



NOVA SCOTIA  
BARRISTERS' SOCIETY

**Regulations**

**Made pursuant to the  
*Legal Profession Act, S.N.S 2004, c.28***

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[SCHEDULE A](#)

## PART 1

### DEFINITIONS & GENERAL

#### 1.1 Interpretation

##### 1.1.1 In these Regulations, unless the context otherwise requires

- (a) **“approved principal”** means a practicing lawyer or a law firm that has satisfied the requirements of sub regulation 3.5.2;
- (b) **“articled clerk”** means a person enrolled in the Society’s bar admission program and registered on the register of articled clerks;
- (c) **“articling agreement”** means the form that outlines the contractual relationship between a principal and an articled clerk;
- (d) **“articling plan”** means an outline that shows how an education plan will be applied to an individual articled clerk;
- (da) **“certificate of legal effect”** has the same meaning as s. 18 of the *Land Registration Act*
- (e) **“caution”** means a determination that a member of the Society has breached the standards of legal ethics or professional conduct expected of members but in circumstances where such breach does not constitute professional misconduct, conduct unbecoming, professional incompetence or incapacity;
- (f) **“certificate of standing”** is a document from a law society in a foreign jurisdiction which discloses the current standing, the professional responsibility, discipline and insurance history of the member in that jurisdiction and any other information that may be required by the Society;
- (fa) **“Code of Professional Conduct”** means the Code of Professional Conduct adopted by Council and effective on January 1, 2012;
- (g) **“counsel”** means a determination that a member of the Society could benefit from professional guidance from the Society with regard to the subject matter of the complaint in circumstances that do not constitute professional misconduct, conduct unbecoming, professional incompetence or incapacity, and “counseling” has a similar meaning;
- (h) **“credentials appeal panel”** - means a panel established to hold appeal hearings and make orders, including orders as to costs, concerning the admission and reinstatement of persons as members of the Society in each of the categories of membership pursuant to subregulation 3.11;
- (i) **“discipline”** includes a finding by a 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; or
  - (v) any other breach of a lawyer’s professional responsibilities.
- (j) **“discipline 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 disciplinary hearing.
- (k) **“education plan”** means a plan prepared by a principal to outline the means by which an articled clerk will receive training and education in the core lawyering skills and attributes which are prescribed by the Credentials Committee;
- (l) **“fee”** includes any amount that a member is required to pay to the Society pursuant to s.15(2) and the regulations made pursuant to s. 15(2);
- (m) **“form”** means a standardized document prescribed for purposes of providing information or making an application to the Society;
- (ma) **“foundation documents”** means information on which a practicing lawyer relied in support of the exercise of professional judgment in rendering an opinion of title or certificate of legal effect, and includes an abstract of title, searches, documents, notes, survey fabric, or other title information, whether prepared by the lawyer or others and all information required to be kept pursuant to the Land Registration Administration Regulations.
- (n) **“foreign legal consultant”** means a person qualified to provide legal services in a jurisdiction other than Canada who practises the law of that foreign jurisdiction in the Province,
- (o) **“internal review”** means a review of a decision of the Executive Director made pursuant to subregulations 3.10;
- (p) **“judgment”** includes a Consolidation Order issued pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada) respecting orderly payment of debts;
- (q) **Deleted**
- (r) **“LRA Agreement”** means the Agreement between the Minister of Service Nova Scotia and Municipal Relations and the Society dated March 7th, 2003, regarding the relationship, duties and responsibilities between the Society and the Minister in relation to *Land Registration Act*, S.N.S. 2001, c. 6 as amended;
- (s) **Repealed – July 20, 2012**
- (t) **“law firm”** includes a sole practitioner, partnership, law corporation, any other joint arrangement, or any legal entity carrying on the practice of law;
- (u) **“life member”** includes a sole practitioner, a person who has been a member for at least 50 years, is no longer engaged in the practice of law and is exempted from the payment of fees to the Society;
- (ua) **“opinion of title”** means a practicing lawyer's or law firm's opinion on the title to or interest in land.
- (v) **“money”** means currency, cheques, drafts, money orders, credit card slips and electronic funds transfer received by a practising lawyer;
- (w) **“non-practising member”** means a person who has been called to the bar but does not hold a practising certificate and is not a retired or life member;
- (x) **“practising lawyer”** means a lawyer who holds a practising certificate;

- (y) **“reciprocating jurisdiction”** means a law society in another province or territory of Canada which has executed and implemented the National Mobility Agreement, as amended from time to time, of the Federations of Law Societies of Canada;
- (ya) **“remedial agreement”** means an agreement approved by the Fitness to Practise Committee setting out the terms and conditions to be met by a member to address issues of incapacity;
- (z) **“retired member”** means a member of the Society who is no longer earning employment income.
- (z) **“review subcommittee”** means a subcommittee of the Credentials Committee established to conduct an internal review
- (bb) **“trust account”** means a general trust account or a specific trust account;
- (cc) **“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 a client or another, and
  - (ii) money advanced to a practising lawyer for fees for services not yet rendered or for disbursements not yet made.
- (dd) **“trust property”** includes
- (i) any property of value belonging to a client, other than trust money, received by a practising lawyer in trust, or to be held on behalf of or at the direction or order of a client, or another person; or
  - (ii) money held by a practising lawyer, belonging in whole or in part to a client or another person, which is held under escrow conditions.
- (ee) **“visiting lawyer”** means a lawyer who is entitled to practise law in a Canadian jurisdiction other than the Province;

### **Interpretation Act**

**1.1.2** Except where a contrary intention appears, the interpretation provisions of the Act and the *Interpretation Act* shall apply to these Regulations.

### **Days Excluded from Time Requirements**

**1.1.3** The period of days in these Regulations that permits or requires something to be done in a number of days does not include any of the following:

- (a) the day the period begins;
- (b) a Saturday or Sunday in the period;
- (c) a weekday the office of the Society is closed during the period;
- (d) the day on which a thing is required, or first permitted, to be done.

### **Delivery when Office is Closed**

**1.1.4** A document delivered on a Saturday, a Sunday, or a weekday that the office of the Society is closed is considered to be delivered on the next weekday when the office of the Society is open.

### **Delivery after 4:30**

**1.1.5** A document delivered after four-thirty on an afternoon is considered to be delivered on the next weekday when the office of the Society is open.

### **Day Defined**

**1.1.6** A day is the period between midnight and the instant before midnight marking the beginning of the next day.

### ***Time Definition Act***

**1.1.7** For the purpose of Section 3 of the *Time Definition Act*, a year is the 365 days from midnight of a day on the Gregorian calendar to the instant before midnight marking the beginning of the same numbered day, in the same month, in the following year, except a year that starts on the twenty-ninth day of February ends on the first day of March in the following calendar year.

### **Forms**

**1.1.8** Unless otherwise required by these regulations, forms to be used for various purposes will be prescribed by the Executive Director and shall take effect when they are published as a schedule to these regulations.

### **Seal of the Society**

**1.1.9** The seal of the Society shall contain the name of the Society in English and in French surrounding an image of scales of justice balancing on the tip of a sword and the Latin phrase "*ubi jus ibi officium*" which means "where there is right, there is duty."



## **PART 2**

### **MANAGING SOCIETY AFFAIRS, EXECUTIVE DIRECTOR, COUNCIL, ELECTIONS AND COMMITTEES**

#### **2.1 Executive Director is Chief Executive Officer**

**2.1.1** The Executive Director is the chief executive officer of the Society and under the direction of the Council shall be responsible for the management and coordination of all phases of the operation, administration, finances, organization, supervision and maintenance of all activities of the Society.

#### **Additional responsibilities**

**2.1.2** In addition to the duties set out in subregulation 2.1.1, the Executive Director shall perform all the functions and duties normally associated with the office of chief executive officer, including

- (a) putting into effect all policies and procedures established by Council or a committee acting under its authority;
- (b) counseling and assisting Council and any committee in the development, adoption, implementation and advancement of the various activities of the Society;
- (c) engaging employees of the Society and directing such personnel in the ongoing administration of the approved policies and programs;
- (d) executing documents on behalf of the Society;
- (e) performing such other functions and duties as may be assigned by Council.

#### **Temporary Executive Director**

**2.1.3** Council may temporarily fill any vacancy in the office of Executive Director, or designate a substitute to act *pro tem* during the absence of the Executive Director or if the Executive Director is unable or fails to act.

#### **Banking**

**2.1.4** Council shall authorize the Executive Director to

- (i) conduct the Society's banking through any chartered bank, trust company or credit union, and
- (ii) execute banking documents which authorize identified persons to sign on behalf of the Society.

#### **Borrowing**

**2.1.5** Council may authorize the Executive Director to borrow money for the general purposes of the Society.

#### **2.2 Annual Meeting**

**2.2.1** An annual meeting of the Society shall be held at least once in every calendar year at such time and place as may be fixed by Council.

#### **Special Meetings**

**2.2.2** Special meetings of the Society may be called at any time by Council.

#### **Request for Meeting**

**2.2.3** Whenever 30 or more members file with the Executive Director a notice in writing requesting a special meeting of the Society and stating the object of such meeting, Council shall call such meeting.

#### **Notice of Meeting**

**2.2.4** Notice of any meeting of the Society shall be sent at least one week before the date of the meeting to each member of the Society.

## **2.3 Council**

**2.3.1** For each election starting in 2011, the elected members of Council referred to in Section 7(1) of the Act shall be

- (a) Two practising lawyers from the Cape Breton District;
- (b) Two practising lawyers from the Southwestern District;
- (c) Two practising lawyers from the Central District; and
- (d) Four practising lawyers from the Halifax Regional Municipality; and
- (e) Three practising-lawyers or non-practicing members from anywhere in the Province.

### **At-large members of Council**

**2.3.1.1** Persons elected pursuant to reg. 2.3.1(e) are referred to as ‘at-large’ members of Council.

### **District**

**2.3.2** For the purpose of subregulation 2.3.1, a lawyer practises primarily in the-district that corresponds to the current mailing address for the lawyer on file at the Society.

### **Term of Council member**

**2.3.3** The term of a Council member commences at the end of the Annual Meeting following the Council election, or at the Council meeting immediately following a by-election or appointment and ends at the next Annual Meeting in an odd numbered calendar year

### **Term Limits**

**2.3.4** Members of Council are eligible to serve a maximum of three consecutive terms.

### **Vacancy on Council**

**2.3.5** In the case of a vacancy on Council, Council shall appoint

- (a) if the vacancy is a district position, a practising lawyer from the appropriate district or,
- (b) if the vacancy is an at-large position, a practicing lawyer or a non-practicing member, from anywhere in the province, or,
- (c) if the vacancy is of a public representative, a non-lawyer to fill the vacancy for the remainder of the term, which period does count as one of the terms allowed by subregulation 2.3.4.

### **First Meeting of Council**

**2.3.6** The first meeting of a new Council shall be held immediately following the Annual Meeting which follows its election.

### **Quorum for Council**

**2.3.7** The quorum for a meeting of Council is a majority of its members.

### **Number of Meetings**

**2.3.8** A minimum of six Council meetings per year will be held at such time and place as determined by the Executive Committee.

### **Form of Meetings**

**2.3.9** Council meetings may be conducted in person, by teleconference, videoconference or such other means of electronic communication approved by Council.

### **Notice of Meetings**

**2.3.10** Members of Council shall receive at least 24 hours’ notice of a meeting of Council, together with an agenda of the business to be transacted, but failure to receive such notice does not invalidate the meeting or the business conducted at the meeting.

### **Special Meetings**

**2.3.11** A special meeting of Council may be called by the President, or in the absence of the President, the first Vice-President by sending notice of the meeting to members of Council.

### **Special Meeting on Request**

**2.3.12** A special meeting of Council shall be called by the President, or in the absence of the President, the first Vice-President, upon receipt of a written request to do so signed by at least seven members of Council, by sending notice of the meeting to members of Council.

### **Parliamentary Procedure at Meetings**

**2.3.13** The proceedings at the meetings of the Society and of the Council shall be conducted as nearly as possible in accordance with parliamentary procedure.

## **2.4 Elections**

The Executive Director is responsible for the proper conduct of any elections required by these Regulations.

### **Secret Ballots**

**2.4.1** Elections are to be held by secret ballot.

### **Election by Electronic Means**

**2.4.2** Electronic processes, including the Internet, may be used for elections, so long as the specific technology is approved by Council.

### **Eligibility to Vote**

**2.4.3** All members of the Society in good standing who are resident in the Province may vote for members of Council in the election being held in the district corresponding to their current mailing address on file at the Society.

**2.4.4** All members of the Society in good standing may vote for the at-large members of Council.

## **2.5 Council Election Years**

**2.5.1** An election shall be conducted in each odd-numbered calendar year to elect:

- (a) practising lawyers to be members of Council, from a district, and
- (b) either practicing lawyers or non-practicing members of the Society to the at-large positions on Council

### **District Nominations**

**2.5.2** Prior to February 1 of a Council election year, the Executive Director will advertise for nominations and communicate the purpose of district and at-large elections to those who are eligible to be nominated and to vote.

### **District Nominations Requirements**

**2.5.3** The nomination of a candidate for election to Council is valid only if

- (a) it is in writing, signed by five members of the Society in good standing who are eligible to vote in the district in which the nominee seeks to be a candidate;
- (b) the nominee consents in writing to the nomination, and
- (c) the nomination and consent are received by the Executive Director on or before the date nominations close.

### **District Nominations Close**

**2.5.3.1** The nominations for District elections will close on February 15.

### **District Acclamation**

**2.5.4** If the number of candidates nominated does not exceed the number to be elected in a district, the Executive Director must declare that those nominated are elected to Council for that district.

### **District Election**

**2.5.5** If the number of candidates nominated exceeds the number to be elected in a district, then an election must be held for that district.

### **Council Fills Vacancy**

**2.5.6** If the number of candidates nominated is less than the number of members to be elected to Council from a district, Council, following receipt of advice from the Nominating Committee, may

- (a) appoint a practising lawyer from the district to be a member of the new Council and to take office when the new Council does, or
- (b) call a by-election to fill the vacancy.

### **District Election Ballots**

**2.5.7** If an election is required in a district, the Executive Director must forward ballots or voting information to all members of the Society in good standing who are eligible to vote in the district by the first Monday in March.

### **District Elections Voting**

**2.5.8** The voting period must remain open and ballots will be received until 5:00 pm on the third Monday in March following which the Executive Director must

- (a) count the ballots;
- (b) declare elected the individuals with the most votes;
- (c) publish the results, including the names of the candidates, the total number of ballots cast, the total number of ballots cast for each candidate, and the total number of spoiled ballots.

### **Nominations for At-Large Positions**

**2.5.9** At the time of publishing the results of an election pursuant to subregulation 2.5.8, the Executive Director will call for nominations for candidates for members of Council pursuant to subregulation 2.3.1(e).

### **At-Large Nomination Requirements**

**2.5.10** The nomination of a candidate for election to Council as an At-Large member is valid only if

- (a) it is in writing, signed by five members of the Society in good standing;
- (b) the nominee consents in writing to the nomination, and
- (c) the nomination and consent are received by the Executive Director on or before the first Monday in April

### **At-Large Nominations Close**

**2.5.10.1** The nominations will close on the first Monday in April.

### **At-Large Acclamation**

**2.5.11** If the number of candidates nominated does not exceed the number to be elected in at large election, the Executive Director must declare that those nominated are elected to Council as at-large members

### **Council Fills Vacancy**

**2.5.12** If less than three nominations are received for the at-large election, Council, following receipt of advice from the Nominating Committee, will

- (a) appoint one or more members of the Society to be a member of the new Council and to take office when the new Council does or
- (b) call a by-election to fill the vacancy.

### **At-Large Election Ballots**

**2.5.13** If an election is required, the Executive Director will forward ballots to all members of the Society in good standing by the third Monday in April.

### **At-Large Elections Voting**

**2.5.14** The voting period must remain open and ballots will be received until 5:00 pm on the fourth Monday in April following which the Executive Director must

- (a) count the ballots;
- (b) declare elected the individuals with the most votes; and
- (c) publish the results, including the names of the candidates, the total number of ballots cast, the total number of ballots cast for each candidate, and the total number of spoiled ballots.

## **2.6 Second Vice - President Election**

**2.6.1** On or about October 15 of each year, the Executive Director will advertise for nominations and communicate the description and process for nomination of the Second Vice-President to all members of the Society who are eligible to vote.

### **Second Vice - President Nominations**

**2.6.2** On or before January 31 of every year the Nominating Committee will:

- (a) advise the members of the Society of its nominee for Second Vice President, and
- (b) call for nominations from others for Second Vice President.

### **Validity of Nomination**

**2.6.3** A nomination of a candidate for election as Second Vice-President is valid only if

- (a) it is in writing, signed by ten members of the Society in good standing;
- (b) the nominee consents in writing to the nomination,
- (c) if the nominee were elected the Second Vice-President, there would not be a contravention of Section 8(1) of the Act, and
- (d) the nomination and consent are received by the Executive Director on or before February 15.

### **No Additional Nominations**

**2.6.4** If no additional nominations are received, the candidate nominated by the Nominating Committee will be deemed to be elected.

### **Vice - Presidential Election Ballots**

**2.6.5** If an election for Second Vice-President is required, the Executive Director will forward ballots or voting information to all members of the Society in good standing by the first Monday in March.

### **Vice President Voting Period**

**2.6.6** The voting period must remain open and ballots will be received until 5:00 pm on the third Monday in March following which the Executive Director must:

- (a) count the ballots;
- (b) declare elected the individual with the most votes;
- (c) publish the results, including the names of the candidates, the total number of ballots cast, the total number of ballots cast for each candidate, and the total number of spoiled ballots.

## **2.7 Appointment of Public Representatives**

**2.7.1** At its first meeting, or whenever a vacancy occurs, Council must appoint, from among names presented by the Nominating Committee, three persons, who are not members of the Society, to be Public Representatives on Council.

## **2.8 Absence**

**2.8.1** A member of Council who is not present for three meetings between July and the next June is deemed to have resigned from Council, unless Council otherwise determines.

### **Professional Misconduct**

**2.8.2** A member of Council who is found guilty of professional misconduct, conduct unbecoming or professional incompetence or found to be incapacitated under Part 3 of the Act shall be deemed to have resigned from Council.

### **Absence of President**

**2.8.3** In the case of a vacancy in the office of President or in the absence or inability of the President to act, the First Vice-President or, failing that, the Second Vice-President, has all the powers of the President.

### **Absence of First Vice-President**

**2.8.4** In the case of a vacancy in the office of First Vice-President or in the absence or inability of the First Vice-President to act, the Second Vice-President has all the powers of the First Vice-President.

### **Appointment of First Vice-President**

**2.8.5** The Second Vice-President may choose not to assume the powers under subregulation 2.8.4, in which case Council must appoint a person to assume the office of First Vice-President.

### **Absence of Second Vice-President**

**2.8.6** In the case of a vacancy in the office of Second Vice-President, a by-election must be held not more than three months after the vacancy occurs, unless otherwise determined by Council.

### **Public Representative Remuneration**

**2.8.7** Public Representatives on Council will be entitled to receive remuneration from the Society for each meeting of:

- (a) Council; and,
- (b) a Committee to which they have been appointed.

## **2.9 Committees**

**2.9.1** Council must appoint the following committees:

- (a) **LAWYERS' FUND FOR CLIENT COMPENSATION COMMITTEE**, to carry out the responsibilities assigned to it under Part IV of the Act and Part 11 of the Regulations;
- (b) **COMPLAINTS INVESTIGATION COMMITTEE**, to carry out the responsibilities assigned to it under Part III of the Act and Part 9 of the Regulations and in accordance with the Objects of the professional responsibility process;
- (c) **CREDENTIALS COMMITTEE**, to oversee the Regulations with respect to admission to membership in the Society, the Bar Admission Course, changes in category of membership in the Society, and resumption of membership in the Society;
- (d) **EXECUTIVE COMMITTEE**, to review matters to be dealt with by Council to ensure they are ready for Council consideration, to undertake those matters that are delegated to it by Council, and to act on behalf of Council in matters of urgency;
- (e) **FINANCE COMMITTEE**, monitors the finances of the Society, acts on behalf of Council in regard to the annual audit of the Society's finances and acts on behalf of Council in respect to the management of the Society's investments;
- (f) **FITNESS TO PRACTISE COMMITTEE**, to carry out the responsibilities assigned to it under the Act and regulations;

- (g) HEARING COMMITTEE, to carry out the responsibilities assigned to it under Part III of the Act and Part 9 of the Regulations and in accordance with the Objects of the professional responsibility process;
- (h) GENDER EQUITY COMMITTEE, monitors, and provides Council with advice about, matters that address issues of gender, gender identity and gender expression in the legal profession;
- (i) GOVERNANCE COMMITTEE, supports Council's commitment to the principles and practices of good governance;
- (j) RACIAL EQUITY COMMITTEE, monitors, and provides Council with advice about, programs that address issues of racism and discrimination in the legal profession and in relation to access to justice, including programs to increase access to the legal profession;
- (k) COMPLAINTS REVIEW COMMITTEE, to carry out the responsibilities assigned to it under Part 9 of the Regulations in accordance with the objects of the professional responsibility process;
- (l) PROFESSIONAL RESPONSIBILITY POLICY & PROCEDURES COMMITTEE, to consider and recommend to Council changes to the Act, Regulations and policies, and develop procedures for the professional responsibility process;
- (m) PROFESSIONAL STANDARDS (Real Estate) COMMITTEE, develops professional standards for the area of real estate law;
- (n) PROFESSIONAL STANDARDS (Family) COMMITTEE, develops professional standards for the area of family law;
- (o) PROFESSIONAL STANDARDS (Criminal) COMMITTEE, develops professional Standards for the area of criminal law;
- (p) PROFESSIONAL STANDARDS (Law Office Management) COMMITTEE, develops professional standards in the area of law office management;
- (q) PROFESSIONAL STANDARDS (Wills, Powers of Attorney and Personal Directives) COMMITTEE, develops professional standards in the area of wills, powers of attorney, personal directives and estates; and
- (r) NOMINATING COMMITTEE, assists Council in the recruitment, appointment and election of members of Council, Officers, Committees, working groups and representatives of the Society.

### **Additional Committees**

**2.9.2** Council may appoint such other committees, working groups or task forces as may be necessary to further the purpose of the Society, and may fill a vacancy or add to any committee, working group or task force.

**2.9.2.1** Unless Council otherwise determines, any committee, working group or task force may determine its own procedure.

### **Additional Powers of Committee**

**2.9.3** A committee, in addition to the powers and duties granted it by the Act or Regulations will have such additional powers as the Council may from time to time prescribe.

### **Chair of Committee**

**2.9.4** Council must appoint a Chair of each committee and may appoint a Vice-Chair.

### **Composition of the Complaints Investigation Committee**

**2.9.5** The Complaints Investigation Committee will be made up of not fewer than twelve (12) people and unless Council otherwise determines, must include at least one member of the Society from each of the four judicial districts and two persons who are not members of the Society.

**2.9.6** The members of the Complaints Investigation Committee should be representative of the Society's demographically diverse membership.

**2.9.7** Council must appoint a Chair and at least one Vice-Chair of the Complaints Investigation Committee.

### **Composition of Hearing Committee**

**2.9.8** The Hearing Committee must be composed of at least 12 persons, none of whom may be members of Council and, unless Council otherwise determines, include at least two members of the Society from each of the four judicial districts and two persons who are not members of the Society.

**2.9.9** Council must appoint a Chair and at least one Vice-Chair of the Hearing Committee.

### **Responsibility of the Chair of the Hearing Committee**

**2.9.10** The Chair of the Hearing Committee is responsible for

- (a) appointing a chair of a hearing panel,
- (b) empanelling members of the Committee to sit as a hearing panel, and ensuring that at least one member of the hearing panel is a person who is not a member of the Society.

**2.9.11** The Chair must empanel three members of the Committee to sit as a hearing panel.

### **Additional Members**

**2.9.12** Whenever, for any reason, a quorum of the Hearing Committee is not available for a hearing into a charge, Council may, for the purpose of such hearing only, appoint to the Committee such additional members of the Society as are needed for a quorum.

**2.9.13** If one member of the panel ceases to be able to sit on the panel before the hearing of evidence has commenced the Chair of the Hearing Committee will appoint another member of the Committee to the panel.

**2.9.14** If one member of a panel ceases to be able to sit on the panel after the hearing of evidence has commenced, the hearing will be ended and the Chair of the Hearing Committee will empanel a new hearing panel, which will reschedule the hearing from the beginning, unless the parties otherwise agree.

### **Remuneration**

**2.9.15** Members of the Hearing Committee may be entitled to receive remuneration from the Society for serving on a hearing panel.

### **Composition of the Fitness to Practise Committee**

**2.9.16** The Fitness to Practise Committee must be made up of not fewer than five (5) people and, unless Council determines otherwise, must include at least two (2) persons who are not members of the Society.

**2.9.17** Council must appoint a Chair and at least one Vice-Chair of the Fitness to Practise Committee.

### **Composition of the Complaints Review Committee**

**2.9.18** The Complaints Review Committee is to be made up of not fewer than five people, none of whom may be members of Council nor any Committee with responsibilities assigned to it under Part III of the Act and Part 9 of the Regulations, and must include at least one person who is not a member of the Society.

### **Executive Committee**

**2.9.19** Council will appoint an Executive Committee to review matters to be dealt with by Council to ensure they are ready for Council consideration, to undertake those matters that are delegated to it by Council, and to act on behalf of Council in matters of urgency.

### **Composition**

**2.9.20** The Executive Committee will be made up of the officers and, if determined by Council, one or two additional members.

### **Duties**

**2.9.21** The Executive Committee has the following powers and duties:



- (a) appoint members to committees in the event of a vacancy and in circumstances where it determines the appointment should not wait until the next Council meeting;
- (b) to approve r resignations from membership in the Society in circumstances where it determines the resignation should not wait until the next Council meeting; and
- (c) to undertake any other work assigned or delegated by Council.

## **2.10 Quorum**

**2.10.1** A quorum of any committee shall be three members.

### **Adjourned Meeting**

**2.10.2** When a meeting of a committee is adjourned for any reason, the committee, when it resumes the meeting, will be deemed to be duly constituted and shall not lose jurisdiction to deal with a matter that was before it at the adjourned meeting.

### **Notice of Meeting**

**2.10.3** Meetings of any committee may be convened by 24 hours' notice, oral or written, but in extraordinary circumstances a quorum of the committee may abbreviate the notice requirement.

### **Effect of Lack of Notice**

**2.10.4** Failure of one or more committee members to receive adequate or any notice of a meeting will not invalidate the proceedings, and nothing herein will preclude subcommittee members from waiving notice of meetings.

### **Procedure of Committee**

**2.10.5** Except as provided in the Act or in these Regulations, a committee may determine its own procedure.

### **Ex Officio**

**2.10.6** For the purpose of this part "ex officio" means non-voting and an ex officio member is not counted for quorum of a committee.

**2.10.7** The President is a member ex officio of each committee except the Hearing Committee.

## **PART 3**

### **ADMISSIONS**

#### **3.1 Interpretation**

##### **3.1.1 In this Part**

- (a) “**Committee**” means the Credentials Committee;
- (b) “**law degree**” means
  - i) a Bachelor of Laws degree or a Juris Doctor degree from a faculty of common law at a Canadian university approved by the Federation of Law Societies of Canada for the granting of such degree;
  - ii) a degree in civil law, if the holder of the degree has passed a comprehensive examination in common law or has successfully completed a common law conversion course approved by the Credentials Committee; or
  - iii) a Certificate of Qualification issued by the National Committee on Accreditation of the Federation of Law Societies of Canada;

#### **3.2 Exceptional circumstances**

**3.2** The Executive Director may, in exceptional circumstances and when it is in the public interest to do so, waive one or more of the requirements for admission.

#### **3.3 Application for enrolment as an articled clerk**

##### **3.3.1** An applicant for enrolment as an articled clerk must:

- (a) be of good character;
- (b) be a fit and proper person;
- (c) be lawfully entitled to be employed in Canada;
- (d) have a law degree;
- (e) have an approved principal;
- (f) provide the Executive Director with a completed application in the form prescribed by the Committee;
- (g) provide the Executive Director an official transcript of the applicant’s grades at each faculty of law at which the applicant studied;
- (h) pay the prescribed application fee to the Executive Director;
- (i) provide an Articling Agreement in the prescribed form executed by the applicant and an approved principal to the Executive Director;
- (j) provide the Executive Director with a criminal record check in a manner prescribed by the Executive Director;
- (k) be proficient in the English language and if English is not the first language of the applicant, provide proof of English language proficiency in a manner prescribed by the Executive Director; and
- (l) provide such other information that may be required, at any time, by the Executive Director.

##### **Decision of the Executive Director**

##### **3.3.2** The Executive Director may, where it is in the public interest to do so:

- (a) approve the application and stipulate the effective date of enrolment;
- (b) deny the application for reasons other than good character or fitness;
- (c) obtain any additional information from the applicant or any other person regarding the good character and fitness of the applicant;
- (d) where there is any issue regarding the good character or fitness of an applicant refer the application to the Committee;

**3.3.3** In the event that an application is denied pursuant to subregulation 3.3.2(b), the Executive Director shall provide the applicant with a written decision with reasons and shall inform the applicant of the internal review process

### **Decision of the Committee**

**3.3.4** If an application is referred to the Committee pursuant to subregulation 3.3.2(d), the Committee shall consider the application and all the information provided by the Executive Director and may:

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

**3.3.5** In the event that the approval is with terms or the application is denied, the Committee shall provide the applicant with a written decision with reasons and shall inform the applicant of their right to appeal to the Credentials Appeal Panel.

### **Responsibility of the Executive Director on Approval**

**3.3.6** When the application is approved, the Executive Director shall:

- (a) notify the applicant and the principal of the approval and the effective date on which the applicant will be enrolled as an articulated clerk, and
- (b) on the effective date, register the applicant on the Register of Articled Clerks.

### **Commencement of articles**

**3.3.7** Unless the Executive Director otherwise permits, persons shall be enrolled as articulated clerks only on March 1, June 1, September 1, or December 1.

## **3.4 Requirement of Articled Clerks**

**3.4.1** An articulated clerk shall:

- (a) unless credit has been given under subregulation 3.4.2(c), work under an Articling Agreement for a total of twelve months which period shall include the period required for the Bar Admission Course;
- (b) successfully complete the Bar Admission Course;
- (c) not engage in any other employment which, in the opinion of the Executive Director, would interfere with the articulated clerk's completion of the Articling Agreement or the Bar Admission Course;
- (d) not receive credit for any period of articles that occurred more than three years prior to the date of registration on the Register of Articled Clerks;
- (e) not receive credit for any period of less than one month worked under an articling agreement.

### **Options for Articled Clerks**

**3.4.2** An articulated clerk may

- (b) with the written consent of the principal and approval of the Executive Director, fulfill the articling requirements on a part-time basis, provided the total time to complete the Articling Agreement does not exceed three years from the date of enrolment;
- (c) notwithstanding the definition of principal, serve under an Articling Agreement with a Justice of the Supreme Court of Nova Scotia, the Nova Scotia Court of Appeal, the Federal Court, the Federal Court of Appeal, the Tax Court of Canada or the Supreme Court of Canada provided the other requirements of this Part are satisfied;
- (d) with the approval of the Executive Director, transfer credit for not more than six months of articles performed in another province provided the period of articles in that province was not more than three years prior to the date of registration as an articulated clerk on the Register of Articled Clerks;
- (e) work as an articulated clerk in the office of a practising lawyer other than that of the principal, provided
  - i) the other practising lawyer meets the requirements to be a principal
  - ii) the work period satisfies the requirements of the Articling Agreement and
  - iii) the work period does not exceed more than one month unless approved by the Executive Director
- (f) with the written consent of the principal, or, when it is in the public interest, the consent of the Executive Director assigns the Articling Agreement to another principal provided,
  - i) the other principal has applied to and been approved by the Executive Director, and
  - ii) the assignment is filed in the prescribed form before the assignment takes effect;
- (g) with the written consent of the principal, and approval of the Executive Director, take a leave of absence for an appropriate period under the circumstances, during which time the articulated clerk

- remains a member of the Society but is not entitled to act as an articled clerk and that time does not count towards the period of articles required under these regulations;
- (h) apply to the Executive Director to terminate the Articling Agreement by providing information required to allow the Executive Director to consider the application and the Executive Director may approve the application on such terms as the Executive Director deems appropriate;
  - (i) apply to the Executive Director to extend the Articling Agreement beyond the period of articles required under these regulations, provided the total extension does not exceed twelve months from the date of the expiry of the original Articling Agreement;
  - (j) report to the Executive Director if
    - i) a principal fails to comply with the obligations of the principal contained in the Articling Agreement; or
    - ii) circumstances in the office of the principal are not conducive to providing an educational experience, and
  - (k) the Executive Director may take such action on the review of the report, as the Executive Director deems appropriate;
  - (l) apply to the Executive Director to be assigned to another approved principal in the event that their principal ceases to be an approved principal under the Regulations.

### **Review of Character and Fitness of an Articled Clerk**

**3.4.3** An articled clerk must report, in writing, to the Executive Director any matter that may bring the character or fitness of the articled clerk into question that occurs before or during the articling period.

**3.4.4** On receipt of a report pursuant to subregulation 3.4.3, the Executive Director may, where it is in the public interest to do so, obtain any additional information from the articled clerk or any other person regarding the good character or fitness of the articled clerk.

**3.4.5** Where, in the opinion of the Executive Director, there is an issue regarding the good character or fitness of an articled clerk, the articled clerk must be referred to the Credentials Committee.

**3.4.6** If an articled clerk is referred to the Committee pursuant to subregulation 3.4.5, the Committee must consider all the information provided by the Executive Director and may:

- (a) request that the Executive Director obtain additional information;
- (b) find the articled clerk to be of good character or fitness; or
- (c) find the articled clerk not to be of good character or fitness.

**3.4.7** In the event that the articled clerk is found to not be of good character or fitness, the Committee may

- (a) impose conditions or restrictions on the articles of the articled clerk; and
- (b) refer the matter to the Executive Director to investigate under Part 9 of these Regulations.

**3.4.8** If the Committee makes a decision pursuant to subregulation 3.4.7, the Committee must provide the articled clerk with a written decision with reasons and must inform the articled clerk of their right to appeal to the Credentials Appeal Panel.

## **3.5 Application to be a Principal**

A practising lawyer, a law firm or an office of a law firm which has more than one office in the Province may apply to be a principal.

