

# RULES

## LAW SOCIETY OF YUKON

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## **INTERPRETATION**

1. (1) In these Rules:
  - a) “Act” means the Legal Profession Act;
  - b) “active member” means any member in good standing of The Society who engages in or is entitled to engage in the practice of law as defined in s. 1(1) of the Act within Yukon;
  - c) “Bar Admission Course” means the course of bar admission lectures and examinations prescribed from time to time by the Executive as a prerequisite for admission to the Society;
  - d) “cash” means current coin and government or bank notes produced for circulation in Canada and coins or bank notes of countries other than Canada;
  - e) “client” includes any beneficial owner of funds received by a lawyer in connection with the lawyer’s practice;
  - f) “currency” includes current coins, government or bank notes of Canada or any other country;
  - g) “Executive” means the Executive of The Law Society of Yukon;
  - h) “funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or interest in them;
  - i) “member” means a member of The Law Society of Yukon;
  - j) “money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders;
  - k) “member in good standing” means any member who has:
    - i) paid all fees and levies required to be paid by the member pursuant to the Act or these rules;
    - ii) is insured by a current and valid policy of professional liability insurance as required by the Act or these Rules;
    - iii) is neither suspended nor struck off the Roll pursuant to the Act or these Rules.
  - l) “non-practicing member” means a member in good standing of The Society whose application to the Executive to become a non-practicing member has been granted and who has paid the fees due for a non-practicing member and is not entitled to practice law in the Yukon Territory.

- m) “President” means the President of The Law Society of Yukon;
  - n) “public body” means:
    - i) a department or agent of Her Majesty in right of Canada or of a province and for greater clarification includes a department or agent of the government of any of the territories;
    - ii) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them;
    - iii) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the Excise Tax Act or an agent of the organization.
  - o) “Secretary” means the Secretary of The Law Society of Yukon;
  - p) “Society” means The Law Society of Yukon;
  - q) “Treasurer” means the Treasurer of The Law Society of Yukon;
  - r) “1st Vice-President” means the 1st Vice-President of The Law Society of Yukon;
  - s) “2nd Vice-President” means the 2nd Vice-President of The Law Society of Yukon;
- (2) Any term defined in the Act shall, unless otherwise stated, have the same meaning when used in these Rules.
- (3) All of the provisions of the Interpretation Act as amended shall apply to these Rules.

## **THE SOCIETY**

### **Head Office**

2. The Head Office of the Society shall be located at the City of Whitehorse or at such other place or places within the Yukon Territory as may be determined from time to time by resolution of the Executive.

### **Seal**

3. (1) The Seal of the Society shall not be affixed to any instrument or document except in the presence of any one of the following persons:

a) The President, 1st Vice-President, or Secretary or such other person or persons as the Executive may from time to time by resolution appoint in writing;

(2) In every case where the Seal of the Society is affixed to any instrument or document pursuant to this Rule, the officer or person in whose presence the Seal is so affixed shall sign the document in question.

### **Financial Records**

4. The fiscal year end of the Society shall be on the 31st day of December in each year or upon such other date in each year as designated by the Executive.

5. (1) The Executive shall, at its first meeting after the fiscal year end, request the preparation of an auditor's report of accounts for the Society to be completed within 90 days of the fiscal year end or within such other reasonable period of time as is designated by the Executive.

(2) The Auditor's report of accounts referred to in this Rule may, at the discretion of the Executive, be either audited or unaudited.

6. The Society shall maintain a bank account or accounts at any chartered bank located in the City of Whitehorse, Yukon as designated by the Executive.

7. Any monies of the Society deposited in any account may be paid out by cheque signed by any two members of the Executive, or by any one member of the Executive together with the Recording Secretary.

8. A member of the Executive or other person authorized by the Executive, engaged in any business of the Society, may be reimbursed out of the funds of the Society in any amount authorized by the Executive.

9. At any meeting, the Executive may order the preparation of an audit with respect to any records or books of account of the Society and kept by the Treasurer.

## **THE EXECUTIVE**

### **Membership**

10. The number of persons to be elected annually to the Executive shall be 5.

11. At each election of the Executive the members as defined in Rule 22 shall elect:

- a) a President;
- b) a 1st Vice-President;
- c) a 2nd Vice-President;

- d) a Treasurer;
- e) a Secretary.

**President**

**12.** The President shall perform all duties usual to the office of President and without restricting the generality of the foregoing shall:

- a) be responsible for the general superintendence and direction of the affairs of the Society;
- b) act as an ex-officio member of every Committee of the Society except the Discipline Committee.

**First Vice-President**

**13.** The 1st Vice-President shall perform all duties usual to the office of Vice-President and without restricting the generality of the foregoing shall:

- a) assume all powers and responsibilities of the President in the absence of the President;
- b) act as Chair of the Discipline Committee;
- c) see to the implementation of and supervise all of the practices and procedures relating to the conduct of members designated in the Act and these Rules;
- d) perform all such other duties as may from time to time be required by resolution of the Executive.

**Second Vice-President**

**14.** The 2nd Vice-President shall:

- a) see to the implementation of and supervise all of the practices and procedures designated in the Act and these Rules in respect of the legal education of both students-at-law and members;
- b) act as Chair of the Continuing Legal Education Committee;
- c) provide liaison between the Executive and the Continuing Legal Education Committee, the Legal Services Society Board and any other person or body engaged in the provision of public legal education in Yukon;
- d) perform all such other duties as may from time to time be required by resolution of the Executive.

### **Treasurer**

**15.** The Treasurer shall perform all duties usual to the office of Treasurer and without restricting the generality of the foregoing shall:

- a) receive and deposit all monies payable to the Society;
- b) maintain in good standing all bank accounts of the Society;
- c) pay from the funds of the Society all necessary expenses that may be authorized by the Executive;
- d) keep proper books of account and record all financial transactions made on behalf of the Society;
- e) present to the Executive at a meeting held prior to the Annual General Meeting the statement of the financial position of the Society during the previous fiscal year as required by Section 14 of the Act,
- f) be responsible for the preparation of a budget of proposed receipts and expenditures for the forthcoming year which budget shall be presented to the Executive within 60 days following the Society's fiscal year end and circulated to the membership not less than 45 days prior to the Annual General Meeting.
- g) perform all such other duties as may from time to time be required by resolution of the Executive.

### **Secretary**

**16.** The Secretary shall perform all duties usual to the office of Secretary and without restricting the generality of the foregoing shall:

- a) record and keep the minutes of all meetings of the Executive and all general meetings of the Society;
- b) present all minutes of meetings at the next appropriate meeting for amendment and adoption as required;
- c) issue all notices, certificates, documents or other forms required to be executed by the Society pursuant to the Act or these Rules;
- d) subject to Rule 15(d), act as the custodian of all documentation and correspondence the property of, seized by, or filed with the Society;
- e) act as the custodian of the Seal and Roll of the Society;
- f) record and maintain in current status all of the information required to be set out in the Roll, Professional Conduct Record, Student Record and Professional Corporations Record;

- g) perform all such other duties as may from time to time be required by resolution of the Executive.
- h) see to the implementation of and supervise all of the practices and procedures designated in the Act and these Rules in respect of the admission of both students-at-law and members.

**Honourary Executive Members**

**17.** The immediate past President of the Society shall be an honorary member of the Executive, and may participate in any meeting of the Executive and may vote and form part of any quorum required.

**Elections**

**18.** Deleted in its entirety.

**19.** To be eligible for nomination or election to the Executive, a member shall:

- a) be an active member;
- b) be a resident of Yukon;
- c) in the case of a nomination for the position of Vice-President, Discipline, have engaged in the practice of law for at least 10 years preceding the date of his or her nomination.

**20.** Unless otherwise determined by The Society the Executive shall be elected on the day preceding the Annual General Meeting in each year.

**21.** Every election of the Executive shall be by way of secret ballot.

**22.** To be eligible to vote in any election of the Executive a member must have become an active member at least 30 days prior to the date of such election.

**23.** Every nomination for election to the Executive shall be:

- a) in writing;
- b) signed by two members eligible to vote in an election of the Executive;
- c) accompanied by the written consent of the member nominated;
- d) delivered to the Head Office of The Society at least 30 days prior to the date of the Annual General Meeting.

**24.** At least 45 days prior to the Annual General Meeting in each year, the Secretary shall mail, send by electronic mail or deliver to each member then entitled to vote in such election, as of the date of mailing, notice of such election.



**25.** At least 20 days before the Annual General Meeting the Secretary shall mail, send by electronic mail or deliver to each member entitled to vote:

- a) a copy of the instructions to vote in Form 1;
- b) a ballot in Form 2;
- c) an envelope marked “ballot”.

**26.** Every member voting in an election shall:

- a) in conformity with the instructions to vote, mark and enclose his or her ballot in the envelope marked “ballot”;
- b) seal and enclose in a separate envelope the envelope marked “ballot” with a covering letter under the signature of the member whose ballot is enclosed;
- c) deliver the envelope marked “ballot” and covering letter in a separate sealed envelope to the Head Office of The Society before 12:00 noon on the day preceding the Annual General Meeting.

**27.** Commencing at 1:00 o’clock in the afternoon on the day prior to the Annual General Meeting, the Secretary shall open the envelopes received and ensure that not more than one envelope marked “ballot” is received from each member eligible to vote and thereafter, shuffle the envelopes marked “ballot”, open them, scrutinize the ballots and record the votes cast for each candidate.

**28.** Any candidate or their designated agent may be present at the scrutinizing of ballots and the counting of votes.

**29.** Any ballot that is not marked according to the instructions to vote in Form 1 shall not be counted.

**30.** (1) At each general election members shall specifically elect candidates for the offices of President and First Vice-President and shall elect three additional candidates at large who shall upon election decide amongst themselves which of them will serve as Second Vice-President, Secretary, and Treasurer.

(2) The candidates for the offices of President and First Vice-President receiving the most votes will be elected to the said position.

(3) Of the candidates for election at large the candidates receiving the largest number of votes shall be elected to the Executive to serve as Second Vice-President, Treasurer and Secretary as agreed amongst themselves.

**31.1** (1) Where an equal number of votes is cast for two or more candidates and in consequence thereof the election to one or more of the positions on the Executive is left undecided, the Secretary shall:

- a) place in a ballot box, on a separate piece of paper the name of each of the candidates having a equal number of votes for the position in question;
- b) mix the names together; and,
- c) draw a name by lot from the box in the presence of any candidate or any candidate's designated agent who wishes to be present.

(2) The candidate whose name is drawn in this fashion shall be deemed to be elected to the position in question on the Executive for the ensuing year.

**32.** The secretary shall, immediately upon the completion of the counting of all ballots:

- a) notify the elected members of their election;
- b) provide a copy of the election results to each candidate upon request;
- c) cause the results of the election to be published in the Yukon Gazette; and,
- d) retain all ballots and the record of election results for a period of 15 days after the date of publication in the Yukon Gazette.

**33.** The newly elected Executive in any year shall take office at the first Executive Meeting following the Annual General Meeting and the Executive in office prior to the election shall continue in office until that time.

**34.** The Executive in office prior to any election shall convene a meeting of the old and new Executive within 30 days following the Annual General Meeting for the purpose of transferring power to the newly elected Executive members.

**35.** (1) Any member may dispute the validity of any election of the Executive or the validity of any election of any member of the Executive upon application by way of Notice of Motion to the Yukon Supreme Court filed within 10 days of the publication in the Yukon Gazette of the results of the election in question.

(2) Any Judge of the Yukon Supreme Court may hear such motion in a summary way.

(3) Where it appears to the Judge hearing a motion under this Rule that the election was conducted substantially in accordance with the requirements of the Act and these Rules and that any non-compliance did not materially affect the result of the election, she or he may adjudge the election to be valid.

(4) Where, upon the conclusion of a hearing under this Rule, the Judge finds that an election is invalid, she or he shall give directions as to the holding of another election and in any such case, the Executive members holding office immediately prior to the invalid election, shall continue in office until the first Executive meeting following the next election.

(5) Where, upon the conclusion of a hearing under this Rule, the Judge finds that the election of any member of the Executive is invalid, she or he shall give directions as to the holding of another election for that position and in any such case, pending the holding of another election, the Executive position in question shall be occupied by the Executive member holding that position immediately prior to the invalid election.

**36.** Any member of the Executive elected pursuant to s.4(1)(a) of the Act who:

- a) ceases to be an active member in good standing; or,
- b) ceases to be a resident of Yukon;

shall cease to be a member of the Executive.

**37.** Any member of the Executive elected pursuant to s.4(1)(a) of the Act, may be removed from the Executive for cause which shall include but is not limited to his or her refusal or inability to perform his or her duties.

**38.** Removal of any Executive member for cause shall be by way of a motion for removal requiring the approval of two thirds of the members present at a Special General Meeting of The Law Society called pursuant to s.15 of the Act.

**39.** Where a vacancy on the Executive occurs, the remaining members of the Executive may appoint any other member eligible for nomination and election to fill such vacancy.

### **Meetings**

**40.** A meeting of the Executive may be called at any time by the President or by any two members of the Executive.

**41.** (1) At a meeting of the Executive, at least one-half of the number of members of the Executive at the time of the meeting shall constitute a quorum.

