



NOVA SCOTIA
BARRISTERS' SOCIETY

Legal Profession Act

S.N.S. 2004, c 28, as amended by S.N.S. 2010, c 56

This is an unofficial office consolidation.
Consult the [consolidated statutes](#) of the Legislative Counsel Office.

An Act Respecting the Legal Profession

Short title

1 This Act may be cited as the Legal Profession Act. *2004, c. 28, s. 1.*

Interpretation

2 In this Act,

- (a) "adjudicative body" means a court, an arbitrator or a legislative body, administrative agency or other body acting in an adjudicative capacity;
- (b) "adjudicative capacity" means the capacity of a neutral person or body to render a binding judgment directly affecting a party's interests in a matter, after the presentation of evidence or legal argument by a party or parties;
- (c) "annual meeting" means the annual general meeting of the Society;
- (d) "articled clerk" means a person enrolled in the Society's bar admission program and registered on the register of articled clerks in accordance with this Act and the regulations;
- (e) "Association" means the Lawyers' Insurance Association of Nova Scotia continued pursuant to this Act;
- (f) "Board" means the Board of the Law Foundation;
- (g) "call to the Bar" means the admission of a person to membership in the Society as a lawyer;
- (ga) "capacity" means a member's ability to practise law with reasonable skill and judgement that is not substantially impaired by a physical, mental or emotional condition, disorder or addiction;
- (h) "charge" means an allegation of professional misconduct, conduct unbecoming a lawyer or incompetence against a member of the Society that is referred by the Complaints Investigation Committee to the Hearing Committee;
- (i) "Complaints Investigation Committee" means the Complaints Investigation Committee appointed pursuant to this Act;
- (j) "corporation" means a body corporate incorporated under the laws of the Province, the laws of Canada or the laws of another province of Canada;
- (k) "Council" means the Council of the Society;
- (l) "court" means the Supreme Court of Nova Scotia or the Nova Scotia Court of Appeal, as the context requires;
- (m) "disbar" means to revoke a lawyer's membership in the Society as a result of a finding of professional misconduct, conduct unbecoming a lawyer or incompetence;

- (n) "districts" means the judicial districts of the Province established by the Judicature Act or such other geographic areas of the Province that are prescribed by the regulations for purpose of the election of members of the Council;
- (o) "Executive Director" means the Executive Director of the Society appointed pursuant to this Act;
- (p) "First Vice-president" means the First Vice-president of the Society holding office pursuant to this Act;
- (q) "foreign jurisdiction" means a jurisdiction, other than the Province, in which the legal profession is regulated;
- (r) "former Act" means Chapter 30 of the Revised Statutes, 1989, the Barristers and Solicitors Act;
- (s) "Fund" means the Lawyers' Fund for Client Compensation continued pursuant to this Act;
- (t) "Hearing Committee" means the Hearing Committee appointed pursuant to this Act;
- (u) "hearing panel" means a quorum of the Hearing Committee empanelled to hear a charge;
- (v) "judge" means a justice of the Supreme Court of Nova Scotia;
- (w) "law corporation" means a corporation that holds a valid permit issued under Section 20;
- (x) "law firm" means a partnership, a law corporation, any other joint arrangement, or any legal entity carrying on the practice of law;
- (y) "Law Foundation" means the Law Foundation of Nova Scotia continued pursuant to this Act;
- (z) "lawyer" means a person who has been called to the Bar in the Province or a foreign jurisdiction and who is eligible to carry on the practice of law in accordance with this Act and the regulations and includes a barrister, a barrister-at-law, a barrister of the Supreme Court, a solicitor of the Supreme Court and a member of the Bar, an attorney-at-law and an avocat or notaire;
- (aa) "limited liability partnership" means a partnership established pursuant to Section 50 of the Partnership Act;
- (aaa) "medical assessment" means a physical, mental health or addictions assessment or examination by a qualified health professional approved by the Society;
- (ab) "permit" means a permit issued pursuant to this Act to a corporation permitting the corporation to carry on the practice of law in the Province;
- (ac) "practice of law" means the practice of law as described in subsection 16(1);
- (ad) "practising certificate" means a document issued by the Executive Director to a lawyer who has met the criteria to be eligible to carry on the practice of law;

- (ae) "practising lawyer" means a lawyer who holds a practising certificate;
- (af) "prescribed person" means a person prescribed by the regulations;
- (ag) "President" means the President of the Society;
- (ah) "Prothonotary" means the Prothonotary of the Supreme Court of Nova Scotia at Halifax;
- (ai) "Register of Articled Clerks" means a record maintained by the Executive Director of all persons who are articled clerks;
- (aj) "Roll of Lawyers" means the record maintained by the Prothonotary of all persons who have been called to the Bar and includes the Roll of Barristers maintained pursuant to the former Act;
- (ak) "Second Vice-president" means the Second Vice-president of the Society elected pursuant to this Act;
- (al) "settlement agreement" means an agreement regarding disposition of a charge that is approved by the Complaints Investigation Committee and a hearing panel;
- (am) "Society" means the Nova Scotia Barristers' Society. *2004, c. 28, s. 2.*

PART I

THE NOVA SCOTIA BARRISTERS' SOCIETY

Society continued

3 (1) The Nova Scotia Barristers' Society as constituted by the former Act is continued as a body corporate with its head office at Halifax.

(2) In pursuing its purpose and carrying out its duties, the Society has all the powers and capacity of a natural person.

(3) The Society has perpetual succession and a common seal.

(4) The Society may be referred to as "Le Barreau de la Nouvelle-Écosse". *2004, c. 28, s. 3.*

Purpose of Society

4 (1) The purpose of the Society is to uphold and protect the public interest in the practice of law.

(2) In pursuing its purpose, the Society shall

(a) establish standards for the qualifications of those seeking the privilege of membership in the Society;

(b) establish standards for the professional responsibility and competence of members in the Society;

(c) regulate the practice of law in the Province. 2004, c. 28, s. 4; and

(d) seek to improve the administration of justice in the Province by

(i) regularly consulting with organizations and communities in the Province having an interest in the Society's purpose, including, but not limited to, organizations and communities reflecting the economic, ethnic, racial, sexual and linguistic diversity of the Province, and

(ii) engaging in such other relevant activities as approved by the Council.

Members

5 (1) Subject to subsection (8), the following persons are members of the Society:

(a) lawyers registered on the Roll of Lawyers;

(b) articled clerks; and

(c) other persons who qualify as members under the regulations.

(2) No person may become a member of the Society or be reinstated as a member unless the Council is satisfied that the person meets the requirements established by the regulations.

(3) A person who meets the requirements established by the regulations for membership in the Society as a lawyer shall be called to the Bar by appearing before a judge, taking the oath or affirmation prescribed by the regulations and signing the Roll of Lawyers.

(4) The Council may, in circumstances it considers appropriate, authorize the appearance referred to in subsection (3) to be other than in person.

(5) The Prothonotary shall maintain a Roll of Lawyers that shall be signed by all persons who are called to the Bar.

(6) A person ceases to be a member of the Society when

(a) the person dies;

(b) as a result of disciplinary proceedings,

(i) the person is disbarred,

(ii) the person's name is ordered to be struck from the Register of Articled Clerks, or

(iii) the person is permitted to resign;

(c) the person ceases to be an articled clerk, unless the person is called to the Bar;

(d) the person is appointed to a judicial office; or

(e) permitted by Council to resign.

(7) No person may resign as a member of the Society unless permitted to do so by a resolution of the Council or by order of a hearing panel pursuant to subsection 45(4).

(8) The Council may make regulations

(a) establishing categories of membership in the Society and prescribing the rights, privileges, restrictions and obligations that apply to those categories;

(b) establishing requirements to be met by members, including educational, good character and other requirements, and procedures for admitting or reinstating persons as members of the Society in each of the categories of membership;

(c) governing the educational program for articled clerks;

(d) establishing the procedures and the oath or affirmation of office for calling lawyers to the Bar;

(e) establishing requirements and procedures for the reinstatement of former members of the Society;

(f) governing practising certificates;

(g) governing the resumption of practice by non-practising members of the Society;

(h) governing the requirements to change categories of membership in the Society;

(ha) authorizing members of the Hearing Committee to sit as a credentials appeal panel and to hold hearings and make orders, including orders as to costs, concerning the admission or re-instatement of persons as members of the Society in each of the categories of membership;

(hb) establishing the powers of a credentials appeal panel including some or all of the powers, privileges and immunities enumerated in Sections 42 and 44;

(i) governing the resignation of lawyers from membership in the Society and their obligations with regard to client files, trust funds, property of clients and the accounting therefor, and other matters that must be dealt with before a lawyer is permitted to resign. *2004, c. 28, s. 5.*

Council

6 (1) The Council under the former Act is continued and is the governing body of the Society.

(2) The Council shall govern the Society and manage its affairs, and may take any action consistent with this Act that it considers necessary for the promotion, protection, interest or welfare of the Society.

(3) The Council may take any action consistent with this Act by resolution.

(4) Where there is a quorum at a meeting of the Council, the Council may exercise its powers under this Act notwithstanding any vacancies among the members of the Council.

(5) In addition to any specific power or requirement to make regulations under this Act, the Council may make regulations to manage the Society's affairs, pursue its purpose and carry out its duties. *2004, c. 28, s. 6.*

Members of Council

7 (1) The Council consists of

- (a) such number of members of the Society elected or appointed as prescribed by the regulations;
- (b) the Attorney General of the Province for the time being or a representative appointed by the Attorney General;
- (c) the President, First Vice-president and Second Vice-president of the Society;
- (d) the Dean of the Faculty of Law of Dalhousie University; and
- (e) at least three persons who are not members of the Society and who are appointed in the manner prescribed by the regulations.

(2) The Executive Director is a non-voting member of the Council.

(3) Persons elected or appointed to the Council take office at the first meeting of the Council after the annual meeting of the Society that follows their election or appointment and, subject to the regulations, hold office until their successors take office.

(4) The regulations prescribing the number of members to be elected from each district for the purpose of clause (1)(a) must provide for a sufficient number of elected members to ensure that a majority of the Council is made up of members of the Society.

(5) Where the Judicature Act is amended in such a way that it no longer provides for the division of the Province into judicial districts, the Council may make regulations prescribing geographic areas of the Province as districts for the purpose of the election of members of the Council. *2004, c. 28, s. 7.*

Officers

8 (1) The officers of the Society are the President, the First Vice-president and the Second Vice-president, at least one of whom resides in the Halifax Regional Municipality and at least one of whom resides outside that municipality.

(2) When the President is absent or unable to act, the First Vice-president shall act for the President and when neither of them is present or able to act, the Second Vice-president shall act for the President.

(3) Each year there shall be an election, in accordance with the regulations, by the members of the Society for a person to hold the office of Second Vice-president.

(4) The Second Vice-president becomes the First Vice-president and the First Vice-president becomes the President on the expiry of the term of their immediate predecessor, unless the Council, in accordance with the regulations, determines otherwise.

(5) The term of the President commences immediately following the annual meeting of the Society at which that person is the First Vice-president and the President holds office until the conclusion of the annual meeting at the end of the President's term.

(6) Where an officer resigns or otherwise becomes unable to carry out the duties of that officer, another person shall be appointed in the officer's stead in accordance with the regulations. *2004, c. 28, s. 8.*

Executive Director

9 (1) The Council shall employ a person as Executive Director of the Society and fix the Executive Director's remuneration, and may, by regulation, authorize the Executive Director to do any act or exercise any power or jurisdiction that by this Act and the regulations the Council is authorized to do or exercise, except the power to make regulations.