### **Eligibility**

**3.5.1** To be a principal, a practicing lawyer or a law firm must

- (a) if the applicant is a practising lawyer, have practised for at least five years immediately preceding becoming a principal,
- (b) if the applicant is a law firm or an office of a law firm of at least 2 practising lawyers, designate one practising lawyer of the firm or office who individually qualifies to be a principal, to be the

supervising lawyer responsible for the Education Plan and individual Articling Plans and to oversee the educational experience;

- (c) not be prohibited from being a principal by a Hearing Panel or as a result of the processes prescribed by Part III of the Act;
- (d) not have been convicted of any charges pursuant to Part III within 3 years from the date of the application to be a principal;
- (e) not have any outstanding charges pursuant to Part III of the Act;
- (f) not be charged with or plead guilty to or be found guilty of any offence under the
  - i) Criminal Code (Canada)
  - ii) Controlled Drug and Substances Act (Canada)
  - iii) Income Tax Act (Canada)
  - iv) Securities Act or any province of Canada;

Within 3 years from the date of the application to be a principal.

- (g) not be participating in the Fitness to Practice program;
- (h) not have been suspended pursuant to Part III;
- (i) not have any practice restrictions imposed by order of the Complaints Investigation Committee or otherwise under the Act or Regulations;
- (j) have an Education Plan that meets the Committee's prescribed requirements for Education Plans; and
- (k) have an Articling Plan that meets the Committee's prescribed requirements for Articling Plans;
- (l) demonstrate a commitment and ability to provide articled clerks with an articling experience in which the educational component is of paramount importance;
- (m) demonstrate a commitment and ability to provide supervision and feedback to articled clerks;

### **Request for exemption**

**3.5.3** The Executive Director may exempt an applicant from subregulation 3.5.2(a) if it is appropriate to do so.

### **Content of Application**

**3.5.4** An application to be a principal must be in a prescribed form and must provide:

- (a) the name of the practicing lawyer or law firm;
- (b) confirmation the practicing lawyer or law firm is eligible to be a principal;
- (c) a proposed or previously approved Education Plan;
- (d) a proposed Articling Plan to be used by the principal when entering into a specific Articling Agreement with an articled clerk; and
- (e) such other information as may be required by the Executive Director.

### **Content of Plans**

**3.5.5** The Committee must, in general terms, prescribe the requirements for Education Plans and Articling Plans.

### **Application to Executive Director**

**3.5.6** An application under this Regulation must be made to the Executive Director.

### **Decision of Executive Director**

**3.5.7** The Executive Director may, where it is in the public interest to do so:

- (a) approve the application to be a principal, or
- (b) subject to subregulation 3.5.2.1, deny the application, if the practicing lawyer or law firm does not satisfy the requirements of subregulation 3.5.2(a) to 3.5.2(k).

**3.5.8** The decision of the Executive Director under subregulation 3.5.7 is final.

### **Referral to Committee**

**3.5.9** The Executive Director must refer the application to the Committee if the practicing lawyer or law firm does not satisfy the requirements of subregulation 3.5.2 (l) or 3.5.2(m)

### **Detailed Review by Committee of Some Applications**

**3.5.10** In determining if the practicing lawyer or law firm satisfies the requirements of subregulation 3.5.2 (l) or 3.5.2 (m) the Committee may:

- (a) review materials submitted by the practicing lawyer or law firm; and
- (b) review other relevant information in the possession of the Society.

### **Material and Information to Applicant**

**3.5.11** The Committee must provide a copy of all materials and other information reviewed by the Committee pursuant to subregulation 3.5.10 to the practicing lawyer or law firm.

### **Opportunity for Submissions**

**3.5.12** The Committee must not dismiss an application referred pursuant to subregulation 3.5.9 unless, prior to making its final decision, it provides the practicing lawyer or law firm with an opportunity to provide written submissions and any further information.

### **Dismissal of Application**

**3.5.13** The Committee may dismiss an application if the practicing lawyer or law firm does not satisfy the requirements of subregulation 3.5.2(i) through (m).

### **Approval of Application**

**3.5.14** The Committee may approve an application referred pursuant to subregulation 3.5.9 and may impose such terms on its approval as it deems appropriate.

### **Written Reasons**

**3.5.15** The Committee must provide the practicing lawyer or law firm with written reasons.

### **Decision is Final**

**3.5.16** The decision of the Committee under subregulation 3.5.13 is final.

### **Replacement of Responsible Lawyer in Firm**

**3.5.17** If the supervising lawyer responsible for the Education Plan and individual Articling Plans and to oversee the educational experience for articled clerks in a law firm or office of a law firm ceases to be the supervising lawyer, the law firm or office of the law firm must notify the Executive Director and advise the Executive Director of the name of the new supervising lawyer.

### **New Application**

**3.5.18** The Executive Director may require the proposed new supervising lawyer to apply to be a principal or take such other steps as the Executive Director deems appropriate.

### **3.5.19** If a principal:

- (a) has been charged pursuant to Part III of the Act;
- (b) has been suspended pursuant to Part III of the Act;
- (c) has any practice restrictions imposed by order of the Complaints Investigation Committee or otherwise under the Act or Regulations;
- (d) no longer demonstrates a commitment and ability to provide articled clerks with an articling experience in which the educational component is of paramount importance;
- (e) no longer demonstrates a commitment and ability to provide supervision and feedback to articled clerks

the Executive Director may withdraw the privilege of being a principal, and must take appropriate action with respect to the articled clerk

### **Referral to Committee**

**3.5.20** The Executive Director must refer the matter to the Committee if subregulation 3.5.19(d) or 3.5.19(e) apply to a principal.

### **Review by Committee**

**3.5.21** In determining if subregulation 3.5.19(c) or 3.5.19(d) apply to a principal, the Committee may:

- (a) review materials submitted by the principal; and

- (b) review other relevant information in the possession of the Society;

### **Material and Information to Principal**

**3.5.22** The Committee must provide a copy of all materials and other information reviewed by the Committee pursuant to subregulation 3.5.21 to the principal.

### **Opportunity for Submissions**

**3.5.23** The Committee must not withdraw the privilege to be a principal pursuant to unless, prior to making its final decision, it provides the principal with an opportunity to provide written submissions and any further information.

### **Withdrawal of Privilege**

**3.5.24** If the Committee determines that subregulation 3.5.19(c) or 3.5.19(d) apply to a principal, then it must withdraw the privilege to be a principal.

### **Written Reasons**

**3.5.25** The Committee must provide the principal with written reasons if the privilege to be a principal is withdrawn.

### **Decision is Final**

**3.5.26** The decision of the Committee under subregulation 3.5.23 is final.

### **Termination by Principal**

**3.5.27** A principal may apply to the Executive Director to terminate an Articling Agreement by providing information required to allow the Executive Director to consider the application.

### **Approval on terms**

**3.5.28** The Executive Director may approve an application under subregulation 3.5.27 on such terms as the Executive Director deems appropriate.

### **Limitation on Number of Articled Clerks**

**3.5.29** A principal may only employ one articled clerk, unless an articled clerk has been allowed to extend the Articling Agreement, pursuant to subregulation 3.4.2(h), in which case the Executive Director may allow the principal to employ a second articled clerk.

### **Limitation on Number of Articled Clerks - Firm**

**3.5.30** A law firm or office of a law firm, acting as principal, may only employ as many articled clerks as there are practising lawyers in the firm or office of the law firm who would qualify to be principals under this Regulation.

## **3.6 Society to offer Course**

- 3.6.1** The Society shall offer a Bar Admission Course which shall consist of the following components:
- (a) the Skills Course;
  - (b) the Bar Examination;
  - (c) such seminars as are prescribed by the Committee.

### **Purpose**

**3.6.2** The purpose of the Bar Admission Course is to determine that those who successfully complete each required component possess the particular level of competence required of:

- (a) an articled clerk being called to the Bar as a lawyer;
- (b) a lawyer being called to the Bar in the province on transfer from a foreign jurisdiction;
- (c) a member changing category of membership to become a practising lawyer, or
- (d) a person resuming membership as a practising lawyer.

### **Level of Competence**

**3.6.3** The particular level of competence required of a person to successfully complete the Bar Admission Course shall be determined by Council on recommendation of the Committee, and the standard for successful completion of each component of the Course shall be set by the Committee.

### **Skills Course**

**3.6.4** The Skills Course must

- (a) teach and assess legal practice skills as are prescribed by and to a standard set by the Committee;
- (b) be offered at such times as are set by the Executive Director; and
- (c) be offered in person or by such other means as are approved by the Executive Director.

### **Attendance**

**3.6.5** A person attending the Skills Course must

- (a) pass the required evaluations in each legal practice skill;
- (b) unless otherwise determined by the Executive Director, be in full-time attendance at the Bar Admission Course;
- (c) not perform work for a principal or a practising lawyer.

### **Failure of Course**

**3.6.6** A person who fails the required evaluation in a legal practice skill may

- (a) take a supplemental evaluation in that legal practice skill at a time and place determined by the Executive Director; and
- (b) take only one supplemental evaluation in each legal practice skill unless the Executive Director otherwise permits.

### **Bar Examiners**

**3.6.7** Council shall appoint Bar Examiners who shall be responsible for those aspects of the Bar Examination assigned by the Regulations or by the Committee.

### **Bar Examination**

**3.6.8** The Bar Examination

- (a) is set by the Bar Examiners;
- (b) examines substantive areas of law that are prescribed by the Committee;
- (c) tests the ability of the writer to identify legal issues in a statement of facts, such as may be encountered in the practice of law, engage in a reasoned analysis of the issues and arrive at a logical conclusion by the application of fundamental legal principles in a manner which demonstrates a thorough understanding of those principles;
- (d) evaluates to a standard set by the Committee;
- (e) is offered at times and locations set by the Executive Director.

### **Successful Completion of Bar Examination**

**3.6.9** A person writing the Bar Examination

- (a) must achieve a grade of 70 percent in order to pass;
- (b) may receive reasonable accommodation in writing the examination on submission of medical or other information, which is satisfactory to the Executive Director, that indicates the need for an accommodation in order to provide a fair opportunity for the person to pass.

### **Failure of Bar Examination**

**3.6.10** A person who fails the Bar Examination on one or more occasions may

- (a) request the examination be remarked pursuant to subregulation 3.6.13;
- (b) rewrite at a future date scheduled for the Bar Examination;
- (c) rewrite on no more than two occasions unless the Executive Director otherwise permits.

**3.6.11** The Executive Director must provide an applicant who fails the Bar Examination a copy of their marked exam, showing the grade achieved, and must inform the applicant of the remarking process.



**3.6.12** The Executive Director must provide an applicant who is not permitted to rewrite the Bar Examination because of subregulation 3.6.10(c) with a written decision with reasons and must inform the applicant of the internal review process.

#### **Remarking of Bar Exam**

**3.6.13** Within 30 days from the day the marked examination and decision of the Executive Director were sent to the applicant, an applicant may request that their examination be remarked by the Bar Examiners.

**3.6.14** Despite any other regulation, the remarking of a Bar Examination by the Bar Examiners shall be in lieu of an internal review of a failed bar examination.

#### **Results of Remark**

**3.6.15** The grade assigned on the remarking by the Bar Examiners is the final grade and is not subject to review or appeal.

#### **Seminars**

##### **3.6.16** Seminars

- (a) may be prescribed to provide more in depth instruction in an area determined to be required by the Committee;
- (b) must be offered at such times as are set by the Executive Director; and
- (c) must be offered in person or by such other means as are approved by the Executive Director.

#### **Attendance at Seminars**

**3.6.17** A person attending a seminar must complete any evaluation that is required to the satisfaction of the instructor of the seminar.

#### **Failure of Seminar**

**3.6.18** A person who fails the required evaluation of a seminar may

- (a) take a supplemental evaluation at a time and place determined by the Executive Director; and
- (b) take only one supplemental evaluation unless the Executive Director otherwise permits.

#### **Consequences of Failure**

**3.6.19** A person who fails the Bar Admission Course may apply to the Executive Director for a determination of the requirements to be met to complete the Bar Admission Course, and the Executive Director may

- (a) require the applicant to successfully complete all or a portion of the Bar Admission Course;
- (b) extend the applicant's Articling Agreement for not more than twelve months in order to allow the applicant to complete the Bar Admission Course;
- (c) impose such other requirements as the Executive Director deems appropriate; or
- (d) deny the application.

**3.6.20** The Executive Director must provide the applicant with a written decision and reasons for any decision made pursuant to this subregulation and must inform the applicant of the internal review process.

#### **Notification to Principal**

**3.6.21** If a person

- (a) fails any component of the Bar Admission Course, or
- (b) behaves in a manner during the course which is inconsistent with the good character expected of a member of the Society

the Executive Director may advise the principal and provide such information as to allow the principal to fulfill his or her responsibilities.

#### **Establishment of Subcommittees**

**3.6.25** The Committee may, with the permission of Council, establish one or more subcommittees to perform any of the functions of the Committee under regulation 3.6.

## **3.7 Dalhousie Law School**

**3.7.1** A member of the faculty of Dalhousie Law School may apply to be a practising lawyer.

### **Eligibility**

**3.7.2** To be eligible to be a practising lawyer an applicant under this subregulation must

- (a) hold a law degree, a graduate law degree from a common law university, or be a member of the Bar of a foreign jurisdiction;
- (b) have been a full time member of the faculty for the two years immediately preceding the application;
- (c) intend to remain a fulltime member of the faculty for a further year;
- (d) be of good character and a fit and proper person.

### **Content of Application**

**3.7.3** An application under this regulation shall be accompanied by the prescribed fee and shall provide

- (a) contact information;
- (b) proof that the applicant;
  - i) holds a law degree,
  - ii) holds a graduate law degree from a common law university, or
  - iii) is a member of the Bar of a foreign jurisdiction
- (c) confirmation that the applicant has been a fulltime member of the faculty for the two years immediately preceding the application;
- (d) confirmation that the applicant intends to remain a full-time member of the faculty for a further year;
- (e) if the applicant is or has been a member of the Bar of a foreign jurisdiction, a Certificate of Standing from each law society where the applicant is or has been a member.
- (f) the Executive Director with a criminal record check in a manner prescribed by the Executive Director

### **Approval by the Executive Director**

**3.7.4** The Executive Director may, where it is in the public interest to do so:

- (a) approve the application and fix a date for the applicant to be called to the Bar;
- (b) deny the application for reasons other than good character or fitness;
- (c) obtain any additional information from the applicant or any other person regarding the good character and fitness of the applicant;
- (d) where there is any issue regarding the good character or fitness of an applicant refer the application to the Committee;

**3.7.5** In the event that an application is denied pursuant to subregulation 3.7.4(b), the Executive Director shall provide the applicant with a written decision with reasons and shall inform the applicant of the internal review process

### **Decision of the Committee**

**3.7.6** If an application is referred to the Committee pursuant to subregulation 3.7.4(d), the Committee shall consider the application and all the information provided by the Executive Director and may:

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

**3.7.7** In the event that the approval is with terms or the application is denied, the Committee shall provide the applicant with a written decision with reasons and shall inform the applicant of their right to appeal to the Credentials Appeal Panel.

### **Termination of Employment at Dalhousie**

**3.7.8** When a practising lawyer who has been admitted under this regulation ceases to be a full-time member of the faculty of Dalhousie Law School, that person may remain a practising lawyer on compliance with such requirements as the Executive Director may prescribe.

### **Requirements of Executive Director**

**3.7.9** In the event that the Executive Director establishes requirements pursuant to subsection 3.7.8 the Executive Director shall provide the applicant with a written decision with reasons and shall inform the applicant of the internal review process.

### **3.8 Application for Admission**

**3.8.1** An articled clerk may apply to be admitted as a practising lawyer.

#### **Eligibility**

**3.8.2** To be eligible to be a practising lawyer under this regulation an applicant must

- (a) satisfactorily complete the requirements of the Articling Agreement,
- (b) successfully complete the Bar Admission Course,
- (c) be of good character,
- (d) be a fit and proper person,
- (e) be competent,
- (f) be lawfully entitled to be employed in Canada,
- (g) meet such other requirements as may be imposed on all applicants by Council or the Committee.

#### **Content of Application**

**3.8.3** An application under this regulation, accompanied by the prescribed fee and in the prescribed form, shall

- (a) be filed at least 30 and not more than 45 days before the anticipated date for call to the Bar;
- (b) confirm that the applicant has satisfactorily completed the Articling Agreement; or will complete the Articling Agreement prior to the date fixed for call to the Bar;
- (c) confirm that the applicant has successfully completed the Bar Admission Course;
- (d) provide evidence that the applicant is competent;
- (e) provide evidence that the applicant is of good character;
- (f) if applicable, provide evidence that the applicant is lawfully entitled to be employed in Canada, and will at the time of call, be so entitled;
- (g) provide such other information that may be required for all applicants by the Committee; and
- (h) if required by the Executive Director, provide evidence of fitness.

#### **Additional Information**

**3.8.4** The Executive Director may obtain additional information or additional proof of information provided in the application.

#### **Process After Approval**

**3.8.5** Following approval of the application under subregulation 3.8.6, the Executive Director shall

- (a) advise the Committee of the name of each applicant who has been approved for admission to the Bar, and
- (b) fix a date for the applicant to be called to the Bar.

#### **Authority of the Executive Director**

**3.8.6** The Executive Director may, where it is in the public interest to do so:

- (a) approve the application and fix a date for the applicant to be called to the Bar;
- (b) obtain additional information from the applicant, the principal or any other person regarding the applicant's competence, character or fitness;
- (c) with the consent of the applicant and the principal extend the applicant's Articling Agreement for not more than twelve months in order to allow the applicant a further period to demonstrate competence, fitness or both; or
- (d) where, in the opinion of the Executive Director, there are issues about the applicant's competence, character or fitness, refer the application to the Committee.
- (e) deny an application if:
  - (i) an applicant has not satisfactorily completed the requirements for articling;
  - (ii) has not satisfactorily completed the Bar Admissions Course; or
  - (iii) the applicant is not lawfully entitled to be employed in Canada.

### **Decision of the Executive Director**

**3.8.7** In the event that an application is denied pursuant to subsection 3.8.6(e), the Executive Director shall provide the applicant with a written decision with reasons and shall inform the applicant of the internal review process.

### **Decision of the Committee**

**3.8.8** If an application is referred to the Committee pursuant to subregulation 3.8.6(d), the Committee shall consider the application and all the information provided by the Executive Director and may:

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

**3.8.9** In the event that the approval is with terms or the application is denied, the Committee shall provide the applicant with a written decision with reasons and shall inform the applicant of their right to appeal to the Credentials Appeal Panel.

### **Status Prior to Call**

**3.8.10** When the Executive Director has approved an application and fixed a date for call to the Bar, if the Executive Director has not extended the applicant's Articling Agreement pursuant to subregulation 3.4.2(h), during the period between completion of the Articling Agreement and call to the Bar, the applicant remains a member of the Society but is not entitled to act as an articulated clerk.

## **3.9 Call to the Bar**

**3.9.1** The ceremony for the call to the Bar must be held in Halifax, or at such other place at times determined by the Executive Director.

### **Executive Director to Present Documents**

**3.9.2** Five days prior to a scheduled date for a call to the Bar ceremony the Executive Director will file with the Prothonotary

- (a) a sworn affidavit attesting to the fact that each person being called to the Bar has satisfied all of the requirements of the Society entitling the person to be a practising lawyer,
- (b) a form of order of the Court admitting each person as a practising lawyer,
- (c) a brief biography of each person being called to the Bar, and
- (d) the prescribed fees.

### **Day of Call**

**3.9.3** Every person being called to the Bar must appear in person, unless excused from such personal appearance by the Committee, and be presented to Court by a member of Council.

### **Dress**

**3.9.4** Unless otherwise permitted by the Executive Director, every person being called to the Bar must appear wearing traditional legal attire, namely a waistcoat, a robe, a wing collar shirt, tabs and black or dark gray trousers or skirt and black shoes.

### **Oath or affirmation on Admission**

**3.9.5** Every person being called to the Bar must swear or affirm the following Oath or Affirmation on Admission to the Bar:

*"I, [name], swear/affirm that as a lawyer, I shall, to the best of my knowledge and ability, conduct all matters and proceedings faithfully, honestly and with integrity. I shall support the Rule of Law and uphold and seek to improve the administration of justice. I shall abide by the ethical standards and rules governing the practice of law in Nova Scotia."*

### **Oath or Affirmation of Allegiance**

**3.9.6** A person being called to the Bar may swear or affirm the following Oath or Affirmation of Allegiance:

*“I, [name], swear/affirm that as a lawyer, I shall, bear true allegiance to Her Majesty, Queen Elizabeth the Second, her heirs and successors according to law.”*

**3.9.7** The Oaths or Affirmations referred to in subregulations 3.9.5 and 3.9.6 must be spoken in either English or French and may be spoken in the applicant’s mother tongue.

### **Admission in Halifax**

**3.9.8** Immediately after the ceremony a person who has been called to the Bar in Halifax must sign the Roll of Lawyers.

### **Admission outside Halifax**

**3.9.9** A person who is called to the Bar outside of Halifax must sign the Roll of Lawyers before commencing the practice of law.

**3.9.9.1** Any person who is excused from appearing in person pursuant to subregulation 3.9.3 must provide an Affidavit of Proof of Signature in the prescribed form to the Executive Director before commencing the practice of law.

### **Obligation of Executive Director**

**3.9.10** When a lawyer has signed the Roll of Lawyers or provided an Affidavit of Proof of Signature, the Executive Director must

- (a) amend the records of the Society to reflect the category of membership and the effective date;
- (b) issue a practising certificate to the lawyer;
- (c) if applicable, affix the lawyer’s signature to the Roll of Lawyers.

## **3.10 Internal Review by Review Subcommittee**

### **Selection of a Review Subcommittee**

**3.10.1** The Committee shall, at its first meeting following the Annual Meeting of the Society, establish a Review Subcommittee composed of no less than 3 and no more than 5 members of the Committee.

**3.10.2** If the need arises, the Committee may appoint additional members of the Review Subcommittee when appropriate.

**3.10.3** The Committee shall appoint one member of the Review Subcommittee to act as Chair.

**3.10.4** An internal review shall be conducted by the Review Subcommittee.

### **Internal Review**

**3.10.5** Any decision of the Executive Director pursuant to subregulations 3.3.3, 3.6.12, 3.6.19, 3.6.20, 3.7.5, 3.7.9, 3.8.7, 5.4.5, 5.6.4, 5.10.5, 6.5.6 may be internally reviewed.

### **Time Limit for Internal Review Request**

**3.10.6** A request for an internal review must be made within 30 days from the day the decision of the Executive Director was sent to the applicant.

### **Request for Internal Review in Writing**

**3.10.7** A request for internal review must be made in writing to the Executive Director.

### **Responsibility of the Executive Director upon receipt of a request for an Internal Review**

**3.10.8** The Executive Director shall refer a request for internal review to the Chair of the Review Subcommittee Committee.

### **Disclosure**

**3.10.9** Within 30 days of the receipt of a request for internal review the Executive Director shall provide the Review Subcommittee and the applicant with:

- a) a copy of the written decision under review;
- b) a copy of all records related to the application in the possession of the Society, subject to any lawful restrictions; and
- c) such written information as the Executive Director deems necessary.

### **New Information and Submissions of the Applicant**

**3.10.10** An applicant may provide new information and make written submissions to the Review Subcommittee within 15 days from the day the written information and disclosure of the Executive Director was sent to the applicant.

**3.10.11** Any new information and written submissions shall be copied to the Executive Director by the applicant.

**3.10.12** Upon a request by an applicant, the Review Subcommittee may extend the timeline for the filing of new information and submissions.

### **No Requirement for Oral Hearing or Meeting**

**3.10.13** The Review Subcommittee may decide any matter without holding an oral hearing or meeting with the applicant.

### **Review of all Material and Submissions**

**3.10.14** The Review Subcommittee shall review all material provided to it and any submissions.

### **Decision Making Power of Review Subcommittee**

**3.10.15** The Review Subcommittee may make any decision that the Executive Director could have made with respect to an application.

### **Written Decision**

**3.10.16** The Review Subcommittee shall make its decision within a reasonable time and shall render a written decision with reasons within 30 days following the meeting when its decision is made.

### **Internal Review Subcommittee Decision Final**

**3.10.17** The decision of the Internal Review Subcommittee is final but the Subcommittee may, if it considers it advisable to do so and based on new information, reconsider any decision made by it pursuant to this regulation and may vary or revoke any decision made by it.

## **3.11 Credentials Appeal Panel**

**3.11.1** An appeal from a decision of the Committee made pursuant to subregulations 3.3.5, 3.7.7, 3.8.9, 5.6.7, 5.10.10, 6.2.9 shall be conducted by a panel of three persons, who are members of the Hearing Committee constituted under Section 41 of the *Legal Profession Act*, which shall be referred to as a Credentials Appeal Panel.

### **Selection of a Credentials Appeal Panel**

**3.11.2** In the event of an appeal to a Credentials Appeal Panel the Chair of the Hearing Committee shall:

- (a) appoint a chair of a Credentials Appeal Panel,
- (b) empanel members of the Hearing Committee to sit as a Credentials Appeal Panel, and
- (c) ensure, when it is practical to do so, that at least one member of the Credentials Appeal Panel is a person who is not a member of the Society.

### **Time Limit for Appeal**

**3.11.3** A request for an appeal of a decision of the Committee pursuant to subregulations 3.3.5, 3.7.7, 3.8.9, 5.6.7, 5.10.10, 6.2.9 must be made within 30 days from the day that the decision of the Committee was sent to the applicant.

### **Request for Appeal in Writing**

**3.11.4** An appeal must be made in writing to the Executive Director.

### **Responsibility of the Executive Director upon receipt of a request for an Appeal**

**3.11.5** The Executive Director shall refer an appeal to the Chair of the Hearing Committee.

### **Disclosure**

**3.11.6** The Executive Director shall, within a reasonable time, provide the Credentials Appeal Panel and the applicant with a copy of all records related to the application in the possession of the Society, subject to any lawful restrictions, and a copy of the written decision.

### **Security for the Costs of an Appeal**

**3.11.7** On application by the Society, the Credentials Appeal Panel may determine that it is appropriate for the applicant to deposit with the Society security for the appeal and shall fix the amount and form of such security.

### **Powers of the Credentials Appeal Panel**

**3.11.8** A Credentials Appeal Panel may determine its own procedure and may

- (a) order pre-hearing procedures, including pre-hearing conferences that are held in private, and direct the times, dates and places of the hearing for those procedures;
- (b) order that a hearing, parts of a hearing or pre-hearing conference be conducted using a means of telecommunication that permits the parties and the panel to communicate simultaneously;
- (c) administer oaths and solemn affirmations;
- (d) receive and accept such evidence and information on oath, affidavit or otherwise as the appeal panel in its discretion sees fit, whether admissible in a court of law or not;
- (e) prescribe the disclosure obligations of the parties prior to a hearing;
- (f) adjourn or postpone a proceeding from time to time;
- (g) amend or permit the amendment of any document filed in connection with the proceeding, including a notice of hearing;
- (h) approve or reject a settlement.

### **Time and Place of Hearing**

**3.11.9** The Credentials Appeal Panel shall hold a hearing and shall fix a reasonable time and place for the hearing.

### **Notice of Hearing to the Applicant**

**3.11.10** After the time and place for the hearing have been set, the Executive Director shall cause written notice of the hearing to be given to the applicant, at least fourteen days prior to its commencement.

### **Notice of Hearing**

**3.11.11** After the notice of hearing has been given to the applicant, the Executive Director shall cause notice of the hearing to be given to the public by publishing a notice on the Society's website within seven days that

- (a) specifies the date(s), time and location for the hearing; and
- (b) outlines the nature of the appeal;

but such notice shall not disclose the name or other identifying information of the applicant.

### **Notice of Hearing to Others**

**3.11.12** The Executive Director shall give notice of the hearing to such others, if any, as the Chair of the Credentials Appeal Panel directs.

### **Conduct of Appeal Hearings**

**3.11.13** In a hearing before a Credentials Appeal Panel, the parties to the hearing are the Society and the applicant.

**3.11.14** In a proceeding before a Credentials Appeal Panel, the parties have the right to

- (a) representation by legal counsel;
- (b) the opportunity to present evidence and make submissions, including the right to cross-examine witnesses;
- (c) disclosure of relevant information and documents as prescribed in the regulations; and

**3.11.15** In a hearing before a Credentials Appeal Panel, an applicant is a compellable witness.

### **Public attendance at hearing**

**3.11.16** Subject to subregulation 3.11.17, a hearing before a Credentials Appeal Panel shall be open to the public.

**3.11.17** A Credentials Appeal Panel may order that the public, in whole or in part, be excluded from a hearing or any part of it if the Credentials Appeal Panel is satisfied that

- (a) matters involving solicitor-client privilege that have not otherwise been waived may be disclosed;
- (b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings may be open to the public; or
- (c) the safety of a person may be jeopardized.

**3.11.18** A Credentials Appeal Panel may make orders it considers necessary to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters.

**3.11.19** No order shall be made pursuant to subregulation 3.11.18 that prevents the publication of anything that is otherwise available to the public.

**3.11.20** A Credentials Appeal Panel may make an order that the public be excluded from the part of the hearing dealing with a motion for an order pursuant to subregulation 3.11.17.

**3.11.21** A Credentials Appeal Panel may make any order necessary to prevent the public disclosure of matters disclosed in a submission relating to any motion described in subregulation 3.11.20 including an order prohibiting the publication or broadcasting of those matters.

**3.11.22** Subject to any orders pursuant to this regulation, a Credentials Appeal Panel shall state, at the hearing, its reasons for an order made pursuant to this regulation.

**3.11.23** Where a Credentials Appeal Panel makes an order pursuant to subregulation 3.11.17, wholly or partly because of the desirability of avoiding disclosure of matters in the interest of a person affected, the Credentials Appeal Panel

- (a) shall allow the parties and their legal and personal representatives to attend the hearing; and
- (b) may allow such other persons as the panel considers appropriate to attend all or part of the hearing.

**3.11.24** Notwithstanding anything contained in this regulation, public attendance at a hearing without restriction does not constitute authorization to take photographs, record sound, videotape or otherwise mechanically or electronically record the proceedings, and no such recording is permitted, unless specifically authorized by the Credentials Appeal Panel.

### **Evidence**

**3.11.25** The following evidence is not admissible at a hearing unless the opposing party has been given, at least ten (10) days before the hearing,

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or if there is no written report, a written summary of the evidence and the qualifications of the expert; or
- (c) in the case of evidence of a witness, the identity of the witness.



**Power to Allow Evidence**

**3.11.26** Notwithstanding subregulation 3.11.25, the Credentials Appeal Panel may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible and may make directions it considers necessary to ensure that a party is not prejudiced.

**Failure of Applicant to Attend**

**3.11.27** If an applicant fails to attend a hearing, the Credentials Appeal Panel may proceed with the hearing in any event.

**Conclusion of Hearing**

**3.11.28** At the conclusion of the hearing, the Credentials Appeal Panel shall make its decision within a reasonable time and render a written decision with reasons within 60 days of making its decision.

**3.11.29** The Credentials Appeal Panel may:

- (a) make any decision the Committee could have made with respect to the application; and
- (b) assess costs, if any, to be paid by the applicant and how the security and deposit provided pursuant to subregulations 3.11.7 shall be credited towards the cost or refunded to the applicant as the case may be.

**Decision is Final**

**3.11.30** The decision of the Credentials Appeal Panel is final but the Credentials Appeal Panel may, if it considers it advisable to do so and based on new information, reconsider any decision made by it pursuant to this regulation and may vary or revoke any decision made by it.

## **PART 4**

### **OBLIGATIONS OF LAWYERS AND LAW FIRMS**

#### **4.1 Compliance obligations of lawyers**

##### **List of obligations**

##### **4.1.1** A practicing lawyer must:

- (a) pay fees annually in accordance with subregulations 4.2.2 and 4.2.4;
- (b) pay other fees in accordance with subregulation 4.2.3;
- (c) unless exempted from doing so by subregulation 4.1.8 or subregulation 6.6.2, maintain a minimum of \$1,000,000.00 of liability insurance in the form provided by the Association;
- (d) file the Annual Lawyer Report prescribed by subregulation 4.3.2;
- (e) satisfy the continuing professional development requirements prescribed by Regulation 8.3; and
- (f) if applicable, provide notice to the Society as prescribed by Regulation 4.4.

##### **Required payments**

##### **4.1.2** A practicing lawyer must, by June 30 of each year:

- (a) pay the practising fee prescribed by [Schedule A](#);
- (b) unless exempted from doing so by subregulation 4.1.8 or subregulation 6.6.2, pay the amount due to the Association as prescribed by [Schedule A](#);
- (c) pay the amount prescribed by [Schedule A](#) to be contributed to the Fund; and
- (d) pay the amount prescribed by [Schedule A](#) to be contributed to the fund established pursuant to s. 60(2) of the Act.

##### **Pre-authorized payment plan**

**4.1.3** Despite subregulation 4.1.2, a practicing lawyer or law firm may pay the annual fees by means of a pre-authorized payment plan in a form prescribed by the Executive Director.

##### **Other fees**

**4.1.4** A practicing lawyer or law firm must pay any special assessments, surcharges or transaction fees by the dates prescribed by [Schedule A](#).

##### **Practising certificate**

**4.1.5** Following receipt of the items listed in subregulation 4.1.2, the Executive Director will issue a practicing certificate to each practising lawyer and make available a receipt for fees.

##### **Obligations of non-practising members**

**4.1.6** A non-practising member must by June 30 of each year pay the fee prescribed by [Schedule A](#).

##### **Obligations of retired members**

**4.1.7** A retired member must by June 30 of each year, pay the fee prescribed by [Schedule A](#).

##### **Insurance exemption**

**4.1.8** The following practising lawyers are exempt from maintaining the liability insurance provided by the Association:

- (a) a practising lawyer employed by a department of the Government of Canada;
- (b) a practising lawyer whose only practice is as an adjudicator under the Small Claims Court Act and who files with the Executive Director satisfactory proof of that fact,
- (c) a practising lawyer who:
  - (i) is also a lawyer in good standing of another Law Society of Canada with a current practising certificate in that jurisdiction,

- (ii) maintains a minimum of \$1,000,000.00 of liability insurance which coverage provides protection for acts or omission arising out of professional services performed in Nova Scotia, and
- (iii) provides proof of such insurance in a form satisfactory to the Executive Director,
- (d) a practising lawyer who by resolution of Council is exempted from the requirement.

### **Insurance and mobility**

**4.1.9** Subject to subregulation 4.1.8, the Society will, on application, exempt a lawyer from acquiring liability insurance in Nova Scotia if the lawyer does the following in another the jurisdiction of another governing body:

- (a) is resident in the jurisdiction of another governing body;
- (b) is a member of that governing body; and
- (c) maintains liability insurance required in that jurisdiction that provides occurrence or claim limits of \$1,000,000 and \$2,000,000 annual per member aggregate and that insurance applies to the applicant's practice in Nova Scotia.