(1.1) Persons appointed under paragraph 4(1)(b) of the Act, are deemed to be members of the executive.

(2) Notwithstanding subsection (1), at a hearing of an appeal from a decision of the discipline chair under s.30 of the Act, three members of the Executive shall constitute a quorum.

(3) Where at least three members of the Executive are unable to hear an appeal under s.30 of the Act, the President shall appoint such members of the discipline committee to sit as members of the appeal hearing, as is necessary to bring the quorum to three.

(4) A member of the discipline committee appointed under subsection (3) shall have the same powers as a member of the Executive for the purpose of hearing an appeal.

**42.** (1) A resolution of the Executive consented to in writing by all members of the Executive shall be as valid and effective as if passed at a properly constituted meeting of the Executive duly called pursuant to these Rules.

(2) For the purposes of this Rule, a consent by telegram or telex shall be deemed to be in writing.

## **MEMBERSHIP AND ENROLMENT**

### **Records To Be Maintained**

**43.** On the day upon which the Act comes into force, the Secretary shall take and maintain custody of the Barristers and Solicitors Roll maintained under the provisions of the Legal Profession Ordinance R.O. 1958, c.64 and thereafter the said record shall be referred to as the “Roll of The Law Society of Yukon” (hereinafter called the “Roll”) pursuant to s.16(1) of the Act.

**44.** The Roll shall be kept by the Secretary in the offices of the Clerk of the Yukon Supreme Court and shall contain the following:

- a) a record of the full name and signature of every duly enrolled member of The Society;
- b) a record of the date upon which each member was duly enrolled;
- c) a notation of the Roll number given to each member duly enrolled.

**45.** On the date of completion by any person of all of the requirements for admission to the Society as provided in the Act and these Rules, the Secretary shall enter or cause to be entered in the Roll all of the information as set out in Rule 44 above and, thereafter, the said person shall be deemed to be enrolled as a member of The Law Society.

**46.** In addition to the Roll the Secretary shall maintain a record to be called the “Professional Conduct Record” which shall consist of a file in respect of each member of The Society containing the following information:

- a) the full name, signature and date of birth of the member;
- b) the current business address and telephone number of the member;
- c) the roll number assigned to that member;

- d) a record of the date of enrolment of the member and his or her current standing in The Society;
- e) a record of the date of enrolment and any additional information received concerning the current status of the member's membership in any other professional or legal society or body.
- f) a record of the date of election and position held in respect of any member elected to the Executive of The Society.
- g) a record of the date and particulars of any conviction or finding made against the member either in Yukon or otherwise, in respect of conduct resulting in discipline or deserving of censure and the particulars of any penalty imposed upon the member with respect thereto;
- h) a record of the date and particulars of the member's removal from the Roll and the reason for the removal;
- i) a record of the date and particulars of the member's resignation as a member of The Society and the reason for the resignation;
- j) a record of the date and particulars of the member's reinstatement on the Roll;
- k) a copy of all of the information and documentation referred to in either Rule 81, 82, or 85 in relation to the member;
- l) a copy of any Certificate of Membership in Form 3 relating to the member;
- m) copies of all certificates of standing or certificates of good standing issued by The Society in respect of the member;
- n) a copy of any order either suspending the member from practice or striking the member from the Roll;
- o) a record of the particulars of any reprimand received by the member;
- p) such further and other material or information as directed by the Executive.

**47.** The Secretary shall maintain a record to be called the Student Record which shall consist of a file in respect of each student-at-law containing the following information:

- a) the full name, signature and date of birth of the student-at-law;
- b) the current business address and telephone number of the student-at-law;
- c) a copy of all of the information and documentation referred to in Rule 60;

- d) a record of the date and particulars of any termination of articles under Rules 65, 66 or 67 or of any conviction or finding made against the student-at-law in respect of conduct resulting in discipline or deserving of censure and the particulars of any penalty imposed upon the student-at-law with respect thereto;
- e) a record of the date of enrolment and current status of the student-at-law in any other professional or legal society or body;
- f) a copy of any order either suspending the student-at-law from practice or striking the name of the student-at-law from the Student Record;
- g) a record of the particulars of any reprimand received by the student-at-law;
- h) a record of the date of call to the bar or resignation of the student-at-law; such further and other materials and information as directed by the Executive.

**48.** Every member of The Society shall, in the event of any change with respect to the information contained in the Professional Conduct Record or Student Record, advise the Secretary in writing and within 30 days of any such change and any failure of the member to do so may be the subject of a complaint and may be deemed to be conduct deserving of censure within the meaning of the Act.

48.1 The following person shall, in writing, advise The Law Society of Yukon of any conviction against such person for any offence under the Criminal Code of Canada, the Controlled Drugs and Substances Act, the Food and Drug Act, any securities Act of any Province of Canada, or any legislation similar to any of the foregoing, in any jurisdiction:

- a) a student -at-law;
- b) a student-at-law whose articles were terminated, upon application of reinstatement;
- c) an active member;
- d) a suspended member, at time of reinstatement;
- e) a member whose name has been struck off the roll, upon application for reinstatement;
- f) a judge, upon application for reinstatement;
- g) an inactive member, at time of reinstatement; and,
- h) a non-practicing member.

### **Certificates of Standing**

**49.** As soon as reasonably practicable after the entry of any member's name and signature upon the Roll, that member shall be issued a Certificate of Membership in Form 3.

**50.** Where, at any time a member has completed all of the requirements of the Act and these Rules for enrollment and continuing membership and good standing in The Society, the Secretary shall, upon the request of such member, and payment of the prescribed fee issue a Certificate of Standing in Form 4 in respect of the said member.

**51.** Where a member is issued a Certificate of Standing and has not paid any fee, assessment or other levy as required by the Act or these Rules or is suspended or struck off the Roll by reason of any such failure to pay, the Certificate shall be clearly endorsed upon its face with a memorandum of the failure to pay such fee, assessment or levy or the suspension or striking off of the member for such failure to pay.

**52.** Where a member or former member has failed to complete one or more of the requirements of the Act or these Rules in respect of enrollment of continued membership or good standing in The Society, the Secretary shall, upon the written request of the member or former member, and payment of the prescribed fee issue a Certificate of Standing in Form 5 containing an endorsement of any deficiency in respect of which the member or former member is not in good standing.

### **General Meetings**

**53.** Unless otherwise determined by the Executive, the Annual General Meeting of The Society shall be held in the Month of April each year.

**54.** At least 30 days before any Annual General Meeting the Secretary shall mail, send by electronic mail or deliver to each active member written notice of the date, time and place as well as the proposed agenda for the said meeting.

**55.** At least 10 days before any Special General Meeting of The Society the Secretary shall mail, send by electronic mail or deliver to each active member written notice of the date, time and place as well as the proposed agenda for the said meeting.

**56.** (1) At any Annual General Meeting of the Society, any fifteen members who are eligible to vote at such Meeting shall constitute a quorum.

(2) At any Special General Meeting of the Society a quorum shall be constituted by any seven members who are eligible to vote at such Meeting.

**57.** A decision of the majority of members eligible to vote at any general meeting shall be a decision of the meeting, but in the event of any evenly divided vote, the matter shall be decided in accordance with the vote of the President of the Executive.

**58.** All general meetings of The Society shall be Chaired by either the President, or in his or her absence the 1st Vice-President, or in the absence of the President and 1st Vice-President, by any other appointee designated by the President.

**59.** To be eligible to vote at any general meeting a member must be:

- a) an active member in good standing; and,
- b) personally present at such meeting.

**Students-at-Law**

**60.** (1) Any applicant for admission to The Society as a student-at-law shall furnish to the Secretary;

- a) a written application in Form 6;
- b) proof of graduation from a school of law approved by these Rules;
- c) a copy of the Articles of the student-at-law in Form 7;
- d) proof of payment of all applicable fees, assessments or levies provided for in the Act and these Rules.

(2) Notwithstanding the requirements of this Rule the Executive may, upon the written request of any applicant, waive any or all of the requirements set out in this Rule.

**61.** Upon completion by any applicant of all of the requirements for admission to The Society as a student-at-law the Secretary shall issue to the applicant a Certificate of Admission as a student-at-law in Form 8.

**62.** The Articles of a student-at-law shall commence on the date upon which the Certificate of Admission of such student-at-law is issued or upon such other date as specified by the Executive.

**63.** A member of The Society may not have more than two students-at-law serve Articles under him or her at any one time without the prior approval of the Executive.

**64.** (1) Upon the written request of any student-at-law, Articles in respect of that student may be assigned from one principal to another with the written consent of the Executive.

(2) Any assignment of Articles shall take effect immediately upon such consent.

**65.** In the event that the principle of any student-at-law:

- a) dies;



- b) is suspended from practice, struck off the Roll or otherwise fails to maintain good standing in The Society; or,
- c) ceases to be resident in Yukon,

the Articles of that student shall thereupon terminate.

**66.** Where any principal of a student-at-law is found guilty of any conduct deserving of censure, the Executive may terminate the Articles upon written notice to the student-at-law.

**67.** Any student-at-law may upon reasonable notice to his or her principal and to the Executive terminate his or her Articles.

**68.** In the event of the termination of any Articles pursuant to the provisions of Rule 65, 66, or 67 above, the student-at-law may, without further fee, enter into new Articles and in that event shall be credited with the whole or such part of his or her service under the original Articles as the Executive may approve.

**69.** During his or her term of Articles, a student-at-law shall well and faithfully serve his or her principal as a student-at-law in the office of his or her principal and shall not engage in any other employment without the written authorization of the Executive.

**70.** (1) Where any student-at-law is not admitted as a full member of The Society within 6 months after the completion of the term of his or her Articles, the Secretary may serve upon the student a written notice in Form 9 to show cause before the Executive at the time and place therein specified why his or her name should not be struck from the Student Record.

(2) The student-at-law may thereupon appear at the hearing provided for in this Rule and in the event that he or she is unable to show cause in a manner acceptable to the Executive, the Executive may:

- a) strike the name of the student-at-law from the student record;
- b) require that the student-at-law enter into such further term of articles as prescribed by the Executive;
- c) require that the student-at-law become a full member of The Society within such other time as prescribed by the Executive.

**71.** Any principal may permit a student-at-law to attend in the office of another member who is qualified to act as a principal for a period or periods not exceeding in total one quarter of the student's prescribed term of articles, for the purpose of the student obtaining training in a field or fields in which the original principal is not, in his or her opinion, qualified to instruct the student.

72. During any term of Articles a student-at-law may appear as follows:
- a) in a Yukon Territorial Court:
    - i) in respect of all Small Claims matters and any criminal offences that are proceeded with by way of summary conviction;
    - ii) in respect of all matters proceeded with by way of indictment for the purposes only of:
      - speaking to applications for adjournments;
      - fixing dates for trial;
      - applications for securing the release of persons from custody;
      - having an election put to an accused person pursuant to the provisions of Section 464(2) or Section 484(2) of the Criminal Code of Canada;
    - iii) in respect of all matters proceeded with in the Young Offender's Court that would otherwise have been proceeded with by way of summary conviction in the adult Court;
    - iv) in respect of any matter proceeded with pursuant to the provisions of the Children's Act or the Family Property & Support Act for the purpose of:
      - speaking to applications for adjournments;
      - fixing a date for trial.
  - b) in the Yukon Supreme Court on any uncontested matter pursuant to the provision of Rule 52 of the Rules of Court and on any contested matter of the following nature:
    - i) applications for time to plead;
    - ii) applications for leave to amend pleadings;
    - iii) applications for discovery and production of documents;
    - iv) any other procedural applications relating to the conduct of a cause or matter.
  - c) before all administrative tribunals;
  - d) on a Judgment Summons;
  - e) on examination in aid of execution.

- 73.** (1) The Executive may permit:
- a) any person who is a student in a faculty or school of law; or,
  - b) any person who is otherwise qualified for enrolment into Articles and is awaiting the commencement of formal Articles, to enter into special Articles for any period specified by the Executive.
- (2) Any time spent by a student under special Articles shall not be included in the 12 continuous months of Articles required by the Act.
- (3) Any person who has entered into special Articles shall be deemed to be enrolled as a student-at-law for the purposes of Rule 72 above.
- (4) Any such enrollment may be revoked by the Executive at any time for any reason if deemed sufficient without the necessity of giving notice to the student or the holding of any inquiry.
- (5) Any student making application for special Articles pursuant to the provisions of this Rule, shall submit to the Secretary an application in Form 10 and a copy of the Articles in Form 7 and proof of payment of any fee or assessment or other levy made pursuant to the Act or these Rules.

**74.** For the purposes of s.20(1)(b) of the Act the term “12 months service” shall be deemed to be completed notwithstanding that the person has taken any period or periods not exceeding three weeks in length as vacation during such time and shall be deemed to include the period of attendance at a Bar admission course approved by the Executive.

**75.** Upon the written application of any student, the Executive may permit such student to take one period of continuous leave from Articles not to exceed in total more than 6 months in the event of sickness, maternity or paternity leave, or upon such other grounds as permitted by the Executive.