(2) The Executive Director has the powers and duties given to the Executive Director by or under this Act and the regulations.

(3) The Executive Director may delegate to one or more employees of the Society any of the Executive Director's powers, duties or functions. *2004, c. 28, s. 9.*

(4) The Executive Director shall report to Council and the Society's annual meeting on the results of the consultations carried out pursuant to clause 4(2)(d).

Annual meeting

10 (1) The Council shall call an annual meeting of members of the Society each year and may call special meetings of members of the Society from time to time in accordance with the regulations.

(2) At each annual meeting,

(a) the Executive Director shall present the Society's annual report for the immediately preceding year, which must include the financial statements for the fiscal year and the auditor's report on those statements;

(b) the members of the Society shall appoint an auditor for the current fiscal year; and

(c) the Society shall receive the annual report of the Law Foundation. *2004, c. 28, s. 10.*

Regulations

11 The Council may make regulations

(a) governing the election or appointment of members of the Council;

(b) prescribing the manner in which members of the Council shall be appointed pursuant to clause 7(1)(e);

(c) fixing the terms of office for all members of the Council;

- (d) prescribing circumstances in which a person ceases to be a member of the Council, or may be removed as a member of the Council or as an officer of the Society;
- (e) providing for the filling of vacancies on the Council;
- (f) providing for the replacement of officers of the Society who resign or otherwise become unable to carry out their duties;
- (g) providing a procedure for calling the annual meeting and special meetings of the members of the Society;
- (h) governing the meetings of members of the Society;
- (i) governing the meetings of members of the Council and the practice and procedure to be used at such meetings;
- (j) establishing the number of districts and the geographical boundaries of each district;
- (k) establishing the number of members of the Society to be elected to the Council from each district;
- (l) prescribing which members of the Society are eligible to vote in which districts;
- (m) prescribing the quorum for meetings of the Council, the annual meeting and special meetings of members of the Society. *2004, c. 28, s. 11.*

Committees

12 (1) The Council may establish committees and may authorize a committee to do any act or exercise any power or jurisdiction that, by this Act, the Council is authorized to do or to exercise, except the power to make regulations.

(2) The Council may make regulations

- (a) defining a committee's mandate and authority;
- (b) governing the membership of a committee;
- (c) governing meetings of a committee;
- (d) governing the practice and procedure for proceedings before a committee. *2004, c. 28, s. 12.*

Notary public commissions

13 (1) Where the Lieutenant Governor is satisfied that a person is a practising lawyer, the Lieutenant Governor may issue a commission as a notary public for the Province to that person.

(2) A person who holds a commission issued pursuant to subsection (1) has all the powers and authority of a notary public appointed under the Notaries and Commissioners Act.

(3) The Governor in Council may revoke any commission issued pursuant to subsection (1).

(4) No act performed by a practising lawyer, as a notary public, is valid unless the practising lawyer holds a commission as a notary public.

(5) Where the practising certificate of a lawyer is suspended, the lawyer shall not act as a notary public during the period of the suspension.

(6) Where a person ceases to be a member of the Society, the person's commission as a notary public is revoked.

(7) A practising lawyer is a commissioner under Section 6 of the Notaries and Commissioners Act.

(8) The Notaries and Commissioners Act applies to a notary public who holds a commission issued pursuant to subsection (1). *2004, c. 28, s. 13.*

Membership records

14 (1) The Executive Director shall keep membership records, including

(a) a list of all persons whose names appear on the Roll of Lawyers and the membership category for each person;

(b) the Register of Articled Clerks;

(c) records of changes in categories of membership;

(d) a list of former members of the Society;

(e) a record of any disposition by the Complaints Investigation Committee or a hearing panel that affects a member of the Society.

(2) The Council may make regulations

(a) addressing the manner and form in which the membership and other records of the Society are to be kept;

(b) allowing for sharing of membership records with a law society in a foreign jurisdiction;

(c) addressing the release of information from membership records. *2004, c. 28, s. 14.*

Fees

15 (1) Applicants for membership in the Society shall pay the fees set by the Council if applying for

(a) admission as an articled clerk;

(b) membership as a lawyer; or

(c) reinstatement.

(2) To obtain a practising certificate, a member of the Society shall pay a fee consisting of

(a) a practising fee;

(b) an amount to be contributed to the Association, unless the member is exempt in accordance with the regulations;

(c) an amount to be contributed to the Fund; and

(d) any other fee or levy imposed on some or all practising lawyers under the regulations.

(3) The Council may make regulations

(a) setting the fees payable under subsection (1);

(b) setting each component of the fee payable under subsection (2);

(c) setting the fees payable by each category of member of the Society;

(d) setting other fees to be paid by the members of the Society or one or more categories of members;

(e) setting special assessments, surcharges or transaction fees to be paid for the purpose of the Society;

(f) setting special assessments, surcharges or transaction fees to be paid for the purpose of the Association;

(g) setting the date for the payment of fees and assessments;

(h) permitting payment of any fees by instalments;

(i) prorating the fees for practising certificates issued for less than a full year;

(j) specifying consequences for failing to pay a fee, assessment, surcharge or transaction;

(k) governing the establishment, administration and collection of any other fees, assessments, surcharges or transaction fees. *2004, c. 28, s. 15* .

PART II

AUTHORITY TO PRACTISE LAW

Practice of law

16 (1) The practice of law is the application of legal principles and judgement with regard to the circumstances or objectives of a person that requires the knowledge and skill of a person trained in the law, and includes any of the following conduct on behalf of another:

- (a) giving advice or counsel to persons about the persons legal rights or responsibilities or to the legal rights or responsibilities of others;
- (b) selecting, drafting or completing legal documents or agreements that affect the legal rights or responsibilities of a person;
- (c) representing a person before an adjudicative body including, but not limited to, preparing or filing documents or conducting discovery;
- (d) negotiating legal rights or responsibilities on behalf of a person.

(2) No person shall carry on the practice of law in the Province for fee, gain, reward or other direct or indirect compensation, unless the person is

- (a) a member of the Society who holds a practising certificate;
- (b) entitled to practise law by the governing body for lawyers in a foreign jurisdiction approved by the Council and has met the requirements established by regulation to engage in the practice of law in the Province;
- (c) an articled clerk and is practising in accordance with the regulations;
- (d) a student of the Faculty of Law of Dalhousie University during the period the student is participating in a legal aid or clinical law program operated by and under the supervision of the Faculty or under the authority of an enactment; or
- (e) otherwise entitled pursuant to this Act or the regulations to carry on the practice of law in the Province.

(3) Only a lawyer, a law firm or a law corporation may advertise or hold out that the services of a lawyer are available to the public.

(4) Notwithstanding subsections (1), (2) or (3), this Act does not prohibit

- (a) any public officer from fulfilling the public officer's duty;
- (b) any incorporated loan or trust company carrying on business within the Province from doing anything that its act of incorporation empowers it to do;

(c) an accountant from preparing for the person by whom the accountant is employed any document or portion thereof dealing with the accounting affairs of that person;

(d) any person from representing himself or herself in a matter or proceeding to which that person is party;

(e) any corporation from being represented by an agent if such representation is authorized by statute;

(f) a law corporation from carrying on the practice of law in accordance with the provisions of this Act and the regulations;

(g) an insurance agent or adjuster from adjusting, negotiating and settling claims, including consenting to judgments in uncontested matters;

(h) a mediator or arbitrator from mediating or arbitrating disputes;

(i) an employee of a trade union from acting on behalf of that union or a member of that union in arbitration proceedings or proceedings before an administrative tribunal;

(j) a member of

(i) the House of Commons of Canada,

(ii) the House of Assembly, or

(iii) a council of a municipality,

from acting as an advocate or representative of a person in the member's capacity as an elected representative;

(k) a member of the Senate of Canada from acting as an advocate or representative of a person in that member's capacity as a Senator;

(l) any other person or class of persons permitted by the regulations made by the Council and approved by the Governor in Council to carry on one or more of the activities referred to in subsection (1); or

(m) any other person or class of persons permitted by regulation made by the Governor in Council to carry on one or more of the activities referred to in subsection (1) if the Governor in Council considers the carrying on of the activities to be necessary or advisable for the purposes of the government of the Province. *2004, c. 28, s. 16.*

Offence

17 (1) Every person, other than a member of the Society, who

(a) carries on the practice of law for fee, gain, reward or other direct or indirect compensation, unless permitted to do so pursuant to subsection 16(4); or

(b) otherwise contravenes this Act or the regulations,

is guilty of an offence and is liable on summary conviction for a first offence to a fine of not more than ten thousand dollars, or for a second or subsequent offence to a fine of not more than twenty-five thousand dollars, or to imprisonment for a term of not more than six months, or to both.

(2) The Summary Proceedings Act applies with respect to the enforcement of this Section.

(3) Where a corporation commits an offence under this Section, a director, officer or employee of the corporation who authorized, permitted or acquiesced in the commission of the offence is also guilty of an offence and is liable on summary conviction, whether or not the corporation has been prosecuted or convicted,

(a) for a first offence to a fine of not more than ten thousand dollars; and

(b) for a second or subsequent offence to a fine of not more than twenty-five thousand dollars.

(4) Where a violation of this Act or the regulations by a person or corporation continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

(5) All fines and penalties payable under the Summary Proceedings Act and pursuant to this Section as a result of a prosecution by or on behalf of the Society are payable to Her Majesty in right of the Province. *2004, c. 28, s. 17.*

Injunction respecting violation

18 (1) In the event of a threatened or continuing violation of this Act or the regulations, the Society may apply to a judge for an injunction to restrain a member of the Society or any other person from continuing or committing the violation.

(2) A judge may on an ex parte application, grant an interim injunction pending the hearing of an application for an injunction pursuant to subsection (1) if the judge is satisfied that there is reason to believe that a person is likely to commit or is continuing to commit a violation of this Act or the regulations.

(3) A judge may make such orders as to costs as the judge considers appropriate in any proceedings pursuant to this Section.

(4) An application for an injunction against a member may be in addition to any other authority over the member provided by this Act or the regulations. *2004, c. 28, s. 18.*

Regulations

19 (1) The Council may make regulations

(a) allowing lawyers who are authorized to practise law in a foreign jurisdiction to practise law in the Province;

(b) imposing conditions or restrictions on the practice of law in the Province by lawyers pursuant to clause (a);

(c) setting fees for permission to practise law in the Province pursuant to clause (a);

(d) setting conditions, restrictions, rights, privileges, standards or duties that apply to lawyers practising law in the Province pursuant to clause (a) and to the practice of law in the Province by those lawyers; and

(e) extending or limiting the application of provisions of this Act and the regulations to lawyers practising law in the Province pursuant to clause (a).

(2) A member of the Society who practises law in a foreign jurisdiction shall

(a) comply with the legislation, regulations, rules and professional conduct requirements that apply to the members of the legal profession of that jurisdiction; and

(b) on the request of the authority that governs the legal profession in that jurisdiction, provide the authority with the names of all jurisdictions in which the member is a member of the legal profession. *2004, c. 28, s. 19.*

Law corporations

20 (1) No corporation shall carry on or hold itself out as carrying on the practice of law, except as provided by this Act.

(2) The Executive Director may issue a permit to a law corporation allowing it to carry on the practice of law in the Province.

(3) Subject to the regulations, a law corporation holding a permit that is not under suspension may carry on the practice of law in its own name or under a business name.