### **Resident of Quebec**

**4.1.10** For the purposes of subregulation 4.1.9, a lawyer or an applicant who is resident in Quebec and who is also a member within the jurisdiction of another governing body other than the Barreau is deemed resident in one of the other jurisdictions in which the lawyer is a member, and will be required to maintain liability insurance in both Quebec and one of the other jurisdictions in which the applicant is a member.

### **Deemed residence**

**4.1.11** Unless otherwise provided, the lawyer applicant will be deemed resident in the jurisdiction in which the lawyer has been a member continuously for the longest period of time.

### **Member of Barreau**

**4.1.12** A lawyer who is a member of the Barreau and one or more of the other signatory governing bodies must comply with the liability insurance requirements of the Barreau and at least one of the other signatory governing bodies of which the lawyer is a member.

### **Insurance**

**4.1.13** If subregulation 4.1.12 applies, insurance coverage is to be provided as follows:

- (a) by the professional liability insurance program of the Barreau with respect to services provided by the lawyer as a member of the Barreau;
- (b) by the professional liability insurance program of the other governing body other than the Barreau with respect to services provided by the lawyer as a member of the governing body other than the Barreau.

## **4.2 Fees**

**4.2.1** Fees payable to the Society are set out in [Schedule A](#) to these Regulations.

**4.2.2** Council must, by resolution, set the fees for:

- (a) practising lawyers;
- (b) any administrative fees;
- (c) non-practising members;
- (d) retired members; and
- (e) Canadian Legal Advisors.

### **Special assessments**

**4.2.3** Council may, by resolution, set special assessments, surcharges or transaction fees to be paid for the purpose of the Society by practising lawyers and must set the dates by which the special assessment, surcharge or transaction fee must be paid.

**4.2.4** Council must, by resolution, confirm the fees payable to the Association for a

- (a) practising lawyer;
- (b) practising lawyer employed by Nova Scotia Legal Aid Commission or Dalhousie Legal Aid Service; and
- (c) practising lawyer employed in the civil service in the province of Nova Scotia

**4.2.5** Council may, by resolution, set fees for:

- (a) articling clerks;
- (b) Bar Admission Course;
- (c) Bar Examination;
- (d) admission to the Bar;
- (e) Changes of Category Applications;
- (f) reinstatements;
- (g) temporary practice;
- (h) transfer applicants;
- (i) Foreign Legal Consultants; and
- (j) Canadian Legal Advisors.

**4.2.6** Council may, by resolution, set fees for:

- (a) application to change category of membership from a practising lawyer to a non-practising, retired or life member;
- (b) application to change category of membership from a non-practising category of membership to a practising lawyer and may set different fees depending on the length of time the applicant has held the non-practising category of membership;
- (c) a Certificate of Standing;
- (d) confirmation of a lawyer's status, including authentication of a lawyer's signature;
- (e) an application for a law corporation under subregulation 7.4.2;
- (f) the renewal of a law corporation permit under subregulation 7.4.7;
- (g) changes to a law corporation permit under subregulation 7.4.14;
- (h) reinstatement of a law corporation permit under subregulation 7.4.21;
- (i) an application to register a limited liability partnership under subregulation 7.3.2, based on an amount per Nova Scotia partner;
- (j) an application to register an extra-provincial limited liability partnership under subregulation 7.3.5, based on an amount per Nova Scotia partner; and
- (k) renewal of registration of a limited liability partnership under subregulation 7.3.12, based on an amount per Nova Scotia partner.

### **Fee Paid when received**

**4.2.7** Any fee, levy, surcharge or other payment due to the Society is not paid until it is received at the office of the Society or deposited in the account of the Society through on line payment or by pre-authorized payment.

### **Form of payment**

**4.2.8** Notwithstanding subregulation 4.1.2(a), a practising lawyer may pay the total amount required to be paid to the Society under that subregulation by:

- (a) payment in full by cash, cheque or electronic payment;
- (b) payment in full by credit card, including the applicable administrative fee;
- (c) preauthorized monthly payment if the Society has been provided with bank account information so that the Society may draw the amount, including the applicable administrative fee; or
- (d) postdated cheques equivalent to the amounts that would be drawn through preauthorized payment, including the applicable administrative fee.

**4.2.9** A lawyer will be considered ineligible for payments pursuant to subregulation 4.2.8 (b) - (d) if

- (a) two payments made pursuant to subregulation 4.2.8 (b) - (d) are not honoured for any reason, including insufficient funds in the lawyer's account; and

(b) the lawyer is suspended pursuant to subregulation 4.5.1(b), and must pay the remainder of the annual fees then due to the Society.

### **Proportioning fees**

**4.2.10** When a fee being paid is for a portion of the year, that fee is determined by dividing the total fee by twelve and that amount will be multiplied by the number of months remaining in the year without allowance for any partial month.

**4.2.11** There will be no proportioning or refunding of any amount paid pursuant to subregulation 4.2.3.

**4.2.12** Payment of fees for admission as a lawyer under subregulations 3.8.3, 6.2.3, and 6.6.3, will entitle the admittee to the status of practising lawyer until the last day of the month in which the Call to the Bar occurs.

## **4.3 Annual Lawyer Report**

### **Obligation to file**

**4.3.1** A lawyer must file the Annual Lawyer Report in the prescribed form by June 30 of each year.

### **Extension or waiver**

**4.3.2** The Executive Director may:

- (a) extend the date by which the Annual Lawyer Report is due; or
- (b) waive the requirement to file the Annual Lawyer Report;

if, in the opinion of the Executive Director, it is appropriate to do so.

### **Fee for extension**

**4.3.3** If, pursuant to subregulation 4.3.2(a), an extension of the date by which the report is due is granted, the lawyer must

- (a) file the required report by the new date; and
- (b) pay the fee prescribed by Schedule A.

### **Fee for Waiver**

**4.3.4** A request for a waiver pursuant to subregulation 4.3.2(b) must be accompanied by the fee prescribed by Schedule A.

**4.3.5** The Executive Director may, in exceptional circumstances, waive the fee required by subregulations 4.3.3 or 4.3.4.

### **Annual Lawyer Report contents**

**4.3.6** The Annual Lawyer Report will be in the prescribed form and contain:

- (a) the lawyer's mailing and civic address;
- (b) the lawyer's telephone number;
- (c) the lawyer's email address;
- (d) a lawyer's language proficiencies for the practice of law and delivery of legal services;
- (e) a lawyer's areas of practice and the approximate percentage associated with each area;
- (f) whether a lawyer has handled trust money or property;
- (g) whether a lawyer has held trust money or property in a representative capacity as defined in subregulation 10.1.2;
- (h) whether a lawyer has borrowed from or loaned money to clients;
- (i) information about the planning for continuing professional development and continuing legal education undertaken by the lawyer in accordance with Regulation 8.3; and
- (j) such other information as Council may prescribe.

## 4.4 Notice to Society: Bankruptcy, Judgment, Criminal Charges, Guilty of Offence

### Duty to report

**4.4.1** A lawyer, law corporation, or the lawyer designated under Regulation 4.7 must immediately advise the Executive Director when the lawyer or law corporation:

- (a) is served with a petition in bankruptcy under the *Bankruptcy and Insolvency Act* (Canada);
- (b) makes an assignment of property for the benefit of creditors, including an assignment under the *Bankruptcy and Insolvency Act* (Canada);
- (c) presents a proposal in bankruptcy to creditors under the *Bankruptcy and Insolvency Act* (Canada);
- (d) learns that a judgment has been entered against the lawyer;
- (e) is subject to an order for costs against the lawyer personally; or
- (f) is charged with, pleads guilty to or is found guilty of any offence under the
  - (i) *Criminal Code* (Canada)
  - (ii) *Controlled Drug and Substances Act* (Canada)
  - (iii) *Income Tax Act* (Canada)
  - (iv) *Customs and Excise Act* (Canada); or
  - (v) *Securities Act* of any province of Canada;
- (g) is suspended by the governing body of the legal profession in another jurisdiction;
- (h) is charged with a discipline offence in another jurisdiction; or
- (i) is found guilty of a discipline offence in another jurisdiction.

### Obligations when bankrupt

**4.4.2** From the date of the event set out in subregulation 4.4.1(a)-(c), until the petition, assignment, or proposal has been satisfied, withdrawn, discharged or is otherwise of no further force or effect, the member and the trustee of the estate of the lawyer in bankruptcy must not, without written permission of the Executive Director, accept from or on behalf of clients any money or other property, except in payment of costs and fees of the lawyer, and then only on such conditions imposed by the Executive Director.

### Judgments - particulars

**4.4.3** A notice under subregulation 4.4.1(d) must contain:

- (a) the name of the lawyer for the judgment creditor, if any;
- (b) the amount of the judgment;
- (c) where no appeal has been taken from the judgment, whether the member intends to take such an appeal;
- (d) where an appeal from the judgment has been taken, the fact the appeal has been taken; and
- (e) whether or not arrangements, which are satisfactory to the judgment creditor, have been made to pay the judgment.

### Additional information

**4.4.4** The Executive Director may require the lawyer to provide additional information for more complete examination outlining the circumstances relating to any of the matters referred to in subregulation 4.4.1 and the lawyer must respond fully within the time prescribed by the Executive Director.

## 4.5 Suspensions

### Lawyer is suspended

**4.5.1** A lawyer will be suspended if:

- (a) the requirements of subregulation 4.1.1 are not met by June 30;
- (b) the payment of any special assessments, surcharges or transaction fees required by subregulation 4.1.4 is not made by the dates prescribed by these Regulations or [Schedule A](#);
- (c) a pre-authorized monthly payment permitted by subregulation 4.1.3 is not made at the appropriate time;
- (d) the requirements of subregulations 4.11.2 and 4.11.4 are not met by the specified time; or

- (e) the payments of any individual deductible required by Regulation 12.6 is not made in accordance with the Regulation;
  - (f) all fees have not been paid by June 30 as required by subregulation 8.4.4;
- and while suspended the lawyer must not engage in the practice of law or the delivery of legal services and is not entitled to any of the rights and privileges of a member of the Society.

### **Suspension effective July 1**

**4.5.2** The suspension of a lawyer pursuant to subregulation 4.5.1(a) will be effective on July 1.

### **Alternate date**

**4.5.3** Despite 4.5.2, the Executive Director may, on receipt of the lawyer's written request, set an alternative date for suspension if such alternate date is in the public interest.

### **Obligation of lawyer suspended**

**4.5.4** A lawyer, who practices as a sole practitioner, and who is suspended at the time that a trust account report is due remains obligated to file the trust account report.

### **Waiver of suspension**

**4.5.5** Notwithstanding subregulations 4.5.1 and 4.5.2, the Executive Director may waive the suspension of a lawyer for non-payment of fees if that member has made an application to change membership category and that application was received prior to the date the payment was due.

**4.5.5.1** The Executive Director may, in exceptional circumstances, waive the suspension of a lawyer for non-payment of fines pursuant to subregulation 4.5.1(f).

### **Notification**

- 4.5.6** When a lawyer has been suspended under this Regulation, the Executive Director must:
- (a) notify both the lawyer and the Designated Lawyer of the suspension and the effective date;
  - (b) amend the records of the Society to reflect the suspension and the effective date; and
  - (c) notify all prothonotaries, court administrators and registrars and other public offices that may be affected by the suspension.

### **Publication**

- 4.5.7** When a lawyer has been suspended under this Regulation, the Executive Director may:
- (a) cause a notice of the suspension to appear in a newspaper of general circulation in the Province, which advises that the lawyer has been suspended and is not entitled to practise law or deliver legal services; and
  - (b) unless otherwise directed by the Executive Committee, require the suspended lawyer to reimburse the Society for all reasonable costs associated with publishing the notice as a condition precedent to the lawyer's reinstatement.

### **Reinstatement after suspension**

- 4.5.8** When a lawyer has been suspended pursuant to subregulation 4.5.1, the lawyer may apply to be reinstated after:
- (a) filing the required forms; and
  - (b) payment of the reinstatement fee prescribed by [Schedule A](#) to these Regulations and the remainder of the annual fees and any special assessments, surcharges or transaction fees outstanding at the time of the suspension.

### **Executive Director may approve**

**4.5.9** The Executive Director may approve an application under subregulation 4.5.8 unless the Executive Director is required to refer the application to the Credentials Committee under subregulation 4.5.10.

### **Public interest**

**4.5.10** If the facts disclosed in the application or otherwise known to the Society raise public interest issues which require, in the opinion of the Executive Director, consideration by the Credentials Committee, the Executive Director will forward the application to the Committee.

### **Credentials Committee may approve**

**4.5.11** When the Credentials Committee is satisfied that it is consistent with the public interest, it may approve the application for reinstatement upon such terms and conditions as it deems appropriate.

### **Notice of reinstatement**

**4.5.12** When a suspended lawyer has been reinstated under this Regulation, the Executive Director must:

- (a) notify both the lawyer and the Designated Lawyer of the reinstatement and the effective date,
- (b) notify all prothonotaries, court administrators and registrars and other public offices of the reinstatement and the effective date; and
- (c) amend the records of the Society to reflect the reinstatement and the effective date.

### **Notice - suspended or disbarred**

**4.5.13** When a lawyer has been suspended or disbarred pursuant to Sections 37 or 45 of the Act, the Executive Director must:

- (a) cause a notice to appear in a newspaper of general circulation in the Province, which advises that the lawyer has been suspended or disbarred and is not entitled to practise; and
- (b) notify all Prothonotaries, Court Administrators and Registrars and other public offices that may be affected by the suspension or disbarment.

### **Manner of notice**

**4.5.14** Whenever any notice is required by the Act or the Regulations to be given to a lawyer, such notice may be personally served on the lawyer or mailed by ordinary mail or left at the lawyer's last known address.

### **Effect of notice**

**4.5.15** Failure of any person to receive the notice to which he or she is entitled will not invalidate the ensuing proceedings.

### **Suspension of non-practising lawyer**

**4.5.16** A non-practising lawyer who does not pay the annual fee pursuant to this Regulation is suspended.

### **Notification**

**4.5.17** When a non-practising lawyer has been suspended pursuant to subregulation 4.5.16, the Executive Director must:

- (a) notify the non-practising lawyer of the suspension and the effective date; and
- (b) amend the records of the Society to reflect the suspension and the effective date.

### **Reinstatement**

**4.5.18** When a non-practising lawyer has been suspended pursuant to subregulation 4.5.16, the non-practising lawyer may apply to be reinstated after payment of the annual fee and the reinstatement fee prescribed by [Schedule A](#).

## **4.6 Compliance obligations of law firms and sole practitioners**

### **List of obligations – law firm**

**4.6.1** A law firm must:

- (a) keep the Society informed of its current mailing address, civic address, telephone number and email address;



- (b) keep the Society informed of the names of all lawyers associated with the law firm and the electronic contact information, including email addresses, for all lawyers and law corporations associated with the law firm;
- (c) appoint a Designated Lawyer in accordance with subregulation 4.7.1;
- (d) have a management system for ethical legal practice;
- (e) provide to the Society the self-assessment in the form and with the frequency prescribed by the Executive Director or these Regulations;
- (f) maintain a written succession plan in accordance with subregulations 4.6.4 through 4.6.6;
- (g) submit an Annual Firm Report;
- (h) if the law firm operates a trust account, file a Trust Account Report, as required by Regulation 4.11 and, if required by the Executive Director, an accountant's report on the trust account report;
- (i) provide written notice to the Executive Director of the closure of a general trust account;
- (j) if the law firm or an office of the law firm with more than one office in the Province is a principal, designate a lawyer, who individually qualifies to be a principal, to be the supervising lawyer responsible for the education plan and individual articling plans and to oversee the educational experience of articulated clerks pursuant to Part 3 of these Regulations; and
- (k) maintain foundation documents on behalf of lawyers practising real estate in the law firm pursuant to Part 8 of these Regulations, unless the obligation is transferred pursuant to that Part.

### **List of obligations – sole practitioner**

#### **4.6.2** A sole practitioner must:

- (a) keep the Society informed of their current mailing address, civic address, telephone number and email address;
- (b) have a management system for ethical legal practice;
- (c) provide to the Society the self-assessment in the form and with the frequency prescribed by the Executive Director or these Regulations;
- (d) maintain a written succession plan in accordance with subregulations 4.6.4 through 4.6.6;
- (e) submit an Annual Firm Report;
- (f) if the sole practitioner operates a trust account, file a Trust Account Report, as required by Regulation 4.11 and, if required by the Executive Director, an accountant's report on the trust account report;
- (g) provide written notice to the Executive Director of the closure of a general trust account; and
- (h) maintain foundation documents pursuant to Part 8 of these Regulations, unless the obligation is transferred pursuant to that Part.

### **Succession Plan**

#### **4.6.3** A law firm or sole practitioner must

- (a) maintain a current succession plan for the practice including all lawyers in the firm;
- (b) annually review the succession plan; and
- (c) pursuant to Regulation 4.11, report to the Executive Director regarding the succession plan.

#### **4.6.4** A succession plan must contemplate the unique arrangements that will be necessary in the event of the cessation of the lawyer's practice for any reason, including

- (a) temporary disability or incapacity;
- (b) long term disability or incapacity; and
- (c) death of the lawyer.

#### **4.6.5** At a minimum, a succession plan must include information and adequate arrangements to allow for the handling of clients and management of the practice with regard to the following, where applicable:

- (a) open and closed files;
- (b) wills and wills indices;
- (c) foundation documents and other important records;
- (d) other valuable property;
- (e) passwords and the means to access computers, email, accounting and other electronic records;
- (f) trust accounts and trust funds;

- (g) other accounts related to the member's practice; and
- (g) any other arrangements necessary to carry on or wind up the lawyer's unique practice.

## **4.7 Designated Lawyer**

### **Appointment**

**4.7.1** Every law firm must appoint a Designated Lawyer.

### **Qualifications**

**4.7.2** For purposes of these Regulations, a Designated Lawyer is

- (a) a practicing lawyer; and
- (b) of sufficient authority within the law firm to fulfill the duties of the role.

### **Designated Lawyer's obligations**

**4.7.3** The Designated Lawyer:

- (a) must submit on behalf of the law firm the self-assessment tool as required by Regulation 4.9;
- (b) must use reasonable efforts to provide complete and accurate information when submitting the self-assessment, but by submitting the form is not personally responsible for the firm's obligations;
- (c) must complete the Trust Account Assessment pursuant to subregulation 4.10.2.1, if applicable;
- (d) will receive communications from the Society;
- (e) must ensure that the law firm maintains foundation documents as required by Part 8 of these Regulations;
- (f) will receive communications from the Association relating to claims; and
- (g) must submit the Annual Firm Report, including, if applicable, the Trust Account Report, as required by Regulation 4.11.

### **Appoint new Designated Lawyer**

**4.7.4** If the Designated Lawyer for a law firm of two or more lawyers:

- (a) has been charged pursuant to Part III of the Act;
- (b) has been suspended pursuant to Part III of the Act;
- (c) has any practice restrictions imposed by order of the Complaints Investigation Committee or otherwise under the Act or Regulations; or
- (d) becomes unable to fulfill their obligations under this Regulation for any other reason;

the law firm must appoint a new Designated Lawyer at the earliest opportunity and advise the Society of the appointment.

### **Communications**

**4.7.5** The Designated Lawyer will receive communications from the Society including:

- (a) a complaint against the law firm under Part 9 of these Regulations;
- (b) reports regarding an LRA Audit under Part 13 of these Regulations;
- (c) a copy of each complaint against a member of the Society associated with the law firm under Part 9 of these Regulations;
- (d) a copy of each determination or decision made pursuant to Part 9 of these Regulations or Part III of the Act relating to a member of the Society associated with the law firm;
- (e) information about a lawyer's failure to comply with the requirements for continuing professional development as reported in the Annual Lawyer Report filed pursuant to subregulation 4.3.1; and
- (f) a copy of other materials relating to the processes prescribed by Part III of the Act, if so requested by the Designated Lawyer, provided that the member of the Society was associated with the law firm at the time the matter which is the subject of the complaint took place.

### **Firm change**

**4.7.6** If a lawyer changes law firms after the matter which is the subject of a complaint took place, the Designated Lawyer of the original firm will receive a copy of any materials listed in subregulation 4.7.5 and the Designated

Lawyer of the lawyer's current law firm must be notified of the existence of the complaint and any other information that is not subject to lawyer-client privilege or confidentiality that the Executive Director determines is proper to convey.

#### **Other firm communications**

**4.7.7** The Designated Lawyer may, by notice in writing to the Executive Director, appoint a person associated with the law firm to receive communications or copies of communications from the Society and to deal with matters of an administrative nature.

### **4.8 Registration of Law Firms**

#### **Registration**

**4.8.1** The Executive Director must maintain within the records of the Society a list of all law firms, which will be considered to be registered law firms pursuant to section 24 of the Act.

#### **Purpose of registration**

**4.8.2** The purpose of registering a law firm is to:

- (a) assist the Society in its engagement with law firms, and
- (b) enable the law firm to effectively carry out their obligations as law firms under the Act and these Regulations.

#### **Confirmation of registration**

**4.8.3** Each law firm registered by the Executive Director pursuant to subregulation 4.8.1 will receive confirmation:

- (a) it has been so registered;
- (b) of the names of the lawyers associated with the firm;
- (c) of the name of the Designated Lawyer; and
- (d) it may correct the information provided by the Executive Director.

#### **Registration required**

**4.8.4** After December 31, 2017, a new law firm must be registered as a law firm by the Executive Director before it practises law and delivers legal services.

#### **Registration process**

**4.8.5** A new law firm must file a request for registration with the Executive Director in the prescribed form that must include:

- (a) the names of the lawyers and law corporations associated with the law firm;
- (b) the nature of the association between the lawyers and law corporations within the firm;
- (c) the name of the Designated Lawyer;
- (d) the names of any individuals who are not lawyers, who will assist in or deliver legal services through the law firm;
- (e) the mailing address, civic address, telephone number and email address for the law firm;
- (f) the electronic contact information, including email addresses, for all lawyers and law corporations associated with the firm; and
- (g) unless approval has been granted pursuant to subregulation 4.10.4, an undertaking from the proposed Designated Lawyer that the law firm will not hold money or property in trust until the law firm has received approval to operate a trust account.

#### **Prior to registration**

**4.8.6** If a new law firm begins to practice law and deliver legal services prior to being registered, the Executive Director will

- (a) require the law firm to provide the information required by subregulation 4.8.5; and
- (b) specify the timeframe within which the information is to be provided.

#### **Review of obligations**

**4.8.7** The Executive Director may meet with the Designated Lawyer or all lawyers associated with the new registered law firm to review:

- (a) the law firm's regulatory obligations;
- (b) the law firm's knowledge of and ability to comply with the regulatory requirements applicable to law firms;
- (c) the law firm's knowledge of the elements required for a management system for ethical legal practice;
- (d) the requirement to complete the self-assessment pursuant to subregulation 4.9.1 and the likely timing as it pertains to the law firm;
- (e) the resources available from the Society and otherwise to assist the law firm in its practice of law and delivery of legal services;
- (f) the role and obligations of the Designated Lawyer; and,
- (g) such other matters that the Executive Director determines are appropriate given the circumstances and plans for the new law firm.

#### **Sole practice - new**

**4.8.8** A lawyer who is opening a sole practice must notify the Executive Director before that lawyer begins to practise law and deliver legal services as a sole practitioner.

#### **Sole practice - review of obligations**

**4.8.9** Following the notification in subregulation 4.8.8, the Executive Director may meet with the sole practitioner to review:

- (a) the lawyer's regulatory obligations;
- (b) the lawyer's knowledge of and ability to comply with the regulatory requirements applicable to sole practitioners;
- (c) the lawyer's knowledge of the elements required for a management system for ethical legal practice;
- (d) the requirement to complete the self-assessment pursuant to subregulation 4.9.1 and the likely timing as it pertains to the sole practitioner;
- (e) the resources available from the Society and otherwise to assist the lawyer in the practice of law and delivery of legal services; and,
- (f) such other matters that the Executive Director determines are appropriate given the circumstances and plans for the new sole practice.

#### **Two or more law firms join**

**4.8.10** When two or more law firms join together to create a new law firm the provisions of subregulations 4.8.4 to 4.8.7 apply with any necessary changes.

#### **Law firm changes ownership**

**4.8.11** If there is a material change in ownership of a law firm, the provisions of subregulations 4.8.4 to 4.8.7 apply with any necessary changes, unless the Executive Director otherwise determines.

#### **Additional requirements**

**4.8.12** The requirements of this Regulation are in addition to the requirements for a lawyer or a group of lawyers to apply to become a law corporation under subregulation 7.4.4 or a limited liability partnership under subregulation 7.3.4.

### **4.9 Self-Assessment**

#### **Request to submit**

**4.9.1** Commencing January 2018, the Executive Director may request that a law firm or sole practitioner:

- (a) record the findings from their self-assessment for the prescribed reporting period; and
- (b) submit the completed self-assessment tool to the Executive Director by a specified date.

### **Purpose of self-assessment**

**4.9.2** The purpose of self-assessment is to assist:

- (a) law firms and sole practitioners in maintaining and enhancing their management system for ethical legal practice; and
- (b) the Society in its engagement with law firms and sole practitioners.

### **Tri-annual reporting**

**4.9.3** The regular reporting period for the self-assessment is once every three years.

### **Reporting outside the regular period**

**4.9.4** The Executive Director may, when it is in the public interest to do so, require a law firm or sole practitioner to complete the self-assessment outside of the regular reporting period.

### **Failure to submit**

**4.9.5** A failure to comply with subregulations 4.9.1 or 4.9.3 will not result in an investigation pursuant to subregulation 9.2.1.

### **Information obtained**

**4.9.6** If a self-assessment indicates that a law firm or sole practitioner does not have in place appropriate policies, practices, and systems to support the elements for a management system for ethical legal practice, such reporting will not result in an investigation pursuant to subregulation 9.2.1.

### **Revised deadline**

**4.9.7** If a self-assessment is not submitted by the date specified by the Executive Director, the Executive Director will set a revised deadline and assist the law firm in submitting the self-assessment.

## **4.10 Operating a Trust Account**

### **Approval to operate a trust account**

**4.10.1** After January 1, 2018, a practising lawyer or law firm that does not operate a general trust account, may not accept trust money or trust property without approval to operate a general trust account pursuant to subregulation 4.10.4.

### **Application**

**4.10.2** A lawyer or law firm may apply to the Executive Director to operate a general trust account.

### **Trust account assessment**

**4.10.2.1** If a lawyer or law firm applying to open a general trust account has not previously had such an account or has not operated a trust account in the last three years, the lawyer or in the case of a law firm, all practicing lawyers who will have signing authority on the trust account, must successfully complete a Trust Account Assessment, prescribed by the Executive Director, that demonstrates familiarity with Part 10 of the Regulations and an ability to operate a general trust account and maintain proper accounting records in compliance with those Regulations.

### **Requirements for operating a trust account**

**4.10.3** Prior to operating a general trust account, a lawyer or law firm through its Designated Lawyer, must:

- (a) successfully complete a Trust Account Assessment as required by subregulation 4.10.2.1;
- (b) provide a certificate in the prescribed form confirming that the lawyer or law firm has in place a trust accounting system that will enable compliance with Part 10 of the Regulations;
- (c) confirm that appropriate arrangements, in writing, have been made with the financial institution to comply with the requirements of Section 30 of the Act;
- (d) in the case of a lawyer, hold a practicing certificate; and
- (e) meet such other requirements as may be prescribed by Council.

### **Executive Director must approve**

**4.10.4** When the requirements of subregulation 4.10.3 have been met, the Executive Director must approve a practicing lawyer or law firm to operate a general trust account.

### **Signing authority**

**4.10.4.1** After January 1, 2019, any practicing lawyer who has not previously operated a trust account or has not operated a trust account in the last three years, must successfully complete the trust account assessment before they are permitted to be added as a signatory to a trust account.

**4.10.4.2** Any employee of the practicing lawyer or law firm who has signing authority or other direct involvement in the operation of a trust account should successfully complete the trust account assessment.

### **Trust account closure**

**4.10.5** Upon the closing of a general trust account the practicing lawyer or law firm must immediately give written notice to the Executive Director and provide

- (a) confirmation that the account has been closed; and
- (b) if applicable, confirmation that the Law Foundation has been advised of the trust account closure.

### **Final trust account report**

**4.10.6** The practicing lawyer or law firm must file a final trust account report in compliance with subregulations 4.11.2 and 4.11.4, unless the Executive Director waives the requirement.

**4.10.7** The Executive Director will provide a practising lawyer or law firm with assistance in closing a trust account on receipt of a written request accompanied by the prescribed fee.

**4.10.8** The Executive Director may, in exceptional circumstances, waive the fee required by subregulation 4.10.7.

## **4.11 Annual Reporting**

### **Annual firm report**

**4.11.1** An annual firm report must be filed by March 31, for the 12 months ending December 31 each year unless another time is prescribed by the Executive Director, that confirms:

- (a) the names of all lawyers associated with the law firm, and the nature of their association;
- (b) the names of individuals who are not lawyers, who assist in or deliver legal services through the law firm and the nature of the legal services they provide;
- (c) the location and particulars of all law firm bank accounts and trust accounts operated by the law firm;
- (d) the names and responsibilities of employees of the law firm, or others, who maintain the accounting records of the firm;
- (e) all lawyers associated with the law firm have written succession plans and the location of those succession plans;
- (f) all lawyers associated with the law firm are in compliance with the obligations to create and adhere to a continuing professional development plan pursuant to subregulation 8.3.5 to 8.3.11; and
- (g) such other information as may be required by Council.

### **Trust Account Report**

**4.11.2** A trust account report in the prescribed form must be filed with the Executive Director by March 31 of each year by all practicing lawyers or law firms operating one or more general trust account.

### **Content of Trust Account Report**

**4.11.3** The trust account report must confirm the books, records and accounts and related files of the practicing lawyer or law firm have been maintained in respect of the obligations prescribed by Parts 4 and 10 of the Regulations.

### **Accountant's Report on the Trust Account**

**4.11.4** Subject to subregulation 4.11.8(b) an accountant's report on the trust account, in the prescribed form, must be filed with the Executive Director by March 31 each year.

### **Report by a public accountant**

**4.11.5** The accountant's report must be:

- (a) prepared by a public accountant licensed under the *Public Accountant's Act*;
- (b) confirm that the review required to be performed by the public accountant has been done in accordance with the prescribed standards; and
- (c) verify the accuracy of information contained in the part of the trust account report prepared by the practicing lawyer or law firm.

### **Additional information or reports**

**4.11.6** When a trust account report indicates that the practicing lawyer or law firm has not maintained books, records and accounts as required by Part 10 of the Regulations, the Executive Director may:

- (a) require the practicing lawyer or Designated Lawyer to provide additional information;
- (b) require the practicing lawyer or Designated Lawyer to file documents with the Society to demonstrate compliance with Part 10 of the Regulations;
- (c) require the practicing lawyer or Designated Lawyer to file additional trust account reports at times or intervals specified by the Executive Director; and
- (d) take such other action as is necessary to ensure compliance by the practicing lawyer or law firm with Part 10 of the Regulations.

### **Additional information from accountant**

**4.11.7** In order to assist the Society in fulfilling its purpose, the Executive Director may request the public accountant who prepared the accountant's report to provide additional information about the books, records and accounts of the practicing lawyer or law firm.

### **Extension or waiver**

**4.11.8** The Executive Director may:

- (a) extend the date by which a report is due pursuant to subregulation 4.11.1 or 4.11.2; or
- (b) waive the requirement to file the accountant's report;

if, in the opinion of the Executive Director, it is appropriate to do so.

### **Fee for extension**

**4.11.9** If, pursuant to subregulation 4.11.8(a), an extension of the date by which a report is due is granted, the lawyer or law firm must

- (a) file the required report by the new date; and
- (b) pay the fee prescribed by Schedule A.

### **Fee for Waiver**

**4.11.10** A request for a waiver pursuant to subregulation 4.11.8(b) must be accompanied by the fee prescribed by Schedule A.

**4.11.11** The Executive Director may, in exceptional circumstances, waive the fee required by subregulations 4.11.9 or 4.11.10.

## 4.12 Cash Transactions

### Definitions

#### 4.12.1 In Regulation 4.12

- (a) “cash” means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the Bank of Canada Act that are intended for circulation in Canada and coins or bank notes of countries other than Canada;
- (b) “disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;
- (c) “expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;
- (d) “financial institution” means
- (i) a bank that is regulated by the Bank Act,
  - (ii) an authorized foreign bank within the meaning of section 2 of the Bank Act in respect of its business in Canada,
  - (iii) cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
  - (iv) an association that is regulated by the Cooperative Credit Associations Act (Canada), (v) a financial services cooperative,
  - (vi) a credit union central,
  - (vii) a company that is regulated by the Trust and Loan Companies Act (Canada),
  - (viii) a trust company or loan company that is regulated by a provincial or territorial Act,
  - (ix) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or
  - (x) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.
- (e) “financial services cooperative” means a financial services cooperative that is regulated by An Act respecting financial services cooperatives, CQLR, c. C-67.3, or An Act respecting the Mouvement Desjardins, S.Q. 2000, c.77, other than a caisse populaire.
- (f) “funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or right to or interest in them;
- (g) “professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;
- (h) “money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders.
- (i) “public body” means
- (i) a department or agent of Her Majesty in right of Canada or of a province or territory,
  - (ii) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada of any of them,
  - (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 *Municipal Government Act* or similar body incorporated under the law of another province or territory,
  - (iv) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act (Canada) or an agent of the organization,
  - (v) a body incorporated by or under 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.



**Limitation on cash**

**4.12.2** A lawyer must not receive or accept cash in an aggregate amount of greater than \$7,500 Canadian in respect of any one client matter.

**Foreign currency**

**4.12.3** For the purposes of this Regulation, when a lawyer receives or accepts cash in a foreign currency the lawyer will be deemed to have received or accepted the cash converted into Canadian dollars at

- (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the lawyer receives or accepts the cash, or
- (b) if the day on which the lawyer receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the lawyer receives or accepts the cash.

**Application**

**4.12.4** Subregulation 4.12.2 applies when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities:

- (a) receiving or paying funds;
- (b) purchasing or selling securities, real properties or business assets or entities;
- (c) transferring funds by any means.

**Exception**

**4.12.5** Despite subregulation 4.12.4, subregulation 4.12.2 does not apply when the lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer's firm

- (a) from a financial institution or public body,
- (b) from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
- (c) to pay a fine, penalty, or bail, or
- (d) for professional fees, disbursements, or expenses, provided that any refund out of such receipts is also made in cash.

**4.12.6** Every lawyer, in addition to existing financial recordkeeping requirements to record all money and other property received and disbursed in connection with the lawyer's practice, shall maintain

- (a) a book of original entry identifying the method by which money is received in trust for a client, and
- (b) a book of original entry showing the method by which money, other than money received in trust for a client, is received.