**Bar Admission Course and Examinations**

**76.** During the term of Articles every student-at-law shall attend all bar admission lectures and complete all bar admission examinations prescribed by the Executive unless excused from doing so by the Executive.

- 77.** With respect to all bar admission examinations the following shall apply:
- a) all bar admission examinations shall be held at such time and place as prescribed by the Executive;
  - b) the student-at-law must obtain a mark of at least 60% in order to pass each examination;

- c) all examinations shall be marked forthwith upon their completion by the person designated to do so by the Executive and in the event that any candidate receives a mark of less than 60%, his or her paper shall be remarked by the Secretary or his or her appointee whose assessment shall be final;
- d) any student-at-law achieving a mark of less than 60% may write a supplemental examination in any one subject but no student may write more than one supplemental examination except with the written permission of the Executive;
- e) the provisions of subrule c) above shall apply with respect to supplemental examinations;
- f) subject to the provisions of Rule 78, a student-at-law who fails to achieve a mark of 60% in more than one examination shall be deemed to have failed the bar admission course;
- g) no student may pass the bar admission course with a final mark under 40% in any examination taken;
- h) details of the marks achieved by each student in any examination or supplemental examination shall be provided to the student and to the student's principal as soon as reasonably practical following the completion of the examination.

**78.** Where a student-at-law fails to achieve a mark of at least 60% in more than one examination the Executive may require the student to do any one or more of the following:

- a) serve such further and other period of Articles as is deemed by the Executive to be necessary in the circumstances;
- b) attend and complete such further bar admission lectures as may be deemed necessary in the circumstances; or,
- c) successfully complete such further and other bar admission examinations as may be deemed necessary in the circumstances.

**79.** Any student-at-law who fails to meet the further requirements in Rule 78 shall be deemed to have failed the bar admission course.

**80.** All bar admission examinations taken pursuant to the Act or these Rules shall be in writing and signed by the student-at-law.

### **Admission Requirements**

**81.** (1) Every applicant for admission to The Society under s.20(1)(a) of the Act shall furnish to the Secretary:

- a) a written application in Form 11;
- b) a Certificate of Standing from each Law Society of which the person is or has ever been a member, which Certificate shall be dated not earlier than sixty days prior to the date of the applicant's proposed call to the Bar and shall contain the following:
  - i) a notation of that person's current standing in the Society or body;
  - ii) a notation of the period of time during which that person has been listed as a member of the Society;
  - iii) a notation that no disciplinary or other proceedings are currently outstanding against the person as a result of his or her membership in the society or body;
- c) a certificate in Form 12 stating that the applicant has completed within the preceding 12 months prior to his or her application, the Statute Law Examinations prescribed by the Executive;
- d) two letters of reference and good character satisfactory to the executive from two members in good standing of each of the professional or legal societies or bodies of which the applicant is a member or from Judges of a Superior Court of Record in the jurisdiction in which such other society or body operates;
- e) proof of payment of all applicable fees, assessments or levies provided for in the Act and these Rules;
- f) a Declaration in Form 13 in respect of professional liability insurance.

(2) Notwithstanding the requirements of this Rule the Executive may, upon the written request of any applicant and subject to s.20(1)(c) of the Act, waive any or all of the requirements set out in this Rule.

(3) Notwithstanding any other provision in this rule, a person to be qualified for appointment as a judge of the Territorial Court shall not be obligated to complete the Bar Admission Examinations as prescribed by the Executive.

81.1 Pursuant to Section 20(1)(a)(i) of the Legal Profession Act, the present period of "12 consecutive months immediately preceding the date of application...." be reduced to "zero months or such period of time as the Executive may decide".

**82.** (1) Any applicant for admission to this Society under s.20(1)(b) of the Act shall furnish to the Secretary:

- a) a written application in Form 14;
- b) a Declaration in Form 15 sworn by each principal to whom the applicant has articulated under;
- c) a Declaration in Form 16 of the applicant;
- d) a Certificate in Form 12 stating that the applicant has successfully completed within the preceding 12 months prior to his or her application, the Bar Admission Course prescribed by the Executive;
- e) a certified true copy of a diploma, degree or other such document verifying that the applicant is a graduate of a school of law approved by these Rules;
- f) proof of payment of all applicable fees, assessments or levies provided for in the Act and these Rules;
- g) a Declaration in Form 13 in respect of professional liability insurance.

(2) Notwithstanding the requirements of this Rule the Executive may, upon the written request of any applicant and subject to s.20(1)(b) and s.18 of the Act, waive any or all of the requirements set out in this Rule.

**83.** For the purposes of these Rules, the following law schools shall be deemed to be approved by the Executive:

- a) any common law school of law located in any province of Canada unless otherwise determined by resolution of the Executive;
- b) any other school of law recommended from time to time by the Secretary and approved by resolution of the Executive.

**84.** (1) Any applicant for admission to The Society under s.20(1)(c) of the Act shall:

- a) complete 12 months continuous service in Yukon under Articles as a student-at-law;
- b) take and successfully complete the Bar Admission Course prescribed by the Executive;
- c) furnish to the secretary:
  - i) a written application in Form 17;

ii) a Certificate of Standing from each Law Society of which the person is or has ever been a member which Certificate shall be dated not earlier than sixty days prior to the date of application shown on Form 17 and shall contain the following:

- a notation of that person's current standing in the society or body;
- a notation of the period of time during which that person has been listed as a member of the society or body;
- a notation that no disciplinary or other proceedings are currently outstanding against the person as a result of his or her membership in the society or body;

iii) a certified true copy of a diploma, degree or other such document verifying that the applicant is a graduate of a school of law approved by these Rules;

iv) a Certificate in Form 12 stating that the applicant has successfully completed within the preceding 6 months prior to his or her application, the Bar Admission Course prescribed by Executive;

v) two letters of reference and good character satisfactory to the executive from members in good standing of each of the professional or legal societies or bodies of which the applicant is a member or from Judges of a Superior Court of Record in the jurisdiction in which such society or body operates;

vi) proof of payment of all applicable fees, assessments or levies provided for in the Act and these Rules;

vii) a Declaration in Form 13 in respect of professional liability insurance.

(2) Notwithstanding the requirements of this Rule the Executive may, upon the written request of any applicant and subject to s.20(1)(c) of the Act waive any or all of the requirements set out in this Rule.

**85.** (1) Upon completion by any applicant for admission to The Society of all of the requirements referred to in the provisions of this Rule, the applicant shall be presented in person to a presiding Judge of the Yukon Supreme Court by any member in good standing who shall also appear personally, at which time the applicant shall swear the oath referred to in s.22(2) of the Act and, after the issuance of a Certificate in Form 18, the applicant shall be entitled to sign the Roll.

(2) The Executive upon cause being shown by the applicant may waive the requirement of personal attendance as set out in Rule 85(1).

**86.** (1) Any person requesting permission to act as a Barrister or Solicitor in Yukon pursuant to the provisions of s.20(7) of the Act shall furnish to the secretary:

- a) a written application in Form 11(a);
- b) a certificate of standing from each legal or other professional society or body of which the person is or has ever been a member, which certificate shall be dated not earlier than 60 days prior to the date of the request for permission and shall contain the following:
  - i) a notation of that person's current standing in the society or body;
  - ii) a notation of the period of time during which that person has been listed as a member of the Society or body;
  - iii) a notation that no disciplinary or other proceedings are currently outstanding against the person as a result of his or her membership in the society or body.
- c) Repealed
- d) Repealed
- e) proof of payment of all applicable fees, assessments or levies provided for in the Act and these Rules;
- f) an Affidavit in Form 13 in respect of professional liability insurance.

(2) Before granting permission to any person to act in Yukon as a Barrister or Solicitor pursuant to s.20(7), the Executive may require compliance with any conditions which it thinks proper and necessary for the protection of the public and the integrity of the profession and The Society and, without restricting the generality of the foregoing, these conditions may include:

- a) providing the Secretary with all of the information and forms specified in subsection (1) above;
- b) the restriction of the person's conduct as a Barrister and Solicitor to a single act or action as is necessary in the circumstances;
- c) the payment of all necessary fees required by these Rules;
- d) the imposition of limitations of time upon the person's proposed practice as a Barrister or Solicitor in Yukon;
- e) a requirement that the person be covered by a policy of professional liability insurance relating to his or her proposed practice as a Barrister or Solicitor in Yukon;
- f) Repealed.



86.1 Any member in good standing of the Society may apply to become a non-practicing member of the Society by:

- a) making written application in the prescribed form, and;
- b) paying the prescribed fees.

**Admission and Membership Fees**

**87.** (1) The following fees are prescribed by and shall be payable to The Society in respect of the matters hereinafter set out:

- a) upon application and acceptance for enrolment as a student-at-law or student-at-law under temporary articles; .....\$150.00
- b) upon call and admission of a member pursuant to s.20(1)(b);.....\$300.00
- c) upon call and admission of a Barrister and Solicitor pursuant to s.20(1)(a); .....\$700.00
- d) upon call and admission of a Barrister and Solicitor pursuant to s.20(1)(c); .....\$700.00
- e) upon application and acceptance for reinstatement after strike-off by reason of any order under s.37 of the Act;.....\$700.00
- f) upon application and acceptance for reinstatement after resignation because of conflict arising from the holding of any position or office;.....\$300.00
- g) upon application and acceptance for reinstatement of a member who has ceased to practice for any reason not set out in subparagraphs e) or f) above, the member shall pay all fees which would otherwise have been due and payable during the period of resignation, together with an administration fee of; .....\$300.00
- h) upon application and acceptance for reinstatement by any member forced to resign by virtue of his or her holding any position or office; .....\$300.00
- i) upon receipt for the issuing of any Certificate of Standing or Good Standing; .....\$ 50.00
- j) upon application for or reinstatement of any permit in Form 32 in respect of a professional corporation; .....\$250.00
- k) upon the renewal of any permit in Form 36;.....\$100.00
- l) upon application for permission to practice as a Barrister or Solicitor in Yukon under s.20(7) of the Act. ....\$175.00

- m) upon application for and renewal of a certificate to practice as a Barristers or Solicitor in the Yukon under s.20(7) of the Act; .....\$125.00
- n) upon application to the Law Society pursuant to Rules 87(c) and 87(d); .....\$300.00
- o) upon application and acceptance as a non-practicing member of the Law Society of Yukon; .....\$500.00
- p) upon application and acceptance to change from a non-practicing member to a practicing member of the Law Society of Yukon;.....\$200.00
- q) upon application and acceptance as a retired member of the Law Society of Yukon .....\$100.00
- r) annual administration fee for retired member status.....\$ 25.00

**87.** (2) All admission and membership fees will be paid in full by applicants to the Law Society of Yukon regardless of the time of year their application is brought and accepted. Admission and membership fees will not be pro-rated. There is to be no return of fees for any lawyer leaving prior to year-end.

**88.** The annual fee payable by every active member shall be fixed by the Executive from year to year and every active member shall be notified of the amount of such levy by Notice of Levy in Form 19 and mailed, sent by electronic mail or delivered to the last business address recorded for each such member on the Professional Conduct Record.

**89.** (1) Every member shall, by the 31st day of January in each year, or by such other date as prescribed by the Executive, pay to The Society all annual fees, assessments, and other levies due to The Society and a failure by a member to comply with this Rule may result in the immediate suspension of the member’s membership.

(2) Following three years of non-payment of annual fees, assessments or other levies, the member’s name may be struck from the roll.

(3) Any member who has attained the age of 55 years or who has been a member of the Society in good standing for not less than 20 years or has been engaged in the full time practise of law for not less than 20 years shall be entitled, upon submitting an Application and Undertaking in Form 37, to be placed on the retired members roll; and

- a) The retired member will be entitled to all the privileges of other members of the Society except the right to practise law, and shall be subject to all the obligations of other members of the Society.
- b) On or before the 31<sup>st</sup> day of January in each year, a retired member shall file with the Secretary a Declaration in Form 38.
- c) Retired members are not required to pay the annual membership fee or other levies due to the Society except those set out in Rules 87(q) and (r).

### **Committees**

- 90.** Each newly elected Executive shall appoint a Chair and members of each of the following standing committees:
- a) a Discipline Committee to assist the Vice-President(Discipline) in the implementation and supervision of all practices and procedures about the conduct of members designated in the Act and these Rules;
  - b) a Continuing Legal Education Committee which shall assist the Second Vice-President in the implementation and supervision of all of the practices and procedures designated in the Act and these Rules for the legal education of both students-at-law and members;
  - c) an Assurance Fund Committee to supervise and administer all aspects of the Assurance Fund as designated in the Act and these Rules.
- 91.** The Executive may, in its discretion, appoint any other committees and may fill any vacancies on or add to any committee from time to time.
- 92.** Each committee shall consist of at least 3 members, any 2 of whom (including the Chair) shall constitute a quorum except that the quorum for the Discipline Committee shall be 7.
- 93.** The President shall be an ex-officio member of every committee except the Discipline Committee.
- 94.** Every committee shall appoint from among its membership a Vice-Chair.
- 95.** A committee or Chair of any committee, in addition to the duties assigned to it by the Act and these Rules, may be given additional duties by the Executive.