(4) Notwithstanding anything contained in this Section, a law corporation shall not be entered on the Roll of Lawyers as a lawyer pursuant to this Act.

(5) All persons who carry on the practice of law on behalf of a law corporation must be practising lawyers.

(6) For the purpose of subsection (5), the practice of a law is deemed not to be carried on by articled clerks, clerks, secretaries and other assistants employed by a law corporation to perform the services that are not ordinarily considered by law, custom or practice to be services that may be performed only by a practising lawyer, nor is the practice of law deemed to be carried on by articled clerks employed by a law corporation to do anything in the course of their duties as articled clerks if it is done under the direction or supervision of a practising lawyer and in accordance with this Act and the regulations. *2004, c. 28, s. 20.*

Shares of law corporations

21 (1) All issued voting shares of a law corporation must be legally and beneficially owned by one or more practising lawyers or by a trust of which all the trustees and all the beneficiaries are practising lawyers.

(2) All issued non-voting shares, if any, of a law corporation must be legally and beneficially owned by prescribed persons or by a trust of which all the trustees and all the beneficiaries are prescribed persons.

(3) Notwithstanding subsection (1), issued voting shares of a law corporation may be legally and beneficially owned by a corporation of which

(a) all the issued voting shares are legally and beneficially owned by one or more practising members of the Society or by a trust of which all the trustees and all the beneficiaries are practising members of the Society;

(b) all the issued non-voting shares are legally and beneficially owned by prescribed persons or by a trust of which all the trustees and beneficiaries are prescribed persons; and

(c) all the officers and directors are practising lawyers.

(4) Notwithstanding subsection (2), issued non-voting shares, if any, of a law corporation may be legally and beneficially owned by a corporation of which

(a) all the issued shares are beneficially and legally owned by prescribed persons or by a trust of which all the trustees and beneficiaries are prescribed persons; and

(b) all the officers and directors are prescribed persons;

(5) No voting shareholder of a law corporation shall enter into a trust agreement, proxy or any other type of agreement vesting in another person who is not a practising lawyer the voting rights attached to any or all of the shares of a law corporation.

(6) No shareholder of a corporation owning shares of a law corporation shall enter into a trust agreement, proxy or any other type of agreement vesting in another person who is not a practising lawyer the voting rights attached to any or all of the shares of the corporation.

(7) No corporation holding voting shares of a law corporation may authorize any person to represent it at a meeting of the shareholders of the law corporation unless that person is a practising lawyer.

(8) No corporation holding non-voting shares of a law corporation may authorize any person to represent it at a meeting of the shareholders of the law corporation unless that person is a prescribed person. *2004, c. 28, s. 21.*

Qualifications of officers and directors

22 (1) All officers and directors of a law corporation must be practising lawyers.

(2) No officer or director of a law corporation or a corporation owning voting shares of a law corporation shall enter into a trust agreement, proxy or any other type of agreement vesting in a person who is not a practising lawyer any authority or voting rights as an officer or director of a law corporation and any attempt to do so is invalid to the extent that it purports to vest such authority or rights in a person who is not a practising lawyer.

(3) No officer or director of a corporation owning non-voting shares of a law corporation shall enter into a trust agreement, proxy or other type of agreement vesting in a person who is not a prescribed person

any authority or voting rights as an officer or director of the corporation and any attempt to do so is invalid to the extent that it purports to vest such authority or rights in a person who is not a prescribed person.

(4) Where there is any change in the shareholders, shareholdings, officers, directors, name or business name of a law corporation, the corporation shall provide notice, in writing, to the Executive Director within fifteen days of the change.

(5) Every person who is a voting shareholder of a law corporation and every person who is a voting shareholder of a corporation owning voting shares of the law corporation is liable to every person for whom professional services of a lawyer are undertaken or provided by the law corporation in respect of such professional services to the same extent and in the same manner as if such voting shareholders were carrying on the practice of law in a limited-liability partnership or, where there is only one such voting shareholder, as an individual carrying on the practice of law. *2004, c. 28, s. 22.*

Principles applicable to corporations

23 (1) The following principles apply to the practice of law carried on by a corporation:

(a) the relationship of a practising lawyer or of an articled clerk to a corporation carrying on the practice of law, whether a shareholder, director, officer or employee, does not affect, modify or diminish the application to that person of this Act and the regulations;

(b) nothing contained in this Section modifies or limits any law applicable to the fiduciary, confidential or ethical relationships between a lawyer and a person receiving the professional services of a lawyer;

(c) the relationship of a corporation carrying on the practice of law and a person receiving the professional services of the corporation is subject to all applicable law relating to the fiduciary, confidential and ethical relationship between a lawyer and the lawyer's client;

(d) all professional responsibilities and obligations pertaining to communications made to or information received by a lawyer, or the advice of the lawyer therein, apply to the shareholders, directors, officers and employees of a corporation carrying on the practice of law; and

(e) any undertaking given by or on behalf of a corporation carrying on the practice of law that, where given by a practising member, would constitute a specific undertaking, is deemed to be a lawyer's undertaking given by the corporation and the practising lawyers who give it, sign it or authorize it.

(2) Notwithstanding anything contained in this Section and Sections 20 to 22, all provisions of this Act and the regulations that are applicable to practising lawyers apply with all necessary modifications to a law corporation, and a law corporation is deemed, for this purpose, to be a practising lawyer and, without limiting the generality of the foregoing, proceedings that may be taken under this Act or the regulations against a member who is an individual may also be taken against a law corporation, and any order that may be made against an individual may be made against a law corporation.

(3) Subject to this Act and the regulations, a law corporation may commence an action and sue to recover its account for the provision of any services provided by it in the course of carrying on the practice of law if those services were performed while the law corporation was a holder of a valid permit that was not under suspension.

(4) A law corporation shall not, while it is the holder of a permit, carry on any business prohibited by the regulations and no act of a law corporation, including the transfer of property to or by a corporation, is invalid by reason only that it contravenes this subsection.

(5) A permit may be refused, suspended, revoked, cancelled or reinstated by the Society, a committee established by the Society for that purpose or the Executive Director, as prescribed by the regulations.

(6) The Council may make regulations

(a) prescribing the requirements for the issuing of a permit permitting a corporation to carry on the practice of law in the Province;

(b) prescribing the requirements for the renewal of a permit;

(c) providing for the refusal, suspension, revocation, cancellation or reinstatement of a permit by the Society, a committee or the Executive Director;

(d) prescribing forms necessary or desirable for carrying out the procedures pursuant to this Section;

(e) regulating the practice of law carried on by a law corporation;

(f) regulating the name of a law corporation and the name under which a corporation may carry on the practice of law;

(g) defining "prescribed person" for the purpose of Sections 20 to 22;

(h) prescribing businesses and undertakings that a law corporation is prohibited from carrying on or holding itself out as carrying on;

(i) providing for an appeal from any decision of the Executive Director pursuant to this Section;

(j) prescribing liability insurance to be carried by persons carrying on the practice of law;

(k) that the Council considers necessary or advisable to carry out effectively the intent and purpose of this Section. *2004, c. 28, s. 23.*

Regulations

24 The Council may make regulations

(a) requiring law firms to register with the Society;

(b) requiring law firms to designate a member of the firm who is to receive official communication from the Society to the firm;

(c) specifying what information law firms must provide and keep current with the Society. *2004, c. 28, s. 24.*

Limited liability partnership

25 (1) A lawyer or a law corporation may carry on the practice of law as a partner in a limited liability partnership.

(2) The Council may make regulations that are not contrary to the Partnership Act and the Partnership and Business Names Registration Act respecting limited liability partnerships that are used to carry on the practice of law. *2004, c. 28, s. 25.*

Regulations

26 The Council may make regulations

- (a) permitting practice arrangements between lawyers and non-lawyers;
- (b) respecting conditions to be met in such practice arrangements;
- (c) providing for the registration of an entity embodying such arrangements;
- (d) specifying any requirements respecting such arrangements that are necessary to protect the public interest;
- (e) permitting the practice of law in the Province by law firms having an office in the Province and an office in one or more foreign jurisdictions;
- (f) regulating the practice of law by a firm referred to in clause (e). *2004, c. 28, s. 26.*

PART III

PROTECTION OF THE PUBLIC

Interpretation of Part

27 In this Part and Part IV, unless otherwise indicated, "member of the Society" includes a law firm. 2004, c. 28, s. 27.

Jurisdiction of Society

28 (1) The Society has jurisdiction over

(a) members of the Society in respect of their conduct, capacity and professional competence in the Province or in a foreign jurisdiction;

(b) persons who were members of the Society at the time when a matter regarding their conduct or professional competence occurred;

(c) lawyers from foreign jurisdictions in respect of their practice of law in the Province;

(d) members of the Society, who have been subject to a disciplinary proceeding in a foreign jurisdiction, in respect of the members' behaviour in a foreign jurisdiction and regardless of disciplinary proceedings taken in that jurisdiction.

(2) The Council may make regulations

(a) establishing or adopting ethical standards for members of the Society;

(b) establishing or adopting professional standards for the practice of an area of law;

(c) establishing and maintaining, or otherwise supporting, a system of post law school legal education, including

(i) a bar admission program, and

(ii) courses for lawyers from foreign jurisdictions seeking the right to practise law in the Province;

(d) respecting the promotion of standards for the practice of law, including regulations setting mandatory requirements for some or all members of the Society for attendance and successful completion of programs of continuing legal education and professional development and prescribing the sanctions or restrictions that apply where a member fails to successfully complete the requirements.

(3) The Council may, by resolution,

(a) establish a

(i) continuing legal education and professional development program,

(ii) remedial legal education program,

(iii) loss prevention program;

(b) provide library services;

(c) publish or support the publication of legal materials, including court and other legal decisions;

(d) provide support for legal education, research, public legal information or other matters considered by the Council to be in the interest of the legal profession or the public;

(e) establish and maintain programs to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems;

(f) establish and maintain programs to assist lawyers with issues arising from the practice of law.

(4) The Council may make regulations establishing rules of confidentiality regarding information obtained by those engaged by the Society to assist lawyers in programs established under this Section. *2004, c. 28, s. 28.*

Books and records

29 Every member of the Society shall maintain books and records of accounts as required by the regulations. *2004, c. 28, s. 29.*

Trust money or property

30 (1) Every member of the Society shall hold in trust money or property received in trust for a client or another person.

(2) Money held in trust pursuant to subsection (1) shall be deposited to an interest-bearing account at a financial institution approved by the Council and at an interest rate approved by the Law Foundation.

(3) A financial institution holding trust funds pursuant to subsection (2) shall remit the interest earned on those funds, less any charges or fees for the operation of the account, to the Law Foundation semi-annually in April and October of each year.

(4) A member of the Society is not liable, by virtue of the relationship between the member and a client or the member and a beneficiary of the trust, to account for interest earned on money deposited in a financial institution pursuant to subsection (2).

(5) Every member of the Society who receives money from a person, which the member holds in trust, and who has reasonable grounds to believe that the money will not be required for more than thirty days, has a duty to advise that person that the money may be deposited in a separate interest-bearing trust account in a financial institution and the interest credited to that person.