**4.12.7** Every lawyer who receives cash for a client shall maintain, in addition to existing financial recordkeeping requirements, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received, any file number in respect of which cash is received and containing the signature authorized by the lawyer who receives cash and of the person from whom cash is received.

**4.12.8** The financial records described in subregulations 4.12.6 and 4.12.7 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

**4.12.9** The financial records described in subregulations 4.12.6 and 4.12.7 shall be entered and posted so as to be current at all times.

**4.12.10** A lawyer shall keep the financial records described in subregulations 4.12.6 and 4.12.7 for at least the six year period immediately preceding the lawyer's most recent fiscal year end.

## 4.13 Client Identification

### Definitions

#### 4.13.1 In Regulation 4.13

- (a) “credit union central” means a central cooperative credit society, as defined in section 2 of the *Cooperative Credit Associations Act*, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial or territorial Act other than one enacted by the legislature of Quebec.
- (b) “disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;
- (c) “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.
- (d) “expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;
- (e) “financial institution” means
- (i) a bank that is regulated by the *Bank Act*,
  - (ii) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,
  - (iii) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
  - (iv) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
  - (v) a financial services cooperative,
  - (vi) a credit union central,
  - (vii) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
  - (viii) a trust company or loan company that is regulated by a provincial or territorial Act;
  - (ix) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public; or
  - (x) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.
- (f) “financial services cooperative” means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire.
- (g) “funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or **right to or** interest in them;
- (h) “lawyer” means, in the Province of Quebec, an advocate or a notary and, in any other province or territory, a barrister or solicitor;
- (i) “organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;
- (j) “professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;
- (k) “public body” means
- (i) a department or agent of Her Majesty in right of Canada or of a province or territory,
  - (ii) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada of any of them,
  - (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 *Municipal Act* (Ontario) [or equivalent legislation] or similar body incorporated under the law of another province or territory,

- (iv) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,
  - (v) a body incorporated by or under 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.
- (l) "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 designated under section 262 of the *Income Tax Act* (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.
- (m) "securities dealer" means persons and entities authorized under provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than persons who act exclusively on behalf of such an authorized person or entity.

### **Requirement to Identify Client**

**4.13.2** Subject to subregulation 4.13.4, a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule in keeping with the lawyer's obligation to know their client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

**4.13.3** A lawyer's responsibilities under this Rule may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.

**4.13.4** Subregulations 4.13.5 through 4.13.31 do not apply to

- (a) a lawyer when he or she provides legal services or engages in or gives instructions in respect of any of the activities described in subregulation 4.13.6 on behalf of his or her employer;
- (b) 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 subregulations 4.13.5 through 4.13.31, or,
- (c) 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.

**4.13.5** A lawyer who is retained by a client as described in subregulation 4.13.2 must obtain and record, with the applicable date, the following information:

- (a) for individuals:
  - (i) the client's full name,
  - (ii) the client's home address and home telephone number,
  - (iii) the client's occupation or occupations, and
  - (iv) the address and telephone number of the client's place of work or employment, where applicable;
- (b) for organizations:
  - (i) the client's full name, business address and business telephone number,
  - (ii) 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,
  - (iii) 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

- (iv) the name and position of and contact information for the individual who is authorized to provide and gives instructions to the lawyer with respect to the matter for which the lawyer is retained,
- (c) if the client is acting for or representing a third party, information about the third party as set out paragraphs (a) or (b) as applicable.

#### **When Verification of Client Identity Required**

**4.13.6** Subject to subregulation 4.13.7, subregulation 4.13.8 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.

#### **Exemptions re: certain funds**

**4.13.7** Subregulation 4.13.8 does not apply

- (a) where the client is a financial institution, public body or reporting issuer,
- (b) 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 to pay a fine, penalty, or bail; or
  - (v) paid or received for professional fees, disbursements, or expenses;
- (c) to an electronic funds transfer.

#### **Requirement to Verify Client Identity**

**4.13.8** When a lawyer is engaged in or gives instructions in respect of any of the activities described in subregulation 4.13.6 the lawyer must

- (a) obtain from the client and record, with the applicable date, information about the source of funds described in subregulation 4.13.6, and
- (b) verify the identity of the client, including the individual(s) described in subregulation 4.13.5(b)(iv), and, where appropriate, the third party using the documents or information described in subregulation 4.13.13.

#### **Use of Agent**

**4.13.9** A lawyer may rely on an agent to obtain the information described in 4.13.13 to verify the identity of an individual client, third party or individual described in 4.13.5(b)(iv) provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in 4.13.11.

**4.13.10** Notwithstanding subregulation 4.13.9, where an individual client, third party or individual described in 4.13.5(b)(iv) is not physically present in Canada, a lawyer must rely on an agent to obtain the information described in subregulation 4.13.11 to verify the person's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subregulation 4.13.11.

#### **Agreement for Use of Agent**

**4.13.11** A lawyer who enters into an agreement or arrangement referred to in subregulations 4.13.9 or 4.13.10 must:

- (a) obtain from the agent the information obtained by the agent under that agreement or arrangement; and
- (b) satisfy themselves that the information is valid and current and that the agent verified identity in accordance with subregulation 4.13.13.

**4.13.12** A lawyer may rely on the agent's previous verification of an individual client, third party or an individual described in subregulation 4.13.5(b)(iv) if the agent was, at the time they verified the identity,

- (a) acting in their own capacity, whether or not they were required to verify identity under this Regulation, or

(b) acting as an agent under an agreement or arrangement in writing, entered into with another lawyer who is required to verify identity under this Regulation, for the purpose of verifying identity under subregulation 4.13.13.

### **Documents and information for verification**

**4.13.13** For the purposes of subregulation 4.13.8(b), the client's identity must be verified by referring to the following documents, which must be valid, original and current, or the following information, which must be valid and current, and which must not include an electronic image of a document:

- (a) if the client or third party is an individual,
  - (i) an identification document containing the individual's name and photograph that is issued by the federal government, a provincial or territorial government or a foreign government, other than a municipal government, that is used in the presence of the individual to verify that the name and photograph are those of the individual;
  - (ii) information that is in the individual's credit file if that file is located in Canada and has been in existence for at least three years that is used to verify that the name, address and date of birth in the credit file are those of the individual;
  - (iii) any two of the following with respect to the individual:
    - (A) Information from a reliable source that contains the individual's name and address that is used to verify that the name and address are of those of the individual;
    - (B) Information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual, or
    - (C) Information that contains the individual's name and confirms that they have a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information.
- (b) For the purposes of subregulation 4.13.13(a)(iii)(A) to (C), the information referred to must be from different sources, and the individual, lawyer and agent cannot be a source.
- (c) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of one of their parents or their guardian.
- (d) To verify the identity of an individual who is at least 12 years of age but not more than 15 years of age, the lawyer may refer to information under subregulation 4.13.13(a)(iii)(A) that contains the name and address of one of the individual's parents or their guardian and verifying that the address is that of the individual.
- (e) 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
- (f) 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.

### **Requirement to Identify Directors, Shareholders and Owners**

**4.13.14** When a lawyer is engaged in or gives instructions in respect of any of the activities in subregulation 4.13.6 for a client or third party that is an organization referred to in subregulation 4.13.13(e) or (f), the lawyer must:

- (a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer; and
- (b) make reasonable efforts to obtain, and if obtained, record with the applicable date,

- (i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization,
- (ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, and
- (iii) in all cases, information establishing the ownership, control and structure of the organization.

**4.13.15** A lawyer must take reasonable measures to confirm the accuracy of the information obtained under subregulation 4.13.14

**4.13.16** A lawyer must keep a record, with the applicable date(s), that sets out the information obtained and the measures taken to confirm the accuracy of that information.

**4.13.17** If a lawyer is not able to obtain the information referred to in subregulation 4.13.14 or to confirm the accuracy of that information in accordance with subregulation 4.13.15, the lawyer must

- (a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization;
- (b) determine whether
  - (i) the client's information in respect of their activities,
  - (ii) the client's information in respect of the source of the funds described in subregulation 4.13.6, and
  - (iii) the client's instructions in respect of the transaction are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule;
- (c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and
- (d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).

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

**4.13.18** A lawyer must verify the identity of

- (a) a client who is an individual, and
- (b) the individual(s) authorized to provide and giving 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 subregulation 4.13.6.

**4.13.19** Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

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

**4.13.20** A lawyer must verify the identity of a client that is an organization upon engaging in or giving instructions in respect of any of the activities described in subregulation 4.13.6, but in any event no later than 30 days thereafter.

**4.13.21** Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subregulation 4.13.20, the lawyer is not required to subsequently verify that identity or obtain that information, unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

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

**4.13.22** A lawyer must verify the identity of a client that is an organization upon engaging in or giving instructions in respect of any of the activities described in subregulation 4.13.6, but in any event no later than 30 days thereafter.

**4.13.23** Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subregulation 4.13.20, the lawyer is not required to subsequently verify that identity or obtain that information, unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

### **Record keeping and retention**

**4.13.24** A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of subregulation 4.13.8.

**4.13.25** The documents referred to in subregulation 4.13.24 may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

**4.13.26** A lawyer must retain a record of the information, with the applicable date, and any documents obtained for the purposes of subregulation 4.13.5, 4.13.14 and 4.13.31(b) and copies of all documents received for the purposes of subregulation 4.13.8 for the longer of

- (a) 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
- (b) a period of at least six years following completion of the work for which the lawyer was retained.

### **Application**

**4.13.27** Subregulations 4.13.2 through 4.13.26 do not apply to matters in respect of which a lawyer was retained before this Regulation 4.13 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**

**4.13.28** If in the course of obtaining the information and taking the steps required in subregulation 4.13.5 and subregulations 4.13.8, 4.13.14 and 4.13.17, 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.

**4.13.29** Subsection 4.13.28 section applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Regulation 4.13 comes into force.

### **Monitoring**

**4.13.30** During a retainer with a client in which the lawyer is engaged in or gives instructions in respect of any of the activities described in subregulation 4.13.6, the lawyer must monitor on a periodic basis the professional business relationship with the client for the purposes of determining whether

- (a) the client's information in respect of their activities,
- (b) the client's information in respect of the source of the funds described in section 4, and
- (c) transactions

are consistent with the purpose of the retainer and the information obtained about the client as required by this Regulation.

**4.13.31** In addition to the requirements set out in subregulation 4.13.30, the lawyer must

- (a) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and
- (b) keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of subregulation 4.13.30.

### **Duty to withdraw**

**4.13.32** If while retained by a client, including when taking the steps required in subregulations 4.13.30 and 4.13.31, 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.

## **Application**

**4.13.33** Subregulation 4.13.32 applies to all matters for which a lawyer was retained before this Regulation 4.13 comes into force and to all matters for which he or she is retained after that time.

## **4.14 Member records**

**4.14.1** The Executive Director must maintain a record for each member of the Society that specifies:

- (a) current contact information;
- (b) the date the member became a member;
- (c) all changes in category of membership and the effective dates;
- (d) the dates during which a member was suspended and the effective date of reinstatement;
- (e) the date on which the member ceased to be a member of the Society;
- (f) the dates of all activities and actions regarding the member pursuant to sections 35 - 54 of the Act, together with a summary of the activity;
- (g) if the member filed a trust account report, the information provided in the trust account report;
- (h) if the member did not file a trust account report, confirmation that the member did not hold trust funds or property;
- (i) the information provided in the annual member report;
- (j) the nature of any claims made against the Fund, and the determination made on the claim; and
- (k) location of files and other property of the practice for members who have ceased to engage in the practice of law.

## **Law firm records**

**4.14.2** The Executive Director must maintain a record for each law firm that specifies:

- (a) the names of all members of the Society associated with the firm and the nature of their association;
- (b) the location and particulars of all trust accounts and firm bank accounts maintained by the firm;
- (c) information regarding the maintenance of the books, records and accounts of the firm, including the names, designations, and responsibilities of employees of the firm;
- (d) information about the demographics of the members of the Society at the firm and other employees of the firm that will assist the Society in addressing equity issues in the legal profession; and
- (e) the name of the lawyer designated to fulfill certain responsibilities under Regulation 4.7.

## **Register of law corporations**

**4.14.3** The Executive Director must 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;
- (d) any other particulars specified by Council or these Regulations, and
- (e) any other records with respect to the law corporations as specified by Council.

## **Register of LLPs**

**4.14.4** The Executive director must maintain a register of LLPs containing the following information with respect to each LLP:

- (a) the name of the LLP;
- (b) the registered office of the LLP;
- (c) the names of the members of the Society who are partners in the LLP;
- (d) the date of initial approval by the Society of the application of the LLP for registration under Part II of the *Partnership Act* (Nova Scotia);
- (e) the number on the register attributed to the LLP;
- (f) any other particulars specified by Council or these Regulations, and
- (g) any other records with respect to the LLP as specified by Council.



**Public information**

**4.14.5** The information maintained pursuant to subregulation 4.14.1(a)-(e) and (k) will be considered to be public information.

**Release of statistical information**

**4.14.6** In addition to information otherwise authorized by the Act or the Regulations to be released, the Society may provide to the public statistical information about the membership of the Society.

**Extent of information**

**4.14.7** The records maintained under subregulation 4.14.1 will be maintained for former members to the extent that the information is available.

**Register of Articled Clerks**

**4.14.8** By maintaining the information required in subregulation 4.14.1, the Executive Director fulfils the obligation to maintain a Register of Articled Clerks so long as at any time, the Executive Director can produce a current list of articled clerks with particulars of each articled clerk.

**Format of records**

**4.14.9** The records required under this subregulation may be kept in paper, or in electronic or digital medium so long as the records are preserved in a viable format that can be recovered and reproduced from time to time as required.

**Sharing information with foreign jurisdictions**

**4.14.10** The Society may share information on members with the law society of a foreign jurisdiction if:

- (a) the member consents; and
- (b) there is information which, in the opinion of the Executive Director, indicates that the member in that foreign jurisdiction acted in a manner which is contrary to the Regulations of the Society or the Law Society of the foreign jurisdiction and the disclosure of the information is in the public interest.

**Agreements regarding information**

**4.14.11** The Society may enter into agreements to provide information about members:

- (a) to the Province of Nova Scotia, pursuant to the requirements of the regulations passed under the *Land Registration Act*;
- (b) to the Federation of Law Societies of Canada for purposes of maintaining a national database of lawyers in Canada which reflects their status and eligibility to practise in another jurisdiction in Canada under the *National Mobility Agreement* of the Federation of Law Societies.

**4.14.12** No one may use or disclose information obtained from the database established by the Federation of Law Societies of Canada except for a purpose related to enforcement of the Act and these Regulations.

## **PART 5**

### **MEMBERSHIP CATEGORIES, CHANGES OF CATEGORY, OBLIGATIONS, SUSPENSIONS**

#### **5.1 Interpretation**

In this part, “Committee” means the Credentials Committee.

#### **5.2 Exceptional circumstances**

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

#### **5.3 Categories of Membership**

**5.3.1** The following are the categories of members of the Society:

- (a) articled clerk
- (b) practising lawyer,
- (c) non-practising member,
- (d) retired member,
- (e) life member,
- (f) honorary member, and
- (g) Canadian Legal Advisor

#### **Obtaining Membership Category**

**5.3.2** A person becomes an articled clerk when an application to be enrolled as an articled clerk under Part 3 of these regulations is approved and becomes effective.

#### **Becoming a Practising Lawyer**

**5.3.3** A member becomes a practising lawyer when

- (a) after completion of the period of enrollment as an articled clerk, he or she is called to the Bar in accordance with Part 3 of these regulations and is issued a practising certificate by the Executive Director;
- (b) he or she is called to the Bar following transfer as a lawyer from a foreign jurisdiction in accordance with Part 6 of these regulations, and is issued a practising certificate by the Executive Director;
- (c) pursuant to this part of the regulations, he or she is issued a practising certificate by the Executive Director when a person
  - i) changes category of membership,
  - ii) is reinstated after appointment to a judicial office,
  - iii) is readmitted after resignation, or
  - iv) is readmitted after disbarment.

#### **Effective Date**

**5.3.4.1** A member becomes a non-practising member, a retired member or a life member when, pursuant to this part of the Regulations, an application to change category of membership is approved and becomes effective.

**5.3.4.2** A member becomes a Canadian Legal Advisor when he or she is called to the Bar and is issued a Canadian Legal Advisor certificate by the Executive Director.

#### **5.4 Reinstatement of Former Judges**

**5.4.1** 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.

### **Approval by Executive Director**

**5.4.2** An application under this subregulation may be approved by the Executive Director.

### **Additional Information**

**5.4.3** The Executive Director may require the applicant to file such additional information as the Executive Director considers appropriate.

### **Approval of Reinstatement to Membership**

**5.4.4** The Executive Director may approve the reinstatement to membership, with or without terms, and stipulate the effective date of reinstatement.

**5.4.5** In the event that the approval is with terms the Executive Director shall provide written reasons for those terms and shall inform the applicant of the internal review process.

### **Effective Date**

**5.4.5** A change in category of membership pursuant to this subregulation is effective on the date set by the Executive Director or the Committee.

## **5.5 Change of Member Category to Non-practising, Retired or Life Member**

**5.5.1** A practising lawyer may apply to become a non-practising member, a retired member or a life member.

### **Content of Application**

**5.5.2** An application under this subregulation 5.5.1, accompanied by the prescribed fee, must be in the prescribed form and must provide the following:

- (a) contact information;
  - (b) professional history;
  - (c) final trust account report;
  - (d) confirmation that
    - (i) all clients' matters have been completed; 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 practising lawyer;
- and, if applicable, that
- (iii) all foundation documents required to be kept pursuant to Part 8 of the Regulations have been transferred in accordance with that part;
  - (iv) all money or other property held in trust has been accounted for and either paid over to the person entitled to receive it or has been transferred to another practising lawyer for the benefit of the person or persons entitled to receive it;
  - (v) the lawyer does not hold money or other property in trust for any person;
  - (vi) the trust account is closed; and
  - (vii) 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;
- (e) the location of the files from the lawyer's practice; and
  - (f) an undertaking not to engage in the practice of law unless reinstated as a practising lawyer.

**5.5.3** Subject to subregulations 5.5.4 and 5.5.5, the application will not be approved if any requirements of subregulation 5.5.2 have not been met.

### **Trust Account Report Form**

**5.5.4** When the practising lawyer has held money or other valuable property in trust at any time in the 12 months immediately preceding this application,

- (a) the lawyer must confirm that any trust activity will be reported by the lawyer's firm in the firm's trust account report; or
- (b) the application must be accompanied by a final trust account report and an account's report on the trust account report confirming 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 practising lawyer for the benefit of the person or persons entitled.

**5.5.5** The Executive Director may waive the requirement to file a final trust account report pursuant to subregulation 5.5.4(b) if

- (a) a written request for a waiver is received with the application; and
- (b) the lawyer provides confirmation from the financial institution that the account has a zero balance.

#### **Approval by Executive Director**

**5.5.6** An application under this Regulation may be approved by the Executive Director unless it must be referred to the Committee under subregulation 5.5.7.

#### **Referral to Committee**

**5.5.7** If the facts disclosed in the application or otherwise known to the Society raise public interest issues which require, in the opinion of the Executive Director, consideration by the Committee, the Executive Director must forward the application to the Committee.

#### **Additional Information**

**5.5.8** The Committee may require the applicant to file such additional information as it considers appropriate.

#### **Review of Information by Committee**

**5.5.9** The Committee must consider the application and review all information provided to it related to the application.

#### **Approval by Committee**

**5.5.10** When the Committee 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.

#### **Notification**

**5.5.11** When an application under this Regulation has been approved, the Executive Director will

- (a) notify the lawyer 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.

**5.5.12** The Executive Director may, in exceptional circumstances, waive the fee required by subregulation 5.5.2.

### **5.6 Change of Member Category Non-Practising to Practising**

**5.6.1** A non-practising member, a retired member or a life member may apply to resume practice.

### **Content of Application**

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

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

### **Decision of the Executive Director**

**5.6.3** The Executive Director may, where it is in the public interest to do so:

- (a) approve the application, with or without terms, and stipulate the effective date;
- (b) deny the application for reasons other than good character or fitness;
- (c) obtain any additional information from the applicant or any other person regarding the good character and fitness of the applicant;
- (d) where there is any issue regarding the good character or fitness of an applicant refer the application to the Committee;

**5.6.4** In the event that the approval is with terms or the application is denied pursuant to subregulation 5.6.3(b), the Executive Director shall provide the applicant with a written decision with reasons and shall inform the applicant of the internal review process

### **Terms of approval**

**5.6.5** The Executive Director may approve an application subject to the applicant:

- (a) satisfactorily completing a period of service with a practising lawyer, in accordance with an education plan approved by the Executive Director;
- (b) successfully completing all or a portion of the Bar Admission Course;
- (c) satisfying the Executive Director of the applicant's fitness or competence for resumption of practice, or
- (d) completing such other requirements as may be required by the Executive Director.

### **Decision of the Committee**

**5.6.6** If an application is referred to the Committee pursuant to subregulation 5.6.3(d), the Committee shall consider the application and all the information provided by the Executive Director and may:

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

**5.6.7** In the event that the approval is with terms or the application is denied, the Committee shall provide the applicant with a written decision with reasons and shall inform the applicant of their right to appeal to the Credentials Appeal Panel.

### **Status while in Practising Lawyer's office**

**5.6.8** During the period of service with a practising lawyer, required pursuant to subregulations 5.6.5(a) or 5.6.6(b), the applicant shall be considered to be a practising lawyer and shall be required to pay the fees of a practising lawyer, pursuant to regulation 4.7, for the period of service required by the Executive Director or the Committee.

## **Notification**

- 5.6.9** When an application under this regulation has been approved, the Executive Director 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 of membership and the effective date.

**5.6.10** The Executive Director may, in exceptional circumstances, waive the fee required by subregulation 5.6.2.

## **5.7 Change of Category: Non-practising to Retired or Life member**

**5.7.1** A non-practising member may apply to become a retired member or a life member and a retired member may apply to become a life member.

### **Application in prescribed Form**

- 5.7.2** An application under this regulation shall be in writing and shall provide the following:
- (a) the contact information, and
  - (b) the reasons for applying to change category.

### **Approval by Executive Director**

**5.7.3** The Executive Director may approve an application under this regulation unless the Executive Director is required to refer the application to the Committee under subregulation 5.7.4.

### **Referral to the Committee**

**5.7.4** If the facts disclosed in the application or otherwise known to the Society raise public interest issues which require, in the opinion of the Executive Director, consideration by the Committee, the Executive Director shall forward to application to the Committee.

### **Approval by Committee**

**5.7.5** When the Committee 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.

### **Effective Date**

**5.7.6** A change of category of membership pursuant to this regulation is effective on the date set by the Executive Director or the Committee.

## **Notification**

- 5.7.7** When the application under this regulation has been approved, the Executive Director shall
- (a) notify the member 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.

## **5.8 Application to Resign**

**5.8.1** A practising lawyer or a Canadian Legal Advisor may apply to Council to resign.

### **Content of Application**

- 5.8.2** An application under this Regulation must be in the prescribed form and must provide the following
- (a) contact information;
  - (b) professional history;
  - (c) final trust account report;
  - (d) confirmation that
    - (i) all clients' matters have been completed, 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 practising lawyer or, where applicable, a Canadian Legal Advisor,
- and, if applicable, that
- (iii) all foundation documents required to be kept pursuant to Part 8 of the Regulations have been transferred in accordance with that part,
  - (iv) all money or other property held in trust has been accounted for and either paid over to the person entitled to receive it or has been transferred to another practising lawyer or, where applicable, a Canadian Legal Advisor for the benefit of the person or persons entitled to receive it;
  - (v) the lawyer does not hold money or other property in trust for any person;
  - (vi) the trust account is closed;
- (e) the reason for applying to resign;
  - (f) that 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; and
  - (g) the lawyer's undertaking that following approval of the resignation by Council that the lawyer will not engage in the practice of law.

**5.8.3** Subject to subregulations 5.8.4 and 5.8.5, the application will not be approved if any requirements of subregulation 5.5.2 have not been met.

#### **Trust Account Report Form**

**5.8.4** When the lawyer has held money or other valuable property in trust at any time in the 12 months immediately preceding this application,

- (a) the lawyer must confirm that any trust activity will be reported by the lawyer's firm in the firm's trust account report,
- (b) the application must be accompanied by a final trust account report and an account's report on the trust account report confirming that all money or other property held in trust has been accounted for and
  - (i) either paid over to the person entitled to it, or
  - (ii) transferred to another practising lawyer or, where applicable, a Canadian Legal Advisor for the benefit of the person or persons entitled to it.

**5.8.5** The Executive Director may waive the requirement to file a final trust account report pursuant to subregulation 5.8.4(b) if

- (a) a written request for a waiver is received with the application; and
- (b) the lawyer provides confirmation from the financial institution that the account has a zero balance.

#### **Referral by Executive Director**

**5.8.6** When the Executive Director receives an application to resign pursuant to subregulation 5.8.1, the Executive Director may

- (a) refer the application to Council with a recommendation that it be approved; or
- (b) prior to the application being considered by Council, when the facts disclosed by the application or otherwise known to the Society raise public interest issues, which, in the opinion of the Executive Director, require consideration by the Committee, refer the application to the Committee for consideration and recommendation to Council.

#### **Additional Information**

**5.8.7** The Executive Director or the Committee may require the member to file additional information to allow for a determination if the application is consistent with the public interest.

### **Report Respecting Complaints**

- 5.8.8** If the application is referred to the Committee, the Executive Director must advise the Committee
- (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 Association; and
  - (c) such other information as may be relevant to allow for a recommendation by the Committee on whether or not the application is consistent with the public interest.

### **Consideration by Council**

**5.8.9** Upon receipt by Council of a written recommendation from the Executive Director or the Committee, when it is 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.

### **Authority of Discipline Committee Unaffected**

**5.8.10** Council must not consider an application under this Regulation if there any ongoing procedures under Part III of the Act unless the Complaints Investigation Committee consents to the resignation.

### **Notification**

- 5.8.11** When the application under this Regulation has been approved, the Executive Director will:
- (a) notify the lawyer 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 resignation and the effective date.

## **5.9 Other Resignations**

**5.9.1** A non-practising member, a retired member or a life member may apply to Council to resign.

### **Content of Application**

- 5.9.2** An application under this regulation shall be in writing and shall provide the following:
- (a) the contact information, and
  - (b) the reasons for applying to resign.

### **Report to Council**

- 5.9.3** When the Executive Director receives an application to resign pursuant to subregulation 5.9.1, the Executive Director may
- (a) refer the application to Council with a recommendation that it be approved, or
  - (b) prior to the application being considered by Council, when the facts disclosed by the application or otherwise known to the Society raise public interest issues which, in the opinion of the Executive Director, require consideration by the committee, refer the application to the Committee for consideration and recommendation to Council.

### **Additional Information**

**5.9.4** The Executive Director or the Committee may require the member to file additional information to allow for a determination if the application is consistent with the public interest.

### **Recommendation to Council**

**5.9.5** Following consideration of additional information, the Committee shall make a recommendation to Council on whether it is consistent with the public interest to allow the member to resign.

### **Consideration by Council**

**5.9.6** Upon receipt by Council of a recommendation from the Executive Director or the Committee, when it is 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.



## **Notification**

- 5.9.7** When the application under this regulation has been approved, the Executive Director shall
- (a) notify the member 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 resignation and the effective date.

## **5.10 Application for Readmission**

**5.10.1** 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 may apply to be readmitted to membership in the Society.

### **Content of Application**

- 5.10.2** An application under this regulation 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 practise law,
  - (f) if the member is or has been a member of a law society in a foreign jurisdiction, certificates of standing from each jurisdiction,
  - (g) provide the Executive Director with a criminal record check in a manner prescribed by the Executive Director;
  - (h) such other information that may be required by the Executive Director.
- 5.10.3** If an applicant under this regulation was disbarred or permitted to resign by a Hearing Panel, the Executive Director shall
- (a) cause notice of the application to be published in a newspaper, or
  - (b) advise the members of the Society of the application, or
  - (c) invite submissions to the Society on the application.
  - (d) obtain any additional information from the applicant or any other person regarding the good character and fitness of the applicant;

### **Decision of the Executive Director**

- 5.10.4** The Executive Director may, where it is in the public interest to do so:
- (a) approve the application, with or without terms, and stipulate the effective date;
  - (b) deny the application for reasons other than good character or fitness;
  - (c) obtain any additional information from the applicant or any other person regarding the good character and fitness of the applicant;
  - (d) where Executive Director is required pursuant to subregulation 5.10.6, or if there is any issue regarding the good character or fitness of an applicant, the Executive Director shall refer the application to the Committee;
- 5.10.5** In the event that the approval is with terms pursuant to subregulation 5.10.4(a) or the application is denied pursuant to subregulation 5.10.4(b), the Executive Director shall provide the applicant with a written decision with reasons and shall inform the applicant of the internal review process

### **Terms of approval**

- 5.10.6** The Executive Director may approve an application subject to the applicant:
- (a) satisfactorily completing a period of service with a practising lawyer, in accordance with an education plan approved by the Executive Director;
  - (b) successfully completing all or a portion of the Bar Admission Course;
  - (c) satisfying the Executive Director of the applicant's fitness or competence for resumption of practice, or

- (d) completing such other requirements as may be required by the Executive Director.

### **Referral to Committee**

#### **5.10.7 If:**

- (a) the applicant was disbarred or permitted to resign by a Hearing Panel, or
- (b) the facts disclosed in the application or otherwise known to the Society raise public interest issues which require, in the opinion of the Executive Director, consideration by the Committee, the Executive Director shall forward the application to the Committee.

### **Review of Application by Committee**

**5.10.8** If an application is referred to the Committee pursuant to subregulation 5.10.4(d) or subregulation 5.10.7, the Committee shall consider the application and the information provided by the Executive Director and may request that the Executive Director obtain new information.

### **Requirements for resumption of practice**

**5.10.9** Following consideration of the application, the Committee may

- (a) approve the application without conditions,
- (b) approve the application, subject to the applicant
  - i) successfully completing a period of service with a practising lawyer, approved by the Committee,
  - ii) successfully completing all or a portion of the Bar Admission Course,
  - iii) satisfying the Committee of the applicant's fitness for admission to membership and resumption of practice;
  - iv) completing such other requirements as may be required by the Committee.
- (c) deny the application.

**5.10.10** In the event that the approval is with terms or the application is denied, the Committee shall provide the applicant with a written decision with reasons and shall inform the applicant of their right to appeal to the Credentials Appeal Panel.

### **Status while with Practising Lawyer**

**5.10.11** During the period of service with a practising lawyer, required pursuant to subregulations 5.10.6(a) and 5.10.9(b)(i) the applicant will be considered to be a practising lawyer and will be required to pay the fees of a practising lawyer, pursuant to subregulation 4.2.1, for the period of service required by the Executive Director or the Committee.

### **Call to the Bar Required**

**5.10.12** Upon approval of an application under this regulation, the applicant must be called to the Bar.

## PART 6

### LAWYERS FROM OTHER JURISDICTIONS

#### 6.1 Interpretation

##### 6.1.1 In this part:

- (a) “**Barreau**” means the Barreau du Québec;
- (b) “**Chambre**” means the Chambre des notaires du Québec;
- (c) “**Committee**” means the Credentials Committee;
- (d) “**day**” means any calendar day or part of a calendar day in which a lawyer provides legal services;
- (e) “**discipline**” is defined in subregulation 1.1.1(i);
- (f) “**disciplinary records**” is defined in subregulation 1.1.1(j);
- (g) “**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;
- (h) “**governing body**” is a Canadian law society;
- (i) “**liability insurance**” means compulsory professional liability errors and omissions insurance required by a governing body;
- (j) “**mobility permit**” means a permit issued by a host governing body on application to a lawyer allowing the lawyer to provide legal services in the host jurisdiction on a temporary basis;
- (k) “**National Mobility Agreement**” means the 2013 National Mobility Agreement of the Federation of Law Societies of Canada, as amended, from time to time;
- (l) “**notary**” means a member of the Chambre des notaires du Québec;
- (m) “**practice of law**” is defined in section 2(ac) of the Act;
- (n) “**providing legal services**” means engaging in the practice of law physically in a Canadian jurisdiction or with respect to the law of a Canadian jurisdiction;
- (o) “**reciprocating governing body**”
  - (i) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and
  - (ii) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;
- (p) “**resident**” has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada);
- (q) “**Territorial Mobility Agreement**” means the 2013 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended, from time to time;
- (r) “**visiting lawyer**” means a lawyer who is licensed to practice law by a governing body other than the Chambre des notaires du Québec;

#### 6.2 Temporary Mobility by a Member of another Canadian Jurisdiction

##### Mobility without permit

**6.2.1** A visiting lawyer is permitted to provide legal services in the Province or with respect to the law of the Province on a temporary basis, without a mobility permit or notice to the Society, for a total of not more than 100 days in a calendar year, provided the visiting lawyer:

- (a) meets the criteria in subregulation 6.2.5; and
- (b) has not established an economic nexus with Province as described in subregulation 6.2.14.

##### 6.2.2 A visiting lawyer:

- (a) is bound by the applicable provisions of the Act, these Regulations, the professional standards and the Code of Professional Conduct;
- (b) must record and verify the number of days in which he or she provides legal services in the Province; and

- (c) must provide evidence of compliance with these Regulations to the Executive Director within 20 days of request for same or such longer period as the Executive Director may, in writing, allow.

**6.2.3** If the visiting lawyer fails or refuses to comply with the Executive Director's request under subregulation 6.2.2(c):

- (a) the visiting lawyer is prohibited from carrying on the practice of law in the Province; and
- (b) the Executive Director may advise the visiting lawyer's home jurisdiction of any facts relevant to such refusal or failure.

**6.2.4** A visiting lawyer who is subject to a prohibition under subregulation 6.2.3(a) may apply to the Executive Director for restoration of any or all rights lost under that subregulation and the Executive Director may grant the application subject to any conditions.

**6.2.5** To qualify to provide legal services on a temporary basis without a mobility permit or notice to the Society, a visiting lawyer must:

- (a) be entitled to practise law in another jurisdiction in Canada;
- (b) carry liability insurance that:
  - (i) is reasonably comparable in coverage and amount to that required of lawyers of the host jurisdiction; and
  - (ii) extends to the lawyer's practice in the Province, unless the lawyer is exempt under subregulation 4.1.8;
- (c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the Province;
- (d) not be subject to conditions or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;
- (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and
- (f) have no disciplinary record in any jurisdiction.

**6.2.6** For the purposes of subregulation 6.2.1, a visiting lawyer practising law of federal jurisdiction in the Province is providing legal services in the Province.