### **DISCIPLINE OF MEMBERS**

- 96.** To be eligible for appointment to the Discipline Committee pursuant to s.25(2) of the Act, a member must:
- a) be an active member;
  - b) have at least 7 years experience in the practice of law immediately preceding his or her appointment;

### **Complaint and Preliminary Investigation**

- 97.** Every complaint made concerning the conduct of a member shall be made in writing and shall be referred immediately to the Chair of the Discipline Committee.

**98.** Notwithstanding any of the provisions of the Act or these Rules, the Chair of the Discipline Committee may, on his or her own motion, and in the absence of any complaint, in any case where he or she has reasonable and probable grounds to believe that any member of The Society has engaged in conduct deserving of censure, deal with the matter as if it were a complaint made pursuant to s.27 of the Act.

**99.** For the purposes of making any determination pursuant to s.27(2) of the Act, the Chair of the Discipline Committee shall, by registered mail addressed to the last business address recorded in the Professional Conduct Record of the member in question, forward to the member a copy of the complaint and request that the member provide an explanation of the circumstances surrounding the complaint and of the member's position with respect to the matter.

**100.** (1) Any member receiving a copy of a complaint and a request pursuant to Rule 99 shall deliver to the Chair of the Discipline Committee his or her reply within 30 calendar days of receipt by the member of the copy of the complaint.

(2) The Chair of the Discipline Committee may extend the time for delivering a reply under subsection (1) when the Chair is satisfied that the member had a valid reason for not being able to comply within 30 calendar days.

**101.** Where any member fails to reply as required by Rule 100 the Chair of the Discipline Committee may direct that a preliminary investigation be held pursuant to s.27(2) of the Act.

**102.** Where, pursuant to s.27(2)(a) of the Act the Chair of the Discipline Committee directs that no further action be taken with respect of a complaint, he or she shall advise the complainant by registered mail of this determination and of the complainant's right of appeal pursuant to s.30(1) of the Act.

**103.** Where a complaint is not dealt with pursuant to s.27(2)(a) of the Act, the Chair of the Discipline Committee shall appoint in writing a member of The Society to conduct a preliminary investigation into the circumstances of the complaint.

**104.** To be eligible to conduct a preliminary investigation, a member must:

- a) be an active member;
- b) have at least 5 years experience in the practice of law;
- c) have, so far as is reasonably practical, obtained general experience in the area of law to which the complaint relates.

**105.** In addition to the powers designated in s.28 of the Act, a member conducting a preliminary investigation shall have the power to:

- a) enter upon the premises of the member against whom the complaint was made during normal business hours for the purposes of carrying out an audit and in order to seize any and all such records required for that purpose;

- b) enter upon the premises of the member against whom the complaint was made during normal business hours for the purposes of inspecting and seizing any books, papers, records, files, and other documents in the possession or control of the member that in any way relate to the matter which is the subject of the complaint;
- c) administer oaths and affirmations;
- d) request that the member in question provide further particulars of his or her explanation concerning the circumstances of the complaint and his or her position with respect to the complaint;
- e) impose reasonable time limitations upon the member for compliance with any of the above.

**106.** Any member of The Society conducting a preliminary investigation shall, upon request by the member against whom the complaint was made, produce his or her written authority to conduct such investigation.

**107.** (1) Where a member refuses to produce or surrender any thing or document in his or her possession or under his or her control at the request of a member conducting a preliminary investigation either upon the ground that the thing or document is protected by solicitor client privilege or for any other reason, the thing or document shall forthwith be sealed and transferred into the custody of the Yukon Supreme Court in the presence of both the member conducting the preliminary investigation and the member in question.

(2) After delivery of the thing or document to the Supreme Court, the member conducting the preliminary investigation shall forthwith advise the Chair of the Discipline Committee of the circumstances of the refusal and of the details of the thing or document to which the refusal relates whereupon the Chair of the Discipline Committee shall commence an application pursuant to s.28 of the Act in order to determine the matter.

**108.** Where any member conducting a preliminary investigation wishes to obtain production of any thing mentioned in s.28(3) of the Act he or she shall forthwith advise the Chair of the Discipline Committee of the nature and extent of the production requested whereupon the Chair shall commence an application pursuant to s.28(3) of the Act.

**109.** The report of a member conducting a preliminary investigation referred to in s.29(1) of the Act, shall, unless otherwise directed by the Chair of the Discipline Committee, be delivered to the Chair of the Discipline Committee within 45 days of the date of the appointment of the member under the provisions of Rule 105 above.

**110.** Where the Chair of the Discipline Committee pursuant to s.29(2) of the Act directs that no further action be taken after a preliminary investigation he or she shall advise the complainant by registered mail of this determination and of the complainant's right of appeal pursuant to s.30(1) of the Act.

**111.** Where the Chair of the Discipline Committee, pursuant to s.29(2) is satisfied that further investigation is required he or she shall direct the member conducting the preliminary investigation to carry out such further and other investigation as required and report the results of such investigation as soon as is reasonably practical.

**112.** (1) Where, pursuant to s.29(2) the Chair of the Discipline Committee finds that the member's conduct may be deserving of censure but that it is not sufficiently serious to warrant referral to a Committee of Inquiry, the Chair may, with the consent of the member against whom the complaint was made, allow the member to appear privately without Citation before two members of the Discipline Committee for the purposes of reviewing the complaint.

(2) At the conclusion of any hearing conducted pursuant to this Rule, the members conducting such hearing may, with the consent of the member against whom the complaint was made impose any of the sanctions provided for in s.37 of the Act.

### **Committee of Inquiry**

**113.** Where the Chair of the Discipline Committee directs that a complaint concerning a member's conduct shall be referred to a Committee of Inquiry, he or she shall advise the President in writing of the nature of the complaint and of the decision to refer the matter to a Committee of Inquiry, whereupon the Executive shall forthwith appoint Counsel to represent the Society in any such proceedings.

**114.** Where a complaint or other matter is referred to a Committee of Inquiry pursuant to these Rules, the Chair of the Discipline Committee shall draw a Citation in Form 20 and a Notice of Inquiry in Form 21 in triplicate and affix the seal of The Society to each copy of the document.

**115.** As soon as practicable after the seal of The Society is affixed to a Citation or Notice of Inquiry, a sealed copy of each document shall be served upon the member against whom the complaint is alleged and upon the President or Counsel appointed for The Society pursuant to Rule 113.

**116.** Subject to an express waiver of this condition by the member against whom the complaint is made and by the President, no Notice of Inquiry shall provide for any hearing date less than 4 weeks from the date of service upon the member of the Notice of Inquiry.

**117.** (1) Where the Chair of the Discipline Committee directs that any complaint concerning conduct of a member shall be referred to a Committee of Inquiry he or she shall forthwith pursuant to s.25(7), s.25(10),s.25(12), and s.31(9) of the Act, convene a Committee of Inquiry and immediately thereafter shall serve upon the member whose conduct is to be the subject of the inquiry a Notice of Appointment in Form 22.

(2) Upon receipt of the Notice of Appointment, the member shall be at liberty to request the alteration of the constitution of the Committee pursuant to s.31(9) of the Act by delivering a Notice of Objection in Form 23 to the Chair of the Discipline

Committee within 7 days of the date of service of the Notice of Appointment, and thereafter only with leave of the Chair of the Discipline Committee.

**118.** Neither the Chair of the Discipline Committee nor any member of The Society who conducted a preliminary investigation with respect to the complaint in question shall be a member of any Committee of Inquiry in respect of that complaint.

**119.** The Committee of Inquiry shall commence a hearing pursuant to the Act and these Rules on the date fixed in the Notice of Hearing or upon such other date as agreed upon by all parties.

**120.** Unless otherwise ordered by a Committee of Inquiry, all proceedings before a Committee of Inquiry shall be held in public.

**121.** Any application to limit the rights and privileges of a member or to suspend a member pending the result of a Committee of Inquiry pursuant to s.33 of the Act shall be made upon 3 clear days notice to the member in question and by way of a Notice of Motion served upon the member pursuant to s.109 of the Act.

**122.** (1) A Committee of Inquiry may from time to time, and only in the presence of the parties or their Counsel, adjourn the hearing of the Inquiry either upon the application of either party or upon its own motion, however, any application for an adjournment of the hearing of the Committee before the return date specified in the Notice of Hearing shall be made in writing to the Chair of the Discipline Committee and shall be made not less than 2 days before the time set for hearing in the said Notice.

(2) Upon the receipt of any such written application by the Chair of the Discipline Committee he or she shall determine whether or not such application is to be granted or denied in advance of the attendance of the parties and shall advise the parties immediately upon such determination and provide written reason for such determination upon request.

**123.** At any hearing of a Committee of Inquiry the member against whom the complaint is made has the right to appear personally or by Counsel.

**124.** At any hearing of a Committee of Inquiry, The Society shall, subject to s.34(6) of the Act bear the onus of proof and shall adduce such admissible evidence as Counsel deems necessary to prove that the member in question has engaged in conduct deserving of censure.

**125.** At the conclusion of all evidence adduced by Counsel for The Society the member against whom the complaint is made shall have the right to adduce such admissible evidence as Counsel deems necessary to make full answer and defense.

**126.** For the purpose of all proceedings taken against any member pursuant to the Act or these Rules, the provisions of the Evidence Act shall apply where those provisions are not inconsistent with the provisions of the Act or these Rules.

**127.** Subject to s.34 of the Act, all evidence adduced at any hearing of a Committee of Inquiry shall be given under oath and shall be subject to cross-examination.

**128.** Counsel for the Society and the member who is the subject of the Inquiry or his or her Counsel, may agree upon facts to be presented to a Committee of Inquiry and any such agreement shall be made in writing signed by both Counsel and delivered to the members of the Committee of Inquiry.

**129.** All proceedings of the Committee of Inquiry shall be recorded by an Official Court Reporter and, unless the Committee otherwise directs, shall be transcribed into written form and presented to the Chair of the Discipline Committee.

**130.** Where either party wishes to summon and enforce the attendance of any person at a hearing or compel any witness to produce any books, documents or other files, the Chair of the Discipline Committee shall, upon request, draw a Notice of Required Attendance for such witness in Form 24, affix the seal of The Society to each copy and deliver the Notice to the party requesting such Notice for service upon the appropriate person.

### **Penalties and Costs**

**131.** Where a Committee of Inquiry finds that the member in question has not engaged in conduct deserving of censure, the Chair of the Discipline Committee shall advise the complainant by registered mail of this determination.

**132.** Where the Committee of Inquiry finds that the member has engaged in conduct deserving of censure, the Committee shall then hear submissions on behalf of The Society and the member with respect to:

- a) the matter of the appropriate penalty to be ordered pursuant to s.24(4) and s.37 of the Act;
- b) the matter of costs to be assessed against the member pursuant to s.37(5) of the Act.

**133.** During the course of any submissions made with respect to the issue of the appropriate penalty or disposition as to costs, The Society shall be at liberty to produce either an original or certified true copy of any document contained in the Professional Conduct Record of the member in question in relation to any other hearing or proceeding of any kind resulting in discipline to the member and, in the absence of any evidence to the contrary, those documents shall be evidence of the contents thereof without further proof of the official nature of the document or signature of any persons endorsed thereon.

**134.** A copy of any document contained in the Professional Conduct Record of any member shall be deemed to be a certified true copy of the document if it is endorsed with a declaration to that effect and has the seal of The Society affixed thereto.



**135.** (1) Where any Committee of Inquiry finds that a member has engaged in conduct deserving of censure, the member, in speaking to the matter of the appropriate penalty or disposition as to costs, shall be at liberty to call such character or other evidence either by way of viva voce or documentary evidence as he or she deems appropriate.

(2) Where a member introduces documentary evidence pursuant to this Rule, the Committee of Inquiry may, in its discretion, either upon its own motion or upon the application of The Society, require the attendance of the author of any such document for purposes of cross-examination by Counsel for The Society.

**136.** Where character evidence is introduced by the member whose conduct is being inquired into, The Society shall be at liberty to call any admissible evidence in rebuttal on the issue of character.

**137.** For the purposes of s.37(5) of the Act, “cost incurred by The Society” shall include but not be limited to the following:

- a) all reasonable costs and expenses incurred by The Society either by way of disbursements or fees in connection with the investigation or prosecution of the matter at any time from the date of receipt of the complaint by the Chair of the Discipline Committee up to and including the completion of all matters related to the investigation or prosecution including any matters relating to any appeal taken pursuant to the Act or these Rules;
- b) witness fees payable at the rate of \$20.00 per half day or part thereof and \$35.00 per day or part thereof exceeding one-half day;
- c) Court Reporter’s fees and transcript fees;
- d) any reasonable mailing, advertising or other expenses in connection with either the hearing or the penalty or discipline imposed;
- e) all reasonable expenses incurred by any member conducting a preliminary investigation, Counsel, The Society, any witness in the proceedings, the Chair of the Discipline Committee or by any member of the Committee of Inquiry.

**138.** Where an order for the payment of costs is made against a member whose conduct has been reviewed by a Committee of Inquiry, the Committee shall, in its discretion, fix a specified date for the payment of any such amounts and any failure to pay such amounts by or within the time specified shall operate as an immediate suspension of that member’s membership in The Society and the name of any such member shall be struck from the Roll by the Secretary.