(6) Nothing in subsection (2)

(a) applies to money deposited in a separate account for a person with interest that shall be and remain the property of the person; or

(b) affects any arrangement in writing, whenever made, between a member of the Society and a person as to the application of the person's money or interest thereon. *2004, c. 28, s. 30.*

Law foundation may use interest for general purposes

31 The interest on the funds paid to the Law Foundation may be used by the Law Foundation for its general purposes. *2004, c. 28, s. 31.*

Regulations

32 The Council may make regulations

(a) requiring members of the Society to maintain certain books and records of accounts;

(b) requiring members of the Society to establish and maintain trust accounts;

(c) regulating the investment of funds held in trust by members of the Society;

(d) prescribing the types of financial institutions in which members of the Society may deposit money held in trust;

(e) requiring members of the Society to keep books and records of accounts with respect to money and other property entrusted to or received by them for the benefit of clients or other persons in the course of practising law, and to produce those books and records of accounts on demand, to the Executive Director or any other person designated by the Council;

(f) requiring members of the Society to have their books, records of accounts and related files independently reviewed by an accountant or a person designated by the Council;

(g) providing for the audit, review or examination of books, records of accounts and related files of a member of the Society by a person designated by the Council;

(h) requiring a member of the Society to provide the Executive Director or any other person designated by the Council with a report on the review conducted under clause (e);

(i) requiring a member of the Society to answer questions about the books, records of accounts and related files that were reviewed;

(j) prescribing anything that is to be prescribed pursuant to this Act. *2004, c. 28, s. 32.*

Protection of public and integrity of profession

33 The purpose of Sections 34 to 53 is to protect the public and preserve the integrity of the legal profession by

(a) promoting the competent and ethical practice of law by the members of the Society;

- (b) resolving complaints of professional misconduct, conduct unbecoming a lawyer, professional incompetence and incapacity;
- (c) providing for the protection of clients' interests through the appointment of receivers and custodians in appropriate circumstances;
- (d) addressing the circumstances of members of the Society requiring assistance in the practice of law, and in handling or avoiding personal, emotional, medical or substance abuse problems; and
- (e) providing relief to individual clients of members of the Society and promoting the rehabilitation of members. *2004, c. 28, s. 33.*

Complaints Investigation Committee

34 (1) The Council shall appoint a Complaints Investigation Committee made up of lawyers and persons who are not members of the Society and may make regulations

- (a) establishing processes for receiving and responding to complaints or other information concerning the conduct, practice, professional competence or capacity of members of the Society;
- (b) establishing processes for investigating the conduct, practice, professional competence or capacity of a member of the Society;
- (c) prescribing the makeup of the Complaints Investigation Committee and determining the criteria for being the Chair or a Vice-chair;
- (d) determining the quorum for the Complaints Investigation Committee;
- (e) determining the manner in which members of the Complaints Investigation Committee must receive notice of meetings and the consequences of failing to receive notices;
- (f) determining the means by which the Complaints Investigation Committee makes decisions;
- (g) prescribing the circumstances in which a member of the Complaints Investigation Committee whose term has expired may remain a part of the Committee until matters in which that member of the Committee has been involved have concluded.

(2) Regulations made pursuant to clause (1)(c) must provide that a majority of the members of the Complaints Investigation Committee are members of the Society. *2004, c. 28, s. 34.*

34A (1) The Council shall establish a Fitness to Practise Committee composed of members of the Society and persons who are not members of the Society as prescribed by the regulations.

(2) The Council may make regulations

- (a) prescribing the make-up of the Fitness to Practise Committee and determining the criteria for being the Chair or Vice-chair;

- (b) establishing the processes and procedures to be utilized by the Fitness to Practise Committee;
- (c) prescribing the circumstances in which a member of the Fitness to Practise Committee whose term has expired may remain a part of the Committee until matters in which that member of the Committee has been involved have concluded;
- (d) establishing the processes and procedures by which the Executive Director may refer a matter to the Fitness to Practise Committee pursuant to subsection 35B(1);
- (e) establishing the circumstances in which, and the processes and procedures by which, a matter may be referred
 - (i) by the Fitness to Practise Committee to the Complaints Investigation Committee pursuant to subsection 35B(3),
 - (ii) by the Complaints Investigation Committee to the Fitness to Practise Committee pursuant to subsection 35B(4).

Investigation of member

35 The conduct, capacity, practice or professional competence of a member of the Society may be the subject of an investigation pursuant to this Part.

35A For the purpose of conducting an investigation of a member pursuant to this Part, the Executive Director, the Complaints Investigation Committee or any person designated by either of them may request, and is entitled to obtain, any file or record regarding a client or former client of the member that is reasonably required to further the investigation, whether or not the file or record or any part of it is

- (a) subject to solicitor-client privilege; or
- (b) the subject of a charge or complaint.

Referral to Fitness to Practise Committee

35B (1) Notwithstanding anything contained in this Act or the regulations, where a complaint concerns a member's capacity, or where a person, in the absence of a complaint, raises concerns about a member's capacity to the Society, or a member self reports incapacity to the Society, the Executive Director may, where it is in the public interest to do so, refer the matter to the Fitness to Practise Committee in accordance with the regulations.

(2) Where a matter is referred to the Fitness to Practise Committee, the matter must be addressed in accordance with this Act and the regulations.

(3) The Fitness to Practise Committee may refer a matter to the Complaints Investigation Committee in the circumstances set out in, and in accordance with, the regulations.

(4) The Complaints Investigation Committee may refer a matter to the Fitness to Practise Committee in the circumstances set out in, and in accordance with, the regulations.

(5) Where a matter is referred by the Fitness to Practise Committee to the Complaints Investigation Committee pursuant to subsection (3) or subsection 36(2B), the matter must be considered a complaint and be processed in accordance with this Act and the regulations.

Powers of Complaints Investigation Committee

36 (1) The Complaints Investigation Committee and the Fitness to Practise Committee have all the powers conferred by this Act and the regulations in the discharge of their functions as well as the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*.

(2) The Complaints Investigation Committee may do one or more of the following things during or after an investigation:

(a) require a member of the Society to 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) dispose of a complaint in a manner prescribed by the regulations;

(c) issue a reprimand with the consent of the member of the Society;

(d) authorize the Executive Director to lay a charge against a member of the Society;

(e) recommend approval of a settlement agreement to a hearing panel;

(f) order a financial audit of the practice of a member of the Society to be carried out by a person or persons qualified to do so;

(g) order a review of the practice of a member of the Society to be carried out by any person or persons;

(h) where a review conducted pursuant to clause (g) identifies inadequacies in the member's practice or conduct that pose a substantial risk that the member will face disciplinary action in the future, assist the member to remedy those inadequacies;

(i) require a member of the Society to submit to an assessment or examination, or both, to determine whether the member is professionally competent;

(ia) require a member of the Society to submit to a medical assessment;

(j) receive reports from the audit, review, examination or assessment referred to in clauses (f), (g), (h), (i) or (ia);

(k) after providing a member of the Society with an opportunity to be heard, and where it is in the public interest to do so, direct the member to comply with any reasonable requirements specified by the Complaints Investigation Committee as a result of its consideration of the audit, review, examination or assessment referred to in clauses (f), (g), (h) or (i);

(l) direct that there be an application pursuant to Section 50 regarding the trust account of a practising lawyer;

(m) by resolution, appoint a receiver pursuant to Section 51;

(n) by resolution, direct that the Society apply to the court for the appointment of a custodian pursuant to Section 53;

(o) in addition to the other powers conferred by this subsection, where the member of the Society complained against is a law firm, require the law firm to do what the Complaints Investigation Committee reasonably requires to assist in an investigation.

Powers of Fitness to Practise Committee

(2A) Upon referral of a matter by the Executive Director or the Complaints Investigation Committee, the Fitness to Practise Committee may, where it is in the public interest to do so and with the member's consent, enter into an agreement which may include some or all of the following provisions:

(a) that the member submits to a medical assessment to determine a member's capacity;

(b) that the member undertakes and completes any applicable course of treatment designed to address any issues concerning the member's capacity;

(c) that 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) that the member agrees to accept practice restrictions or conditions on the member's practising certificate or a withdrawal from practice pending completion of the terms and conditions in an agreement reached between the Fitness to Practise Committee and the member in accordance with this Act and the regulations;

(e) that the member consents to such other provisions of an agreement as agreed upon by the member and the Fitness to Practise Committee.

(2B) For greater certainty and subject to subsection 35B(3), the process in subsection (2A) is voluntary and requires the consent of the member after the member has been advised of the authority of the Executive Director under Section 40.

(2C) Where a member of the Society fails to comply with the agreement or requirements under subsection (2A), the Fitness to Practise Committee may refer the matter to the Complaints Investigation Committee.

(2D) The Fitness to Practise Committee in existence at any time retains jurisdiction over a member who is subject to ongoing terms and conditions of an agreement to monitor the member's compliance and may, at any time and with the member's consent, amend the terms and conditions of the agreement, if the Fitness to Practise Committee determines that it is in the public interest to do so.

(3) Where a member of the Society other than a law firm fails to comply with any of the requirements imposed upon the member pursuant to its authority under subsection (2), the Complaints Investigation Committee may order that the member be suspended until the member complies.

(4) 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 this Section, and may set and extend the date for payment.

(4A) A member who is ordered by the Complaints Investigation Committee under this Section to pay costs shall pay those costs in full by the date set or extended by the Committee.

(4B) A member who has not paid the amount owing under this Section by the date set or extended by the Complaints Investigation Committee is in breach of this Section and, where any part of the amount owing remains unpaid by the date set or extended, shall have his or her practising certificate suspended unless the Committee otherwise orders.

(5) An order under subsection (4) is enforceable in the same manner as an order of the Supreme Court of Nova Scotia.

(6) A member who is subject to an order under subsection (4) may, within thirty days, appeal the order on any grounds to the Hearing Committee, which shall refer the appeal to a hearing panel.

(7) Sections 42 and 43 apply mutatis mutandis to an appeal under subsection (6).

(8) The hearing of an appeal under subsection (6) shall not be open to the public except at the member's request and any decision and reasons for the decision shall be provided only to the member and the Society.

(9) For the purpose of an appeal under subsection (6), a hearing panel shall be given access to all correspondence, records, reports and other materials available to or produced by the Complaints Investigation Committee.

(10) Following the hearing of an appeal under subsection (6), a hearing panel may issue an order varying, upholding or striking down the order of the Complaints Investigation Committee as it considers appropriate and the order may be registered for the purpose of enforcement.

(11) An order of a hearing panel pursuant to subsection (10) may be appealed to the Court of Appeal under Section 49. *2004, c. 28, s. 36.*

Suspension of certificate or imposition of conditions

37 (1) The Complaints Investigation Committee may, by resolution, where in its opinion it is in the public interest to do so,

(a) suspend a practising certificate; or

(b) impose restrictions or conditions on a practising certificate,

during or following an investigation until the suspension, restrictions or conditions are rescinded or amended by the Complaints Investigation Committee or a hearing panel.

(2) The power of the Complaints Investigation Committee pursuant to subsection (1) may be exercised with or without hearing the practising lawyer.

(3) The Complaints Investigation Committee shall, forthwith after passing a resolution pursuant to subsection (1), provide a copy of the resolution to the practising lawyer to whom the resolution applies, including the reasons for a decision to suspend the practising certificate or impose restrictions or conditions on the practising certificate.

(4) A lawyer who receives written notice pursuant to subsection (3) may request in writing, a meeting with the Complaints Investigation Committee.

(5) Where a request is received pursuant to subsection (4), the Complaints Investigation Committee shall

(a) provide an opportunity for the lawyer to meet with the Complaints Investigation Committee within ten days of the written request; and

(b) after meeting with the lawyer, confirm, vary or terminate the suspension, restrictions or conditions imposed pursuant to subsection (1).