**6.2.7** Despite subregulation 6.2.6, when appearing before the following tribunals a visiting lawyer will not be providing legal services in the Province:

- (a) the Supreme Court of Canada;
- (b) the Federal Court of Canada;
- (c) the Tax Court of Canada;
- (d) Federal administrative tribunals;
- (e) Service Tribunals under the National Defence Act; and
- (f) Court Martial Appeal Court of Canada.

**6.2.8** A visiting lawyer is permitted to accept funds in trust, provided the funds are deposited to a trust account:

- (a) in the lawyer's home jurisdiction; or
- (b) operated in the Province by a practising lawyer.

### **Member of the Canadian Forces**

**6.2.9** A member of the Canadian Forces who is entitled to practise law in another jurisdiction,

- (a) may carry on the practise of law on behalf of the Office of the Judge Advocate General; and
- (b) does not establish an economic nexus with the Province provided the practise of law is carried on exclusively for or on behalf of the Office of the Judge Advocate General.

### **Mobility Permit Required**

**6.2.10** If a visiting lawyer does not meet the criteria in subregulation 6.2.5, the Executive Director may, where it is in the public interest to do so, issue a mobility permit to the lawyer on written application:

- (a) for a total of not more than 100 days in a calendar year, or such longer period set by the Executive Director; and
- (b) subject to any conditions and restrictions that the Executive Director considers appropriate.

**6.2.11** The permit issued by the Executive Director under subregulation 6.2.10:

- (a) is effective for one year from the date it is issued;
- (b) ceases to be valid if the visiting lawyer:
  - (i) is not entitled to practise law in a home jurisdiction;
  - (ii) fails to maintain liability insurance as required;
  - (iii) is suspended or disbarred in any jurisdiction.

**6.2.12** A lawyer governed by this Regulation, who is an employee of the Crown in right of Canada or a department as defined by the Financial Administration Act (Canada), may practise temporarily in the Province for the Crown in right of Canada or a department as defined by the Financial Administration Act (Canada).

### **Temporary mobility not allowed**

**6.2.13** In this Regulation, an economic nexus is established by actions inconsistent with temporary mobility to the Province, including but not limited to:

- (a) providing legal services beyond 100 days, or any longer period allowed under subregulation 6.2.10(a);
- (b) opening an office from which legal services are offered or provided to the public;
- (c) becoming resident in the Province;
- (d) opening or operating a trust account, or accepting trust funds, except as permitted under subregulation 6.2.7.

**6.2.14** A visiting lawyer who has established an economic nexus with the Province is not permitted to provide legal services on a temporary basis under this Regulation and must cease providing legal services in the Province immediately.

**6.2.15** A visiting lawyer who is subject to subregulation 6.2.14 may

- (a) apply for and obtain membership in the Society; or
- (b) apply for and obtain a mobility permit under subregulation 6.2.10.

## **6.3 Permanent Mobility of Lawyers from within Canada**

**6.3.1** A lawyer from another reciprocating governing body, except the Chambre, may apply to be a practising lawyer in the Province.

### **Eligibility**

**6.3.2** In order to be eligible to become a practising lawyer in the Province, an applicant must be:

- (a) entitled to practise law in the lawyer's home jurisdiction;
- (b) of good character; and
- (c) a fit and proper person to be a lawyer;

**6.3.3** If an application raises an issue regarding the good character or fitness of an applicant, the Executive Director must refer the application to the Committee.

**6.3.4** If the application is referred to the Committee pursuant to subregulation 6.3.3, the Committee must consider the application and all the information provided by the Executive Director and may:

- (a) request that the Executive Director obtain more information;
- (b) approve the application, with or without terms, and stipulate the effective date of enrolment; or

- (c) deny the application.

**6.3.5** If the application is approved with terms or the application is denied, the Committee must provide the applicant with a written decision with reasons and inform the applicant of the right to appeal to the Credentials Appeal Panel.

**6.3.6** A lawyer eligible under subregulation 6.3.2 is not required to pass the Nova Scotia Bar Examination, but may be required to do any or all of the following:

- (a) provide certificates of standing from all Canadian and foreign governing bodies of which the lawyer is or has been a member;
- (b) disclose criminal and disciplinary records in any jurisdiction;
- (c) consent to access by the Society to the lawyer's regulatory files of all governing bodies of which the lawyer is a member, whether in Canada or elsewhere; and
- (d) certify that he or she has reviewed all of the materials reasonably required by the Society.

**6.3.7** Members of the Barreau whose legal training was obtained outside Canada and who have had their credentials reviewed and accepted by the Chambre are not qualifying members of the Barreau for purposes of these Regulations.

### **Liability Insurance**

**6.3.8** The requirements for liability insurance are set out in subregulation 4.1.8.

### **Call to the Bar**

**6.3.9** An applicant who has completed all the requirements under this Regulation may be granted a mobility permit pursuant to subregulation 6.2.10 until called to the Bar pursuant to subregulation 3.8.3.

### **Certify Review and Comprehension of Materials**

**6.3.10** Prior to a call to the Bar ceremony, a lawyer approved for admission under this Regulation, and who has not been required to pass the Bar Examination, must certify review and comprehension of all materials required by the Executive Director.

### **No Greater Rights**

**6.3.11** An applicant under this Regulation has no greater rights as a member of the Society than:

- (a) the lawyer has as a member of the governing body of the home jurisdiction; or
- (b) any other member of the Society in similar circumstances.

### **Executive Director Amends Records**

**6.3.12** When an application under this Regulation has been approved, the Executive Director must:

- (a) notify the lawyer that the application has been approved and the date of call to the Bar; and
- (b) amend the records of the Society to reflect approval of the application and the date of call to the Bar.

## **6.4 Permanent Mobility of Quebec Notaries**

**6.4.1** A member of the Chambre may apply to the Society to become a Canadian Legal Advisor.

**6.4.2** Members of the Chambre whose legal training was obtained outside Canada and who have had their credentials reviewed and accepted by the Chambre are not members of the Chambre for purposes of Regulation 6.

**6.4.3** A member of the Chambre who is granted the status of Canadian Legal Advisor in the Province may, in his or her capacity as a Canadian Legal Advisor:

- (a) give legal advice and consultations on legal matters involving the law of Quebec or involving matters under federal jurisdiction;

- (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) give legal advice and consultations on legal matters involving public international law; and
- (d) plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.

**6.4.4** To be eligible to become a Canadian Legal Advisor in the Province, the applicant must be:

- (a) entitled to practise the notarial profession in Quebec;
- (b) of good character; and
- (c) a fit and proper person to practice law.

**6.4.5** Where there is an issue regarding the good character and fitness of an applicant, the Executive Director must refer the application to the Committee.

**6.4.6** Where the application is referred to the Committee pursuant to subregulation 6.4.5, the Committee must consider the application and all the information provided by the Executive Director and may do one or more of the following:

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

**6.4.7** If the approval is approved with terms or the application is denied, the Committee must provide the applicant with a written decision with reasons and inform the applicant of the right to appeal to the Credentials Appeal Panel.

**6.4.8** An applicant qualified under this Regulation is not required to write the Nova Scotia Bar examination, but may be required to do one or more of the following:

- (a) provide certificates of standing from all Canadian and foreign governing bodies of the legal profession of which the notary is or has been a member;
- (b) disclose criminal and disciplinary records in any jurisdiction; and
- (c) consent to access by the Society to the notary's regulatory files of all governing bodies of the legal profession of which the notary is a member, whether in Canada or elsewhere.

#### **Call to the Bar**

**6.4.9** An applicant who has completed all the requirements under this Regulation must be called to the Bar.

#### **No Greater Rights**

**6.4.10** An applicant under this Regulation has no greater rights as a member of the Society than:

- (a) the applicant has as a member of the Chambre, or
- (b) any other member of the Society in similar circumstances.

#### **Executive Director Amends Records**

**6.4.11** When an application under this Regulation has been approved, the Executive Director must:

- (a) notify the applicant that the application has been approved and the date of call to the Bar;
- (b) amend the records of the Society to reflect approval of the application and the date of call to the Bar; and
- (c) issue the applicant a Canadian Legal Advisor certificate.

#### **Restrictions on Practice of Canadian Legal Advisor**

**6.4.12** A Canadian Legal Advisor may not engage in the practice of law except as permitted under this Regulation.

### **Application of Regulations**

**6.4.13** All regulations that apply to a practising lawyer under Parts 1, 2, 4, 7, 8, 9, 10, 11, 12, 13 and 14 apply equally to a Canadian Legal Advisor.

**6.4.14** A Canadian Legal Advisor must pay the fees prescribed by subregulation 4.2.1.

### **Continued Membership in the Chambre des notaires du Québec**

**6.4.15** A Canadian Legal Advisor must:

- (a) be a member in good standing of the Chambre des notaires du Québec entitled to practice as a notary;
- (b) undertake to comply with subregulation 6.4.12;
- (c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practice law in Quebec.

### **Exemption from Liability Insurance**

**6.4.16** A Canadian Legal Advisor may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance if:

- (a) a minimum of 1,000,000.00 of liability insurance which coverage provides protection for acts or omissions arising out of professional services performed in the Province is maintained; and,
- (b) proof of such insurance in a form satisfactory to the Executive Director is provided.

## **6.5 Application for Permanent Mobility by a lawyer from Outside Canada**

### **Application**

**6.5.1** A lawyer from a jurisdiction outside Canada may apply to be a practising lawyer.

### **Eligibility**

**6.5.2** To be eligible to be a practising lawyer an applicant must:

- (a) have a law degree;
- (b) be a lawyer in a jurisdiction in which the legal profession is regulated;
- (c) be of good character;
- (d) be a fit and proper person to be a lawyer;
- (e) be competent to carry on the practice of law in the Province; and
- (f) be lawfully entitled to be employed in Canada.

### **Content of Application**

**6.5.3** An application under this Regulation, accompanied by the prescribed fee and in a prescribed form, must provide:

- (a) contact information;
- (b) confirmation of a law degree;
- (c) the professional history of the applicant;
- (d) information confirming good character;
- (e) information confirming fitness;
- (f) information confirming competence to practice law in the Province;
- (g) a certificate of standing from each jurisdiction in which the applicant is or has practiced law;
- (h) information about any outstanding complaint pending in a jurisdiction in which the applicant has practiced law; and
- (i) such other information as may be required by the Executive Director or the Committee.

### **Additional Information**

**6.5.4** The Executive Director may require additional information or additional proof of information provided in the application.



## **Decision of the Executive Director**

**6.5.5** The Executive Director may, where it is in the public interest to do so:

- (a) approve the application, with or without terms and stipulate the effective date;
- (b) deny the application for reasons other than good character or fitness;
- (c) obtain any additional information from the applicant or any other person regarding the good character and fitness of the applicant;
- (d) refer the application to the Committee where there is any issue regarding the good character or fitness of an applicant.

**6.5.6** If the approval is with terms or the application is denied, the Executive Director must provide the applicant with a written decision with reasons and inform the applicant of the internal review process.

**6.5.7** If an application is referred to the Committee pursuant to subregulation 6.5.5(d), the Committee must consider the application and all the information provided by the Executive Director and may do one or more of the following:

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

## **Terms of approval**

**6.5.8** The Executive Director or Committee may approve an application with terms that may include:

- (a) serving a period under the supervision of a practising lawyer who would qualify to be a principal under Part 5 of these Regulations;
- (b) satisfying the Executive Director or Committee of the applicant's character and fitness for admission to membership; or
- (c) completing such other requirements as may be required by the Executive Director or Committee.

**6.5.9** If the approval is with terms or the application is denied, the Committee must provide the applicant with a written decision with reasons and inform the applicant of the right to appeal to the Credentials Appeal Panel.

## **Service with Practising Lawyer**

**6.5.10** During any period of service with a practising lawyer required by subregulation 6.5.8(a), the applicant is considered to be a practising lawyer and is required to pay the fees of a practising lawyer pursuant to subregulation 4.2.1.

## **Call to the Bar**

**6.5.11** When an applicant has completed all the requirements under this Regulation, the applicant must be called to the Bar.

## **6.6 Application for Temporary Practice by a Lawyer from Outside Canada**

**6.6.1** A lawyer from a jurisdiction outside Canada may apply to practice temporarily in the Province.

**6.6.2** An application under subregulation 6.6.1 must be in a form prescribed by the Executive Director and must contain all information necessary to ensure compliance with Regulation 6.6, including information about the nature of the matter which the applicant will be addressing in the Province.

**6.6.3** A lawyer practising under this Regulation must:

- (a) be entitled to practise law in a jurisdiction outside Canada;
- (b) carry liability insurance that:
  - (i) extends to the visiting lawyer's practice in the Province, and
  - (ii) is reasonably comparable to coverage and amount to that maintained on the Society's mandatory professional liability insurance program;

- (c) have defalcation compensation coverage from a governing body that extends to the visiting lawyer's practice in the Province, unless waived by the Executive Director;
- (d) not be subject to conditions or restrictions on the visiting lawyer's practice or membership in the governing body in any jurisdiction imposed as a result of or in connection with proceedings related to discipline;
- (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction;
- (f) have no disciplinary record in any jurisdiction;
- (g) pay the prescribed fee; and,
- (h) be competent to practise Nova Scotia law in the area in which the lawyer intends to practice while in the Province.

**6.6.4** A lawyer practising temporarily in the Province must practise in consultation with a practising lawyer in the Province.

**6.6.5** Consultation imposes a duty:

- (a) on the visiting lawyer to disclose fully to each practising lawyer with whom the visiting lawyer consults, all factual information which is necessary so that the practising lawyer can fulfill his or her responsibilities under paragraph (b); and
- (b) on each practising lawyer who is consulted, to
  - (i) be substantially involved in all matters of law which are specific to the Province in respect of which the member is consulted; and
  - (ii) ensure that the handling of trust funds by the visiting lawyer is done in accordance with the Society's Regulations.

#### **Authority of the Executive Director**

**6.6.6** The Executive Director may, where it is in the public interest to do so:

- (a) approve the application, with or without terms, and stipulate the provisions of Regulation 6.4 that apply, the effective date and the termination date; or
- (b) deny the application.

### **6.7 Foreign Legal Consultants**

**6.7.1** A lawyer from a foreign jurisdiction outside of Canada may apply for a permit to be a foreign legal consultant.

#### **Contents of Application**

**6.7.2** An application under this Regulation, accompanied by the prescribed fee and in a prescribed form, must provide:

- (a) contact information;
- (b) professional history;
- (c) information confirming good character;
- (d) information confirming fitness;
- (e) confirmation that the applicant has practised the law of a foreign jurisdiction outside of Canada for at least three complete years, or an undertaking that while acting as a foreign legal consultant, the applicant will practise under the direct supervision of a foreign legal consultant from that foreign jurisdiction;
- (f) a certificate of standing from each law society of which the applicant is a member;
- (g) a written undertaking:
  - (i) not to accept, hold, transfer, or in any other manner, deal with trust money or property;
  - (ii) submitting to the jurisdiction of the Society and agreeing to comply with the Act and Regulations,
  - (iii) to notify the Executive Director if the applicant fails to satisfactorily complete any continuing legal education program that is required by members of his or her jurisdiction;

- (h) proof of professional liability insurance or a bond or indemnity or other security in a form and amount which is reasonably comparable to that maintained by the Society in its mandatory liability insurance program and which specifically extends to the services rendered by the foreign legal consultant while acting in the Province.
- (i) proof that the applicant participates in a defalcation program or carries a fidelity bond or other security satisfactory to the Society and is of a type and in an amount prescribed by Council for purposes of reimbursing persons who sustained a pecuniary loss as a result of misappropriation or conversion by the foreign legal consultant of money or other property entrusted to or received by the foreign legal consultant in that capacity in the Province; and
- (j) such other information as may be required by the Executive Director or the Committee.

### **Executive Director Approval**

**6.7.3** The Executive Director may, if it is in the public interest to do so, approve the application with or without terms and issue a permit to the applicant if the requirements of subregulation 6.7.2 (a)-(j) are satisfactorily met.

**6.7.4** If the approval is with terms or the application is denied, the Executive Director must provide the applicant with a written decision with reasons.

**6.7.5** The Executive Director's decision to deny the application is final.

### **Promotion of Legal Services**

**6.7.6** A foreign legal consultant must, when engaged in any promotional activities in the Province:

- (a) use the term "foreign legal consultant";
- (b) state the foreign jurisdiction in respect of which he or she is qualified to practise law and the professional title used in that jurisdiction; and
- (c) state that he or she is not a member of the Society.

### **Validity of Permit**

**6.7.7** A permit issued pursuant to this Regulation remains valid if the foreign legal consultant renews the permit on its expiry and pays the applicable fees, unless the foreign legal consultant:

- (a) is suspended as a result of proceedings under the Act or Regulations;
- (b) ceases to meet the requirements of subregulation 6.7.2(h) and (i); or
- (c) ceases to be entitled to practise the law of the foreign jurisdiction.

## PART 7

### LLP'S AND LAW CORPORATIONS

#### 7.1 Interpretation

##### 7.1.1 In this Part,

- (a) “**Committee**” means the Credentials Committee;
- (b) “**corporation**” means a company incorporated pursuant to the laws of Canada or the laws of a province of Canada;
- (c) “**extra-provincial LLP**” has the same meaning as in the Partnership Act (Nova Scotia, but is limited to an LLP;
- (d) “**fee**” includes hourly rate;
- (e) “**interjurisdictional law firm**” means a law firm
  - i. that maintains an office in the Province together with an office in a foreign jurisdiction, and
  - ii. in which not all the partners, or in the case of a professional law corporation, not all the voting shareholders, are qualified to practise law in the Province;
- (f) “**law corporation**” means a corporation issued a permit by the Society to carry on the practice of law; which permit has not been revoked;
- (g) “**LLP**” means a limited liability partnership under Part II of the *Partnership Act* (Nova Scotia) that carries on, or holds itself out as carrying on, the practice or profession of a lawyer in Nova Scotia, whether as a Nova Scotia LLP or an extra-provincial LLP;
- (h) “**Nova Scotia LLP**” has the same meaning as in the *Partnership Act* (Nova Scotia, but is limited to an LLP; and
- (i) “**partner in an LLP**” and “**partners in the LLP**” includes each individual who is:
  - (i) a partner in an LLP;
  - (ii) a voting shareholder of Law Corporation that is a partner in an LLP
  - (iii) a partner in a partnership which is a partner in an LLP;
  - (iv) a voting shareholder of a Law Corporation that is a partner in a partnership which is a partner in an LLP; and
  - (v) any combination or extension of items (i) to (iv).

##### Definition of “prescribed persons”

7.1.2 For the purpose of Sections 21 - 23 of the Act, “prescribed person” means any person.

##### No prohibition on other business

7.1.3 For the purpose of subsection 23(4) of the Act, there must not, subject to the Act and these Regulations, be any prohibition on the undertaking and business that a law corporation may engage in or hold itself out as engaging in.

#### 7.2 Interjurisdictional law firms

##### 7.2.1 An interjurisdictional law firm may carry on the practice of law in the Province only if

- (a) at least one practising lawyer, or in the case of a professional law corporation, at least one voting shareholder, is a practising lawyer and does in fact practise law principally in the Province; and
- (b) in the case of an interjurisdictional law firm which maintains an office in one or more foreign jurisdictions
  - (i) it operates only in foreign jurisdictions which offer substantially the same treatment to law firms from this jurisdiction as the Society offers to interjurisdictional law firms, or
  - (ii) it satisfies the Society that a substantial number of important foreign jurisdictions in which that interjurisdictional law firm operates offer substantially the same treatment

to law firms from this jurisdiction as the Society offers to interjurisdictional law firms.

### **Keep books within Canada**

**7.2.2** An interjurisdictional law firm which maintains an office in one or more foreign jurisdictions shall keep within Canada the books, records and accounts which it is required to keep with respect to its practice in the Province, and shall make them available in the Province on demand by the Society or its designated agent.

### **Requirement to practise with firm**

**7.2.3** No practising lawyer will practise law in the Province as a member of an interjurisdictional law firm unless the firm complies with the requirements of this regulation.

### **Comply with all Regulations**

**7.2.4** An interjurisdictional law firm must comply with all Regulations relating to law firms.

### **Council may make rules**

**7.2.5** Council may make rules that they consider necessary or advisable for the purposes of this regulation and, without limiting the foregoing, may make rules respecting procedures for disciplinary action against an interjurisdictional law firm, including the adaptation, in a manner that Council considers necessary or advisable, of rules respecting proceedings before the Complaints Investigation Committee or the Hearing Committee on matters of practice and procedure before that Committee.

### **Part III of the Act applies**

**7.2.6** The provisions of Part III of the Act apply to interjurisdictional law firms.

## **LIMITED LIABILITY PARTNERSHIPS**

### **7.3 Registration of a Nova Scotia LLP**

**7.3.1** A law firm that is a partnership that proposes to register as a Nova Scotia LLP under Part II of the *Partnership Act* (Nova Scotia) may apply to be an LLP.

**7.3.2** An application under this regulation accompanied by the prescribed fee shall be in the prescribed form and shall contain

- (a) the completed application for registration as a Nova Scotia LLP which it proposes to submit to the Registrar of Joint Stock Companies, and
- (b) any other information required by the Executive Director for the purposes of registration.

### **Receipt of application**

**7.3.3** On receipt of an application under this regulation the Executive Director shall verify that:

- (a) the partnership and its partners meet all of the applicable eligibility requirements for practice as an LLP that are imposed under the Act
- (b) the partners of the partnership have liability insurance in the form and amount required for that purpose by these regulations;
- (c) and all of the Nova Scotia partners of the applicant partnership, whether individuals or law corporations, are entitled to carry on the practice of law in Nova Scotia.

**7.3.4** When the Executive Director is satisfied that the requirements of regulation 7.3.3 have been met, the Executive Director will issue a statement of the Society's approval and certification pursuant to subsection 7(A)(1)(e) of the *Partnerships and Business Names Registration Act*.

### **Registration of an extra-provincial LLP**

**7.3.5** Where a partnership that has the status of a limited liability partnership under the laws of a jurisdiction outside Nova Scotia and carries on, or holds itself out as carrying on, the practice of law proposes to register as an extra-provincial LLP under Part II of the *Partnership Act* (Nova Scotia) the partnership must

- (a) forward the prescribed form and the prescribed fee to the Executive Director together with the completed application for registration as an extra-provincial LLP which it proposes to submit to the Registrar of Joint Stock Companies, and
- (b) any other information required by the Executive Director for the purposes of registration.

### **Receipt of application**

**7.3.6** On receipt of an application under this regulation the Executive Director must verify that:

- (a) the partnership and its Nova Scotia partners meet all of the applicable eligibility requirements for practice as an extra-provincial LLP that are imposed under the Act;
- (b) the Nova Scotia partners of the partnership have liability insurance in the form and amount required for that purpose by these regulations;
- (c) and all of the Nova Scotia partners of the applicant partnership, whether individuals or law corporations, are entitled to carry on the practice of law in Nova Scotia.

**7.3.7** When the Executive Director is satisfied that the requirements of regulation 7.4.5.1 have been met, the Executive Director will issue a statement of the Society's approval and certification pursuant to subsection 7(A)(2)(g) of the *Partnerships and Business Names Registration Act*.

### **Insurance requirements**

**7.3.8** A member of the Society who is a partner in an LLP must have and maintain professional liability insurance in the form and amounts required for such member to be a practising lawyer.

**7.3.9** A partner in an LLP who is not a practising lawyer and who provides legal services or otherwise carries on the practice of law in Nova Scotia must have and maintain professional liability insurance in the form and amounts as required by the Regulations.

### **Notification of non-compliance**

**7.3.10** The Executive Director shall provide notification to the Registrar of Joint Stock Companies for the Province of Nova Scotia in accordance with subparagraph 16A(1)(b)(i) of the *Partnerships and Business Names Registration Act* (Nova Scotia) if the Society becomes aware that:

- (a) The LLP or one or more of the partners no longer meets all the applicable eligibility requirements for practice as a Limited Liability Partnership that are imposed by the Society under the Act; or
- (b) one or more of the partners of the LLP no longer have liability insurance in the form and amount required by these Regulations.

### **Expiry of registration**

**7.3.11** The registration of an LLP shall expire on the 31<sup>st</sup> day of January of the calendar year immediately following the year in which such registration is issued or renewed.

### **Renewal of registration**

**7.3.12** An LLP may renew its permit by providing to the Executive Director on or before the 15th day of January in each year,

- (a) the information set out in subregulation 7.3.14; and
- (b) payment of the prescribed renewal fee.

### **Amendment of records**

**7.3.13** If the registration of an LLP expires, the Executive Director must promptly enter in the registry of LLPs a memorandum respecting the expiration of such registration and the Executive Director must provide notification

of such expiration of registration to the Registrar of Joint Stock Companies for the Province of Nova Scotia in accordance with Part II of the *Partnership Act* (Nova Scotia).

### **Information for annual renewal**

**7.3.14** The information required for annual renewal of registration as an LLP must include:

- (a) full particulars of any change since registration or the most recent annual renewal, as the case may be, in:
  - (i) the name of the LLP;
  - (ii) the registered office of the LLP;
  - (iii) the number on the register attributed to the LLP;
  - (iv) the partners in the LLP;
- (b) a list of all of the partners in the LLP who are lawyers,
- (c) a list of all the partners in the LLP which are Law Corporations;
- (d) a list of all the partners in the LLP who are not practising lawyers or Law Corporations;
- (e) the name and the civic business address of the partner who is designated as the representative of the LLP;
- (f) confirmation that each of the persons who will provide legal services or otherwise carry on the practice of law in Nova Scotia on behalf of the LLP is a practising lawyer or otherwise qualified to do so pursuant to Part 6 (Foreign Lawyers) of these Regulations; and
- (g) confirmation that the LLP continues to be registered with the Province of Nova Scotia as an Nova Scotia LLP or as an Extra-Provincial LLP (as the case may be) pursuant to Part II of the *Partnership Act*.

### **After expiry**

**7.3.15** Where the registration for an LLP expires and the partnership wishes to renew its registration with the Society the partnership must apply under subregulation 7.3.1 and the application shall be treated as an application of first instance.

### **Notice of changes**

**7.3.16** Within fifteen (15) days of a change in the particulars set forth in the application or any renewals of such registration or the most recent notice of change furnished according to this Part, a registered LLP must notify the Executive Director in writing.

### **Registration does not affect application of Act or Regulations**

**7.3.17** The registration of a partnership as an LLP does not in any manner whatever affect, modify or diminish the application of the Act or any Part of these Regulations to the LLP nor to the partners in the LLP.

## **LAW CORPORATIONS**

### **7.4 Application for law corporation permit**

**7.4.1** A corporation may apply for a permit to carry on the practice of law pursuant to s. 20 of the Act.

#### **Prescribed form**

**7.4.2** An application under this subregulation, accompanied by the prescribed fee, must be in the prescribed form and identify:

- (a) the full name and address of the corporation;
- (b) the name and basis of qualification of all holders of voting shares of the corporation, along with the number of shares held;
- (c) the name and basis of qualification of all holders of non-voting shares of the corporation, along with the number of shares held; and
- (d) all officers and directors of the corporation.

### **Additional information**

**7.4.3** In addition to the information required by subregulation 7.4.2, a corporation applying for a permit under this regulation must provide:

- (a) a true copy of the corporation's certificate of incorporation, or, if the certificate is not yet available, confirmation, satisfactory to the Executive Director, that all documents and fees necessary for incorporation have been filed with the Registry of Joint Stock Companies 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 certification of incorporation will be provided to the Executive Director forthwith upon receipt of same by the applicant;
- (b) if the corporation intends to carry on the practice of law under a business or partnership name, a true copy of the certificate of registration of the business or partnership name, or, if the certificate is not yet available, confirmation, satisfactory to the Executive Director, that all the documents and fees necessary for the registration of the business or partnership name have been filed with the Registry of Joint Stock Companies, and confirmation that a true copy of the certificate of registration of the business or partnership name will be provided to the Executive Director forthwith upon receipt of same by the applicant; and
- (c) a true copy of the corporation's memorandum of association.

### **Issue of Permit**

**7.4.4** 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 Executive Director must issue to the corporation a permit.

### **Permitted to practise**

**7.4.5** A law corporation issued a permit in accordance with the Act and these Regulations will, subject to the Act and these Regulations, be permitted to carry on the practice of law in the Province.

### **Validity of permit**

**7.4.6** A permit issued to a law corporation or renewed or reinstated will, subject to the Act and these Regulations, be valid until the 31st day of January of the calendar year immediately ensuing the date of issue or renewal of the permit.

### **Renewal of permit**

**7.4.7** A law corporation may renew its permit by providing to the Executive Director on or before the 15th day of January in each year,

- (a) a statement of particulars in the prescribed form, and
- (b) payment of the prescribed renewal fee.

### **Issue renewal**

**7.4.8** Upon compliance with subregulation 7.4.7 by a law corporation, the Executive Director must, 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.

### **Expiry of permit**

**7.4.9** If, for any reason, the permit of a law corporation is not renewed as provided in subregulation 7.4.7 the permit is automatically revoked, and the Executive Director must promptly enter in the register of law corporations a memorandum respecting the revocation of such permit.

**7.4.10** A corporation may not apply for renewal of a permit that has been revoked, but may apply for a new permit.

### **Law corporation names**

**7.4.11** If the name of a law corporation does not contain words which denote that the law corporation carries on the practice of law, then the law corporation must carry on the practice of law 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 of law.

#### **No change of names**

**7.4.12** No law corporation will change its name or the name under which it carries on the practice of law, without first having obtained written confirmation from the Executive Director that the proposed name complies with these Regulations.

#### **Objects of law corporation**

**7.4.13** A permit will not be issued to a corporation if the objects of the corporation do not permit it to carry on the practice of law and all related and incidental activities and acts required by the Act and these Regulations.

#### **Notice of changes**

**7.4.14** A law corporation must inform the Executive Director of any change in the particulars

- (a) set forth in the application furnished pursuant to subregulation 7.4.2, or
- (b) in the statement of particulars most recently delivered to the Executive Director;

by delivering to the Executive Director a statement of particulars in the prescribed form within fifteen (15) days of such change together with any prescribed fee.

#### **Law corporation suspended or revoked**

**7.4.15** A law corporation’s permit is immediately suspended upon the suspension of its only voting shareholder.

**7.4.16** A law corporation whose permit is suspended due to the suspension of its only voting shareholder must have its permit reinstated immediately upon the reinstatement of the voting shareholder.

**7.4.17** A law corporation’s permit must be immediately revoked upon the disbarment of its only voting shareholder.

**7.4.18** A law corporation must not carry on the practice of law while its permit is suspended or after its permit has been revoked.

#### **Revocation or suspension upon notice**

**7.4.19** The permit of a law corporation may be revoked or suspended by the Executive Director upon five (5) days’ notice in writing to the law corporation where it appears to the Executive Director that the law corporation fails to meet any of the requirements of the Act or these Regulations.

#### **Time to satisfy requirements**

**7.4.20** Notwithstanding subregulation 7.4.15-7.4.17, if a law corporation 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 will have thirty (30) 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 the Executive Director may, revoke or suspend the permit issued to such law corporation.

#### **Reinstatement of permit**

**7.4.21** Upon being satisfied that all the requirements of the Act and these Regulations are satisfied by a law corporation whose permit was previously suspended, the Executive Director 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 the prescribed form; and
- (c) payment of the prescribed reinstatement fee.

**Appeal**

**7.4.22** A law corporation, any member of the corporation affected, or any other interested party may appeal any decision of the Executive Director under the Act or these Regulations regarding law corporations, by notice in writing to the Committee within thirty (30) days of any such decision.

**Costs**

**7.4.23** The costs of any appeal pursuant to subregulation 7.4.22 will be borne as determined by the Committee, and the Committee may require security for costs from any party prior to hearing an appeal or at any time during an appeal.

**Committee decision**

**7.4.24** Upon hearing an appeal, the committee may, in its discretion, confirm, revoke or alter the decision of the Executive Director under appeal or provide any other remedy it deems fit and appropriate.

## **PART 8**

### **STANDARDS**

#### **8.1 Code of Professional Conduct**

**8.1.1** The ethical standards contained in the rules and commentaries of the *Code of Professional Conduct* as amended, are adopted as ethical standards for all members of the Society, including Articled Clerks and law firms, and lawyers who are subject to the rules governing members.

##### **Practice in other jurisdictions**

**8.1.2** A lawyer who practises law in another Canadian jurisdiction must comply with the applicable legislation, regulations, rules and professional conduct requirements of that jurisdiction.

##### **Professional standards**

**8.1.3** Lawyers practising an area of law must comply with the standards of practice applicable to that area of law.

#### **8.2 Professional Standards Real Property Transactions**

##### **Requirements to keep foundation documents**

**8.2.1** A practising lawyer or law firm that provides an opinion of title or a certificate of legal effect must keep foundation documents which a reasonably competent lawyer would rely upon to support the opinion of title or certificate of legal effect.

**8.2.2** Subject to subregulation 8.2.4, the obligation of a law firm to keep foundation documents continues even if:

- (a) a lawyer who rendered an opinion or certificate of legal effect on behalf of the law firm is no longer practicing in the law firm or at all; or
- (b) the law firm is dissolved.

**8.2.3** A lawyer or law firm having the obligation to keep foundation documents may be relieved of that obligation if the foundation documents are transferred in accordance with this Regulation.

**8.2.4** The foundation documents may be transferred if an application is made to the Executive Director by a lawyer or law firm in the prescribed form together with:

- (a) the name of the lawyer or law firm to whom the foundation documents are being transferred;
- (b) the written consent of the lawyer or law firm receiving the foundation documents;
- (c) the time frame within which the transfer is to be completed; and
- (d) written confirmation from the lawyer or law firm that the transfer of foundation documents has been completed and they are being maintained in accordance with Regulation 8.2.

**8.2.5** The foundation documents required to be kept available in this Part may be stored in paper or electronic form and must be capable of being reproduced upon the request of those entitled to request a copy.

##### **Definitions**

**8.2.6** In subregulations 8.2.7 to 8.2.8,

- (a) A closing date means the earlier of the following, as applicable:
  - (i) the date agreed to by the parties,
  - (ii) the date funds are advanced in a transaction,
  - (iii) the date of recording or registering a mortgage that replaces another mortgage;
- (b) A security interest means a security interest as defined in the *Land Registration Act*.

### **General duty to remove security interest - in parcel register**

**8.2.7** A practising lawyer or law firm that pays out, or causes to be paid out, in full or in part, a mortgage recorded in a parcel register under the *Land Registration Act* must take the steps required in subregulations 8.2.9 or 8.2.10, as applicable, to remove the security interest from the parcel register no later than 180 days from the closing date of the transaction.