**139.** Any order for the payment of costs pursuant to these Rules shall operate and be enforceable in the same way as if it were a judgment of the Yukon Supreme Court in respect of the outstanding amount.

**140.** (1) Any member who is the subject of an order for the payment of costs pursuant to these Rules shall be at liberty to make application to the Chair of the Discipline Committee for any extension of the time to pay any such amount.

(2) Upon receipt of an application pursuant to this Rule, the Chair of the Discipline Committee shall afford the member a reasonable opportunity to make submissions with respect to the need for an extension of time to pay and shall in his or her discretion grant or deny such application.

(3) Where the Chair of the Discipline Committee denies an application made pursuant to the provisions of this Rule, he or she shall, upon request, provide written reasons for such decisions to the member in question.

**141.** (1) Every Committee of Inquiry shall provide written reasons in respect of both its findings and any penalty or penalties imposed upon any member as a result thereof.

(2) The Committee's written reasons shall be delivered forthwith upon completion to the Chair of the Discipline Committee who shall advise the President and the member or his or her Counsel of the availability of such written reasons and deliver a copy to each party upon request.

**142.** Any appeal against a finding or order of a Committee of Inquiry shall be taken by Notice of Appeal in Form 25, filed in the Yukon Supreme Court pursuant to s.42 of the Act.

**143.** Subject to s.43 of the Act, any penalty or order imposed upon a member as a result of a finding by a Committee of Inquiry shall, unless otherwise stated in the order, take effect immediately upon service of a copy of the written reasons or order upon the member or his or her Counsel pursuant to s.109 of the Act.

**144.** Where a Committee of Inquiry makes a finding that a member has engaged in conduct deserving of censure, the Chair of the Discipline Committee shall cause a copy of the written reasons:

- a) to be delivered to the Registrar of the Court of Appeal of the Yukon Territory, the Federal Court, the Yukon Supreme Court and the Territorial Court as well as the office of the Sheriff of the Yukon Territory;
- b) to be mailed to the Secretary or other such officer of every legal or professional society of which the member is a member;
- c) to be posted outside the Registry Office of the Yukon Supreme and Territorial Courts and the office of the Sheriff for the Yukon Territory;
- d) to be delivered together with the record of the proceedings to the President and the Secretary of The Society.

**145.** Immediately upon receipt of a copy of the written reasons of a Committee of Inquiry the Secretary shall give effect to the provisions of any such reasons by amending or causing to be amended in accordance with such reasons all records of The Society kept pursuant to the Rule.

**146.** In addition to the provisions of Rule 144 above, any Committee of Inquiry may, by order directed to the Secretary, cause such additional publication or notification of the results of the Committee of Inquiry as is considered necessary for the protection of the public and the members of The Society.

**147.** Where a Committee of Inquiry reasonably believes that the publication of any person's name or identity will unduly prejudice that person's personal or family circumstances, it may in its discretion, order that the name of any complainant, witness or other person involved in any proceedings before the Committee be kept confidential and not published in any written reasons, notification or publication made pursuant to these Rules.

**148.** (1) Where a Committee of Inquiry orders that any member shall be suspended from the practice of law for a period of 2 years or more, the Committee shall, upon making such order, fix a date for a review of the justification of the suspension pursuant to s.37(2)(a) of the Act.

(2) Upon any review pursuant to this Rule both the member in question and Counsel for The Society shall be at liberty to call any evidence admissible under the Act and these Rules and make such submissions to the committee as they deem appropriate.

(3) After hearing all of the evidence and submissions made on behalf of the member in question and The Society, the Committee shall order the continuation of the suspension unless it is satisfied, on a balance of probabilities, that the suspension in question is not necessary for the protection of the public.

**149.** Where any member is required pursuant to s.37 of the Act to take any course of study in a particular field of law, that course shall consist of the Bar Admission Course or any other course designated by the Chair of the Education and Admissions Committee and approved by the Executive for that field of practice together with an examination applicable thereto.

**150.** (1) Where the Chair of the Discipline Committee becomes aware of any breach by a member of any condition or restriction in respect of the practice of law imposed upon him or her pursuant to the Act or these Rules, he or she shall serve upon the member in question a Notice of Breach in Form 26.

(2) Where any member is served with a Notice of Breach pursuant to this Rule, his or her membership shall, immediately upon service of such Notice, be suspended unless the member within 7 days of the date of service, shows cause to the Chair of the Discipline Committee why he or she should not be suspended for the breach of that condition or restriction.

(3) Any suspension imposed pursuant to this Rule shall not exceed 6 months duration unless the matter is referred to a Committee of Inquiry pursuant to s.31 of the Act and in any such case the matter shall be dealt with by that Committee and all the provisions of the Act and these Rules in respect of such hearing shall apply mutatis mutandis.

(4) The Chair of the Discipline Committee may, during the period of any suspension imposed pursuant to this Rule, impose such further and other conditions upon the member as are required for the purpose of securing compliance by the member with the conditions originally imposed.

### **Reinstatement**

**151.** (1) Where a member has been struck off the Roll pursuant to the Act or these Rules and at any time thereafter wishes to apply to the Executive for reinstatement pursuant to s.44 of the Act, he shall do so by delivering to the Secretary the following:

- a) a written application in Form 27;
- b) a Certificate of Standing from each legal or other professional society or body of which the person is or has ever been a member, which Certificate shall be dated not earlier than 60 days prior to the date of application shown on Form 27 and shall contain the following:
  - i) a notation of that person's current standing in the society or body;
  - ii) a notation of that period of time during which that person has been listed as a member of the society or body;
  - iii) a notation that no disciplinary or other proceedings are currently outstanding against the person as a result of his or her membership in the society or body;
- c) proof in writing under the signature of the Chair of the Discipline Committee that the applicant has completed all of the outstanding obligations, requirements or conditions imposed upon him or her with respect to any proceedings taken against him or her pursuant to the Act or these Rules;
- d) proof of payment of all applicable fees, assessments or levies provided for in the Act and these Rules;
- e) a Declaration in Form 13 in respect of professional liability insurance.

(2) Notwithstanding the requirements of this Rule, the Executive may, upon the written request of any applicant, waive any or all of the requirements set out in this Rule.

151.1 (1) Where a member has been suspended or struck off the Roll for failure to pay any annual fee, assessment or levy and wishes to apply to the Executive for reinstatement, he or she shall do so by delivering to the Secretary the following:

- (a) a written application in Form 27;
- (b) a Certificate of Standing from each Law Society at which the person is or has ever been a member, which Certificate shall be dated not earlier than 60 days prior to the date of application shown on Form 27 and shall contain the following:
  - i) a notation of that person's current standing in the Law Society;
  - ii) a notation of that period of time during which that person has been listed as a member of the Law Society;
  - iii) a notation that no disciplinary or other proceedings are currently outstanding against that person as a result of his or her membership in the Law Society;
- (c) a Declaration in Form 13 in respect of professional liability insurance;
- (d) payment of all applicable fees, assessments or levies provided for in the Act and these Rules."

(2) Notwithstanding the requirements of this Rule, the Executive may, upon the written request of any applicant, waive any or all of the requirements set out in this Rule.

(3) Where an applicant has not been engaged in the full-time act of practice of law for three years and his or her application for reinstatement is accepted, the Executive may require that as a condition of reinstatement, the applicant:

- a) give a written undertaking not to do one or more of following:
  - i) not to practice law alone and only in a situation approved by the Executive for the first year of actual practice following reinstatement;
  - ii) to complete satisfactorily the Bar Admission examinations or the statute law examinations prescribed by the Executive;
  - iii) to comply with any other requirements imposed by the Executive;and,
- b) give a written undertaking that if the conditions imposed hereunder are not met, the applicant will resign his or her membership in the Society.

(4) The Executive may impose conditions respecting the practice of a former Judge when giving approval for that member to appear as Counsel.

151.2 A non-practising member who is engaged in the practise of law as defined in s.1(2) of the Act or its equivalent, in another province or territory of Canada and who meets the criteria set out in s. 20(1)(a) of the Act, shall be reinstated as of right upon filing with the Secretary:

- (a) a written application in Form 27A;
- (b) a Certificate of Standing from each Law Society at which the person is a member, which Certificate shall be dated not earlier than 60 days prior to the date of application shown on Form 27A and shall contain the following:
  - i) a notation of that person's current standing in the Law Society;
  - ii) a notation of that period of time during which that person has been listed as a member of the Law Society;
  - iii) a notation that no disciplinary or other proceedings are currently outstanding against that person as a result of his or her membership in the Law Society;
- (c) a Declaration in Form 13 in respect of professional liability insurance;
- (d) payment of the difference between the non-practising fees paid by the member and the fees due for active membership for the year in which reinstatement is sought.

151.3 (1) Where a member in good standing who is not engaged in the practise of law in another province or territory of Canada wishes to apply to the Executive for reinstatement, he or she shall do so by delivering to the Secretary the following:

- (a) a written application in Form 27A;
- (b) a Certificate of Standing from each legal society or body of which that person has ever been a member, which Certificate shall be dated not earlier than 60 days prior to the date of application shown on Form 27A and shall contain the following:
  - i) a notation of that person's current standing in the society or body;
  - ii) a notation of that period of time during which that person has been listed as a member of the society or body;
  - iii) a notation that no disciplinary or other proceedings are currently outstanding against that person as a result of his or her membership in the society or body;
- (c) a Declaration in Form 13 in respect of professional liability insurance;

(d) payment of the difference between the non-practising fees paid by the member and the fees due for active membership for the year in which reinstatement is sought.

(2) Notwithstanding the requirements of this Rule, the Executive may, upon the written request of any applicant, waive any or all of the requirements set out in this Rule.

(3) Rule 151.1(3) applies to any applicant under Rule 151.3(1) who has not been engaged in the full-time practise of law for three years prior to making application under this Rule.

**152.** (1) Where the Secretary receives any application for reinstatement he or she shall refer the matter to the Executive and thereafter advise the member in question of the decision of the Executive within 60 days of the date of receipt of such application.

(2) The Executive may, in its discretion, allow any member making application for reinstatement to be fully reinstated or to be reinstated subject to such reasonable conditions or requirements as the Executive may deem appropriate and necessary in order to protect the interests of The Society and the public.

**153.** Where the Articles of a student-at-law have been terminated pursuant to the Act or these Rules, and at any time thereafter the student-at-law applies to the Executive for reinstatement as a student-at-law, he or she shall do so by delivering to the Secretary the following:

- a) a written application in Form 28;
- b) proof of graduation from a school of law approved by these Rules;
- c) a copy of the Articles of the student-at-law in Form 7;
- d) proof in writing under the signature of the Chair of the Discipline Committee that the applicant has completed all the outstanding obligations, requirements or conditions imposed upon him or her with respect to any proceedings taken against him or her pursuant to the Act or these Rules;
- e) proof of payment of all applicable fees, assessments or levies provided for in the Act and these Rules.

**154.** (1) Where the Secretary receives an application for reinstatement from any student-at-law, he or she shall refer the matter to the Executive and thereafter advise the student-at-law in question of the decision of the Executive within 60 days of the date of receipt of such application for reinstatement.

(2) The Executive may, in its discretion, allow any student-at-law making application for reinstatement to be fully reinstated or to be reinstated subject to such reasonable conditions or requirements as the Executive may deem appropriate and necessary in order to protect the interests of The Society and the public.

(3) Notwithstanding the requirements set out in Rule 153 the Executive may, upon the written request of any applicant, waive any or all of the requirements set out in that Rule.

### **Obligation to Report**

**155.** Every member shall report to the Chair of the Discipline Committee any and all information relating to any shortage of trust funds or breach of an undertaking by any member.

**156.** Every member shall, unless it be privileged or otherwise unlawful, bring to the attention of The Society any circumstances involving or appearing to involve conduct deserving of censure or reflecting upon the honor and integrity of the bar.

### **Miscellaneous**

**157.** The Executive shall be authorized to fix an appropriate rate of remuneration in respect of any fees, expenses or other disbursements of any kind in relation to both counsel and any witness or witnesses appearing on behalf of The Society in proceedings under the Act or these Rules.

**158.** No action lies against any person acting pursuant to the Act or these Rules for anything done by him or her in good faith.

## **SPECIAL FUND**

**159.** The Executive shall establish a Special Fund Committee which Committee shall, in consultation with the Executive, maintain, operate and administer the Special Fund established pursuant to s.45 of the Act.

**160.** (1) Every member of The Society not exempted by s.47 of the Act, shall pay to the Special Fund an annual assessment in any amount to be fixed by the Executive from year to year, and every such member shall be notified of the amount of such assessment by Notice of Levy in Form 29 mailed, sent by electronic mail or delivered to the last business address recorded for each member in the Professional Conduct Record.

(2) In each year, the annual assessment provided for in this Rule shall be due and payable according to the provisions of Rule 89 above.

**161.** Where special circumstances require it, the Executive may levy any additional assessment or assessments against the membership and any such amounts shall be due and payable by each member as specified in any such levy.



**162.** (1) Where a person alleges that he or she qualifies for reimbursement of any loss out of the Special Fund, he or she shall make application for such reimbursement to the Secretary and deliver a written complaint concerning the matter to the Chair of the Discipline Committee.

