suspend or cancel the permit issued to such law corporation.

### **Reinstatement of Permit**

123. Upon being satisfied that all the requirements of the *Act* and these Regulations are satisfied by a law corporation whose permit was previously revoked, suspended or cancelled, Council may reinstate the permit of such corporation upon receiving from the corporation:

(a) a request in writing to have the permit reinstated;

(b) a statement of particulars in Form 13; and

(c) payment of the reinstatement fee prescribed by Council..