(6) Where the Complaints Investigation Committee holds a hearing before making a determination under subsection (1), or where a lawyer requests the opportunity to meet with the Complaints Investigation Committee pursuant to subsection (4), the lawyer has the right to

(a) be represented by counsel, at the lawyer's expense;

(b) disclosure of the nature of the complaint; and

(c) an opportunity to present a response and make submissions.

(7) A lawyer may appeal to the Nova Scotia Court of Appeal on any question of law from a decision of the Complaints Investigation Committee pursuant to this Section, in accordance with Section 49. *2004, c. 28, s. 37.*

Show cause hearing respecting offences

38 (1) Where a member of the Society has been convicted or found to be guilty in or out of Canada of any offence that is inconsistent with the proper professional behaviour of a member of the Society, including a conviction under

(a) the Criminal Code (Canada);

(b) the Controlled Drug and Substances Act (Canada);

(c) the Income Tax Act (Canada); or

(d) such other legislation as is prescribed in the regulations,

the Complaints Investigation Committee may, by such notice as it prescribes, require the member to attend a show-cause hearing to establish why the member should not be subject to review by the Complaints Investigation Committee.

(2) During the course of a show-cause hearing pursuant to subsection (1), the Complaints Investigation Committee may, where it considers it proper, take any of the actions authorized by clauses 36(2)(f) to (n) or Section 37.

(3) When the Complaints Investigation Committee has concluded a show-cause hearing pursuant to subsection (1), it may, where it considers it proper, take any of the actions authorized by subsection 36(2) or Section 37.

(4) For the purposes of subsection (1), a certificate of conviction of a member of the Society is conclusive evidence that the member has committed the offence stated therein, unless it is proved that the conviction has been quashed or set aside.

(5) Where a member of the Society has been convicted of an offence referred to in subsection (1), the member shall report the conviction to the Executive Director within thirty days of the conviction having been entered. *2004, c. 28, s. 38.*

Procedure and jurisdiction

39 (1) The Complaints Investigation Committee may set its own procedure for hearings pursuant to Sections 37 and 38.

(2) The Complaints Investigation Committee retains jurisdiction over a matter until such time as a hearing commences before a hearing panel, or a hearing panel otherwise resolves the matter through a settlement agreement. *2004, c. 28, s. 39.*

Complaints to be confidential

40 (1) All complaints received or under investigation and all proceedings of the Complaints Investigation Committee shall be kept confidential by the Society.

(2) Notwithstanding subsection (1),

(a) subject to any order of a hearing panel, a complaint or information with respect to a complaint that forms part of the notice of hearing pursuant to the regulations, may be disclosed to the public when the notice of hearing is published in accordance with the regulations;

(aa) subject to any order of a hearing panel, a complaint or information with respect to a complaint may be disclosed to the public if such complaint or information is disclosed in the course of a hearing;

(b) the Executive Director may disclose to the Minister of Justice and Attorney General of the Province and the Minister of Justice and Attorney General of Canada, or to persons designated by either or both of them, information that the Executive Director considers necessary for the purpose of considering judicial appointments and appointments as Her Majesty's Counsel learned in the law;

(c) the President or the Executive Director, or a person designated by either of them, may disclose

(i) that a complaint about the conduct, capacity or competence of a member of the Society has been received,

(ii) that the complaint is or will be under investigation,

(iii) information that is otherwise available to the public, or

(iv) where Section 37 applies, that conditions or restrictions have been imposed on a practising certificate, or that a lawyer's practising certificate has been suspended, pending completion of the investigation and any disciplinary proceeding that may follow;

(d) the Executive Director, on the recommendation of the Complaints Investigation Committee, may disclose to law enforcement authorities any information about possible criminal activity on the part of a member of the Society that is obtained during an investigation pursuant to this Act;

(e) subject to Section 77A, the Complaints Investigation Committee may authorize the Executive Director to release specific information to a specific person or persons if it is determined by the Complaints Investigation Committee that it is in the public interest to do so;

(f) the Executive Director may disclose information with respect to a complaint to a regulatory body in a foreign jurisdiction when it is relevant and concerns the fitness of a member of the Society for membership in the foreign jurisdiction;

(g) disclosure of information with respect to a complaint may be made for the administration of this Act or to comply with the purpose of this Act.

(2A) All information received by and all proceedings of the Fitness to Practise Committee shall be kept confidential by the Society.

(2B) Notwithstanding subsection (2A) and subject to any order of a hearing panel, where a matter referred to the Fitness to Practise Committee is referred to a hearing panel, information disclosed to the Fitness to Practise Committee may be disclosed to the public if such information is disclosed in the course of a hearing.

(2C) Notwithstanding subsection (2A), the Fitness to Practise Committee may authorize the Executive Director to disclose

(a) to the Minister of Justice and the Attorney General of the Province and the Minister of Justice and Attorney General of Canada, or to persons designated by either or both of them, information that the Executive Director considers necessary for the purpose of considering judicial appointments and appointments as Her Majesty's Counsel learned in the law;

(b) subject to Section 77A, specific information to a specific person or persons if it is determined by the Fitness to Practise Committee that it is in the public interest to do so;

(c) information with respect to a matter before the Fitness to Practise Committee to a regulatory body in a foreign jurisdiction when it is relevant and concerns the fitness of a member of the Society for membership in the foreign jurisdiction;

(d) information with respect to a matter before the Fitness to Practise Committee for the administration of this Act or to comply with the purpose of this Act.

(3) The Council may, by regulation, prescribe the manner in which confidential information is handled and shared within the Society and between the Society and the Nova Scotia Lawyers' Insurance Association. *2004, c. 28, s. 40.*

Hearing Committee and regulations

41 (1) The Council shall appoint a Hearing Committee made up of lawyers and persons who are not members of the Society and may make regulations

- (a) prescribing the makeup of the Hearing Committee including the requirements for a Chair and one or more Vice-chairs;
- (b) prescribing the quorum for a hearing panel and the means by which members of the Hearing Committee are designated to sit on a hearing panel for adjudication of matters included in a charge;
- (c) prescribing the means by which non-lawyers are appointed to the Hearing Committee;
- (d) establishing processes for a charge to proceed to a hearing;
- (e) prescribing the procedure to govern hearings, the means by which hearing panels are to make decisions, the timing for the release of decisions and such other matters that will ensure a fair hearing;
- (f) prescribing the circumstances in which a member of the Hearing Committee whose term has expired may remain on a hearing panel until the matters in which that person has been involved, have concluded;
- (g) prescribing the procedures to be employed for settlement agreements;
- (h) establishing processes respecting Section 48.

(2) Regulations made pursuant to clause (1)(a) or (b) must provide that a majority of the members of the Hearing Committee and any hearing panel thereof are to be members of the Society. *2004, c. 28, s. 41.*

Powers of Hearing Committee

42 (1) The Hearing Committee, and any hearing panel thereof, has all the powers conferred by this Act and the regulations in the discharge of its functions as well as the powers, privileges and immunities of a commissioner under the Public Inquiries Act.

(2) A hearing panel may determine its own procedure and may

- (a) issue subpoenas and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the hearing panel considers necessary for the full consideration of a charge;
- (b) 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;
- (c) 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;

- (d) administer oaths and solemn affirmations;
- (e) 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;
- (f) prescribe the disclosure obligations of the parties prior to a hearing;
- (g) compel, at any stage of a proceeding, any person to provide information or to produce documents or things that may be relevant to a matter before it;
- (h) adjourn or postpone a proceeding from time to time;
- (i) amend or permit the amendment of any document filed in connection with the proceeding, including a notice of hearing and a charge contained therein;
- (j) make interim orders to affirm, amend or rescind any outstanding order of the Complaints Investigation Committee;
- (k) reject or by order approve a settlement agreement.

Conduct of hearings

- 43** (1) In a hearing before a hearing panel, the parties to the hearing are the Society and the member of the Society who is the subject of the charge.
- (2) A hearing held by a hearing panel shall be conducted in accordance with this Act and the regulations.
- (3) In a proceeding before a hearing 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
 - (d) receipt of written reasons for a decision within a reasonable time as prescribed by regulation.
- (4) In a hearing before a hearing panel, a member of the Society who is the subject of a charge is a compellable witness. *2004, c. 28, s. 43.*

Public attendance at hearing

- 44** (1) Subject to subsection (2), a hearing before a hearing panel shall be open to the public.
- (2) A hearing panel may order that the public, in whole or in part, be excluded from a hearing or any part of it if the hearing panel is satisfied that

(a) financial, 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

(b) the safety of a person may be jeopardized.

(2A) A hearing panel

(a) shall order that the public, in whole or in part, be excluded from a hearing or any part of it if satisfied that matters involving solicitor-client privilege that have not otherwise been waived may be disclosed; and

(b) may order that the public, in whole or in part, be excluded from a hearing or any part of it if satisfied that the public interest in disclosure of other information is outweighed by the interest of the public or any person in preventing the information from being disclosed.

(3) A hearing 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.

(4) No order shall be made pursuant to subsection (3) that prevents the publication of anything that is otherwise available to the public.

(5) A hearing 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 subsection (2).

(6) A hearing panel may make any order necessary to prevent the public disclosure of matters disclosed in a submission relating to any motion described in subsection (5), including an order prohibiting the publication or broadcasting of those matters.

(7) Subject to any orders pursuant to this Section, a hearing panel shall state, at the hearing, its reasons for an order made pursuant to this Section.

(8) Where a hearing panel makes an order pursuant to subsection (2), wholly or partly because of the desirability of avoiding disclosure of matters in the interest of a person affected, the hearing 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.

(9) Notwithstanding anything contained in this Section, 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 hearing panel. *2004, c. 28, s. 44.*

Actions by panel during and after hearing

45 (1) At any time during a hearing, or where a hearing panel finds a member of the Society, other than a law firm, guilty of professional misconduct, professional incompetence or conduct unbecoming a

lawyer or articled clerk or makes a finding of incapacity, it may, before making an order pursuant to subsection (4) and upon application by a party, do one or more of the following:

(a) order an audit of the member's practice to be carried out by such person or persons as directed by the hearing panel;

(b) order the member to submit to a review of the practice of the member by a qualified person or persons designated by the hearing panel, and to provide a copy of the review to the hearing panel;

(c) order the member to submit to an assessment or examination to determine whether the member is professionally competent to practise law, and to provide the assessment or the report of the examination to the hearing panel;

(d) order a member to submit to a medical assessment to determine whether the member has the capacity to practise law, and to provide any medical assessment report to the hearing panel;

(e) receive any reports from the medical assessments;

(f) resolve to bring an application pursuant to Section 50.

(2) Where a member of the Society fails to comply with any order of a hearing panel made pursuant to subsection (1), the hearing panel may order that the member be suspended until the member complies.

(3) The costs of complying with an order made pursuant to subsection (1) shall be initially borne by the Society and may be awarded as costs against a member of the Society pursuant to subsection (4).