(2) Upon receipt of any complaint pursuant to this Rule the Chair of the Discipline Committee shall deal with such complaint as if it were a complaint about the conduct of a member made pursuant to s.27 of the Act.

**163.** Where, in respect of a complaint made pursuant to Rule 162(1), a Committee of Inquiry finds that any person has sustained pecuniary loss by reason of the misappropriation or wrongful conversion by a member of property entrusted to or received by the member in his or her capacity as a Barrister or Solicitor, the findings of the Committee of Inquiry in that regard shall be referred by the Chair of the Discipline Committee to the Chair of the Special Fund Committee and the President for consideration by the Executive.

**164.** Where the Executive reimburses any person as a result of a claim against the Special Fund, the Executive may impose any reasonable conditions upon such reimbursement including a condition that the complainant seek and obtain a judgment against the member in question in the Yukon Supreme Court and assign the whole or any part of the proceeds of such judgment to The Society.

**165.** Except where the Executive otherwise directs, no payments shall be made from the Special Fund by way of reimbursement pursuant to the Act or these Rules until a Committee of Inquiry has found that the claimant qualifies for reimbursement under s.49 of the Act and the time for the taking of any appeal against such finding has elapsed or, if any appeal has been taken, until the appeal is dismissed.

**166.** Upon the making of any payment from the Special Fund pursuant to these Rules, the Secretary shall forward to the Yukon Minister of Justice a written report of the circumstances giving rise to such payment.

**167.** The Special Fund Committee may in their discretion authorize the payment out of the Special Fund of any and all expenses incurred:

- a) in the administration of the Special Fund;
- b) in connection with any audit, investigation, hearing or other action taken pertaining to the accounts of any member against whom a complaint is made which results in a claim for reimbursement against the Special Fund; or,
- c) in respect of any matter relating to the protection and maintenance of the Special Fund.

**168.** No payment or reimbursement shall be made out of the Special Fund in respect of any matter, which arose prior to the 1st day of January 1985.

**169.** No claim for reimbursement shall be paid out of the Special Fund unless the application referred to in Rule 162 is received by the Secretary within 6 months from the date upon which the complainant or applicant first became aware of the loss, misappropriation or wrongful conversion.

**170.** No claim for reimbursement shall be paid out of the Special Fund where the loss in question arises from misconduct of a member in relation to a cause or matter which arose or was disposed of in any jurisdiction other than the Yukon and was not directly related to the practice of law by the member in question within the Yukon.

### **PROFESSIONAL LIABILITY INSURANCE**

**171.** Every member required to be insured under the Act or these Rules shall at all times maintain in full force and effect a policy of liability insurance in respect of any professional liability claim or claims which may be made against him or her as required by s.54 of the Act.

171.1 (1) These Rules apply to every resident member actively engaged in the private practice of law in Yukon.

(2) Every member who:

a) does not engage in the private practice of law in the Yukon,

b) practices exclusively as an employee for an employer who does not practice law, and does not practice on his or her own account apart from such employment; or

c) acts exclusively as an employee of a government or a government agency and does not practice on his or her own account apart from such employment

is exempt from payment of the annual insurance fee fixed by the executive pursuant to these rules and shall not be entitled to indemnification from the Liability Claims Fund.

(3) The provisions of s.54 of the Act and any Rules made pursuant thereto shall continue to apply in respect of every non-resident member engaged in the private practice of law in Yukon.

(4) Any member who is exempt from assessment pursuant to Rule (2) shall, upon notice so requiring, forthwith certify in writing to the Executive the facts entitling him or her to such exemption.

(5) If a member exempted by these Rules shall commence to practice law in Yukon in circumstances to which the exemptions are no longer applicable, shall forthwith so notify the Executive and the Executive shall thereupon promptly give to the member written notice of the amount of his or her assessment and the date upon which payment is due to the Society.

(6) There shall be levied upon each member, not herebefore exempted, an assessment in such amount or amounts and payable at such time as the Executive made by resolution from time to time determine.

(7) The Executive, in determining the amount or amounts of such assessment, may include a surcharge to any member based upon that member's paid claims record.

The surcharge commencing July 1, 1992, on paid claims after July 1, 1992, will be as follows:

- i) a 30% increase for the fee and deductible for one paid claim in the past five years commencing July 1, 1992;
- ii) a 75% increase for the fee and deductible for two paid claims in the past five years commencing July 1, 1992;
- iii) a 150% increase for the fee and deductible for three paid claims in the past five years commencing July 1, 1992; and,
- iv) a 300% increase for the fee and deductible for four or more paid claims in the past five years commencing July 1, 1992.

notwithstanding the date the claim was incurred or reported. The Executive shall have the discretion to order a risk management audit of the member's practice and charge the member for the cost of such audit.

(8) The annual assessment fee payable will be equal to:

- i) the base assessment established by the Executive in any year; plus,
- ii) any surcharge for which the member is assessed by the Executive;
- iii) any credit to which the member is entitled.

(9) The Executive shall remit to the Canadian Lawyers Insurance Association such portion of the premium received from members pursuant to these Rules as is required by the Canadian Lawyers Insurance Association to extend compulsory liability insurance coverage to the Society and its insured members.

(10) The Executive in establishing each annual assessment may include in addition to the amount required by the Canadian Lawyers Insurance Association, an amount to cover the cost of administering the professional liability claims fund and an amount to pay for the costs of administration of claims against insured members.

(11) The Executive may enter into an agreement with any other participating Law Society in the Canadian Lawyers Insurance Association to authorize such other Law Society to administer liability claims arising against insured members in Yukon.

(12) The assessment levied pursuant to these Rules and accumulated may be used as follows:

- i) to pay such premiums as may be required annually by the Canadian Lawyers Insurance Association;
- ii) to pay, in appropriate circumstances, all or part of the deductible portion otherwise payable by a member or former member pursuant to the compulsory liability insurance provided by the Canadian Lawyers Insurance Association;
- iii) to pay expenses necessary or incidental to the operation or administration of an indemnity program including, without restricting the generality of the foregoing, claims and risk management, consultants, brokers, adjustors, defensive claims, loss prevention and education programs, and accounting, office and administrative services.

(12.1) In the event that the Law Society of Yukon receives any funds from the Canadian Lawyers Insurance Association, such funds will be deposited into the Professional Liability Claims Fund or to the Special Fund, at the direction of the Executive.

(13) Each member not exempt by these Rules shall on or before the date specified for payment of the assessment, pay the full amount thereof to the Society and, in default of payment, the Executive may suspend any member who fails to pay his or her assessed premium upon demand and, in the event of late payment of premiums, the Executive may charge the member for interest on the overdue premium at a rate set by the Executive not exceeding 2% per month.

(14) In case an insured member is a member of or employed by a law firm, it shall be sufficient compliance on his or her part if payment of the assessment is made by the firm on behalf of the insured member.

(15) Where the deductible portion otherwise payable by a member or former member has been paid by the Society pursuant to these Rules, the Society shall have the right to recover from such member the amount paid and to enter into an agreement with the member for repayment.

(16) Any member who is in default of an arrangement for payment referred to herein shall be deemed to be guilty of breaching the professional and ethical duty to meet financial obligations.

(17) The Executive may, as required by the Canadian Lawyers Insurance Association, impose a retroactive assessment upon the insured membership of the Society and each insured member shall pay to the Society on or before the date specified the full amount of any retroactive assessment, on default of which payment, the Executive may suspend such insured member upon terms and conditions as the Executive may impose.

(18) The Executive may, as permitted by the Canadian Lawyers Insurance Association, provide a retroactive credit to the insured membership in any policy year.

(19) Every member shall forthwith report to the Executive all claims and potential claims of which such member becomes aware or ought reasonably to become aware whether or not such claim is actually reported to the member by the claimant.

(20) A member against whom a claim is made shall cooperate with and assist in all matters relating to the defense, administration or settlement of such claim.

(21) The Executive may receive from insured members, applications for insurance in excess of the compulsory limits provided for pursuant to these Rules and shall remit such applications to the excess insurer or its agent.

(22) In the case of an application for indemnity in excess of the compulsory coverage provided hereunder, the additional premium shall be payable by the applicant to the insurer and shall not be paid to the Society or become part of the Professional Liability Claims Fund.

**172.** In each year every member required to be insured under the Act or these Rules, shall, on or before the date upon which his or her membership fees become due and payable, furnish to the Secretary proof of insurance in Form 13.

**173.** In respect of any policy of professional liability insurance maintained pursuant to the Act and these Rules the deductible amount specified therein shall not exceed:

- a) where a member is a sole practitioner the amount of \$10,000.00 per claim;
- b) where a member practices in partnership with one or more other members, the amount of \$10,000.00 multiplied by the number of partners practicing in any such partnership.

**174.** The insured shall, upon the date of commencement of coverage under any policy of liability insurance in effect pursuant to the Act, instruct the insurer in writing to notify the Secretary of The Society in writing within 7 days of each of the following:

- a) the nature and extent of any default made by the insured under the terms of the policy of insurance;
- b) the date and amounts of any default by the insured in the payment of premiums pursuant to the provisions of the policy of insurance;
- c) the date and nature of any claims made against the insurer or the insured;
- d) the date of any cancellation or voiding of the policy in whole or in part by the insurer for any reason.

**175.** The insured under any policy of professional liability insurance in effect pursuant to the Act, shall immediately notify the Secretary in writing of the following:

- a) the nature and extent of any default made by the insured under the terms of the policy of insurance;
- b) the date and amounts of any default by the insured in the payment of premiums pursuant to the provisions of the policy of insurance;
- c) the date and nature of any claims made against the insurer or the insured;
- d) the date of any cancellation or voiding of the policy in whole or in part by the insurer for any reason.

**176.** Failure of the insured to maintain in full force and effect any policy of liability insurance pursuant to the Act and these Rules or to direct the insurer as required by Rule 174 or to notify the Secretary as required by Rule 175 may be the subject of a complaint to the Chair of the Discipline Committee under s.27 of the Act and shall result in the immediate suspension of that member's membership until every such defect has been remedied.

**177.** Where any deductible amount payable by a member pursuant to the provisions of any policy of professional liability insurance remains unpaid after demand, the member's membership shall, upon 30 days written notice from the Chair of the Discipline Committee, unless otherwise directed, be suspended until such time as the said amount or amounts are duly paid by the member.

177.1 i) Where the deductible of a claim otherwise payable by a member or former member has been paid from the indemnity program fund, the Law Society of Yukon has the right to recover the amount on its own behalf and may enter into an agreement with the member or former member for the repayment to the Law Society of Yukon of the amount by installments or otherwise.

- ii) Any member who fails:
  - a) to pay all or any part of the deductible portion of a claim for which the member is liable;
  - b) to enter into or is in default of any agreement made pursuant to subrule (i);

may be considered to be in breach of the professional and ethical duty to meet financial obligations.

- iii) If a member is in arrears:
  - a) under an obligation under subrule (ii)(a); or,

b) under an agreement entered into pursuant to subrule (i),  
the total amount of the arrears, with interest, may be added to and deemed to be part of insurance assessment levies pursuant to Rule 171.(6).

## **ACCOUNTING RECORDS & REQUIREMENTS**

**178.** For the purposes of s.64(1) of the Act the member shall be deemed to have informed the Executive upon the receipt by the Secretary of written notice of the termination date of the member's fiscal year and/or of any change in such date.

**179.** For the purpose of s.64(2) of the Act the Statutory Declaration shall be in Form 30 and the report of the Chartered Accountant or Certified General Accountant shall be in Form 31.

**180.** Subject to s.64(3) of the Act, every active member who terminates any practice of law in Yukon shall file with the Society within 3 months after the termination of such practice a report of the chartered accountant or certified general accountant in Form 31.

**181.** Where a member fails to file any of the documents required pursuant to s.64 of the Act or these Rules, the membership of that member shall immediately be suspended until such time as all of the requirements of the Act and these Rules are complied with, unless the executive decides otherwise.

181.1 (1) A member who intends to cease the private practice of law in the Yukon Territory shall provide reasonable written notice to the Executive and shall obtain the approval of the Executive before the cessation occurs, with respect to the intended disposition of all:

- a) open and closed files;
- b) wills, titles and other important or valuable documents;
- c) non-documentary valuables; and,
- d) trust monies, trust accounts and books of account, that relate to the practice of the member in the Yukon Territory and are within the control of the member.

(2) A member who ceases the private practice of law in the Yukon Territory shall, within three months after the cessation occurs, provide a written report to the Executive advising of the disposition of the:

- a) files, documents and valuables referred to in paragraphs (1)(a), (b) and (c); and,

b) trust accounts and books of account referred to in paragraph (1) (d), including a statement confirming that:

i) all the balances have been remitted to the clients or other persons on whose behalf they were held, or have been transferred to another member at the request of the client with written instructions concerning the conditions attaching to them, and,

ii) the net interest earned on a pooled trust account has been remitted to the Yukon Law Foundation in accordance with the provisions of the Legal Profession Act.

(3) On the written application of the member, the Executive may extend the time for providing a report under subsection (2).