### **General duty to remove security interest - not in parcel register**

**8.2.8** A practising lawyer or law firm that pays out, or causes to be paid out, in full or in part, a mortgage not recorded in a parcel register must take the steps required in subregulations 8.2.9 or 8.2.10, as applicable, to remove the security interest from the registry as soon as reasonably possible after the closing date of the transaction.

### **Steps to remove security interest - purchase and sale transaction**

**8.2.9** A practising lawyer or law firm that is acting for the seller and pays out, or causes to be paid out, in full or in part, a mortgage in a purchase and sale transaction must take all of the following steps on the closing date of the transaction:

- (a) provide to the buyer's lawyer either
  - (i) a copy of the mortgage payout statement, and confirmation of the transmittal of the payout proceeds by either providing a copy of the transmittal letter or the electronic transmittal, or
  - (ii) if the client of the lawyer or law firm reasonably refuses to authorize the lawyer or law firm to provide a copy of the mortgage payout statement and confirmation of the transmittal of the mortgage proceeds, a statutory declaration signed by the lawyer or a lawyer on behalf of the law firm, that identifies the parcel, provides the mortgage number and provides the mortgagee's address, and states that sufficient funds have been transmitted to payout the mortgage; and
- (b) provide to the buyer's lawyer an undertaking to
  - (i) release the security interest, no later than by the time required in subregulations 8.2.7 or 8.2.8, as applicable, or
  - (ii) in the case where the security interest is recorded in a parcel register under the *Land Registration Act* and it is apparent that the security interest will not be released within the time required in subregulation 8.2.7, complete all prescribed steps in accordance with Section 60 of the *Land Registration Act*, and the *Land Registration Administration Regulations*, to require the Registrar to cancel the security interest, no later than by the time required in subregulation 8.2.7.

### **Steps to remove security interest - transaction other than purchase and sale transaction**

**8.2.10** A practising lawyer or law firm that is acting in a transaction, other than a purchase and sale transaction, that requires the recording in the parcel register or the registering in the registry, of a mortgage to replace or amend a previously recorded or registered security interest, or that requires the certification or opinion as to the priority of a security interest recorded in the parcel register or registered in the registry that replaces or amends a previously recorded or registered security interest, must take all of the following steps on the closing date of the transaction:

- (a) place in their file either a copy of
  - (i) the mortgage payout statement, if one is provided to the lawyer or law firm, and confirmation of the transmittal of the payout proceeds, by means of either a copy of the transmittal letter or the electronic transmittal, or confirmation that the payout has been effected, by means of written evidence; or
  - (ii) a statutory declaration identifying the parcel, providing the mortgage number, providing the mortgagee's address, and stating that sufficient funds have been transmitted to pay out the mortgage;
- (b) release the previously recorded or registered security interest that the newly placed mortgage replaced, no later than by the time prescribed in subregulations 8.2.7 or 8.2.8, as applicable; and

(c) in the case where the security interest is recorded in a parcel register under the *Land Registration Act* and it is apparent that the security interest will not be released within the time required in subregulation 8.2.7, complete all prescribed steps in accordance with Section 60 of the *Land Registration Act*, and the *Land Registration Administration Regulations*, to require the Registrar to cancel the security interest, no later than by the time required in subregulation 8.2.8.

### **8.3 Promotion of High Standards**

**8.3.1** In order to promote high standards for the practice of law, the Society may support programs that enhance the competence of lawyers.

#### **Management system for ethical legal practice**

**8.3.2** Sole practitioners and law firms must develop an effective management system for ethical legal practice, and demonstrate that they are engaged in and committed to the following:

- (a) maintaining appropriate file and records management systems;
- (b) communicating in an effective, timely and civil manner;
- (c) ensuring confidentiality;
- (d) avoiding conflicts of interest;
- (e) developing competent practices;
- (f) ensuring effective management of the law firm and staff;
- (g) charging appropriate fees and disbursements;
- (h) sustaining effective and respectful relationships with clients, colleagues, courts, regulators and the community;
- (i) working to improve diversity, inclusion and substantive equality; and
- (j) working to improve the administration of justice and access to legal services.

#### **Self-assessment**

**8.3.3** A sole practitioner or law firm may be requested to conduct a self-assessment through which they will evaluate the extent to which they have in place appropriate policies, practices and systems to support the elements as set out in subregulation 8.3.2 that apply to their practice.

#### **Mandatory training and education**

**8.3.4** Council may from time to time prescribe mandatory training and educational requirements relating to the practice of law or a particular area of law.

#### **Continuing professional development**

**8.3.5** “Continuing professional development” is any activity that has education as its primary purpose that is:

- (a) relevant to the professional needs of a lawyer; and
- (b) preserves and enhances a lawyer’s knowledge or skills in the areas of:
  - (i) substantive legal education and skills development;
  - (ii) risk and practice management; and
  - (iii) professionalism.

**8.3.6** All practising lawyers are expected to complete a minimum of 12 hours of continuing professional development in each reporting year.

**8.3.7** The reporting year for continuing professional development is June 1 through May 31.

**8.3.8** Commencing June 1, 2016, every lawyer must:

- (a) prepare and implement a written plan for continuing professional development;
- (b) make a declaration to the Executive Director that a plan has been prepared and implemented;
- (c) maintain a record of continuing professional development undertaken and keep the record for five years from the date of declaration; and

(d) provide a copy of the plan and the record of continuing professional development undertaken to the Executive Director on request.

**8.3.9** The Executive Director may commence an investigation pursuant to Regulation 9.2 if a lawyer fails to provide to the Executive Director a copy of the plan or the record of continuing professional development undertaken as required by subregulation 8.3.8.

**8.3.10** The requirements of subregulation 8.3.8 also apply to lawyers who are suspended pursuant to Part III of the Act or subregulation 4.5.1.

#### **Waiver**

**8.3.11** The Executive Director may, on receipt of the prescribed form, waive the requirements of this Regulation if, in the opinion of the Executive Director, such waiver is in the public interest.

### **8.4 Library**

**8.4.1** The library of the Society will be known as the Nova Scotia Barristers' Library.

#### **Purpose of Library**

**8.4.2** The library supports the work of the Society and the competent and professional practice of law by lawyers by

- (a) organizing and distributing legal information; and
- (b) maintaining collections of materials to achieve this goal.

#### **Library policies**

**8.4.3** The Executive Director will ensure that policies governing the library are current.

#### **Fees**

**8.4.4** Any library fees incurred by a lawyer or law firm as a result of the late return, loss or destruction of library materials must be paid by June 30 of each year.

## PART 9

### PROFESSIONAL RESPONSIBILITY

#### 9.1 Interpretation

##### 9.1.1 In this Part,

- (a) “**Chair of the Hearing Committee**” includes the Chair of the Hearing Committee and any member of the Hearing Committee designated by the Chair of the Hearing Committee to act as Chair;
- (b) “**incapacity**” means the member’s lack of capacity as defined in Section 2 of the Act;
- (c) “**member of a firm**” means a practising lawyer who is a partner, counsel, associate or employee of a firm,
- (d) “**member of the Society**” includes a law firm;
- (e) “**pre-hearing conference**” means a proceeding involving the parties and conducted by the hearing panel, held following service of a charge and notice of hearing on the member;
- (f) “**proceedings management meeting**” means a meeting involving the parties and conducted by the Chair of the Hearing Committee;
- (g) “**professional responsibility process**” includes the processes established by Sections 33 to 55 of the Act and Part 9 of the Regulations;
- (h) “**ungovernability**” includes a repeated failure to abide by the Act, the Regulations, Professional Standards or the *Code of Professional Conduct* that indicates an inability or unwillingness to be governed.

#### Objects of the Professional Responsibility Process

##### 9.1.2 The objects of the professional responsibility process are to protect the public and preserve the integrity of the legal profession, by

- (a) promoting competent and ethical practice of law by members of the Society;
- (b) addressing complaints of professional misconduct, conduct unbecoming, professional incompetence or incapacity;
- (c) providing for the protection of clients' interests through the appointment of receivers and custodians in appropriate circumstances; and
- (d) providing relief to individual clients of members of the Society and promoting the rehabilitation of members.

##### 9.1.2.1 In this Part, when the Executive Director or a Committee exercises discretion in the public interest, the objects of the professional responsibility process should be considered.

#### Conduct Unbecoming, Professional Incompetence and Professional Misconduct

##### 9.1.3 When considering complaints or charges, the Complaints Investigation Committee and a hearing panel may determine that conduct constitutes

- (a) conduct unbecoming, if it involves conduct in a member’s personal or private capacity that tends to bring discredit upon the legal profession including one or more of the following:
  - (i) committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or competence 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;
  - (iii) engaging in conduct involving dishonesty;
- (b) professional incompetence, if the lawyer 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 lawyer’s experience and the nature and terms of the lawyer’s engagement;
- (c) professional misconduct if it involves conduct in a lawyer's professional capacity that tends to bring discredit upon the legal profession including one or more of the following:

- (i) violating or attempting to violate one of the provisions in the *Code of Professional Conduct* or a requirement of the Act or these Regulations;
- (ii) knowingly assisting or inducing another lawyer to violate or attempt to violate the provisions in the *Code of Professional Conduct* or a requirement of the Act or these Regulations;
- (iii) misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property;
- (iv) knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;
- (v) demonstrating a pattern of failing to abide by advice, counsels or cautions provided by the Society or Complaints Investigation Committee;
- (vi) demonstrating ungovernability.

### **Abuse of Discipline Process**

**9.1.4** The Professional Responsibility process shall not be used for any extraneous or improper purpose including, but not limited to, use

- (a) for the purpose of harassing a member of the Society into providing relief which is beyond that which the member was retained to furnish, or which is more appropriately available through civil litigation;
- (b) by a party adverse in interest to a client of the member complained of, for the purpose of harassing such client or the member; or
- (c) as a form of discovery or for the gathering of information in another proceeding.

## **COMPLAINTS AND INVESTIGATIONS**

### **9.2 Complaints**

**9.2.1** The conduct, practice, capacity or professional competence of a member of the Society may become the subject of an investigation

- (a) upon receipt of a written complaint from any person,
- (b) upon receipt of information by the Society that, in the opinion of the Executive Director, establishes reasonable grounds for an investigation,
- (c) upon self-referral by the member, or
- (d) when a member has been the subject of discipline in a foreign jurisdiction.

### **Complaint Against President, Complaints Investigation Committee member or Executive Director**

**9.2.1.1** If the member of the Society referred to in subregulation 9.2.1 is the President, a member of the Complaints Investigation Committee or the Executive Director, the investigation must be conducted in accordance with subregulation 9.2.2.1

### **Executive Director's Procedure for Complaints**

**9.2.2** On receipt of a written complaint, the Executive Director must

- (a) dismiss the complaint, and notify the complainant and the member of the reasons for this disposition, if, in the opinion of the Executive Director,
  - (i) the subject matter of the complaint is outside the jurisdiction of the Society,
  - (ii) the complaint is for an extraneous or improper purpose,
  - (iii) the complaint does not allege facts which, if proven, would constitute professional misconduct, conduct unbecoming, or professional incompetence, or would merit counseling, a caution or other;
- (b) attempt to resolve the complaint if, in the opinion of the Executive Director, the complaint may be satisfactorily resolved, consistent with the purposes of the professional responsibility process, and failure to resolve the complaint will result in the complaint being investigated pursuant to this regulation, or;
- (c) in accordance with Regulation 9.2A consider referral to the Fitness to Practise Committee; or
- (d) subject to Regulation 9.2A, commence an investigation.



### **Referral to Chair of the Hearing Committee**

**9.2.2.1** When the provisions of subregulation 9.2.1.1 apply, the matter must be referred by the Executive Director to the Chair of the Hearing Committee.

### **Appointment of Special Investigator**

**9.2.2.2** On receipt of a referral under subregulation 9.2.2.1, the Chair of the Hearing Committee must appoint as a special investigator, a practising lawyer, who is not currently a member of the Complaints Investigation Committee, to investigate the matter in accordance with this Regulation.

**9.2.2.3** If the Chair of the Hearing Committee is not available, the Vice-Chair of the Hearing Committee or other member of the Hearing Committee designated by the Chair will assume the Chair's responsibility under this Regulation.

### **Power of Special Investigator**

**9.2.2.4** When investigating the matter, the special investigator has all the powers and authorities of the Executive Director, under Regulation 9.2.

### **Dismissal by Special Investigator**

**9.2.2.5** If the special investigator dismisses the complaint, the person who appointed the special investigator and those required to receive notice under Regulation 9.2, must be notified of the dismissal.

### **Review of Dismissal**

**9.2.2.6** A dismissal of a complaint by the special investigator is subject to a review under Regulation 9.3.

### **Referral to Complaints Investigation Committee**

**9.2.2.7** If as a result of an investigation, the special investigator determines that the matter should be referred to the Complaints Investigation Committee pursuant to subregulation 9.2.12 (e) or (g), before doing so, the special investigator must advise the person who appointed the special investigator.

### **Appointment of Special Complaints Investigation Committee**

**9.2.2.8** On receipt of a notice from the special investigator pursuant to subregulation 9.2.2.7, the person who appointed the special investigator will take the necessary steps to have not more than 5 persons,

(a) who do not currently serve on the Complaints Investigation Committee, and

(b) who will be collectively known as the Special Complaints Investigation Committee appointed to the Complaints Investigation Committee for the duration of this investigation.

### **Lay Member**

**9.2.2.9** At least one of the persons appointed to the Special Complaints Investigation Committee must be a person who is not a member of the Society.

### **Quorum**

**9.2.2.10** The members of the Special Complaints Investigation Committee will be a quorum of the Complaints Investigation Committee for the purposes of considering the referral from the special investigator and have all the powers of the Complaints Investigation Committee, pursuant to Regulation 9.4.

### **Commence Investigation**

**9.2.3** On receipt of information by the Society that, in the opinion of the Executive Director, establishes reasonable grounds for an investigation, the Executive Director shall commence an investigation.

### **Information to be Summarized**

**9.2.4** Information that causes the Executive Director to commence an investigation shall be reported in writing by the Executive Director and that report shall constitute the complaint.

### **Member to Cooperate**

**9.2.5** A member of the Society who is the subject of a complaint, shall fully cooperate with the Society in the investigation of the complaint by

- (a) responding fully and substantially to the complaint,
- (b) adhering to time limits during the investigation, and
- (c) responding to all requests from the Society during the investigation.

### **Requirement for Member Response**

**9.2.6** When the Executive Director commences an investigation, the Executive Director may

- (a) ask the complainant to clarify information or allegations contained in the complaint
- (b) obtain information from any person that will assist in the investigation of the complaint and,
- (c) either before or after receipt of such clarification or information, unless the Complaints Investigation Committee otherwise directs, shall forward a copy of the complaint to the member and require the member to respond.

### **Complaint against a Law Firm**

**9.2.7** Where the complaint is against a law firm, the Executive Director must communicate with the member of the firm designated pursuant to subregulation 4.7.1, and the obligations of a member under subregulation 9.2.5 apply to that person.

### **Member to Fully Answer**

**9.2.8** Within ten days of receipt of a requirement for response or such additional time as the Executive Director may allow, the member shall respond to the complaint by providing a full answer to the complaint, which answer shall

- (a) address all matters in the complaint, unless otherwise directed by the Executive Director,
- (b) provide copies of all relevant file materials the member relies upon, and
- (c) answer additional questions and provide additional information and material that may be required by the Executive Director.

### **Failure of Member to Cooperate**

**9.2.9** If at any stage of the investigative process a member fails to comply with the requirements of subregulation 9.2.5 or 9.2.8 the Executive Director may report that fact to the Complaints Investigation Committee, which may provide further directions as necessary.

### **Options on Receipt of Response**

**9.2.10** Upon receipt of the member's response, the Executive Director may

- (a) dismiss the complaint and notify the complainant and the member of the reasons for this disposition, if the Executive Director is satisfied the evidence that might reasonably be believed could not support a finding of professional misconduct, conduct unbecoming, professional incompetence or incapacity, or would not merit counseling, a caution or both;
- (b) attempt to resolve the complaint if, in the opinion of the Executive Director, the complaint may be satisfactorily resolved, consistent with the objects of the professional responsibility process, and failure to resolve the complaint will result in the complaint being further investigated pursuant to these Regulations;
- (c) carry on further investigation by
  - i) forwarding the member's response to the complainant and offering the complainant an opportunity to provide additional information; or
  - ii) exercising any of the authority provided for in subregulation 9.2.13
- (d) dismiss the complaint pursuant to paragraph 9.2.10(a) and send a letter to the member reminding the member of his or her obligations under the Act, the Regulations, professional standards or the Code of Professional Conduct.

### **Request of Member for Further Response**

**9.2.11** If the complainant provides additional information pursuant to subregulation 9.2.10 (c) such information shall be forwarded to the member, who

- (a) may provide a further response, and
- (b) shall answer additional questions and provide additional information and material that may be

required by the Executive Director within the timeframe as the Executive Director may allow.

### **Options on Receipt of Further Response**

**9.2.12** Upon receipt of the member's further response, the Executive Director may do one or more of the following:

- (a) dismiss the complaint and notify the complainant and the member of the reasons for this disposition, if the Executive Director is satisfied the evidence that might reasonably be believed could not support a finding of professional misconduct, conduct unbecoming, professional incompetence or incapacity, or would not merit counseling, a caution or both;
- (b) attempt to resolve the complaint if, in the opinion of the Executive Director, 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 subregulation;
- (c) conduct further investigation as deemed appropriate;
- (d) send a letter to the member reminding the member of his or her obligations under the Act, the regulations, professional standards or the Code of Professional Conduct;
- (e) refer the matter to the Complaints Investigation Committee for direction;
- (f) in accordance with Regulation 9.2A, consider referral of the matter to the Fitness to Practise Committee;
- (g) provide a written report to the Complaints Investigation Committee, which report shall contain a summary of the investigation and an identification of the issues that the Committee may wish to determine.

### **Further Investigation by Executive Director**

**9.2.13** An investigation pursuant to this regulation may include

- (a) obtaining additional information, orally or in writing, from the member, the complainant or any other person;
- (b) interviewing the member, the complainant or any other person on oath or affirmation if the member, the complainant or other person consents;
- (c) obtaining outside assistance to further the investigation,
- (d) reviewing the member's trust account records,
- (e) if the Complaints Investigation Committee so directs, a practice review pursuant to subregulation 9.7.1 or an audit pursuant to subregulation 10.7.1; or
- (f) such other steps as the Executive Director determines are required for a thorough investigation.

## **9.2A Fitness to Practise Referrals**

### **Referral by the Executive Director**

**9.2A (1)** Notwithstanding any other provision of these Regulations, if

- (a) a complaint raises concerns about a member's capacity,
- (b) a person, in the absence of a complaint, raises concerns about a member's capacity to the Society, or
- (c) a member self-reports incapacity to the Society,

the Executive Director may, where the Executive Director determines that it is in the public interest to do so and the member consents, refer the matter to the Fitness to Practise Committee.

**9.2A (2)** If the Executive Director does not refer a matter to the Fitness to Practise Committee under 9.2A (1), the Executive Director

- (a) must, in the case of a complaint received pursuant to subregulation 9.2A(1)(a) process the matter as a complaint pursuant to the Act and the Regulations; or
- (b) may, in the case of information received pursuant to subregulation 9.2A(1)(b) or (c) process the matter as a complaint pursuant to the Act and the Regulations.

### **Referral by the Complaints Investigation Committee**

**9.2A (3)** If a matter before the Complaints Investigation Committee raises concerns about a member's capacity, the Complaints Investigation Committee may, where the Complaints Investigation Committee determines that it is in the public interest to do so and the member consents, refer the matter to the Fitness to Practise Committee.

**Fitness to Practise Committee Authority**

**9.2A (4)** The Fitness to Practise Committee, upon receipt of a referral from the Executive Director or the Complaints Investigation Committee, may, with the member's consent, do one or both of the following:

- (a) require the member to submit to a medical assessment,
- (b) enter into an interim agreement respecting conditions or restrictions on a member's practising certificate or undertakings with regard to a member's practice.

**9.2A (5)** If the member does not comply with any of the requirements under subregulation 9.2A (4) the Fitness to Practise Committee must refer the matter back to the Executive Director to be dealt with according to Regulation 9.2.

**9.2A (6)** Where, following a review of a medical assessment and other relevant information, the Fitness to Practise Committee has reasonable concerns about a member's capacity, the Committee may enter into a remedial agreement with a member where

- (a) it is in the public interest to do so; and
- (b) the member consents.

**9.2A (7)** If the review set out in subregulation 9.2A (6) does not raise reasonable concerns about a member's capacity, the Committee must refer the matter back to the Executive Director to be dealt with according to Regulation 9.2.

**9.2A (8)** A remedial agreement may include some or all of the following provisions:

- (a) the member submits to such further medical assessments as the Fitness to Practise Committee deems appropriate;
- (b) the member undertakes and completes any applicable course of treatment designed to address any issues concerning the member's capacity at the member's own expense unless the Committee determines otherwise;
- (c) the member authorizes the Fitness to Practise Committee to receive reports from the medical assessments or treatment referred to in clauses (a) and (b);
- (d) the member agrees to accept practise restrictions or conditions on the member's practising certificate or a withdrawal from practise pending completion of the terms and conditions in the remedial agreement;
- (e) such other provisions as the member and the Fitness to Practise Committee may agree.

**9.2A (9)** Pursuant to section 40(2C) of the Act, the Fitness to Practise Committee may direct the Executive Director to provide a summary of the remedial agreement to the complainant, any other affected individuals, other regulatory bodies in a foreign jurisdictions and any past, present or intended law firms of the member.

**9.2A (10)** The Fitness to Practise Committee may amend an interim agreement or a remedial agreement, with the member's consent.

**9.2A (11)** If the member does not consent to the amendment of the interim agreement or remedial agreement, the Fitness to Practise Committee must refer the matter back to the Executive Director to be dealt with according to Regulation 9.2.

**9.2A (12)** If, at any time during the course of the remedial agreement or interim agreement-referred to in subregulations 9.2A(4) or 9.2A(7) or where the remedial agreement or interim agreement has been amended pursuant to subregulation 9.2A(9), the Fitness to Practise Committee determines that the member has not met the terms and conditions of the remedial or other agreement, the Fitness to Practise Committee may refer the matter to the Executive Director or Complaints Investigation Committee, as appropriate.

**9.2A (13)** Section 14(1)(c) of the Act and subregulation 4.14.1 apply to any condition or restriction or both imposed on a member's practising certificate by the Fitness to Practise Committee.

**9.2A (14)** The Fitness to Practise Committee in existence at any time retains jurisdiction over a member who is subject to ongoing terms and conditions of a remedial agreement or an interim agreement to monitor the member's compliance.

**9.2A (15)** When a remedial agreement has been completed, the Executive Director must give notice to the complainant.

**9.2A (16)** No information received by or proceedings of the Fitness to Practise Committee will be disclosed except in accordance with Section 40 of the Act.

**9.2A (17)** If a matter is referred back to the Executive Director or the Complaints Investigation Committee, all material in the possession of the Fitness to Practise Committee must be provided to the Executive Director or Complaints Investigation Committee, as applicable.

**9.2A (18)** If the Fitness to Practise Committee refers a matter back to the Executive Director or Complaints Investigation Committee, the Fitness to Practise Committee must prepare written reasons which must be provided to the member, the Executive Director and, if applicable, the Complaints Investigation Committee.

### **9.3 Review of Dismissal by Complaints Review Committee**

**9.3.1** Subject to subregulation 9.4.4, a complaint dismissed pursuant to subregulations 9.2.2, 9.2.10 or 9.2.12 must be reviewed by the Complaints Review Committee, if within thirty days of notification of the dismissal being forwarded to the complainant, the complainant submits a Request for Review to the Chair of the Complaints Review Committee.

#### **Extension of Time**

**9.3.2** The Chair of the Complaints Review Committee may, where there are reasonable grounds to do so, extend the time for requesting a review under subregulation 9.3.1.

#### **Notice**

**9.3.3** The Chair of the Complaints Review Committee must advise the member and Executive Director in writing when a Request for Review is received.

#### **Scope of Review**

**9.3.4** The Complaints Review Committee must review all files, records and documents obtained or produced by the Executive Director in the course of investigation of the complaint, including files and information that are subject to solicitor-client privilege and the Complaints Review Committee must not disclose any privileged information, except as permitted under the Act.

#### **Review by Committee**

**9.3.5** The procedures applicable to the review of a complaint received by the Complaints Review Committee will be determined by the Committee.

#### **Confidentiality**

**9.3.6** The Complaints Review Committee will keep all requests for review confidential in accordance with Section 40 of the Act.

**9.3.7** Following a review of the matter the Committee must

- (a) render a written decision which confirms the dismissal of the complaint; or
- (b) return the complaint to the Executive Director to investigate in accordance with the Committee's decision.

### **Decision of the Committee**

**9.3.8** In making a decision under subregulation 9.3.7, the Complaints Review Committee must determine whether, based on the evidence before the Executive Director, the decision to dismiss was correct because

- (a) the subject matter of the complaint was outside the jurisdiction of the Society;
- (b) the complaint was for an extraneous or improper purpose;
- (c) the complaint did not allege facts which, if proven, would constitute professional misconduct, conduct unbecoming, or professional incompetence, or would merit counseling, a caution or other; or
- (d) the evidence that might reasonably be believed could not support a finding of professional misconduct, conduct unbecoming, professional incompetence or incapacity, or would not merit counseling, a caution or both.

**9.3.9** If the Complaints Review Committee determines that the Executive Director's decision was not correct, then it may direct that the complaint be returned to the Executive Director.

### **Reasons**

**9.3.10** The Complaints Review Committee must provide written reasons to the complainant, the lawyer and the Executive Director.

**9.3.11** A decision made under subregulation 9.3.7 is final.

**9.3.12** If a direction is made pursuant to subregulations 9.3.7(b), the Executive Director must follow the direction and despite the authority in subregulations 9.2.10 (a) or 9.2.12 (a), must provide a written report to the Complaints Investigation Committee pursuant to subregulation 9.2.12 (g).

## **9.4 Referral to Complaints Investigation Committee**

**9.4.1** At any time after a complaint is received, the Complaints Investigation Committee may

- (a) require
  - i) the member, or
  - ii) any member of a law firmto attend before it for purposes of assisting with the investigation or for any other purpose consistent with the objects of the professional responsibility process;
- (b) require information to be provided by any person on the record and under oath or affirmation, to the Committee or to the Executive Director;
- (c) order
  - i) the member, or
  - ii) any member of the firmto appear before the Committee or the Executive Director for the purpose of providing information under oath or affirmation;
- (d) provide direction with regard to the investigation;
- (e) assume responsibility for the investigation, in which event a member of the Committee appointed by the Committee or such other person appointed by the Executive Director will act as an investigator; or
- (f) exercise any of the powers conferred upon it by Sections 36, 37, and 38 of the Act;
- (g) direct that an investigation be held in abeyance in accordance with an applicable policy;
- (h) refer a matter to the Fitness to Practise Committee if it determines that it is in the public interest to do so.

### **Committee Determines Process**

**9.4.2** Notwithstanding anything contained in this Regulation, and where the objects of the professional responsibility process require, the investigation of a complaint by the Executive Director and the Complaints Investigation Committee may be conducted in such manner as the Committee determines.

**9.4.2.1** The Committee may conduct its meetings in person, by telephone or by electronic communications including email and videoconference, as determined by the Chair of the Complaints Investigation Committee.

### **Notice**

**9.4.2.2** The Committee may exercise its powers under Section 37 without notice to the practising lawyer when it is in the public interest to do so.

### **Consideration of Complaints by Complaints Investigation Committee**

**9.4.3** Upon receipt of a report pursuant to subregulation 9.2.12 (g), the Complaints Investigation Committee may do one or more of the following:

- (a) attempt to resolve the complaint if, in its opinion the complaint may be satisfactorily resolved, consistent with s. 33 of the Act, and failure to resolve the complaint will result in the complaint being further dealt with in accordance with this subregulation;
- (b) direct further investigation;
- (c) dismiss the complaint;
- (d) counsel, caution, or counsel and caution the member;
- (e) determine that the evidence that can reasonably be believed presents a likelihood of a finding of professional misconduct, conduct unbecoming, professional incompetence or incapacity and, with the consent of the member,
  - (i) direct that the member be required to take such courses and undergo such examinations as the Committee may direct;
  - (ii) impose a reprimand;
  - (iii) impose practice restrictions or conditions on the member's practicing certificate;
- (f) hold disposition of the complaint in abeyance until the member has complied with any conditions deemed advisable by the Committee;
- (g) determine that the evidence that can reasonably be believed presents a likelihood of a finding of professional misconduct, conduct unbecoming, professional incompetence, incapacity or more than one of them and direct the Executive Director to lay one or more charges against the member; or
- (h) take such other appropriate action as is deemed advisable.

### **Committee to Give Reasons**

**9.4.4** The Committee must provide the member and, unless it directs otherwise, the complainant with reasons for any disposition pursuant to subregulation 9.4.3 (c), (d) (e) or (f).

### **Decision to Dismiss is Final**

**9.4.5** A decision to dismiss a complaint by the Complaints Investigation Committee pursuant to subregulation 9.4.3(c) is final and not subject to review pursuant to Regulation 9.3.

### **9.5 Minutes of Meeting**

**9.5.1** The Executive Director must ensure that minutes of meetings are taken recording the names of those present, the text of any resolution adopted and such other matters as the Committee deems appropriate, and will ensure that such minutes are approved by the Committee.

### **Evidence**

**9.5.2** In a proceeding under Section 37, the Committee may receive and accept such evidence and information on oath, affidavit or otherwise as the hearing panel in its discretion sees fit, whether admissible in a court of law or not.

## **Failure to Appear**

**9.5.2.1** If the practising lawyer fails to appear at a proceeding pursuant to Section 37 or for the resumption of an adjourned proceeding after notice thereof, the Committee may proceed in the lawyer's absence.

## **Adjournment**

**9.5.2.2** The Committee may from time to time adjourn a proceeding under Section 37 and give notice thereof to the parties.

**9.5.3** Despite Section 40(1) of the Act and subject to any order of the Committee, the Executive Director must

- (a) provide the membership with an anonymized summary of any disposition pursuant to subregulation 9.4.3(d); and
- (b) provide the public with notice of any disposition under subregulation 9.4.3(e) or Section 37(1)(a) or (b).

## **Notification of suspension**

**9.5.3.1** Despite Section 40(1) of the Act, when a practising lawyer has been suspended pursuant to Section 37(1)(a), the Executive Director must

- (a) notify all prothonotaries, court administrators and registrars and other public offices that may be affected by the suspension; and
- (b) publish notice of the suspension which advises that the lawyer has been suspended and is not entitled to practice.

## **Notification of conditions or restrictions**

**9.5.3.2** When conditions or restrictions have been imposed on a practising lawyer pursuant to Section 37(1)(a), the Executive Director

- (a) must notify all prothonotaries, court administrators and registrars and other public offices that may be affected by the conditions or restrictions; and
- (b) may publish notice of the conditions or restrictions on the practise of the lawyer.

**9.5.3.3** In the absence of a request for a meeting by the lawyer pursuant to Section 37(4), the Committee may reconvene on the receipt of information that could result in the variation or termination of a decision made pursuant to Section 37(1)(a).

## **Continuing Jurisdiction of Committee**

**9.5.4** The Complaints Investigation Committee retains jurisdiction over a complaint until the commencement of a hearing, or the Fitness to Practise Committee otherwise resolves the matter, and nothing in this subregulation affects any order made pursuant to subsection 37(1) of the Act.

## **Extension of Term**

**9.5.5** At the discretion of the Executive Director, members of the Complaints Investigation Committee whose terms have expired may remain members of the Committee until conclusion of ongoing complaint matters in which those members of the Committee have been involved, or the members' participation is no longer required.

## **9.6 Lawyer Conduct in Another Jurisdiction**

**9.6.1** If there is an allegation of professional misconduct, conduct unbecoming professional incompetence or incapacity against a member of the Society while practising temporarily in another Canadian jurisdiction, the Society will

- (a) consult with the governing body concerned respecting the manner in which investigations and disciplinary proceedings will be conducted, and
- (b) subject to subregulation 9.6.2, assume responsibility for the conduct of the investigations and disciplinary proceedings.



### **Other Governing Body to Assume Responsibility**

**9.6.2** The Society may agree to allow the other governing body concerned to assume responsibility for the conduct of investigations and disciplinary proceedings under subregulation 9.6.1, including expenses of the proceeding.

### **Primary Considerations**

**9.6.3** In deciding whether to agree under subregulation 9.6.2, the primary considerations will be the public interest, convenience and cost.

### **Request of Investigating Governing Body**

**9.6.4** To the extent that it is reasonable in the circumstances, the Executive Director must do the following on the request of a governing body that is investigating the conduct of a member of the Society or a visiting lawyer who has provided legal services:

- (a) provide all relevant information and documentation respecting the lawyer or visiting lawyer as is reasonable in the circumstances; and
- (b) cooperate fully in the investigation, any charge and a hearing.

### **Application of 9.6.4**

**9.6.5** Subregulation 9.6.4 applies when the Society agrees with a governing body under subregulation 9.6.2.

## **9.7 Review of Practice**

**9.7.1** Where the Complaints Investigation Committee has reasonable and probable grounds to believe that a member of the Society is practising law in a manner contrary to the public interest, the Committee may direct the Executive Director to appoint a reviewer to conduct a review of all of or a portion of the member's practice.

### **Cooperation with Reviewer**

**9.7.2** The member, and the member's employees or associates, shall answer any inquiries and produce for the reviewer all records, files or other information which the reviewer requires for the purpose of the investigation.

### **Place of Review**

**9.7.3** Where practicable, the review shall be made in the office of the member or wherever client files or records are located.

### **Photocopies**

**9.7.4** The reviewer may direct the member to produce any record, file or other information for the purpose of allowing the reviewer to take it away, make copies and return it within a reasonable time.

### **Report of Reviewer**

**9.7.5** The reviewer shall report the results of the review to the Complaints Investigation Committee.

### **Failure to Comply**

**9.7.6** If the member, or the member's employees or associates, have, in any way, failed to comply with the reviewer's requests for records, files or other information, or have otherwise impeded the review, the reviewer shall report the circumstances to the Complaints Investigation Committee.

### **Review Incomplete**

**9.7.7** If the reviewer has been unable to make or complete the review he or she shall state the reasons therefore.

### **Use of Reviewer's Report**

**9.7.8** The reviewer's report may be made the basis of a complaint against a member and may be used in evidence.

### **Reasonable requirements**

**9.7.9** After providing a member of the Society with an opportunity to be heard, and where it is in the public interest to do so, the Complaints Investigation Committee may direct the member to comply with any reasonable requirements specified by the Committee as a result of its consideration of the review.