(4) Where a hearing panel finds a member of the Society, other than a law firm, guilty of professional misconduct, professional incompetence or conduct unbecoming a lawyer or articled clerk or makes a finding of incapacity, it shall, following an opportunity for the parties to present evidence and submissions respecting the proposed disposition by the hearing panel, do one or more of the following:

(a) where the member is a lawyer, disbar the member;

(b) where the member is an articled clerk,

(i) expel the articled clerk and order the articled clerk's name to be struck off the Register of Articled Clerks,

(ii) defer the articled clerk's call to the Bar, or

(iii) impose conditions on the articled clerk's call to the Bar;

(c) permit the member to resign his or her membership;

(d) for any period the hearing panel considers appropriate,

(i) suspend the member from practising law,

(ii) confirm, vary or impose restrictions on the member's practice;

- (e) order the member to pay an amount not to exceed twenty thousand dollars to be paid into the Fund;
 - (f) order that restitution be made to any person;
 - (g) reprimand the member;
 - (h) order the member to pay all or any part of the costs incurred by the Society in connection with any investigation or proceedings relating to the matter in respect of which the member was found guilty and, in particular, to pay the costs of the proceedings authorized by Sections 36 to 38;
 - (i) order the member to submit to an assessment or examination, or both, as the hearing panel considers appropriate;
 - (ia) order the member to submit to a medical assessment;
 - (j) where the member is a director, officer or shareholder of a law corporation, revoke or suspend the corporation's permit, or impose conditions on the permit;
 - (k) apply for a variation of any custodial order;
 - (l) resolve to bring an application pursuant to Section 50;
 - (m) rescind or vary any order made or action taken under this subsection;
 - (n) 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
- (5) Where a hearing panel finds a law firm guilty of professional misconduct, it may, following the opportunity for the parties to present evidence or submissions respecting the potential disposition, do one or more of the following:
- (a) order the law firm to pay an amount not to exceed fifty thousand dollars into the Fund; or
 - (b) make any other order or take any other action the panel thinks is appropriate in the circumstances including an order to retain jurisdiction to monitor the enforcement of its order. *2004, c. 28, s. 45.*

Publication of decision or order

- 46 (1) Subject to any publication ban ordered by a hearing panel or provision in this Act, the Society shall publish any decision or order of a hearing panel and the reasons for it, notwithstanding the fact that members of the public may have been excluded from the hearing or part of the hearing.
- (2) Publication under subsection (1) may be to members of the Society, to the governing body of a legal profession in a foreign jurisdiction or to the public, or to any combination of them. *2004, c. 28, s. 46.*

Enforcement in same manner as order of Supreme Court

47 Any resolution, decision or order by a hearing panel must be signed by the chair of the hearing panel and may be enforced in the same manner as an order of the Supreme Court of Nova Scotia. *2004, c. 28, s. 47.*

Professional misconduct by member in a foreign jurisdiction

48 A member of the Society is guilty of professional misconduct under this Act if

(a) as a result of disciplinary proceedings in a foreign jurisdiction,

(i) the member is disbarred or permitted to resign the member's membership in the legal profession of that jurisdiction,

(ii) the member is suspended from practising law in that jurisdiction,

(iii) conditions are imposed on the member's practice of law in that jurisdiction, or

(iv) the disciplinary authority in that jurisdiction declares that the member would have been disbarred, permitted to resign, suspended from practising law or had conditions imposed on the member's practice of law if the member of the Society had been a member of the legal profession in that jurisdiction; or

(b) the member contravenes an order of a disciplinary authority of a foreign jurisdiction having jurisdiction over the member. *2004, c. 28, s. 48.*

Appeal of order or decision

49 (1) Subject to this Section, every order or decision of a Complaints Investigation Committee or a hearing panel is final and shall not be questioned or reviewed in any court.

(2) A party may appeal to the Nova Scotia Court of Appeal on any question of law from the findings of a hearing panel, following the rendering of a decision pursuant to subsections 45(4) or (5) or from a decision of the Complaints Investigation Committee under Section 37 or 38.

(3) The notice of appeal shall be filed at the Nova Scotia Court of Appeal and served upon the other party not later than thirty days after service of the written decision of the Complaints Investigation Committee or hearing panel.

(4) The record on appeal from the findings of a hearing panel consists of a copy of the transcript of the proceedings, the decisions and resolutions of the panel and the evidence before the panel certified by the chair of the hearing panel.

(5) The Civil Procedure Rules governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal that are not inconsistent with this Act, apply mutatis mutandis to appeals to the Court of Appeal pursuant to this Section.

(6) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the decision of the hearing panel takes effect immediately unless the Court of Appeal grants a stay of any order made pursuant to this Act. *2004, c. 28, s. 49.*

Court orders respecting trust money or property

50 (1) On ex parte application of the Society, following a resolution of the Complaints Investigation Committee or a hearing panel, a judge who determines that a member of the Society is improperly handling or dealing with money or other valuable property required to be held in trust, may order that

(a) money or other valuable property not be paid out or dealt with by the member or any other person named in the order, except as provided in the order; or

(b) a portion or all of the money or property be paid out or dealt with by any person named in the order in the manner provided in the order.

(2) A member of the Society in respect of whom an order has been made pursuant to this Section, the Society or any member of the Society affected by an order made pursuant to this Section may apply to the judge who made the order or another judge for an order varying or discharging the order.

(3) An order made under this Section is subject to appeal on a question of law to the Nova Scotia Court of Appeal. *2004, c. 28, s. 50.*

Appointment of receiver

51 (1) Where a member of the Society has been suspended from practice pursuant to this Act or the regulations or disbarred, the Complaints Investigation Committee or a hearing panel may, by resolution, order the appointment of a receiver to

(a) take possession of the office of the member and of all records, documents, bank accounts, clients' property and the like relating to the member's practice, or to any trust of which the member is or was a sole trustee or of which the member is or was a co-trustee with a partner, clerk or employee;

(b) receive all monies that the member in the member's professional or fiduciary capacity is or becomes entitled to receive from any person; and

(c) generally conduct or wind down such practice, transfer such trusteeship and account therefor, as the Complaints Investigation Committee or the hearing panel may from time to time direct

(2) A resolution appointing a receiver has the same effect as an order of the Supreme Court appointing a receiver.

(3) Notice of a resolution made pursuant to subsection (1) shall be made public in the manner prescribed by the regulations.

(4) A receiver, the Society or, after ten days notice to the receiver and the Society, any interested person, may apply to a judge for an order varying or vacating the order made pursuant to subsection (1), or giving such direction in connection with the receivership as the judge considers appropriate. *2004, c. 28, s. 51.*

Definition of "property"

52 In Section 53, "property", in relation to a member of the Society, means any negotiable instrument, financial account, cash, money on deposit, file, record or other document or chattel that

- (a) relates to the member's practice; or
- (b) is in the possession or control of the member or the member's estate and relates to the business or affairs of a client or former client of the member. *2004, c. 28, s. 52.*

Appointment of custodian

53 (1) A judge may, upon application of the Society, make an order appointing a custodian to

- (a) take custody of the property of a member of the Society;
- (b) conserve, protect and properly dispose of property; and
- (c) manage or wind up the practice of a member of the Society.

(2) An order may be made pursuant to subsection (1) where the judge is satisfied there are reasonable grounds to believe that

- (a) a member of the Society is no longer authorized or able to practise law;
- (b) a law corporation through which a member of the Society is or has been practising is no longer authorized to practise law;
- (c) a member of the Society has absconded or is otherwise improperly absent from a location at which the member ordinarily practises;
- (d) the practice of a member of the Society has been neglected for an undue period of time;
- (e) a member of the Society, or a law corporation through which the member is or has been practising, has insufficient trust money to meet the trust liabilities of the member or the corporation; or
- (f) other sufficient grounds exist for making the order.

(3) A judge in an order made under subsection (1) or in a subsequent order made upon the application of the Society or the custodian, either ex parte or on such notice as the judge requires, may

- (a) authorize a sheriff to
 - (i) enter any premises in which the judge is satisfied there are reasonable grounds to believe that any of the member's property is located,
 - (ii) seize and remove property and place it in the possession of the custodian, and

(iii) open any safety deposit box or other receptacle on the premises;

(b) authorize the custodian to employ such professional assistance as the custodian requires to carry out the custodian's duties;

(c) direct any bank or other depository of property to deal with, hold, pay or dispose of such property to the custodian or in such manner as the Supreme Court or judge considers proper;

(d) give directions to the custodian as to the disposition of property in the custodian's hands or any part thereof;

(e) make provisions for the remuneration, disbursements and indemnification of the custodian out of the property in the custodian's hands or otherwise as the judge may specify;

(f) make provision for the discharge of the custodian upon completion of the responsibilities imposed upon the custodian by any order made under this Section; and

(g) give such further directions as the judge considers are required in the circumstances. *2004, c. 28, s. 53.*

Application of Act to law corporations and foreign lawyers

54 (1) Sections 33 to 53 apply, mutatis mutandis, to the following persons as if they were members of the Society:

(a) law corporations;

(b) lawyers from foreign jurisdictions who are practising law in the Province under the regulations relating to interjurisdictional practice.

(2) Any regulations made by the Council under Sections 33 to 53 may be made applicable to the following persons as if they were members:

(a) law corporations;

(b) lawyers from foreign jurisdictions who are practising law in the Province under the regulations relating to interjurisdictional practice. *2004, c. 28, s. 54.*

PART IV

LAWYERS' FUND FOR CLIENT COMPENSATION

Fund continued

55 (1) The Reimbursement Fund established pursuant to the former Act is hereby continued as the Lawyers' Fund for Client Compensation.

(2) The purpose of the Fund is to compensate claimants who have sustained pecuniary losses because of misappropriation or wrongful conversion of the claimants' money or property by a member of the Society or by a law corporation. *2004, c. 28, s. 55.*

Property of Fund

56 The property of the Fund

(a) is the property of the Society;

(b) must be accounted for separately from other funds of the Society;

(c) is not subject to any process of seizure or attachment by a creditor of the Society; and

(d) is not subject to a trust in favour of a person who claims to have sustained a loss. *2004, c. 28, s. 56.*

Council may pay compensation to claimants

57 (1) In its sole and absolute discretion, the Council may pay compensation out of the Fund to a claimant if it is satisfied that

(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.

(2) Compensation paid out of the Fund is an ex gratia payment.

(3) When the Council receives a claim for compensation out of the Fund, it may

(a) use the Fund to compensate the claimant for all or any part of the claimant's loss, on any terms it considers appropriate; or

(b) refuse to compensate the claimant.

(4) No payment shall be made out of the Fund unless notice of the claim is received by the Executive Director within six months after the loss comes to the knowledge of the claimant.

(5) Notwithstanding subsection (4), the Council 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.

(6) When a claimant is compensated out of the Fund, the Society has all the rights of recovery of the claimant and the Society may bring an action in its own name, alone or in a joint action with the claimant, to enforce those rights to the extent of the amount paid to the claimant and any costs incurred in recovering the amount paid.

(7) Where the Society or the claimant recovers money or other property for the claimant's loss, the recovered money or property must be paid or applied in the following order:

(a) to cover the legal costs and fees incurred in recovering it;

(b) to compensate the Fund for the compensation paid to the claimant;

(c) to the claimant to compensate for any part of the claimant's loss that was not compensated for pursuant to subsection (3) in the event any balance remains after the payments required by clauses (a) and (b); and

(d) to the person from whom the money or other property was recovered if any balance remains after the payments required by clauses (a) to (c) are made.

(8) A member of the Society whose conduct results in payment of a claim from the Fund is liable to the Fund for the amount paid and the Society may take such action as it considers appropriate to recover such payment to the extent of the amount paid and any costs incurred in recovering the amount paid.