**182.** In the absence of express permission by a client, no member may retain interest earned on any money deposited in a trust account and every member shall, pursuant to s.85(1) of the Act instruct every bank or trust company in which he maintains one or more trust accounts to remit the interest earned on any such amount to the Law Foundation.

**182.1** (1) A lawyer shall not receive or accept cash in an aggregate amount of \$7,500.00 or more Canadian dollars in the course of a single client matter.

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

- a) receiving or paying funds;
- b) purchasing or selling securities, real property or business assets or entities;
- c) transferring funds or securities by any means;
- d) receiving funds as a retainer.

(3) This Rule does not apply to a lawyer when:

- a) receiving funds in respect of professional fees, disbursements, and expenses already incurred;
- b) receiving funds in respect of bail;
- c) engaged in activities referred to in subsection 2 on behalf of his or her employer, or
- d) receiving or accepting currency:



- (i) from a financial institution or public body,
- (ii) from a peace officer, law enforcement agency or other agent of the Crown, acting in his or her official capacity,
- (iii) pursuant to a court order, fine or penalty, or
- (iv) in his or her capacity as executor of a will or administrator of an estate.

(4) For the purposes of this rule, when a lawyer receives or accepts cash in a foreign currency, the lawyer shall be deemed to have received or accepted the cash converted into Canadian dollars at

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

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

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

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

(3) The financial records described in paragraphs 1 and 2 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.

(4) The financial records described in paragraphs 1 and 2 shall be entered and posted so as to be current at all times.

(5) A lawyer shall keep the financial records described in paragraphs 1 and 2 for at least the six year period immediately preceding the lawyer's most recent fiscal year end.

**183.** Where an audit is ordered pursuant to s.66 of the Act, the accountant ordered to provide such audit shall report in writing to the Chair of the Discipline Committee both with respect to the results of the audit and any deficiencies discovered.

**184.** Failure on the part of a member to comply with any of the provisions of the Act or these Rules in respect of bookkeeping or accounting requirements may, in the discretion of the Chair of the Discipline Committee, result in the immediate suspension of that member's membership and may be made the subject of a complaint pursuant to s.27 of the Act.

**185.** Every member shall immediately notify the Secretary of any bankruptcy petition against such member received by him or her or any general assignment for the benefit of his or her creditors made by him.

## **ADVERTISING**

**186.** It shall be improper for any member to advertise in his capacity as a member of The Society except as permitted by s.105 of the Act or by these Rules.

**187.** (1) It is recognized that a member may be invited to comment on matters related generally to the practice of law but it shall be improper for any such member to solicit such invitation or to unduly exploit his or her role and identity as a member in responding to any such invitation.

(2) For the purposes of this Rule, it shall not be improper for a member to actively pursue the dissemination of information about the law and public legal education generally.

**188.** It is recognized that a member may, in conducting any practice of law, be invited to hold office in any community or business organization and in the political affairs of the community, territory or country and that such election or appointment will ultimately result in publicity relating to the member. In seeking or holding any such office it shall be improper for any member to unduly exploit his or her role and identity as a member of The Society.

**189.** When commenting upon his or her view of law or the legal profession, a member shall make clear that the views expressed are his or her personal views only unless he or she is specifically authorized by The Society or the profession at large to express the view of The Society or profession as the case may be.

**190.** With the consent of his or her client, a member may publicly comment with respect to the fact that he or she has acted or is acting in a particular case or matter for the particular client and any such member shall be permitted to succinctly and fairly summarize the pleadings or issues in the case but he or she shall not comment on the validity or worth of any issue or the probable success of any party in the matter.

**191.** It shall not be improper for any of the following information to be disseminated by a member or a firm of members by way of announcement, business card, letterhead, or by way of other advertisement in print so long as any such advertisement is in keeping with the professional standard and quality expected of all members of The Society and is not contrary to the public interest:

- a) the name of the member or his or her firm, its partners and associates;
- b) the member's titles and honors for valor or service, including any designation of Queen's Counsel and the title Right Honorable or Honorable duly conferred;
- c) the member's degrees or graduate status from any recognized University;
- d) street and cable address, telephone, telex and telecopier numbers;
- e) office hours of practice;
- f) languages spoken by a member;
- g) the fact and date of enrolment (by year) as a member in any legal or other professional society;
- h) any preference by a member or a firm of members for practice in a particular field of law (example: criminal law, labor relations law, family);
- i) a statement that any member or firm of members is restricting his or her practice to any one or more particular fields of law;
- j) fees charged for specific services.

**192.** The content of any advertising by a member shall be factual, informational and not deceptive or misleading in any way. It shall, in the opinion of the Executive, conform and be consistent with the good taste and dignity expected and required of all members of The Society and not be unduly promotional.

**193.** Advertisements by a member shall be limited to a size commensurate with the amount of information to be given and it shall be improper for any advertisement to include any photograph, logo, symbol or to make reference to any quality of service except as hereinafter specifically prescribed.

**194.** It shall be improper for any member to permit his or her name to appear on the letterhead of, or in any advertising disseminated by any client, as being its solicitor or counsel other than by way of a designation of honorary counsel or honorary solicitor on the letterhead of a non-profit or philanthropic organization duly approved for such purpose by the Chair of the Discipline Committee.

**195.** No member shall authorize or permit the insertion in any “white pages” section of a general telephone directory of more than one listing for the firm including the name of its members and associates and for each lawyer thereof, in the section for each area where the firm maintains an office or branch office.

**196.** No member shall authorize or permit the insertion in the “yellow pages” section of any general telephone directory of more than one standard listing for a member or firm of members under the heading “barrister and solicitor” or “lawyers” and any such insertion may include:

- a) the name of the sole practitioner or firm;
- b) the business address and telephone number of the sole practitioner or firm;
- c) a reference to any preferred areas of practice of the sole practitioner or firm;
- d) a reference to the business address and telephone number of any branch office of the firm.

**197.** No advertisement in a telephone directory by any member or firm of members shall exceed a double quarter column without the prior approval of the Chairman of the Discipline Committee.

**198.** It shall be improper for any member in any advertisement provided for in Rule 191 above to use the word “specialist” or “specializing” or like words suggesting a recognized special status or accreditation.

**199.** It shall be improper for a member who was formerly a judge to continue to use the title “judge” or to refer to the fact that he or she was formerly a judge in any advertisement under Rule 191 after reinstatement as a member of The Society.

**200.** (1) It shall be improper for the letterhead or firm name of any member or firm of members to include any name except in accordance with this rule.

(2) The firm name may include the name of a current firm member, a deceased or retired member, or a deceased or retired firm member of a predecessor firm (that is, a firm having a direct and substantial connection with the firm in question). When these names appear in the listing of names on the letterhead, the status of an inactive member must be clearly indicated. The status of a lawyer whose name appears in the firm name only and is not listed on the letterhead does not require specification.

(3) The letterhead of a firm may list the names of extraterritorial lawyers associated with the firm who have not been admitted to practice law in Yukon so long as this fact, together with the jurisdiction in which such lawyers are authorized to practice, are indicated on the letterhead.

(4) The firm name or letterhead of a firm may not include the name of a person who has become a judge.

**201.** It shall be permissible for any member or firm of members to have at his or her or their place of business a sign stating his or her name or the name of the firm and its members with the additional words “barrister” or “solicitor” or “barrister and solicitor”, “lawyers”, “notary public”, “law office” or the plural of any of them as is appropriate.

**202.** Any such sign may not be of an advertising or commercial nature and must conform with the requirements of good taste and not be larger than required to suit its purpose.

**203.** It shall be improper for any member to knowingly endorse or lend himself or herself to the advertisement of any property, investment or service, other than the practice of law, for sale to the public.

**204.** (1) No member shall directly or indirectly permit to be done any act or thing which is inconsistent with the Act or these Rules.

(2) A breach by any member of any of Rules 186 to 203 above may be deemed to be conduct deserving of censure and may be the subject of a complaint pursuant to s.27 of the Act.

## **PROFESSIONAL CORPORATIONS**

**205.** For the purposes of s.88(3)(a) of the Act an application for a permit shall be in Form 32.

**206.** A permit issued pursuant to s.88(3) shall be in Form 33.

**207.** Any materials, forms or other documents required to be delivered or filed in respect of any application concerning a professional corporation shall be delivered to the Secretary of The Society who shall thereupon bring such document to the attention of the Executive for consideration.

**208.** A professional corporation authorized by the Act or these Rules shall in all respect conform with the requirements and provisions of the Business Corporations Act.

**209.** An application filed pursuant to s.88(3)(a) of the Act shall have attached thereto:

- a) a copy of the Articles of Incorporation of the corporation;

- b) a copy of the Certificate of Incorporation of the corporation;
- c) a Certificate of Good Standing with respect to the corporation;
- d) proof of payment of all applicable fees, assessments or levies provided for in the Act or these Rules;
- e) a Certificate of Good Standing in respect of every member who will carry on the practice of law on behalf of the corporation;
- f) written proof of the fact that a policy of professional liability insurance as prescribed by the Act and these Rules will be in effect for the period for which the permit is to be issued and will carry on the practice of law on behalf of the corporation.

**210.** Every professional corporation shall immediately inform the Secretary of a change in any particulars set forth in or attached to the application furnished pursuant to s.88(3) of the Act by notice to the Secretary in Form 34.

**211.** Every professional corporation that wishes to have its permit renewed for the following calendar year shall furnish to the Secretary on or before the 1st day of December in each year:

- a) an application in Form 35;
- b) proof of payment of all applicable fees, assessments or levies provided for in the Act or these Rules.

**212.** Upon being satisfied that a professional corporation has completed all of the requirements set out in s.88 of the Act and in these Rules, the Secretary shall, on or before the 31st day of December in any year issue to the corporation an annual renewal certificate in Form 36.

**213.** The Secretary shall keep and maintain a record of professional corporations called the Professional Corporations Record containing the following information with respect to each professional corporation:

- a) the name and registered office of each professional corporation and the number on the register attributed to every such corporation;
- b) a record of the date of issuance of any permit in Form 33 to the professional corporation and the respective dates of the renewal of any such permit;
- c) any application in Form 36 or Notice of Change of particulars in Form 34 including all materials attached thereto in respect of each professional corporation;

d) such further and other particulars as may be directed by the Executive.

**214.** The Secretary shall promptly enter in the record kept pursuant to Rule 213 above the name of each professional corporation whose permit has expired and shall thereupon notify each such professional corporation and the Registrars of each of the Courts of Appeal for the Yukon Territory, the Federal Court, the Yukon Supreme Court and the Territorial Courts and the Office of the Sheriff of the Yukon Territory of the fact that the permit of each such professional corporation has expired.

**215.** The name of a professional corporation shall contain only the surnames or the surnames and any combination of the given names or initials, of one or more members of The Society, living or deceased, who are or were shareholders of the corporation or whose names appear in the name of any practice acquired by the corporation, followed by the words “professional corporation”.

**216.** For the purposes of the Act and these Rules, and notwithstanding s.88(2) of the Act, the definition of “member” shall include a professional corporation and all provisions relating to members shall apply mutatis mutandis to such professional corporations except that:

- a) any reference to the suspension of a member shall, in the case of a professional corporation, be deemed to be a reference to the suspension of the permit of the professional corporation;
- b) any reference to the enrolment or reinstatement of a member shall, in the case of a professional corporation, be deemed to be in reference to the issuance of a permit to the corporation;
- c) any reference to the Roll in relation to a member shall, in the case of a professional corporation, be deemed to be a reference to the Professional Corporations Record.

**217.** Where the permit of a professional corporation has been suspended, the permit shall be reinstated at the conclusion of the period of suspension upon delivery to the Secretary of the following:

- a) proof in writing, under the signature of the Chair of the Discipline Committee, that the professional corporation has completed all of the outstanding obligations, requirements, or conditions imposed upon it with respect to any proceedings taken against it pursuant to the Act or these Rules;
- b) proof of payment of all applicable fees, assessments or levies provided for in the Act and these Rules;
- c) written proof of the fact that a policy of professional liability insurance as prescribed by the Act and these Rules will be in effect for the period for which the permit is to be reinstated and will cover any potential professional liability of the

corporation or of any members who will carry on the practice of law on behalf of the corporation;

- d) a Certificate of Good Standing with respect to the corporation; and,
- e) a Certificate of Good Standing in respect of every member who will carry on the practice of law on behalf of the corporation.

**218.** (1) Every professional corporation shall be liable for payment of all fees, assessments and levies made pursuant to the Act and these Rules in respect of each member of The Society who is a shareholder in the corporation.

(2) Where a professional corporation fails to pay within the time prescribed by these Rules any fee, assessment or levy provided for by the Act or these Rules then every member who is a shareholder in such professional corporation in respect of whom the corporation is primarily liable to make such payment, shall be liable for payment of the same as if he or she were not a member of such professional corporation.

**219.** Payment of any fee or levy pursuant to the Act or these Rules is not required from any member who ceases to be a shareholder in a professional corporation and in respect of whom payment has already been made by the corporation, nor from any professional corporation in respect of any member who becomes a shareholder in such corporation and by whom payment has already been made.