### **Substantial risk**

**9.7.10** Where a review conducted pursuant to this subregulation identifies

(a) inadequacies in the member's practice, or

(b) conduct that poses a substantial risk that the member will face disciplinary action in the future, the Complaints Investigation Committee may provide assistance to the member in order to remedy those inadequacies.

### **Costs of a Practice Review**

**9.7.11** The Complaints Investigation Committee may, by resolution, order that a member pay to the Society all or a portion of the reasonable costs of the audit, review, examination, medical or other assessment ordered or allowed under section 36(2)(g) and (h), and may set and extend the date for payment.

## **CONDUCT OF HEARINGS**

### **9.8 Charge Laid**

**9.8.1** When the Executive Director is instructed to lay a charge, the charge must be

(a) prepared and served upon the member together with the notice of referral to hearing;

(b) communicated appropriately to the person or persons who complained to the Society; and

(c) provided to the Chair of the Hearing Committee.

**9.8.2** Despite any notice or timing requirements in Regulations 9.8 through 9. 11, the parties may agree to shorten such notice or timing requirements.

### **Notice of Referral to Hearing**

**9.8.3** Subject to subregulation 9.8.7, after the charge and notice of referral to hearing have been served on the member, the Executive Director must provide the notice of referral to hearing to the public no earlier than 15 days after service of the charges upon the member by publishing a notice on the Society's website that

(a) specifies the member's name; and

(b) outlines the nature of the charges.

### **Application to Committee**

**9.8.4** The member may make application to the Complaints Investigation Committee to vary the content of the notice of referral to hearing.

**9.8.5** Such application must be made in writing and received by the Executive Director within 14 days of service of the charge and the notice of referral to hearing on the member.

**9.8.6** The Executive Director will wait until the Committee makes a determination on the member's application to vary prior to publishing the notice of referral to hearing.

**9.8.7** The Committee may make a decision regarding the content of the notice of referral to hearing.

### **Committee to Give Reasons**

**9.8.8** The Committee must provide reasons for its decision regarding the member's application to vary.

### **Notice of participation**

**9.8.9** A notice of participation must be filed by the member within 15 days after the day the member has been served with the charge and the notice of referral to hearing.

**9.8.10** A notice of participation must be dated and signed by the member or the member's counsel and include the following:

- (a) a statement giving notice of the member's participation in the hearing; and
- (b) any procedural issues that the member intends to raise.

## **9.9 Proceedings Management Meeting**

**9.9.1** Within 30 days after the charge and the notice of referral to hearing have been served on the member, the Chair of the Hearing Committee must convene a proceedings management meeting.

**9.9.2** The Chair of the Hearing Committee, after consulting with the parties on their availability, must provide written notice to the parties of the time and date of any proceedings management meeting.

**9.9.3** At any proceedings management meeting, the Chair of the Hearing Committee may assist the parties to reach agreement regarding procedural matters to facilitate the expeditious hearing of the charge in accordance with the Act and Regulations including:

- (a) identification of issues in the proceeding;
- (b) consideration of any restorative approaches or alternative dispute mechanisms that could be utilized;
- (c) identification of witnesses in the proceeding;
- (d) discussion of deadlines for filing of expert and other reports;
- (e) addressing issues with respect to disclosure;
- (f) potential for agreed statements of fact with respect to contested and uncontested components of a charge;
- (g) discussion of the number of days the parties anticipate requiring for the proceeding; and
- (h) any further appearances at additional proceedings management meetings, if necessary, the timing and content of which will be as directed by the Chair of the Hearing Committee;

and may adjourn the proceedings management meeting at the Chair's own direction, or on receipt of a request from either party to the proceeding.

### **Authority of Hearing Committee Chair**

**9.9.4** The Chair of the Hearing Committee will select the hearing panel, including appointing the Chair of the hearing panel.

**9.9.5** Where the parties have been unable to reach agreement on any issues arising during a proceedings management meeting, the Chair of the Hearing Committee will refer those issues to the hearing panel.

**9.9.6** If the member fails to participate in any proceedings management meeting after receiving notice thereof, the Chair of the Hearing Committee may proceed with the meeting in the member's absence.

### **Conduct of Proceedings Management Meeting**

**9.9.7** A proceedings management meeting may be conducted in person, in writing, by telephone or by electronic communications including videoconference, as determined by the Chair of the Hearing Committee.

**9.9.8** Within 15 days of the conclusion of a proceedings management meeting, the Chair of the Hearing Committee must issue minutes of the meeting that set out the areas of agreement and areas, if any, to be referred to the hearing panel and must provide the minutes to the parties.

**9.9.9** The Chair of the Hearing Committee will provide a copy of any minutes prepared pursuant to subregulation 9.9.8 to the hearing panel at the conclusion of the proceedings management process.

**9.9.10** The Chair of the Hearing Committee may conduct further proceedings management meetings on the Chair's own direction, or on receipt of a request for further directions from either party to the proceeding.

**9.9.11** A proceedings management meeting may be held anytime until the commencement of one of the following:

- (a) a pre-hearing conference, pursuant to subregulation 9.11.1; or
- (b) a hearing to consider a proposed settlement agreement.

**9.9.12** Despite any notice or timing requirements in this Regulation, the Chair of the Hearing Committee, in the Chair's discretion, may shorten or extend any notice or timing requirements.

## **9.10 Notice of Hearing**

**9.10.1** As soon as practicable following the setting of the dates for hearing, the Executive Director must prepare and serve the member with the notice of hearing.

**9.10.2** After the notice of hearing has been served on the member, the Executive Director must provide notice of the hearing to the public at least 15 days prior to the date of the hearing.

## **9.11 Pre-Hearing Conference**

**9.11.1** Subject to subregulation 9.11.2, a pre-hearing conference must be conducted by the hearing panel no later than 30 days after the last proceedings management meeting or at such time as requested by either party and as determined by the chair of the hearing panel.

**9.11.1.2** A pre-hearing conference may be conducted before the hearing panel chair alone at the discretion of the panel chair.

**9.11.2** The requirement to conduct a pre-hearing conference may be waived with the agreement of the parties.

### **Notice of Conference**

**9.11.3** The hearing panel chair, after consulting with the parties on their availability, must provide written notice to the parties of the time and date of the pre-hearing conference.

**9.11.4** The notice in subregulation 9.11.3 must confirm that the hearing panel may proceed in the absence of the member if the member or the member's counsel does not attend the conference.

### **Authority of Hearing Panel**

**9.11.5** The hearing panel or chair must set a date for the hearing to commence that is not sooner than 30 days from the date of the pre-hearing conference.

**9.11.5.1** At the first pre-hearing conference, the hearing panel or chair may make orders and give directions on any matters relating to the hearing for which agreement may not have been reached at a proceedings management meeting, and on any other matters in accordance with the authority of the hearing panel under Section 42(2) of the Act.

**9.11.6** At a pre-hearing conference, the hearing panel or chair may consider a proposed settlement agreement provided there has been compliance with the requirements for a notice of hearing in subregulation 9.10.1.

**9.11.7** A pre-hearing conference may be held in public or private, as determined by the hearing panel or chair, after hearing from the parties.

### **Conduct of Pre-Hearing Conference**

**9.11.8** A pre-hearing conference may be conducted in person, in writing, by telephone or by electronic communications including videoconference, as determined by the hearing panel or chair.

**9.11.9** Unless otherwise directed by the hearing panel or chair, the parties to the proceeding, or their counsel, must attend or participate in the pre-hearing conference.

**9.11.10** At the conclusion of the pre-hearing conference, the hearing panel or chair must issue written orders and/or directions with regard to any or all of the matters referred to in subregulation 9.11.5.1 and must provide the written orders and/or directions to the parties.

### **Commencement of hearing**

**9.11.11** The hearing has commenced when the hearing panel begins to hear evidence in relation to the charges against the member.

## **9.12 Proposed Settlement Agreement**

**9.12.1** Subject to subregulations 9.12.1.1 and 9.12.1.2, after the charge is served on the member, the Executive Director and the member may, at any time prior to the commencement of the hearing, tender to the Complaints Investigation Committee a proposed settlement agreement that includes

- (a) a statement of sufficient facts in relation to the complaint against the member to support the admitted charges and the proposed disposition;
- (b) an admission of guilt by the member to one or more of the charges; and
- (c) the member's consent to a specified disposition, conditional upon the acceptance of the agreement by a hearing panel.

### **No Contest**

**9.12.1.1** After the charge is served on the member, and where the member and the Executive Director agree that disbarment is the appropriate sanction, the member and the Executive Director may submit to the Complaints Investigation Committee a settlement agreement in which the member does not contest the charge and does not admit guilt.

**9.12.1.2** A settlement agreement submitted to the Committee under subregulation 9.12.1.1 will include:

- (a) a statement of facts alleged by the Society in relation to the complaint against the member sufficient to support the charge and proposed disposition; and
- (b) the member's consent to disbarment and any other penalties;

and is conditional upon the acceptance of the agreement by a hearing panel.

### **Discretion of the Committee**

**9.12.2** The Complaints Investigation Committee may, in its discretion, recommend or refuse to recommend acceptance of the proposed settlement agreement by a hearing panel.

### **Refusal to Recommend by Committee**

**9.12.3** If the Complaints Investigation Committee refuses to recommend acceptance of the proposed settlement agreement, the hearing must proceed without reference to the proposed settlement agreement.

**9.12.4** At any hearing to consider the recommendation of a settlement agreement, the hearing panel will impose a publication ban on all matters disclosed at the hearing pursuant to Section 44(3) of the Act, and this ban will remain in force until

- (a) the hearing panel approves the settlement agreement subject to any ongoing publication ban that may have been ordered; or
- (b) the final disposition of the charges by a subsequent hearing panel subject to any ongoing or further publication bans that may be ordered.

**9.12.5** Within 30 days of the hearing to consider the recommendation of the Complaints Investigation Committee, a hearing panel must

- (a) by resolution, approve a settlement agreement approved by the Complaints Investigation Committee;
- or

- (b) reject a settlement agreement approved by the Complaints Investigation Committee and proceed no further where the panel determines that the agreement is not in the public interest; and
- (c) provide written reasons for its decision.

**9.12.6** A publication ban imposed pursuant to Section 44(3) of the Act will apply to the written reasons provided pursuant to subregulation 9.12.5(c).

#### **Acceptance of Recommendation**

**9.12.7** Following acceptance of the recommendation of the Complaints Investigation Committee and receipt of the resolution made by the hearing panel pursuant to subregulation 9.12.5(a), the Executive Director may release the Settlement Agreement to the public.

**9.12.8** Where the hearing panel has rejected a settlement agreement, the members of that panel must not participate as members of a subsequent hearing panel in the same matter.

#### **Committee has Jurisdiction**

**9.12.9** Where the hearing panel rejects a settlement agreement, the Complaints Investigation Committee has jurisdiction over the matter until the commencement of the hearing by the new panel.

**9.12.10** Nothing in this Regulation affects any order made pursuant to Section 37(1) of the Act.

#### **New Hearing Panel**

**9.12.11** A new hearing panel must proceed without reference to the proposed settlement agreement rejected by the prior hearing panel.

### **9.13 Evidence**

#### **Witness**

**9.13.1** A witness appearing before a hearing panel may raise procedural issues, affecting his or her testimony, either through his or her counsel or through counsel for one of the parties.

#### **9.13.2 Disclosure**

The following evidence is not admissible at a hearing unless the opposing party has been given, at least 10 days before the hearing or such earlier time as determined by the hearing panel at the pre-hearing conference,

- (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- (b) in the case of evidence of an expert, a copy of the expert's written report or if there is no written report, a written summary of the evidence; or
- (c) in the case of evidence of a witness, the identity of the witness.

#### **Power to Allow Evidence**

**9.13.3** Despite subregulation 9.13.2, a hearing panel may, in its discretion, allow the introduction of evidence that would otherwise be inadmissible, or exclude evidence that would otherwise be admissible, and may make such directions that it considers necessary to ensure that a party is not prejudiced.

#### **Failure to Appear**

**9.13.4** If a member fails to appear at a hearing or for the resumption of an adjourned hearing after notice thereof, the hearing panel may proceed with the hearing in the member's absence.

**9.13.5** The hearing panel may from time to time adjourn a hearing and give notice thereof to the member.

#### **Amendment of Charge**

**9.13.6** The hearing panel may, at any time before or during a hearing, amend or alter any charge either to

- (a) correct an alleged defect in substance or form, or
- (b) to make the charge conform to the evidence where

- (i) there appears to be a variance between the evidence and the charge, or
- (ii) where the evidence discloses professional misconduct or conduct unbecoming, professional incompetence or incapacity that is not alleged in the charge

## **9.14 Disposition of Charge**

**9.14.1** Upon completion of a hearing, the hearing panel must dispose of the charge as provided in Sections 45(4) or (5) of the Act.

### **Suspension for non-compliance**

**9.14.1.1** If the hearing panel makes an order for payment under Section 45(4) (e), (f) and (h), the member will be suspended for failing to comply with that order unless otherwise ordered by the hearing panel.

### **Notification of Member**

**9.14.1.2** When a member has been suspended under this Regulation, the Executive Director must

- (a) notify the member of the suspension and the effective date; and
- (b) amend the records of the Society to reflect the suspension and the effective date.

### **Notification of Public Offices**

**9.14.1.3** When a practising lawyer has been suspended pursuant to subregulation 9.14.1.1, the Executive Director must notify all prothonotaries, court administrators and registrars and other public offices that may be affected by the suspension.

### **Notice of Suspension**

**9.14.1.4** When a practising lawyer has been suspended pursuant to subregulation 9.14.1.1, the Executive Director may cause a notice of the suspension to appear in a newspaper of general circulation in the Province, which advises that the lawyer has been suspended and is not entitled to practice.

### **Continuing Jurisdiction**

**9.14.2** Where a hearing panel finds a member of the Society guilty of professional misconduct, professional incompetence or conduct unbecoming, or makes a finding of incapacity, the hearing panel will retain jurisdiction to make any other order or take any other action the hearing panel determines to be appropriate in the circumstances including an order to retain jurisdiction to monitor the enforcement of its order.

**9.14.3** Where the term of a member of the hearing panel has expired or the member is otherwise unavailable to exercise the jurisdiction set out in subregulation 9.14.2, the jurisdiction of the remaining members of the hearing panel will not be affected provided the hearing panel has quorum.

**9.14.4** If the hearing panel no longer has quorum as a result of a member's unavailability to continue to serve, the Chair of the Hearing Committee may appoint a successor member to monitor enforcement of the hearing panel's order or to consider a request to rescind or vary an order made by the hearing panel.

### **Decision on Charge**

**9.14.5** Within 60 days of completion of the hearing of the evidence and receipt of submissions on the charge, the Chair of the hearing panel must provide to the parties and the Executive Director the panel's written decision and its reasons for that decision.

### **Decision is Public**

**9.14.6** Upon receipt of the written decision, unless the Hearing Panel otherwise orders, the Executive Director must

- (a) release the decision to the public, and
- (b) file a copy of the decision with the Prothonotary.

### **Hearing on Sanction**

**9.14.7** If the member is found guilty, within 60 days of release of its decision pursuant to subregulation 9.14.2, the hearing panel must resume the hearing in order to determine the appropriate sanction.

### **Decision on Sanction**

**9.14.8** Within 30 days of completion of the hearing pursuant to subregulations 9.14.7 or 9.15.2, the Chair of the hearing panel must provide to the parties and the Executive Director

- (a) a written decision on the sanction;
- (b) the reasons for that decision; and
- (c) a resolution incorporating the sanction signed by the Chair on behalf of the hearing panel.

### **Exhibits**

**9.14.9** As soon as practicable after providing its final decision to the Executive Director, the Chair of the hearing panel must deliver to the Executive Director all the exhibits tendered at the hearing together with any other material that would constitute the record of the hearing.

### **Filing of Decision**

**9.14.10** Following receipt of the material prescribed by subregulation 9.14.8, the Executive Director must

- (a) file the material with the Prothonotary; and
- (b) release the decision to the public.

## **9.15 Sanction in Foreign Jurisdiction**

**9.15.1** If a member is guilty of professional misconduct pursuant to Section 48 of the Act, the Executive Director must give effect in Nova Scotia to any sanction that may have been imposed by the other jurisdiction.

### **Proof of Guilt**

**9.15.2** A certified copy of a disciplinary decision of another disciplinary authority may be used by the Society to prove that fact in a proceeding under this Part.

### **Application to Chair**

**9.15.3** A member may apply in writing to the Chair of the Hearing Committee to have a hearing panel appointed to determine whether the imposition of the sanction referred to in subregulation 9.15.1 is appropriate.

**9.15.4** The Chair of the Hearing Committee must appoint a hearing panel as soon as practicable following receipt of an application.

**9.15.5** An application pursuant to subregulation 9.15.3 does not operate as a stay.

**9.15.6** A hearing panel may issue any order that may be appropriate prior to making a decision on an application.

**9.15.7** A hearing panel must provide reasons for its decision regarding the member's application under this Regulation.



## PART 10

### TRUST ACCOUNTS

#### 10.1 Definitions

##### 10.1.1 In this Part

- (a) **“data source”** means an electronic file which can be used to generate books of original entry, client ledger cards, and other source documents and which maintains an audit trail of changes;
- (b) **“financial institution”** means a chartered Canadian Schedule I bank, credit union or *Caisse Populaire* legally entitled to carry on business in the Province;
- (c) **“general account”** means a deposit account in a financial institution maintained by a practising lawyer or law firm in connection with the practice of law, other than a trust account;
- (d) **“general trust account”** means a deposit account in a financial institution maintained by a practising lawyer or law firm and designated as a trust account into which the practising lawyer or law firm deposits trust money;
- (e) **“money”** includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders and electronic transfer of deposits at financial institutions;
- (f) **“overdraft”** means an amount below that which is required to meet the practising lawyer’s or law firm’s obligations, whether or not the trust account is overdrawn;
- (g) **“specific trust account”** means a deposit account or instrument in a financial institution, maintained by a practising lawyer or law firm on behalf of a specific client, and designated as a trust account on behalf of that client, into which a practising lawyer deposits money received in trust;

##### Acting in a Representative Capacity

##### 10.1.2 A lawyer is acting in a representative capacity if the lawyer is

- (a) the personal representative, executor or administrator, or one of the personal representatives, executors or administrators, of the estate of a deceased person;
- (b) a trustee, or one of the trustees, of a trust under an appointment made pursuant to a trust instrument creating the trust;
- (c) a trustee, or one of the trustees, of the property of another person under an appointment by a court;
- (d) a *de facto* trustee; or
- (e) an attorney, or one of the attorneys, of a person under a power of attorney, whether general or special, enduring or otherwise.

##### 10.1.3 A lawyer is not required to deposit trust money or trust property received by a lawyer acting in a representative capacity into the lawyer’s or law firm’s trust account or record the trust money or trust property in the prescribed financial records of the lawyer’s law firm if

- (a) the lawyer maintains a record of all appointments or assumptions of a representative capacity and a list of the beneficiaries of the estate or trust together with their last known address;
- (b) the books, records, accounts and documentation of the estate or trust are in a form sufficient to accommodate an examination, review, audit or investigation ordered by the Executive Director or Complaints Investigation Committee; and
- (c) the lawyer or law firm cooperates with the Society’s auditor or investigator in the conduct of any examination, review, audit or investigation so ordered.

#### 10.2 Receipt of Trust Property

##### 10.2.1 A practising lawyer or law firm is responsible for

- (a) all trust money and property received from or on behalf of a client; and
- (b) the timely deposit of trust money into a trust account; and
- (c) identifying the person on whose behalf the money is deposited.

### **When Money Received**

**10.2.2** Money is not considered to be received until its receipt is confirmed by the practising lawyer or law firm.

### **Deposit Without Delay**

**10.2.3** A practising lawyer or law firm who receives money in trust for a client must deposit the money into the practising lawyer's or law firm's trust account without delay, but not later than the first day after receipt.

### **Requirements for Trust Account**

**10.2.4** A trust account must:

- (a) be designated as a trust account;
- (b) be kept at a financial institution; and
- (c) bear interest which is computed and payable in accordance with Section 30 of the Act.

### **Confirmation of Third Party Deposit**

**10.2.5** A practising lawyer or law firm must obtain written confirmation from the financial institution of any third party deposit in a trust account without delay and must retain such confirmation.

### **Money to Be Put into Trust Account**

**10.2.6** Only the following may be paid into a trust account

- (a) trust money;
- (b) money which has been drawn inadvertently from the trust account in contravention of this subregulation; and
- (c) money received by the practising lawyer or law firm representing, in part, money belonging to a client, and in part money belonging to the practising lawyer or law firm if it is not practicable to divide the payment.

### **No mixing of Personal Funds**

**10.2.7** Money that belongs to the practising lawyer or law firm may not be paid into the practising lawyer's or law firm's trust account unless it is for a transaction in which the practising lawyer or law firm is a client of the practising lawyer or law firm.

### **Escrow to be in Writing**

**10.2.8** Escrow conditions requiring trust property to be held without deposit must be in writing and clearly require that the money be held without deposit.

### **Requirement for Trust Relationship**

**10.2.9** A practising lawyer must not use a trust account where there is no trust relationship.

**10.2.9.1** A practising lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the practising lawyer or law firm is providing.

**10.2.9.2** A practising lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.

### **Proper Delegation Allowed**

**10.2.10** The tasks required to be performed by the practising lawyer or law firm pursuant to Regulations 10.2 may be performed by a person other than a lawyer if that person is working under the supervision of a lawyer in a manner authorised by the *Code of Professional Conduct*.

## **10.3 Withdrawal from a Trust Account**

**10.3.1** A practising lawyer is responsible for all withdrawals or transfers from a trust account and may delegate accounting tasks but not responsibility.

### **Records of Withdrawals**

**10.3.2** A practising lawyer or law firm must maintain a record of all withdrawals from a trust account.

### **Prompt Withdrawal of Money Due to Lawyer**

**10.3.3** Money belonging to the practising lawyer or law firm must be withdrawn from the trust account without delay.

### **Proper Withdrawal from Trust Account**

**10.3.4** Money must not be withdrawn or transferred from a trust account except

- (a) for payment on behalf of a client or another person;
- (b) to remove funds inadvertently deposited to the trust account;
- (c) money properly required for or toward payment of the practising lawyer's or law firm's fees that have been disclosed to the client;
- (d) as authorized in writing by a person designated by the Society; or
- (e) as directed by a Court of competent jurisdiction.

### **Requirements for all Withdrawals**

**10.3.5** Any withdrawal of funds from a trust account must

- (a) be made to a named payee;
- (b) be made by a practising lawyer who has received approval to operate a trust account pursuant to subregulation 4.10.4;
- (c) identify the trust account from which the funds are withdrawn and the date on which the funds are withdrawn;
- (d) not be released or effected until the practising lawyer or law firm is in possession of sufficient funds for the credit of the client on whose behalf the withdrawal is made; and
- (e) not be released or effected until the practising lawyer has sufficient knowledge of the withdrawal to ensure that the client's interests are protected.

**10.3.5.1** Notwithstanding subregulation 10.3.5(b), all practicing lawyers who have signing authority on a trust account as of December 31, 2018 may continue as signatories even if they have not received approval pursuant to subregulation 4.10.4.

### **No Cash or Debit Card Withdrawal**

**10.3.6** Any withdrawal of funds from a trust account must not be made payable to cash or bearer and must not be made by way of a cash withdrawal or by debit card or similar instrument.

### **Maintain Signed Directions**

**10.3.7** Signed directions to the financial institution for the withdrawal of funds must be stored in such manner that they may be cross referenced to the withdrawal from the trust account as shown on the monthly statement from the financial institution.

## **10.4 Maintenance of Records**

### **Lawyers' Requirements**

**10.4.1** A practising lawyer or law firm is responsible:

- (a) to maintain accounting records which will allow for the accurate identification of trust money and property;
- (b) for the timely posting of transactions in the accounting records; and

- (c) to maintain accounting records, including source documents, for at least seven years.

### **Required Records**

**10.4.2** The following accounting records must be maintained by a practising lawyer or law firm:

- (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 payments out of trust money for each client, the date of each payment, the name of each recipient, and identifying the client on whose behalf each payment is made out of trust money,
- (c) a clients' trust ledger showing separately for each person on whose behalf trust money has been received all such money received and paid and any unexpended balance,
- (d) a record showing all trust property held in trust, and identifying the client on whose behalf the property is held;
- (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 payments of money other than trust money, the date of each payment 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) bank statements, cashed cheques, which may include a digital image provided by the practising lawyer's financial institution showing both the front and back of the cheque, and detailed deposit slips for all trust and general accounts;
- (i) 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;
- (j) a record showing all transfers of trust money between clients' trust ledger accounts and explaining the purpose for which each transfer is made.

### **10.5 Service Nova Scotia Trust Account**

**10.5.1** A practising lawyer or law firm may establish a general trust account for the purpose of paying document registration fees and deed transfer tax to the Government of Nova Scotia.

#### **Name of Account**

**10.5.2** The trust account referred to in subregulation 10.5.1 must be named “[*The Name of the Practising Lawyer (or Law Firm)*] In Trust for Service Nova Scotia.”

#### **Use of Account**

**10.5.3** The trust account established under this Regulation must be an account into which the practising lawyer or law firm deposits only money

- (a) received in trust for a client for the purpose of paying document registration fees and deed transfer tax, if any, related to a client's real estate transaction;
- (b) properly withdrawn or transferred from another trust account for the purposes of paying the document registration fees and the deed transfer tax, if any, related to a client's real estate transaction; and
- (c) transferred from the practising lawyer's or law firm's general operating account as a disbursement to be charged to the client in connection with the client's real estate transaction.

#### **Only Enough Money for Transactions**

**10.5.4** For greater certainty, a practising lawyer or law firm must not pay into the trust account established under this Regulation more money than the practising lawyer or law firm expects to be required to pay the document registration fees and deed transfer tax, if any, related to a client's real estate transaction.

### **Government May Withdraw Funds**

**10.5.5** Subject to subregulation 10.5.6 the practising lawyer or law firm may give permission to the Government of Nova Scotia to withdraw those funds from the account established under this regulation by electronic funds transfer.

### **Notification of Withdrawal Required**

**10.5.6** A practising lawyer or law firm shall not authorize the Government of Nova Scotia to withdraw from the trust account established under this Regulation money required to pay registration fees and deed transfer tax unless the Government of Nova Scotia agrees to provide to the practising lawyer or law firm advance notification of the amount to be withdrawn in the form of the Notification of E-Submission Receipt and E-Submission Pre-Authorized Payment Notice.

### **No Disclosure of Passwords**

**10.5.7** A practising lawyer authorized by the Government of Nova Scotia to electronically submit documents to the land registration office and to authorize payment of registration fees and deed transfer tax to the Government of Nova Scotia must retain control and confidentiality over his or her personal password used for this purpose and must not disclose such password to any other person.

### **10.5.8 Content of Notification**

The Notification of E-Submission Receipt referred to in subregulation 10.5.6 must:

- (a) be provided to the practising lawyer or law firm at or before the time of withdrawal;
- (b) include a statement of the amount of money to be withdrawn from the trust account;
- (c) provide sufficient details of the nature of the transaction so that the practising lawyer may identify the client for whom the transaction is being processed; and
- (d) provide a unique identifier for the transaction;

### **E-Submission Pre-Authorized Payment Notice**

**10.5.9** The E-Submission Pre-Authorized Payment Notice referred to in subregulation 10.5.6 must:

- (a) be provided to the practising lawyer or law firm at or before the time of withdrawal;
- (b) include a statement of the amount of money to be withdrawn from the trust account;
- (c) provide sufficient details of the nature of the transaction so that the lawyer may identify the client for whom the transaction is being processed; and
- (d) provide the date and time the notification is sent to the practising lawyer or law firm.

### **Requirements on Receipt of Notification**

**10.5.10** No later than the close of the banking day immediately following the day on which the Notification of E-Submission Receipt is sent to the practising lawyer or law firm, the practising lawyer or law firm must

- (a) produce a printed copy of the notification;
- (b) confirm the amount shown on the notification is the correct amount to be withdrawn from the account and, in the event of any discrepancy, immediately notify the Government of Nova Scotia of the discrepancy; and
- (c) indicate on the printed copy of the notification, the date the notification is received, the name of the client, and any file number in respect of which trust money is to be withdrawn from the trust account.

**10.5.11** The notification must be maintained with the practising lawyer or law firm's trust accounting records.

**10.5.12** No later than the close of the banking day immediately following the day on which the E-Submission Pre-Authorized Payment Notice is sent to the practising lawyer or law firm, the practising lawyer or law firm must

- (a) produce a printed copy of the notification; and
- (b) confirm the amount shown on the notification is the correct amount to be withdrawn from the account and, in the event of any discrepancy, immediately notify the Government of Nova Scotia of the discrepancy.

**10.5.13** The E-Submission Pre-Authorized Payment Notice must be maintained with the practising lawyer's or law firm's trust accounting records

#### **Relegation of Authority**

**10.5.14** The tasks required to be performed by the practising lawyer or law firm pursuant to subregulations 10.5.10 and 10.5.11 may be performed by a person other than a practising lawyer if that person is working under the supervision of a practising lawyer in a manner authorised by the Code of Professional Conduct.

### **10.6 Reporting and addressing errors**

#### **No Overdraft Permitted**

**10.6.1** A practising lawyer or law firm must maintain sufficient balances on deposit in trust to meet the practising lawyer's or law firm's obligations with respect to money held in trust for clients, and all shortages must be restored immediately by the practising lawyer or law firm.

#### **Correcting Errors without Delay**

**10.6.2** A practising lawyer or law firm must correct any errors in a trust account without delay.

#### **Reporting and Explaining Overdrafts**

**10.6.3** Unless the overdraft is less than \$50, a practising lawyer or law firm must, in the prescribed form, immediately report to the Executive Director any overdrafts in the practising lawyer's or law firm's trust account, including any relevant information regarding the reason for the overdraft if

- (a) the overdraft was not corrected within 7 days of the time the shortage arose; or
- (b) the overdraft is an amount greater than \$2,500, regardless of when it occurred.

#### **Overdrafts Resulting from Errors**

**10.6.4** All overdrafts, regardless of dollar value or prior report pursuant to subregulation 10.6.3, must be reported on the practicing lawyer or law firm's annual trust account report filed pursuant to Regulation 4.11.

**10.6.5** A practicing lawyer or law firm is required to immediately report to the Executive Director any suspected or confirmed theft of money by any person from the practicing lawyer's or law firm's trust accounts or general accounts.

### **10.7 Audit by the Executive Director**

**10.7.1** The Executive Director may initiate an audit of the books, records, accounts and transactions of a practising lawyer or law firm or former lawyer or law firm to determine compliance with these Regulations.

#### **Unannounced Investigations**

**10.7.2** For the purpose of ensuring that all practising lawyers or law firms comply with these Regulations, the Executive Director may implement and direct a continuing program of unannounced audits of the books, records, accounts and transactions of practising lawyers or law firms, in accordance with the general directions of Council.

#### **Process of Selection**

**10.7.3** The Executive Director may randomly select practising lawyers or law firms for audit.

#### **Production to Investigator**

**10.7.4** Where an audit is conducted under this Regulation, the practising lawyer or law firm must produce to the person conducting the audit all evidence, books, records, papers, accounts, vouchers, files, clients' files and explanations which may be required for the audit, and failure of the practising lawyer or law firm to cooperate constitutes professional misconduct.

**Investigator's Report to be Provided**

**10.7.5** The Executive Director must provide a copy of the audit report to the practising lawyer or law firm whose accounts have been audited.

**Maintenance of Confidentiality**

**10.7.6** Before conducting an audit under this Regulation, an auditor must complete and file with the Executive Director an undertaking to maintain strict confidentiality with respect to all matters connected with the audit, including compliance with Section 77 of the Act.

**Non-compliance with Regulations**

**10.7.7** If the auditor reports that these Regulations have not been complied with, the Executive Director may

- (a) order the practising lawyer or law firm 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) initiate whatever action is appropriate under Part III of the Act, in which case the audit report may be used as the basis for the complaint as well as being used as evidence.

**Preservation of Rights**

**10.7.8** Nothing in these Regulations deprives a practising lawyer or law firm 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 practising lawyer or law firm's trust account or with respect to trust property.

## **PART 11**

### **LAWYERS' FUND FOR CLIENT COMPENSATION**

#### **11.1 Interpretation**

##### **11.1.1** In this Part:

- (a) **“claim”** means a claim for compensation from the Fund,
- (b) **“claimant”** means a person who is making a claim,
- (c) **“claim’s year”** means the period from May 1 to the following April 30
- (d) **“committee”** means the Lawyers’ Fund for Client Compensation Committee
- (e) **“pecuniary loss”** includes, but is not limited to, taxes, interest, late charges and similar penalties required to be paid by a claimant as a result of the conduct giving rise to a claim, but does not include general damages.

#### **11.2 Purpose of Fund**

**11.2.1** The Fund established under Part IV of the Act is to compensate claimants who have sustained pecuniary losses because of misappropriation or wrongful conversion of the claimant’s money or property by a member of the Society or a Law Corporation.

##### **Payment of Premiums**

**11.2.1.1** If the Fund is insured, the premiums for such coverage may be paid from the Fund.

##### **Establishment of LRA Compensation Fund**

**11.2.2** There is hereby established a fund, to be called the LRA Compensation Fund, for the purpose of reimbursement in the event the Minister of Finance is required to pay compensation pursuant to the *Land Registration Act* for claims arising out of dishonesty, fraud or criminal acts in the certifying of title by a practising lawyer.

#### **11.3 Application for Compensation**

**11.3.1** A claimant may claim for compensation from the Fund or the fund established pursuant to Section 60 of the Act.

##### **Content of Application**

**11.3.2** A claim for compensation in the prescribed form must be submitted to the Executive Director within six months after the loss came to the knowledge of a claimant and must contain:

- (a) contact information for the claimant,
- (b) information about the member of the Society whose alleged misappropriation or conversion give rise to the claim,
- (c) detailed facts supporting this claim, including the date on which the claimant had knowledge of the loss,
- (d) the nature of the relationship with the member of the Society whose alleged misappropriation or conversion gave rise to the claim,
- (e) such other information as may be required by the Executive Director or the Committee.



### **Supporting Material**

**11.3.3** In addition to the information provided in the claim for compensation, the claimant shall provide to the Executive Director supporting material and documentation to substantiate the loss.

### **Additional Information**

**11.3.4** The Executive Director at any time may require additional information, additional proof of information or additional evidence to support the claim.

### **Failure to cooperate**

**11.3.5** The Executive Director may deny the claim if

- (a) the claimant refuses or fails to comply with a requirement of the Executive Director; or
- (b) the statutory requirements as set out in section 57 of the Act and subregulation 11.4.1 are not met.