(9) The Council may make regulations

(a) setting the amount of contributions to be paid into the Fund by all or some members of the Society;

(b) establishing limits on payments out of the Fund regarding claims against a member;

(c) establishing aggregate limits for payment out of the Fund in any fiscal year of the Society;

(d) providing for insurance for the Fund and the payment of premiums out of the Fund;

(e) prescribing what may be paid out of the Fund in addition to claims. *2004, c. 28, s. 57.*

Public Inquiries Act

58 When considering a claim for compensation from the Fund, the Council or a committee established for this purpose, has all the powers, privileges, and immunities of commissioners under the Public Inquiries Act. *2004, c. 28, s. 58.*

Compensation programs with other jurisdictions

59 (1) The Council may participate with governing bodies of the legal profession in foreign jurisdictions in programs to compensate persons who sustain pecuniary losses by reason of misappropriation or

wrongful conversion of property entrusted to or received by lawyers or their professional corporations in the course of practising law in the Province or outside the jurisdiction in which they are members of the legal profession.

(2) The Council may use money from the Fund to

(a) contribute to a program referred to in subsection (1);

(b) reimburse, in whole or in part, persons who sustain pecuniary losses by reason of a misappropriation or wrongful conversion, by a member of the Society or a law corporation, of property entrusted to or received by the member or law corporation in the course of practising law outside of the Province; and

(c) pay an insurance premium or otherwise participate in an insurance program that provides compensation for persons who sustain a loss of a type referred to in subsection (1). *2004, c. 28, s. 59.*

Agreement respecting the Land Registration Act

60 (1) The Society may enter into an agreement with the Government of the Province to pay compensation as a result of a claim made under Section 87 of the Land Registration Act.

(2) The Society may establish a fund or other means, including an insurance policy, to provide for compensation that it is required to pay under subsection (1).

(3) Until the Society has established the fund or other means to provide compensation referred to in subsection (2), the Society may pay from the Fund the amounts it is required to pay under an agreement made pursuant to subsection (1).

(4) Where the Society has paid amounts from the Fund, the Society may, by regulation, require contributions from some or all members of the Society to reimburse the Fund for amounts paid. *2004, c. 28, s. 60.*

PART V

LAWYERS' INSURANCE ASSOCIATION OF NOVA SCOTIA

Claims Fund continued as Association

61 (1) The Nova Scotia Barristers' Liability Claims Fund as established by the former Act is continued as a body corporate under the name the "Lawyers' Insurance Association of Nova Scotia".

(2) Subject to this Act and the regulations, the Association shall be managed by a board of directors consisting of persons from time to time appointed by the Council. *2004, c. 28, s. 61.*

Professional liability claims program

62 (1) The Association shall conduct a mandatory professional liability claims program in accordance with this Section and Sections 63 and 64 and may conduct a voluntary excess liability coverage program.

(2) The Association has all the powers necessary to conduct the mandatory professional liability claims program and, without limiting the generality of the foregoing, the Association may

(a) acquire, hold, dispose of or otherwise deal with interests in property;

(b) with the approval of the Council, borrow money for its general purposes and give promissory notes, bills of exchange and other negotiable instruments in respect of any amount borrowed, and mortgage or pledge its properties to secure the sums so borrowed;

(c) enter into agreements of indemnity or guarantee;

(d) indemnify members with respect to liability retained by the Association under a group insurance contract entered into pursuant to subsection 64(2) in accordance with such contract. *2004, c. 28, s. 62.*

(3) The Association has all the powers necessary to conduct and maintain the programs established by the Council pursuant to clause 63(da) and, without limiting the generality of the foregoing, the Association may enter into contracts with service providers to provide or support the programs of assistance.

Regulations

63 The Council may make regulations

(a) authorizing the Council to make a policy giving broad policy directions with respect to the mandatory professional liability program of the Association;

(b) respecting the management of the Association and, without limiting the generality of the foregoing, determining the powers, duties and responsibilities of the board of directors of the Association;

(c) providing for the minimum amount of liability insurance to be carried by members of the Society and for the payment by members of amounts for such annual assessments, surcharges and such other amounts as may be determined by the Council from time to time for the purpose of the Association;

(d) providing for the exemption or exclusion of members of the Society from the payment of annual assessments referred to in clause (c), and from entitlement to indemnification under the mandatory professional liability claims program, and the conditions on which the exemption or exclusion may be made;

(da) establishing

(i) 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,

(ii) programs to assist lawyers with issues arising in the practice of law as part of the mandatory professional liability program of the Association;

(db) authorizing the Council to make a policy giving broad policy directions with respect to programs established under clause (da);

(e) where a member has entered into an agreement with the Association pursuant to a voluntary excess liability coverage program, providing for the payment by such member of assessments in such amount as may be fixed by the agreement. *2004, c. 28, s. 63.*

Reciprocal exchange

64 (1) The Association may, with the approval of the Council, participate in a reciprocal exchange of contracts of indemnity or inter-insurance and thereby exchange contracts of indemnity.

(2) The Association may

(a) enter into a group insurance contract with an insurer, including a reciprocal exchange of contracts of indemnity or inter-insurance, providing for the indemnification by the insurer in whole or in part of members of the Society in respect of professional liability claims against them, on such terms and conditions as may be agreed upon; and

(b) enter into a group insurance contract with an insurer either alone or jointly with one or more governing bodies of the legal professions in foreign jurisdictions, or one or more corporations designated by such a governing body and incorporated for purposes similar to those of the Association.

(3) The Association may enter into contracts with insurers or other persons whereby the Association may be indemnified in whole or in part against claims, expenses and losses of the Association. *2004, c. 28, s. 64.*

PART VI

LEGAL FEES

Interpretation of Part

65 In this Part,

- (a) "account" means the fees, costs, charges and disbursement to be paid by a client or a party to a matter as a result of an order of a court;
- (b) "adjudicator" means an adjudicator of the Small Claims Court of Nova Scotia;
- (c) "lawyer" includes a law firm and a law corporation. *2004, c. 28, s. 65.*

Account recoverable

66 A lawyer may sue to recover the lawyer's reasonable and lawful account. *2004, c. 28, s. 66.*

Taxation

67 Notwithstanding any other enactment, a lawyer's account may be taxed by

- (a) an adjudicator; or
- (b) a judge. *2004, c. 28, s. 67.*

Initiation of taxation

68 A taxation may be initiated by

- (a) any person claiming the whole or a portion of an account; or
- (b) any person from whom an account or any portion of it is claimed. *2004, c. 28, s. 68.*

Where lawyer is party

69 Where a lawyer is a party in a proceeding in which the reasonableness of the lawyer's account is raised, the presiding judge or adjudicator may

- (a) tax the account as part of the proceeding; or
- (b) order the account to be taxed by another judge or adjudicator. *2004, c. 28, s. 69.*

Appeal

70 A decision on a taxation may be appealed to

- (a) the Supreme Court of Nova Scotia, if the taxation is conducted by an adjudicator; or

(b) the Nova Scotia Court of Appeal, if the taxation is conducted by a judge. *2004, c. 28, s. 70.*

Regulations

71 (1) The Governor in Council may, after consultation with the Council in the time and in the manner determined by the Governor in Council, make regulations

(a) prescribing the length of notice required before a taxation;

(b) prescribing the circumstances in which notice may be waived;

(c) prescribing the means of service of a notice;

(d) prescribing the means of proof of service;

(e) prescribing when a taxation may be held in the absence of one or more parties to the taxation;

(f) governing the practice and procedures of taxations;

(g) respecting payment of the cost of taxations;

(h) permitting a person or class of persons to carry out activities referred to in subsection 16(1) for the purpose of clause 16(4)(m);

(i) defining any word or expression used but not defined in this Act;

(j) further defining any word or expression defined in this Act; and

(k) respecting any matter that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act.

(3) Where regulations made pursuant to subsection (1) conflict with the Small Claims Court Act or any regulations made pursuant to that Act, the regulations made pursuant to subsection (1) prevail. *2004, c. 28, s. 71.*

PART VII

THE LAW FOUNDATION OF NOVA SCOTIA

Foundation continued

72 (1) The Law Foundation of Nova Scotia, as constituted by the former Act, is continued as a body corporate, and is governed by a Board composed of

(a) five persons appointed by the Governor in Council; and

(b) four members of the Society appointed by the Council.

(2) Each member of the Board shall be appointed for a term of two years.

(3) Notwithstanding subsection (2), if the term of appointment of a member of the Board expires and no successor has been appointed, the term of that member of the Board continues until a successor is appointed.

(4) The chair of the Board shall be appointed from the members of the Board by the Governor in Council upon the joint recommendation of the Attorney General and the Society.

(5) The chair and members of the Board shall serve on the Board without remuneration.

(6) Where any vacancy occurs on the Board, the Governor in Council or the Council, depending upon who made the appointment of the person who did not complete the term, shall appoint a person to fill the vacancy and the member of the Board so appointed holds office for the remainder of that term or until a successor is appointed.

(7) A quorum of the Board consists of any five members of the Board and those members may act notwithstanding any vacancy on the Board.

(8) Notwithstanding subsection (2), the appointment of any member of the Board terminates when the member

(a) resigns in writing;

(b) ceases to be a member of the Society or leaves the Province permanently;

(c) becomes mentally incompetent or bankrupt;

(d) where appointed by the Governor in Council, is removed by revocation of the order in council making the appointment.

(9) No act of the Board is invalid because a defect is afterwards found in the appointment of any of its members. *2004, c. 28, s. 72.*

Objects

73 The objects of the Law Foundation are to establish and maintain a fund to be used for the examination, research, revision and reform of and public access to the law, legal education, the administration of justice in the Province and any other purposes incidental or conducive to or consequential upon the attainment of any such objects. *2004, c. 28, s. 73.*

Source of funds

74 (1) The funds of the Law Foundation shall be derived from

- (a) gifts, bequests and devises referred to in subsection (2);
- (b) moneys received from lawyers under Section 30;
- (c) moneys resulting from the use, disposal or investment of property received under clauses (a) and (b); and
- (d) any other source.

(2) The Law Foundation has power to receive gifts, bequests and devises of property, real or personal, and to hold, use or dispose of such property in furtherance of the objects of the Law Foundation, subject to the terms of any trust affecting the property.

(3) Any form of words is sufficient to constitute a gift, bequest or devise to the Law Foundation so long as the person making the gift, bequest or devise indicates an intention to contribute to the Law Foundation. *2004, c. 28, s. 74.*

Powers of Board

75 (1) The Board may, subject to this Act,

- (a) approve interest rates to be paid by financial institutions on trust accounts established pursuant to subsection 30(2);
- (b) pay out of the funds of the Law Foundation any costs, charges, audit and other fees, and expenses involved in the administration and operation of the Law Foundation;
- (c) appoint, employ or otherwise retain such persons as are required to carry out the powers and purposes of the Law Foundation;
- (d) acquire, hold, mortgage, dispose of and otherwise deal with real and personal property in the name of and for the purposes of the Law Foundation;
- (e) borrow money for the general purposes of the Law Foundation and make and give promissory notes, bills of exchange and other negotiable instruments in respect of any amount borrowed and mortgage, hypothecate or pledge the property of the Law Foundation to secure sums so borrowed;

(f) make regulations respecting the administration of its affairs, funds and property, and of any other matter that relates to the powers and purposes of the Law Foundation or that is incidental thereto;

(g) do any other matter that relates to the powers and purposes of the Law Foundation or that is incidental thereto.

(2) All moneys of the Law Foundation shall, pending their investment or application in accordance with this Section, be paid into a financial institution authorized by law to receive money on deposit to the credit of the Law Foundation.

(3) Any moneys that are not immediately required for the purpose of the Law Foundation may be invested in the name of the Law Foundation by the Board in any manner in which trustees are authorized by law to invest trust funds.

(4) The accounts of the Law Foundation shall be audited annually by a chartered accountant appointed for the purpose by the Board and the accountant shall report to the Law Foundation.

(5) The Board shall report to the Council from time to time or when requested by the Council and shall present an annual report, including its audited accounts, to the Society at its annual meeting. *2004, c. 28, s. 75.*

Report by Board

76 (1) Within three months next after the end of each fiscal period, the Law Foundation shall prepare and submit to the Attorney General a report consisting of

(a) a general summary of its transactions and affairs during such period, its revenues and the application of its expenditures during that year;

(b) an audited balance sheet of its accounts and financial transactions during such period; and

(c) such other information as the Attorney General may require.

(2) Upon receiving a report under subsection (1), the Attorney General shall lay a copy of it before the Legislature if it is then sitting or, if it is not then sitting, within fifteen sitting days after the commencement of the next ensuing sitting. *2004, c. 28, s. 76.*

PART VIII

GENERAL

Solicitor-client privilege

77 (1) Any person, committee, panel or agent of the Society carrying out duties under this Act may, for the purpose of the Act only, receive and use information or documents that are confidential or subject to solicitor-client privilege, but has the same obligation respecting disclosure of that information or document as the member of the Society or other person from whom the information or document is received.

(2) A member of the Society who, in accordance with this Act, provides the Society with information or a document that is confidential or is subject to solicitor-client privilege is deemed not to have breached any duty or obligation that the member would otherwise have had to the client or to the Society respecting disclosure of that information or document.

(3) Any person who, during any court proceeding respecting a matter arising under this Act, becomes aware of information or a document that is confidential or is subject to solicitor-client privilege, shall not use, produce or disclose the information for a purpose other than that for which it was obtained.

(4) A committee, panel or court considering a complaint, charge, review or appeal under this Act or the regulations

(a) shall order that the public, in whole or in part, be excluded from a proceeding or any part of it if satisfied that the matters involving solicitor-client privilege that have not otherwise been waived may be disclosed; and

(b) may order that the public, in whole or in part, be excluded from a proceeding or any part of it if satisfied that the public interest in disclosure of other information is outweighed by the interest of the public or any person in preventing the information from being disclosed.

(4A) The committee, panel or court may make the order on its own motion or on the application of any person having an interest in the information to be disclosed.

(4B) The order or application referred to in subsections (4) and (4A) may be made before the proceeding begins or at any time during the proceeding.

(5) In giving reasons for judgment in any court proceeding respecting a matter arising under this Act, the court shall take all reasonable precautions to avoid including in those reasons any information before the court that is confidential or is subject to solicitor-client privilege. *2004, c. 28, s. 77.*

77A (1) In this Section,

(a) “legal proceeding” means any civil proceeding, discovery, inquiry, proceeding before a tribunal, court, board of commission or arbitration, in which evidence may be sought or given, and includes an action or proceeding for the imposition of a fine, penalty or imprisonment for the violation of a Provincial enactment, but does not include any proceeding, review, hearing or appeal conducted pursuant to this Act or the regulations;

(b) “relevant committee” means the committee of the Society for whose purpose a report was created or received, and includes the Complaints Investigation Committee, the Fitness to Practise Committee, a panel of the Hearing Committee or the Credentials Committee;

(c) “report” includes any document, statement, electronic record, minute, note, correspondence or memorandum created or received by a person, committee, panel or agent of the Society for the purpose of any process under Section 5 or Part III and regulations under those provisions, but does not include an original document that belongs to a complainant or a member or to a person other than an employee or agent of the Society.

(2) The Society, its employees or agents or persons who are members of committees or panels established or authorized under this Act, are not compelled to

(a) testify in a legal proceeding;

(b) disclose reports in a legal proceeding; or

(c) disclose in a legal proceeding any other information they may have acquired for the purpose of processes under Section 5 or Part III and the regulations under those provisions.

(3) Reports are not admissible in a legal proceeding except where the relevant committee determines that it is in the public interest to make the report available and authorizes the Executive Director to make the report available in the legal proceeding.

(4) Notwithstanding subsections (2) and (3), where a person has made a complaint to the Society respecting a member, the complaint is admissible with the consent of the complainant, but not otherwise.

(5) Notwithstanding subsections (2) and (3), where a member responds to the Society in respect of a complaint or investigation, the member’s response is admissible with the consent of the member, but not otherwise, even though the Executive Director may have delivered a copy or a summary to the complainant.

Appointment of Queen's Counsel

78 (1) The Lieutenant Governor may by letters patent under the Great Seal of the Province appoint from the members of the Society such persons as the Lieutenant Governor considers proper to be during pleasure provincial officers under the name of "Her Majesty's Counsel learned in the law in the Province of Nova Scotia".

(2) Where, pursuant to this Act or the regulations, any person appointed pursuant to subsection (1) is disbarred or suspended from practising for any time as a result of a decision that the lawyer is guilty of professional misconduct, conduct unbecoming a lawyer or incompetence, the appointment of the person as Her Majesty's Counsel learned in the law in the Province of Nova Scotia is immediately revoked and shall not at any time revive, but the Lieutenant Governor may, pursuant to this Section, re-appoint the person.

(3) No person shall be appointed Her Majesty's Counsel learned in the law in the Province of Nova Scotia who is not a lawyer of at least fifteen years standing at the Bar of Nova Scotia. *2004, c. 28, s. 78.*

Precedence

79 Precedence in the courts is in the following order:

- (a) the Attorney General for the time being of Canada;
- (b) the Attorney General for the time being of the Province;
- (c) Her Majesty's Counsel learned in the law in the Province of Nova Scotia according to seniority of appointment;
- (d) other members of the Society in order of their call to the Bar. *2004, c. 28, s. 79.*

Rights unaffected

80 For greater certainty, nothing in this Act affects any right of precedence that applies to a member of the Bar when acting as counsel for Her Majesty or for an Attorney General of Her Majesty. *2004, c. 28, s. 80.*

No action lies

81 (1) No action for damages lies against the Society, the Council, members of the Council, committees of the Society, persons serving as members of committees of the Society, the Executive Director or officers, agents or employees of the Society

(a) for any act or failure to act, or any proceeding initiated or taken, or anything done or not done, in good faith while acting or purporting to act on behalf of the Society in the carrying out of the duties or obligations under this Act; or

(b) for any decision, order or resolution made or enforced in good faith under this Act.

(2) No action lies against any person for the disclosure of any information or any document or anything therein pursuant to this Act unless such disclosure was made in bad faith.

(2A) No action for damages lies against any person for making a complaint to the Society in good faith about a member of the Society.

(1) For greater certainty, a complaint made before the coming into force of this Act must continue to be processed in accordance with the *Legal Profession Act* as nearly as circumstances permit.

(2) Upon the coming into force of this Act, any matter pending before the Complaints Investigation Committee that would properly form the subject of a matter to be heard by the Fitness to Practise Committee may be transferred to that Committee for determination and processing in accordance with this Act.

(3) Upon the coming into force of this Act, where a hearing has not commenced pursuant to the *Legal Profession Act*, any matter pending before the Hearing Committee that the Fitness to Practise Committee believes may be dealt with by it pursuant to this Act may, by agreement of the Fitness to Practise Committee and the member, be transferred to the Fitness to Practise Committee.

(3) No member of the Society or officer, agent or employee of the Society is personally liable for any of the debts or liabilities of the Society unless such person expressly agrees to be so liable.

(4) The Society shall indemnify any person referred to in subsection (1) or (2) for any costs or expenses incurred by such person in the defence of any legal proceedings brought against them in their capacity under this Act. *2004, c. 28, s. 81.*

Library

82 The library of the Society is exempt from all civic and municipal rates, taxes and assessments of every kind. *2004, c. 28, s. 82.*

Law stamps

83 (1) A person who causes to be issued out of the Supreme Court of Nova Scotia or the Nova Scotia Court of Appeal

(a) an originating notice (action) in a proceeding;

(b) any other originating notice, other than a concurrent originating notice or renewal of an originating notice;

(c) a petition, including a petition for divorce; or

(d) a notice of appeal,

shall pay to the Society towards the support of library services of the Society a sum determined by the Governor in Council.

(2) Clauses (1)(a) to (c) do not apply to proceedings commenced in Cape Breton County.

(3) The sum payable under this Section shall be paid by stamps.

(4) This Section does not apply to any person who qualifies for a waiver of court fees pursuant to the Civil Procedure Rules. *2004, c. 28, s. 83.*

Notices and petitions require law stamps

84 The stamps referred to in Section 83 shall be provided by the Society and kept for sale at the office of each prothonotary of the Supreme Court of Nova Scotia and no originating notice, petition or notice of appeal shall be issued unless a stamp for the appropriate amount is attached thereto and any such originating notice, petition or notice of appeal without a stamp is void and may be set aside. *2004, c. 28, s. 84.*

Prothonotary to affix and initial law stamps

85 A prothonotary of the Supreme Court of Nova Scotia who issues an originating notice, petition or notice of appeal shall at the time such originating notice, petition or notice of appeal is issued mark each stamp with the prothonotary's initials and the date of issue of the originating notice, petition or notice of appeal to which it is affixed. *2004, c. 28, s. 85.*

PART IX

TRANSITIONAL PROVISIONS

Substituted reference

86 Subject to Section 87, a reference in any other enactment to the former Act, or to any procedure under the former Act, is deemed to be a reference to this Act or the equivalent procedure under this Act. *2004, c. 28, s. 86.*

Complaints under former Act

87 (1) A complaint made pursuant to the former Act shall continue to be processed in accordance with the former Act as nearly as circumstances permit.

(2) A Discipline Committee appointed pursuant to the former Act while acting in an investigative capacity is deemed to be a Complaints Investigation Committee appointed pursuant to this Act.

(3) A Discipline Committee appointed pursuant to the former Act acting in an adjudicative capacity is deemed to be the Hearing Committee appointed pursuant to this Act.

(4) Upon the coming into force of this Act, any matter pending before a Discipline Committee, acting in an investigative capacity, pursuant to the former Act, and where not set down for a hearing to commence within sixty days of the coming into force of this Act, shall be transferred to the Complaints Investigation Committee pursuant to this Act.

(5) Upon the coming into force of this Act, any matter pending before a Discipline Committee, acting in an adjudicative capacity, pursuant to the former Act, where not set down for a hearing to commence within sixty days of the coming into force of this Act, shall be transferred to the Hearing Committee appointed pursuant to this Act for hearing and determination, but otherwise shall be heard and determined by a Discipline Committee appointed pursuant to the former Act.

(6) Notwithstanding subsections (4) and (5), the parties may agree that a matter pending may be transferred to the Complaints Investigation Committee or the Hearing Committee appointed pursuant to this Act, as appropriate.

(7) A Discipline Committee appointed pursuant to the former Act shall be continued until all matters pending before it at the coming into force of this Act and not transferred to a Complaints Investigation Committee or Hearing Committee appointed pursuant to this Act have been concluded. *2004, c. 28, s. 87.*

Fee for law stamp

88 The amount payable pursuant to subsection 50(1) of the former Act shall be payable as the sum referred to in subsection 83(1) until such time as the Governor in Council determines otherwise. *2004, c. 28, s. 88.*

Repeal of former Act

89 The former Act is repealed. *2004, c. 28, s. 89.* .

Proclamation

90 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. *2004, c. 28, s. 90.*

Proclaimed - May 27, 2005

In force - May 31, 2005