## **11.4 Review of Claims**

**11.4.1** On receipt of a claim, the Executive Director must determine if the claim meets the criteria for consideration by the Committee, specifically whether:

- (a) money or other property was entrusted to or received by a member of the Society in the member's capacity as a lawyer;
- (b) the member of the Society misappropriated or wrongfully converted the money or other property; and
- (c) the claimant sustained a pecuniary loss as a result of that misappropriation or wrongful conversion.

### **Application goes to Committee**

**11.4.2** If the claim meets the criteria set out in section 57 of the Act and subregulation 11.4.1, then the Executive Director must

- (a) advise the Society's insurer of the claim in accordance with the requirements of the applicable insurance policy; and
- (b) provide a report to the Committee with all relevant information about the claim and any relevant supporting materials.

### **Failure to meet criteria**

**11.4.3** If the Executive Director determines that the claim has not met the criteria as required by subregulation 11.4.1, the claimant will be notified in writing of the reasons the claim has not been reported to the Committee.

### **Timing of claim**

**11.4.4** No payment will be made out of the Fund unless the Executive Director receives notice of the claim within six months after the loss comes to the knowledge of the claimant.

**11.4.5** Notwithstanding subregulation 11.4.4, the Committee may extend the time for making a claim to a maximum of twenty-four months after the loss came to the knowledge of the claimant.

### **Consideration by Committee**

**11.4.6** Following the receipt of a report under subregulation 11.4.2(b), the Committee may

- (a) meet with a claimant or a claimant's representative about the claim; or
- (b) conduct a hearing to determine the facts the Committee must decide before approving or denying a claim or making a recommendation to Council, which hearing must be conducted in accordance with the rules of natural justice.

### **Decision of Committee**

**11.4.7** Following consideration of the claim for compensation, the committee may:

- (a) if the claim is for less than \$5,000.00, dismiss or approve the claim in whole or in part; or
- (b) if the claim is for \$5,000.00 or more, report to Council with recommendations regarding denial or approval of the claim.

**Decision is final**

**11.4.8** A decision by the Committee under subregulation 11.4.7(a) or (d) is final and not subject to appeal.

**11.5 Consideration by Council**

- 11.5.1** On receipt of a report from the Committee pursuant to subregulation 11.4.7(b), Council may:
- (a) approve, reject or alter the recommendation of the committee;
  - (b) determine that additional information is required before it can consider the report and request that the information be provided;
  - (c) take such other steps as it considers appropriate to allow for a determination of a claim; and
  - (d) place conditions that it deems advisable upon any payment.

**Decision is final**

**11.5.2** A decision by Council under subregulations 11.5.1(a) or (d) is final and not subject to appeal.

**11.6 Assignment and Release of Information**

- 11.6.1** If a claim for compensation is approved, the Society must receive:
- (a) an assignment by the claimant to the extent of the payment, of whatever rights the claimant has against a member of the Society or any other person, which assignment must entitle the Society to claim on its own behalf to recover payments made out of the Fund,
  - (b) a release of any future claim which the claimant may have against the Society and the Fund,
  - (c) such other documentation as may be required by the Committee or Council,
  - (d) consent from the claimant to allow the Society to release the claimant's name and information about the claim to law enforcement authorities, unless Council consents to the withholding of such information.

**11.6.2** The claimant who requests Council to consent to the withholding of information must include with the claim for compensation a letter to the Executive Director requesting that information not be released to law enforcement authorities and explaining the reason for the request.

- 11.6.3** On receipt of a request from a claimant pursuant to subregulation 11.6.2, Council may:
- (a) approve the request in whole or in part;
  - (b) reject the request;
  - (c) determine that additional information is required and request that the information be provided; or
  - (d) take such steps as it considers appropriate to allow for a determination of the request.

**11.6.4** Notwithstanding Council's approval of a request pursuant to subregulation 11.6.3(a), the Society must respond fully to lawful demands made by law enforcement authorities for claimant names and claimant information.

**11.6.5** The Society will not disclose information that is subject to solicitor-client privilege except as may be required by law.

**11.7 Cap on Payments**

**11.7.1** Payments out of the Fund shall be limited to the amount available to the Society through insurance for all claims made in that claims year.

**Other payments**

**11.7.2** Council may, in its discretion, reallocate all or a portion of the property of the Fund that is in excess of the Fund's reserve required to meet its obligations under the Mobility Defalcation Compensation Agreement.

## **11.8 Interjurisdictional payments**

**11.8.1** Any claims from a client arising from the misappropriation or conversion of monies or property by member while engaged in the practice of law outside the Province shall be processed in accordance with the Mobility Defalcation Compensation Agreement of the Federation of Law Societies of Canada.

**11.8.2** The provisions of the Mobility Defalcation Compensation Agreement apply to a claim for Compensation from the Lawyers' Fund for Client Compensation involving a mobile lawyer.

**11.8.3** If a dispute arises with another host governing body concerning any matter under the Mobility Defalcation Compensation Agreement, the Executive Director, following consultation with the Executive Committee, may do one or both of the following:

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

## **LAND REGISTRATION ACT COMPENSATION FUND**

### **11.9 Interpretation**

**11.9.1** In regulation 11.9

- (a) **“Department”** means the Department of Service Nova Scotia and Municipal Relations;
- (b) **“LRA Agreement”** means the Agreement between the Minister and the Society dated March 7th, 2003 regarding the relationship, duties and responsibilities between the Society and the Minister in relation to the LRA;
- (c) **“Year”** means the twelve-month period commencing April 1st and ending March 31st.

### **Funding**

**11.9.2** The obligations of the LRA Compensation Fund may be paid out of the fund or funded from fees payable by members, by special levies against members, or may be secured by insurance, bonding or other similar means, as approved by Council.

### **Payment of Premiums**

**11.9.3** If the obligations of the LRA Compensation Fund are insured, money allocated to the LRA Compensation Fund may be used for the payment of premiums.

### **Scope of Claims**

**11.9.4** Claims against the LRA Compensation Fund shall be:

- (a) restricted to claims arising out of dishonesty, fraud or criminal acts in the Certifying of Title by a member;
- (b) restricted to claims not covered by another form of compensation;
- (c) restricted to claims against members whose precipitating actions occurred during the currency of the LRA Agreement; and
- (d) limited in amount as follows:
  - (i) a maximum of One Hundred Thousand Dollars (\$100,000.00) per claim;
  - (ii) a maximum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) in total per year, non-cumulative.

### **Review of Limits**

**11.9.5** The limits above may be reviewed and adjusted by written agreement between the Society and the Minister, pursuant to the terms of the LRA Agreement.

### **Notice of Loss**

**11.9.6** The Department shall notify the Executive Director as soon as practicable, after a claim is submitted or action commenced pursuant to Section 87 or 88 of the *Land Registration Act*, if such claim or action may have arisen out of dishonesty, fraud or criminal acts in the Certifying of Title by a member.

### **Payment of Claims**

**11.9.7** Payment of a claim from the LRA Compensation Fund shall only be made following a recommendation of the Committee and approval of Council.

### **Committee**

**11.9.8** The Committee shall organize, manage and administer the LRA Compensation Fund in accordance with these Regulations and the LRA Agreement.

### **Application for Reimbursement**

**11.9.10** To apply for payment from the LRA Compensation Fund, the Minister, or a claimant who has suffered a loss referred to in sub-regulation 11.9.4, shall file with the Executive Director a completed application (which may be in a form prescribed by the Society), which written application shall include the following information:

- (a) the name and address of the member of the Society whose dishonesty, fraud or criminal acts in the Certifying of Title is alleged to have led to the requirement to pay compensation by the Minister of Finance (the "Loss");
- (b) the amount of the Loss;
- (c) details of the circumstances surrounding the Loss;
- (d) the date upon which the dishonesty, fraud or criminal acts came to the knowledge of the Registrar General or the claimant as the case may be; and
- (e) any supporting material or documentation required to substantiate the Loss.

### **Report to Committee**

**11.9.11** Upon receipt of an application, the Executive Director will forward the application to the Committee for review.

### **Inquiry by Committee**

**11.9.12** The Committee shall consider the application and may make such inquiry as it, in its discretion, deems necessary for the purpose of:

- (a) determining the facts upon which the Minister relies;
- (b) determining whether the reimbursement sought in the application comes within the scope of the purpose, restrictions and limitations of the LRA Compensation Fund, as set forth in these Regulations; and
- (c) recommending whether a payment out of the LRA Compensation Fund to the Minister should or should not be made.

### **Recommendation of Committee**

**11.9.13** At the conclusion of its inquiry the Committee shall report its findings and recommendations to the Council with respect to each application referred to it by the Executive Director.

### **Review and Decision by Council**

**11.9.14** The Council shall review the report and recommendations of the Client Compensation Fund Committee and determine that;

- (a) no payment be made, or
- (b) that a payment be made to reimburse the Minister, or the claimant, in whole or in part; and
- (c) may further decide that any payment so made shall be subject to the condition that the Minister, or the claimant, will assign to the Society whatever rights the Minister has against the member who caused the Loss.

## **PART 12**

### **LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA (LIANS)**

#### **12.1 Interpretation**

##### **12.1.1** In this Part

- (a) **"Board"** means the board of directors of the Association,
- (b) **"Board Member"** means a person who is appointed to the Board,
- (c) **"Director"** means the Director of the Lawyers Insurance Association of Nova Scotia.

##### **Seal**

**12.1.2** The Board may procure and adopt a seal for the Association and shall provide for its safe custody.

##### **Purpose**

**12.1.3** The Association shall conduct the mandatory professional liability program for the benefit of practising lawyers.

##### **Cooperate with Society**

**12.1.4** The Association shall work cooperatively with the Society to provide an insurance program that benefits members.

##### **Fiscal Year**

**12.1.5** The fiscal year of the Association shall be established by the Board.

#### **12.2 Composition of Board**

**12.2.1** The Board shall consist of not fewer than six and not more than twelve members, one of whom shall be the Executive Director.

##### **Term of Office**

**12.2.2** Board Members will hold office on the Board for a term of two years commencing effective January 1, 2019 or until the appointment of their successors.

**12.2.2.1** Board Members appointed in June 2017 will hold office until December 31, 2018 or until the appointment of their successors.

##### **Vacancy**

**12.2.3** Where a vacancy occurs on the Board for any reason, the vacancy may be filled at any time by Council appointing another person and the person so appointed shall hold office for the remainder of the term for which the person's predecessor was appointed or until a successor is appointed.

##### **Effect of Vacancy**

**12.2.4** A vacancy on the Board does not impair the right or authority of the Board to act.

##### **Revocation of Appointment**

**12.2.5** Council may, at any time, in its discretion, revoke the appointment of a Board Member.

##### **Ceasing to Hold Office**

**12.2.6** A Board Member who is convicted of professional misconduct, conduct unbecoming or incompetence under Part 3 of the Act shall be deemed to have resigned from the Board.

## **Expenses**

**12.2.7** A Board Member shall not be paid remuneration for carrying out the duties of the member's office, but shall be reimbursed for reasonable expenses necessarily incurred in the performance of the Board Member's duties.

## **Signing Authority**

**12.2.8** Every document to which the seal is affixed for the purpose of certifying documents or proceedings of the Association, and every agreement to which the Association is a party shall be signed by those prescribed by a resolution of the Board.

## **Cheques**

**12.2.9** The Board may maintain accounts in one or more chartered banks and may designate by resolution the person or persons who may sign cheques on the accounts of the Association.

## **12.3 Board Meetings**

**12.3.1** The Board shall meet not fewer than four times per year and shall within six months of the end of the fiscal year;

- (a) approve the audited financial statements,
- (b) appoint auditors for the current year, and
- (c) appoint actuaries for the current year.

## **Means of Meetings**

**12.3.2** The Board may hold meetings in person or by any other means approved by the Board.

## **Quorum**

**12.3.3** A majority of the Board Members constitute a quorum.

## **Resolution in writing**

**12.3.4** A resolution in writing signed by a majority of the Board Members shall be as effective as a resolution passed at a meeting of the Board.

## **Counterparts**

**12.3.5** A resolution in writing may be signed in counterparts.

## **12.4 Director**

**12.4.1** The Board shall appoint a senior executive as Director who will be responsible for the operations of the Association, the handling of claims and such other items assigned by the Board in accordance with the practices and policies established by the Board.

## **Chair**

**12.4.2** Council shall designate one of the Board Members as chair of the Board.

## **Vice-Chair**

**12.4.3** Council may designate one of the Board Members as vice-chair of the Board.

## **Secretary**

**12.4.4** The Director shall be the Secretary of the Association and shall be responsible for the safe keeping of the records of the Association including the minutes of Board and committee meetings.

### **Other Officers**

**12.4.5** The Board may appoint other officers of the Association, as the Board may consider appropriate from time to time.

### **Appointment of Committees**

**12.4.6** The Board shall appoint:

- (a) an audit committee;
- (b) an investment committee;
- (c) a Lawyers' Assistance Program Committee;

and may appoint other committees as it deems necessary

### **Lawyers Assistance Program**

**12.4.7** The Association shall establish, conduct and maintain programs to assist lawyers and other persons designated in the policy direction of the Council in handling or avoiding personal, emotional, medical or substance abuse problems

### **Risk and Practice Management Program**

**12.4.8** The Association must, in collaboration with the Society, establish, conduct and maintain programs to assist lawyers with issues arising in the practice of law as part of the mandatory professional liability program of the Association and the Society may provide financial support for this program.

### **12.5 Expense Sharing Agreement**

**12.5.1** The Association may enter into an agreement with the Society for the sharing of expenses and administrative services, including the expenses respecting the employment of staff of the Society assigned in whole or in part to provide services to the operations of the Association.

### **Indemnity**

**12.5.2** The Association shall indemnify Board and committee members and the officers, servants or agents of the Association, including those employees that may be assigned from the Society to provide services to the operations of the Association, for any loss or damage suffered by such person as a result of anything done in good faith in the performance or intended performance of any duty or in the exercise or the intended exercise of any power pursuant to these Regulations, or for any neglect or default in the performance or exercise in good faith of such duty or power.

### **Policy directions**

**12.5.3** In accordance with the Act the Association shall comply with policy directions of Council prescribed from time to time.

### **Information for Council**

**12.5.4** The Association must provide to Council

- (a) the financial statements of the Association forthwith after they are approved by the Board;
- (b) for the six month periods ending June 30 and December 31, a summary of the operations and financial position of the Association,
- (c) at or before the meeting of Council held in the month of April of each year, the assessment for mandatory liability insurance coverage, for the policy period commencing on July 1, along with a summary of the actuarial reports upon which the assessment is based, which assessment will become the amount payable pursuant subregulation 4.2.4; and
- (d) such further information as the Council may require to assist the Council in discharging the Council's responsibilities to the members.

## **Confidentiality**

**12.5.5** Unless disclosure of specific claims information is authorized or required by law, any information obtained by staff assigned to the Association regarding

- (a) a potential claim to the Association; or
- (b) a claim being handled by the Association,

is confidential and shall not be disclosed or used for purposes other than for those of the Association.

## **Confidentiality of Lawyers' Assistance Program**

**12.5.6** Despite any provision of these Regulations, unless disclosure of specific information is authorized or required by law, all information obtained through the Lawyers' Assistance Program will be confidential and will not be disclosed or used for purposes other than for those of the Association as prescribed by the program.

## **Statistical Information**

**12.5.7** The Association will develop and maintain statistical information about claims which may be used for various purposes including reports to Council, loss prevention and risk management initiatives and other purposes approved by the Board.

## **12.6 Deductible**

**12.6.1** In this Part, "individual deductible" means the damages a lawyer who is insured through the Association must pay in relation to claims made in respect to an occurrence, as set out in the applicable Group Insurance Policy.

**12.6.2** A lawyer must pay to the Association the "individual deductible" in accordance with this Regulation, the Group Insurance Policy and the Association's Individual Deductible Policy.

**12.6.3** Regulation 12.6 only applies to claims paid by the Association on or after September 1, 2018.

**12.6.4** The "individual deductible" is, and will be treated as, a contractual debt owing by the lawyer to the Association.

**12.6.5** If a claim resolved by the Association includes payment(s) of damages in a total amount that is equal to or less than the "individual deductible", the lawyer must reimburse the Association the amount the Association paid for damages forthwith after the claim is paid in accordance with the Association's Individual Deductible Policy then in effect.

**12.6.6** If a claim resolved by the Association includes payment(s) of damages totaling an amount that is greater than the "individual deductible", the lawyer must reimburse the Association the amount of the "individual deductible" in accordance with Regulation 12.6 and the Association's Individual Deductible Policy then in effect.

**12.6.7** Unless Regulation 12.6 or the Association's Individual Deductible Policy states otherwise, the "individual deductible" will be deemed to be a surcharge as described in Parts 4 and 13 of these Regulations.



## PART 13

### REAL ESTATE PRACTICE

#### 13.1 Interpretation

##### 13.1.1 In this Part,

- (a) **"Department"** means Service Nova Scotia and Municipal Relations;
- (b) **"Interest"** has the same meaning as in the *Land Registration Act*;
- (c) **"LRA"** means the *Land Registration Act*;
- (d) **"LRA Agreement"** means the agreement entered into on this 28<sup>th</sup> day of June, 2007, as amended from time to time, between Her Majesty the Queen in right of the Province of Nova Scotia (as represented by the Minister of Nova Scotia and Municipal Relations) and the Nova Scotia Barristers' Society to formalize the relationship, duties and responsibilities between the Society and the Minister in the administration and implementation of the LRA
- (e) **"LRA Auditor"** means those persons appointed by Council pursuant to this Part to audit lawyer's work in the land registration system.
- (f) **"LRAR"** means the Land Registration Administration Regulations made by the Minister of Service Nova Scotia and Municipal Relations pursuant to s. 94 of the LRA.
- (g) **"land registration system"** means the land registration system established by the LRA and regulations there under;
- (h) **"opinion of title"** for purposes of Part 13 opinion of title includes an opinion pursuant to s. 37 of the LRA;
- (i) **"Professional Standards"** means the Professional Standards Real Property Transactions in Nova Scotia as approved by Council;
- (j) **"Registrar General"** means the Registrar General appointed by the Minister pursuant to s. 8 of the LRA

#### 13.2 Eligible Lawyers

**13.2.1** An "eligible lawyer" for the purpose of these Regulations and the land registration system, is a member who:

- (a) meets the definition of "qualified lawyer" in the LRA;
- (b) complies with any educational requirements of the Society relating to the land registration system
- (c) pays any surcharge or levy imposed by Regulation;
- (d) is in compliance with the Authorized Lawyer User Agreement to work in the land registration system;
- (e) is in compliance with the requirements of this Part.

**13.2.2** An eligible lawyer's work that forms the basis for an opinion of title or certificate of legal effect that affects, creates or changes an interest in a parcel register in the land registration system shall be subject to audit in accordance with this Part for compliance with LRA, the LRAR and the Professional Standards.

**13.2.3** Where a lawyer did, but no longer, satisfies the definition for "eligible lawyer" the Executive Director must, in accordance with the requirements of the LRA Agreement, notify the Department that the member is not an eligible lawyer.

#### 13.3 LRA Auditors

**13.3.1** Council shall appoint one or more LRA Auditors and, for the purposes of subregulations 13.3.6 and 13.3.7, other "qualified persons" within the meaning of that section.

##### Audits

**13.3.2** The Society shall carry out an audit program whereby LRA Auditors assess lawyers' work in the land registration system for compliance with the LRA, the LRAR and the Professional Standards.

**13.3.3** An audit may include a review of the electronically stored information in the land registration system and a review of the foundation documents supporting a lawyer's opinion of title or certificate of legal effect.

**13.3.4** A lawyer whose work is the subject of the audit or the law firm that has kept the foundation documents in accordance with Part 8 shall:

1. cooperate with an LRA Auditor in the course of an audit;
2. respond to inquiries of the LRA Auditor within the time frame stipulated by the auditor;
3. produce for the LRA Auditor foundation documents, or other information that the LRA Auditor requires for the purpose of the audit,
4. if the lawyer is no longer with the law firm and the lawyer so requests provide a copy forthwith to the lawyer; and
5. if called upon to do so by the LRA Auditor, explain and provide evidence which would support the opinion of title or certificate of legal effect that is the subject of the audit.

**13.3.5** The LRA Auditors shall:

1. conduct audits of lawyers work in the land registration system in accordance with the terms of the LRA Agreement;
2. upon completion of an audit provide a written report advising whether the lawyer's work audited complies with the LRA, the LRAR and the Professional Standards to:
  - (i) the Executive Director
  - (ii) the Registrar General and,
  - (iii) the lawyer, if the auditor has requested the cooperation of the lawyer;
3. maintain confidentiality with respect to the work audited;
4. report to the Executive Director any failure to cooperate on the part of a lawyer or law firm during the course of an audit;

**13.3.6** If the report of the LRA Auditor indicated that the lawyer's work is not in compliance with the *LRA*, *the LRAR* or the Professional Standards, the Executive Director:

1. may direct the LRA Auditor or another qualified person, to conduct an audit of the files of the lawyer in the office of the lawyer, or in another location where the files are maintained, with or without notice to the lawyer or law firm, and subregulation 13.3.4 applies to such audit;
2. must provide a copy of any report to the member of the law firm designated pursuant to subregulation 4.7.1;
3. may by written notice require the lawyer or law firm to take corrective action to comply with the LRA, the LRAR or the Professional Standards and set a time fixed for doing so, and failing which, if no written notice of objection is received as provided for in subregulation 13.3.7, the Executive Director may report that fact to the Complaints Investigation Committee which may provide further direction as necessary, or
4. may initiate any action considered appropriate under Part III of the Act or Part 9 of the Regulations in which case the auditor's report may be used as the basis for a complaint and may be used in evidence.

**13.3.7** If the Executive Director has given a notice under subregulation 13.3.6 and the lawyer or law firm disagrees with the auditor's opinion as to the corrective action required, the lawyer or law firm may file with the Executive Direction a written objection within the time frame set out in the notice for the corrective action required, which must be accompanied by a copy of the foundation documents relating to the lawyer's work and the basis for the objection, and Executive Director:

1. shall forward the objection and supporting material to another LRA Auditor or another qualified person for review; and
2. if the second reviewer supports the original LRA Auditors review, provide a copy of that review to the objecting lawyer or law firm and give written notice to the lawyer or law firm to comply with the corrective action recommended, within the time provided in the notice; and
3. if the lawyer or law firm fails to comply with the order in 13.3.7.2, may retain a lawyer to undertake corrective work and the costs shall be borne by the lawyer or law firm whose work was subject of the review;

4. if the second reviewer fails to support the original LRA Auditor's review, must provide a copy of that review to the lawyer or law firm, and to the person designated under subregulation 4.7.1 and rescind the written notice to complete the corrective action.

**13.3.8** The Executive Director may commence an investigation pursuant to sub-regulation 9.2.1 if a lawyer or law firm fails to comply with the Executive Director's written requirement for corrective action under subregulations 13.3.6 or 13.3.7.

## **PART 14**

### **TRANSITIONAL PROVISIONS**

#### **14.1 Come into Effect**

**14.1.1** Subject to the provisions of this Part, these Regulations come into effect on June 1, 2005.

#### **Matter Continued**

**14.1.2** Except where otherwise provided, any matter arising under the former Act shall be continued so far as possible under these Regulations.

#### **14.2 Outstanding Applications**

**14.2.1** Except for articulated clerks who commence articles on June 1, 2005, applicants with outstanding applications before the Qualifications and Bar Admission Course Committee at the time these Regulations come into effect, shall have their applications transferred to the Credentials Committee for determination and the Credentials Committee must apply the Regulations pursuant to the former Act to such applications.

#### **Change of Status**

**14.2.2** A person who held practising uninsured status prior to June 1, 2005, will be deemed to be a non-practising member unless the person applies for a change of category of membership.

#### **Option to Have These Regulations Apply**

**14.2.3** A person may elect to have an application, to which subregulation 14.2.1 would apply, governed by these regulations.

#### **14.3 PREP Program Transition**

**14.3.1** In this Regulation,

- (a) “old Bar Admission Course” means the Bar Admission Course as defined by Regulation 3.6.1;
- (b) “PREP Program” means the Practice Readiness Education Program established by CPLED;
- (c) “CPLED” means the Canadian Centre for Professional Legal Education; and
- (d) “foreign transfer” means a person approved under Regulation 6.5.

**14.3.2** Beginning on January 1, 2020, any person approved for enrollment as an articulated clerk, pursuant to Regulation 3.3, or for Permanent Mobility by a lawyer from Outside Canada, pursuant to Regulation 6.5, will be required to complete the PREP Program, unless otherwise determined by the Executive Director.

**14.3.3** The final three sittings of the Bar Examination will be held in January 2020, July 2020 and January 2021 and no further sitting of the Bar Examination will be offered after January 2021.

**14.3.4** A person who has been approved as an articulated clerk pursuant to Regulation 3.3, prior to January 1, 2020, and who has not successfully completed the old Bar Admission Course will be governed by Regulation 3.6, in particular subregulations 3.6.6 and 3.6.10 .

**14.3.5** A person who has been approved as a foreign transfer prior to January 1, 2020, and who has been required to complete the old Bar Admission Course but failed to do so, will be governed by Regulation 3.6, in particular subregulations 3.6.6 and 3.6.10.

**14.3.6** Despite subregulation 3.6.10, the final opportunity for any person to rewrite the Bar Examination will be in January 2021.

**14.3.7** No person will be permitted to defer the writing of the Bar Examination but may elect to participate in the PREP Program as set out in subregulation 14.3.8.

**14.3.8** If a person is unable to successfully complete the Bar Examination in or before January 2021, that person will be permitted to register in the PREP Program without the permission of the Executive Director only if they would have been eligible to write or rewrite the Bar Examination were a further sitting available.

**14.3.9** A person who is registered in the PREP Program pursuant to subregulation 14.3.8 will be responsible to pay the required PREP registration fee.

**14.3.10** A person referred to in subregulation 14.3.4 or 14.3.5 may elect at any time to participate in the PREP Program provided they meet the requirement of subregulation 3.6.10(c) and pay the required PREP registration fee.

**14.3.11** A person referred to in subregulation 14.3.3 or 14.3.4 who does not meet the requirement of subregulation 3.6.10(c) may be registered in the PREP Program at the discretion of the Executive Director.

**14.3.12** Beginning on January 1, 2020, a non-practising member, retired member or life member who applies to resume practice pursuant to subregulation 5.6.1 may be required to complete the PREP Program.

**14.3.13** Beginning on January 1, 2020, 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 and has applied to be readmitted pursuant to subregulation 5.10.1 may be required to complete the PREP Program.

**4.13.14** Subregulations 14.3.12 and 14.3.13 replace subregulations 5.6.5(b) and 5.10.6 (b).

**SCHEDULE A**

as of May 1, 2018

<b>Society Fees and Assessments</b>		<b>Net Fee</b>	<b>HST</b>	<b>Total</b>
<b>Annual Fee</b>				
(a)	Practising fee \$2,477, if paid in one lump sum by <i>June 30, 2018</i> , which amount is subject to a credit of \$77 for a net amount of	\$2,400.00	\$360.00	<b>\$2,760.00</b>
	If the practising fee is paid by credit card (lump sum) in accordance with subregulation 4.2.8 (b), there is a \$60 administrative fee.	\$2,460.00	\$369.00	<b>\$2,829.00</b>
(b)	If the practising fee is paid by preauthorized monthly payments in accordance with subregulation 4.2.8 (c or d), an initial payment consisting of two months' prorated payments and a \$60 administrative fee, which will be drawn on the 20th day of the month immediately preceding the first month, to be paid by preauthorized debit (i.e., June)	\$460.00	\$69.00	<b>\$529.00</b>
	each additional monthly payment of which will be drawn on the 20 <sup>th</sup> of each subsequent month with last payment on April 20, 2019. (No payment during May 2019.)	\$200.00	\$30.00	<b>\$230.00</b>
<b>Non-Practising Fees</b>				
(c)	Non-practising member fee	\$300.00	\$45.00	<b>\$345.00</b>
(d)	Retired member fee	\$50.00	\$7.50	<b>\$57.50</b>
<b>Amount due to the Association</b>				
(a)	Levy for members \$2,256 other than those referred to in subregulation 4.2.4, which amount is subject to a surplus credit of \$261 for a net amount of	\$1,995.00	\$299.25	<b>\$2,294.25</b>
	If lump sum paid by credit card in accordance with subregulation 4.2.8 (b), a \$20 administrative fee applies.	\$2,015.00	\$302.25	<b>\$2,317.25</b>
(b)	If paid by preauthorized monthly payments in accordance with subregulation 4.2.8 (c or d), an initial payment of (includes \$20 administrative fee) which will be drawn on the 20th day of the month immediately preceding the first month to be paid by preauthorized debit (i.e., June)	\$352.50	\$52.88	<b>\$405.38</b>
	each additional monthly payment of which will be drawn on the 20 <sup>th</sup> of each subsequent month with last payment on April 20 <sup>th</sup> , 2019. (No payment during May 2019.)	\$166.25	\$24.94	<b>\$191.19</b>
(c)	For members employed by the <b>Nova Scotia Legal Aid Commission or Dalhousie Legal Aid Service</b> \$1,128, which amount is subject to a surplus credit of \$130 for a net amount of	\$998.00	\$149.70	<b>\$1,147.70</b>
(d)	For members employed in the civil service of the <b>Province of Nova Scotia</b> and not including members employed by provincial government agencies, commissions or corporations, or employed as counsel for municipalities within the province.	\$350.00	\$52.50	<b>\$402.50</b>
(e)	The net amount payable to the association is subject to a surcharge if, prior to July 1, 2018, a claim was paid by the Association on behalf of the member, which surcharge is calculated on each paid claim in the twelve-month period from May 1 to the next April 30 as follows: 40 per cent of the gross assessment in (a) above, for each of the five years following the date of the claim payment.	\$902.40	\$135.36	<b>\$1,037.76</b>

<b>Reinstatement Fees</b>				
(a)	Reinstatement of a practising member	\$250.00	\$37.50	<b>\$287.50</b>
(b)	Reinstatement of non-practising member	\$20.00	\$3.00	<b>\$23.00</b>
(c)	Reinstatement of a retired member	\$20.00	\$3.00	<b>\$23.00</b>
<b>Society Fees and Assessments</b>		<b>Net Fee</b>	<b>HST</b>	<b>Total</b>
<b>Articled Clerk Fees</b>				
(a)	Enrolment as an articled clerk			
	(i) with a Canadian law degree	\$225.00	\$33.75	<b>\$258.75</b>
	(ii) with a Foreign law degree	\$325.00	\$48.75	<b>\$373.75</b>
<b>Bar Admission Course Fees</b>				
(a)	Enrolment in the Bar Admission Course	\$3,750.00	\$562.50	<b>\$4,312.50</b>
(b)	Writing the Bar Examination outside Halifax	\$300.00	\$45.00	<b>\$345.00</b>
(c)	Rewriting the Bar Examination	\$500.00	\$75.00	<b>\$575.00</b>
(d)	Request to have exam results reviewed	\$225.00	\$33.75	<b>\$258.75</b>
(e)	Assignment of articles	\$100.00	\$15.00	<b>\$115.00</b>
<b>Other Fees</b>				
(a)	An application for admission under subregulation 3.8.3	\$300.00	\$45.00	<b>\$345.00</b>
(b)	Transfer from another law society:			
	(i) application fee	\$1,325.00	\$198.75	<b>\$1,523.75</b>
	(ii) the Bar Admission Course	\$3,750.00	\$562.50	<b>\$4,312.50</b>
(c)	Application for readmission after disbarment	\$2,000.00	\$300.00	<b>\$2,300.00</b>
(d)	Application for readmission after resignation under subregulation 5.10.1	\$1,000.00	\$150.00	<b>\$1,150.00</b>
(e)	Application for temporary practice under subregulation 6.4.6	\$1,000.00	\$150.00	<b>\$1,150.00</b>
(f)	Application for temporary practice by a member of a non-reciprocating governing body under subregulation 6.4.4	\$1,000.00	\$150.00	<b>\$1,150.00</b>
(g)	An application to change membership category from non-practising to practising under regulation 5.6 if out of practice less than three years	\$275.00	\$41.25	<b>\$316.25</b>
(h)	An application to change membership category from non-practising to practising under regulation 5.6 if out of practice longer than three years and not practising elsewhere (includes the cost of writing the Bar Examination)	\$1,000.00	\$150.00	<b>\$1,150.00</b>
(i)	An application to apply as a Canadian Legal Advisor	\$1,300.00	\$195.00	<b>\$1,495.00</b>
(j)	Annual Canadian Legal Advisor Fee under subregulation 4.2.2	\$2,777.00	\$416.55	<b>\$3,193.55</b>
(k)	Foreign transfer exam fees	\$525.00	\$78.75	<b>\$603.75</b>
<b>Law Corporation Fees</b>				
(a)	Application for permit under subregulation 7.4.2	\$350.00	\$52.50	<b>\$402.50</b>
(b)	Annual renewal of permit under subregulation 7.4.7	\$150.00	\$22.50	<b>\$172.50</b>
(c)	Changes to permit under subregulation 7.4.14	\$50.00	\$7.50	<b>\$57.50</b>
(d)	Reinstatement of permit under subregulation 7.4.21	\$250.00	\$37.50	<b>\$287.50</b>
<b>Foreign Legal Consultant Fees</b>				
(a)	Application fee under subregulation 6.7.2	\$1,000.00	\$150.00	<b>\$1,150.00</b>
(b)	Annual renewal of the permit under subregulation 6.7.7	\$1,000.00	\$150.00	<b>\$1,150.00</b>

<b>Certificate Fees</b>				
(a)	Certificate of Standing - Standard	\$100.00	\$15.00	<b>\$115.00</b>
	Certificate of Standing - Required in less than 24 hours	\$150.00	\$22.50	<b>\$172.50</b>
(b)	Any other confirmation of standing - Standard	\$25.00	\$3.75	<b>\$28.75</b>
	Any other confirmation of standing - Required less than 24 hours	\$37.50	\$5.63	<b>\$43.13</b>
(c)	A certified copy of a resolution of Council or a decision of a committee - Standard	\$25.00	\$3.75	<b>\$28.75</b>
	A certified copy of a resolution of Council or a decision of a committee - Required in less than 24 hours	\$37.50	\$5.63	<b>\$43.13</b>
<b>Limited Liability Partnerships</b>				
(a)	An application for registration under subregulation 7.3.2, an amount per Nova Scotia partner of	\$50.00	\$7.50	<b>\$57.50</b>
(b)	An application for registration under subregulation 7.3.5, an amount per Nova Scotia partner of	\$50.00	\$7.50	<b>\$57.50</b>
(c)	An application for renewal under subregulation 7.3.12, an amount per Nova Scotia partner of	\$50.00	\$7.50	<b>\$57.50</b>