**220.** Failure on the part of any professional corporation to fulfill any of the obligations of the Act and these Rules with respect to professional corporations shall result in immediate suspension of the permit of the professional corporation until such time as all of the deficiencies have been remedied.

## **ETHICS AND PROFESSIONAL CONDUCT**

**221.** For the purposes of s.6(8) of the Act all members shall conduct their practice in accordance with:

- a) the Code of Professional Conduct prescribed from time to time by the Chair of the Discipline Committee in the Professional Conduct Handbook kept and maintained pursuant to the provisions of these Rules; and,
- b) the Code of Professional Conduct adopted by the Council of the Canadian Bar Association from time to time, together with all amendments and revisions thereto where this Code is not inconsistent with the Professional Conduct Handbook.

**222.** The Chair of the Discipline Committee shall keep and maintain the original Professional Conduct Handbook, which shall contain all rules prescribed by the Discipline Committee about the conduct of members.



## **CONFLICTS ARISING AS A RESULT OF TRANSFER BETWEEN LAW FIRMS**

222.1

### **Definitions**

(1) In this Rule:

“client” includes anyone to whom a member owes a duty of confidentiality, whether or not a solicitor-client relationship exists between them;

“confidential information” means information obtained from a client which is not generally known to the public;

“law firm” includes one or more members practicing:

- a) in a sole proprietorship,
- b) in a partnership,
- c) in association for the purpose of sharing certain common expenses but who are otherwise independent practitioners,
- d) as a professional law corporation,
- e) in a government, a Crown corporation or any other public body, and,
- f) in a corporation or other body;

“matter” means a case or client file, but does not include general “know-how” and, in the case of a government lawyer, does not include policy advice unless the advice relates to a particular case;

“member” means a member of this Society, and includes an articulated law student registered in this Society’s pre-call training program.

### **Application of Rule**

(2) This Rule applies where a member transfers from one law firm (“former law firm”) to another (“new law firm”), and either the transferring member of the new law firm is aware at the time of the transfer or later discovers that:

- a) the new law firm represents a client in a matter which is the same as or related to a matter in respect of which the former law firm represents its client (“former client”),
- b) the interests of those clients in that matter conflict, and,

- c) the transferring member actually possesses relevant information respecting that matter.

(3) Subrules (4) to (7) do not apply to a member employed by the federal, a provincial or a territorial Attorney General or Department of Justice who, after transferring from one department, ministry or agency to another, continues to be employed by that Attorney General or Department of Justice.

**Firm Disqualification**

(4) Where the transferring member actually possesses relevant information respecting the former client which is confidential and which, if disclosed to a member of the new law firm, may prejudice the former client, the new law firm shall cease its representation of its client in that matter unless:

- a) the former client consents to the new law firm's continued representation of its client, or,
- b) the new law firm establishes, in accordance with subrule (8), that:
  - i) it is in the interests of justice that its representation of its client in the matter continue, having regard to all relevant circumstances, including:
    - A) the adequacy of the measures taken under (ii);
    - B) the extent of prejudice to any party,
    - C) the good faith of the parties,
    - D) the availability of alternative suitable counsel, and,
    - E) issues affecting the national or public interest, and,
  - ii) it has taken reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur.

**Transferring Lawyer Disqualification**

(5) Where the transferring member actually possesses relevant information respecting the former client but that information is not confidential information, which, if disclosed to a member of the new law firm, may prejudice the former client:

- a) the member should execute an affidavit or solemn declaration to that effect, and,
- b) the new law firm shall:

i) notify its client and the former client, or if the former client is represented in that matter by a member, notify that member, of the relevant circumstances and its intended action under this Rule, and,

ii) deliver to the persons referred to in (i) a copy of any affidavit or solemn declaration executed under (a).

(6) A transferring member described in the opening clause of sub rule (4) or (5) shall not, unless the former client consents:

a) participate in any manner in the new law firm's representation of its client in that matter, or,

b) disclose any confidential information respecting the former client.

(7) No member of the new law firm shall, unless the former client consents, discuss with a transferring member described in the opening clause of subrule (4) or (5) the new law firm's representation of its client or the former law firm's representation of the former client in that matter.

#### **Determination of Compliance**

(8) Anyone who has an interest in, or who represents a party in, a matter referred to in this Rule may apply to the Society or to a court of competent jurisdiction for a determination of any aspect of this Rule.

#### **Due Diligence**

(9) A member shall exercise due diligence in ensuring that each member and employee of the member's law firm, and each other person whose services the member has retained:

a) complies with this Rule, and,

b) does not disclose:

i) confidences of clients of the firm, and,

ii) confidences of clients of another law firm in which the person has worked.

#### **Commentary**

### **APPLICATION OF THIS RULE**

#### **Lawyers and Support Staff**

*This Rule is intended to regulate members of the Society and articulated law students who transfer between law firms. It also imposes a general duty on members to exercise*

*due diligence in the supervision of non-lawyer staff, to ensure that they comply with the Rule and with the duty not to disclose:*

*confidences of clients of the member's law firm, and,*

*confidences of clients of other law firms in which the person has worked*

#### *Government Employees and In-House Counsel*

*The definition of "law firm" includes one or more members of the Society practicing in a government, a Crown corporation, any other public body and a corporation. Thus, the Rule applies to members transferring to or from government services and into or out of an in-house counsel position, but does not extend to purely internal transfers in which, after transfer, the employer remains the same.*

#### *Law Firms with Multiple Offices*

*The Rule treats as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments, an interprovincial law firm and a legal aid program with many community law offices. The more autonomous that each such unit or office is, the easier it should be, in the event of a conflict, for the new firm to obtain the former client's consent or to establish that it is in the public interest that it continue to represent its client in the matter.*

#### *Practicing in Association*

*The definition of "law firm" includes one or more members practicing in association for the purpose of sharing certain common expenses but who are otherwise independent practitioners. This recognizes the risk that lawyers practicing in association, like partners in a law firm, will share client confidences while discussing their files with one another.*

### ***MATTERS TO CONSIDER WHEN INTERVIEWING A POTENTIAL TRANSFEREE***

*When a law firm considers hiring a lawyer or articulated law student ("transferring member") from another law firm, the transferring member and the new law firm need to determine, before transfer, whether any conflicts of interest will be created.*

*Conflicts can arise with respect to clients of the firm which the transferring member is leaving, and with respect to clients of a firm in which the transferring member worked at some earlier time.*

*During the interview process, the transferring member and the new law firm need to identify, firstly, all cases in which:*

- i) the new law firm represents a client in a matter which is the same as or related to a matter in respect of which the former law firm represents its client,*

- ii) *the interests of these clients in that matter conflict, and,*
- iii) *the transferring member actually possesses relevant information respecting that matter.*

*When these three elements exist, the transferring member is personally disqualified from representing the new client, unless the former client consents.*

*Second, they must determine whether, with respect to each such case, the transferring member actually possesses relevant information respecting the former client which is confidential and which, if disclosed to a member of the new law firm, may prejudice the former client.*

*If this element exists, then the transferring member is disqualified unless the former client consents, and the new law firm is disqualified unless the former client consents or the new law firm establishes that its continued representation is in the public interest.*

*In this Rule, “confidential” information refers to information obtained from a client which is not generally known to the public. It should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.*

*In determining whether the transferring member possesses confidential information, both the transferring member and the new law firm need to be very careful to ensure that they do not, during the interview process itself, disclose client confidences.*

### **MATTERS TO CONSIDER BEFORE HIRING A POTENTIAL TRANSFEREE**

*After completing the interview process and before hiring the transferring member, the new law firm should determine whether a conflict exists.*

#### **Where a Conflict does Exist**

*If the new law firm concludes that the transferring member does actually possess relevant information respecting a former client which is confidential and which, if disclosed to a member of the new law firm, may prejudice the former client, then the new law firm will be prohibited, if the transferring member is hired, from continuing to represent its client in the matter unless:*

- i) *the new law firm obtains the former client’s consent to its continued representation of its client in that matter, or,*

ii) *the new law firm complies with sub rule (4)(b), and in determining whether continued representation is in the interests of justice, both clients' interests are the paramount consideration.*

*If the new law firm seeks the former client's consent to the new law firm continuing to act it will, in all likelihood, be required to satisfy the former client that it has taken reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur. The former client's consent must be obtained before the transferring member is hired.*

*Alternatively, if the new law firm applies under sub rule (8) for a determination that it may continue to act, it bears the onus of establishing the matters referred to in sub rule (4)(b). Again, this process must be completed before the transferring person is hired.*

*An application under sub rule (8) may be made to the Society or to a court of competent jurisdiction. The Society has developed a procedure for adjudicating disputes under this Rule, which is intended to provide an informal and economical procedure for the speedy disposition of disputes.*

*The circumstances enumerated in sub rule (4)(b)(i) are drafted in broad terms to ensure that all relevant facts will be taken into account. While clause (b) to (d) are self explanatory, clause (e) addresses governmental concerns respecting issues of national security, Cabinet confidences and obligations incumbent on Attorneys General and their agents in the administration of justice.*

#### *Where No Conflict Exists*

*If the new law firm concludes that the transferring member actually possesses relevant information respecting a former client, but that information is not confidential information which, if disclosed to a member of the new law firm, may prejudice the former client, then:*

- *the transferring member should execute an affidavit or solemn declaration to that effect, and,*
- *the new law firm must notify its client and the former client/former law firm "of the relevant circumstances and its intended action under the Rule", and deliver to them a copy of any affidavit or solemn declaration executed by the transferring member.*

*Although the Rule does not require that the notice be in writing, it would be prudent for the new law firm to confirm these matters in writing. Written notification eliminates any later dispute as to the fact of notification, its timeliness and content.*

*The new law firm might, for example, seek the former client's consent to the transferring member acting for the new law firm's client in the matter because, absent such consent, the transferring member may not act.*

*If the former client does not consent to the transferring member acting, it would be prudent for the new law firm to take reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur. If such measures are taken, it will strengthen the new law firm's position if it is later determined that the transferring member did in fact possess confidential information, which, if disclosed, may prejudice the former client.*

*A transferring member, who possesses no such confidential information, by executing an affidavit or solemn declaration and delivering it to the former client, puts the former client on notice. A former client who disputes the allegation of no such confidential information may apply under sub rule (8) for a determination of that issue.*

#### **Where the New Law Firm is Not Sure Whether a Conflict Exists**

*There may be some cases where the new law firm is not sure whether the transferring member actually possesses confidential information respecting a former client, which, if disclosed to a member of the new law firm, may prejudice the former client.*

*In such circumstances, it would be prudent for the new law firm to seek guidance from The Society before hiring the transferring member.*

#### **Reasonable Measures to Ensure Non-disclosure of Confidential Information**

*As noted above, there are two circumstances in which the new law firm should consider the implementation of reasonable measures to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur:*

- a) Where the transferring member actually possesses confidential information respecting a former client which, if disclosed to a member of the new law firm, may prejudice the former client, and,*
- b) Where the new law firm is not sure whether the transferring member actually possesses such confidential information, but it wants to strengthen its position if it is later determined that the transferring member did in fact possess such confidential information.*

*It is not possible to offer a set of "reasonable measures" which will be appropriate or adequate in every case. Rather, the new law firm which seeks to implement reasonable measures must exercise professional judgement in determining what steps must be taken "to ensure that no disclosure to any member of the new law firm of the former client's confidential information will occur".*

*In the case of law firms with multiple offices, the degree of autonomy possessed by each office will be an important factor in determining what constitutes "reasonable measures". For example, the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm or a legal aid program may be able to argue that, because of its institutional structure, reporting*

*relationships, function, nature of work and geography, relatively fewer “measures” are necessary to ensure the non-disclosure of client confidences.*

*The guidelines at the end of this Commentary, adapted from the Canadian Bar Association’s Task Force report entitled: Conflict of Interest Disqualification: Martin v. Gray and Screening Methods (February 1993), are intended as a checklist of relevant factors to be considered. Adoption of only some of the guidelines may be adequate in some cases, while adoption of them all may not be sufficient in others.*

*In cases where a transferring lawyer joining a government legal services unit or the legal department of a corporation actually possesses confidential information respecting a former client which, if disclosed to a member of the new “law firm”, may prejudice the former client, the interests of the new client (i.e. Her Majesty or the corporation) must continue to be represented. Normally, this will be effected either by instituting satisfactory screening measures or, when necessary, by referring conduct of the matter to outside counsel. As each factual situation will be unique, flexibility will be required in the application of subrule (4)(b), particularly clause (e).*

### **Guidelines**

- 1. The screened member should have no involvement in the new law firm’s representation of its client.*
- 2. The screened member should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.*
- 3. No member of the new law firm should discuss the current matter or the prior representation with the screened member.*
- 4. The current client matter should be discussed only within the limited group, which is working on the matter.*
- 5. The files of the current client, including computer files should be physically segregated from the new law firm’s regular filing system, specifically identified, and accessible only to those lawyers and support staff in the new law firm who are working on the matter or who require access for other specifically identified and approved reasons.*
- 6. No member of the new law firm should show the screened member any documents relating to the current representation.*
- 7. The measures taken by the new law firm to screen the transferring member should be stated in a written policy explained to all lawyers and support staff within the firm, supported by an administration that violation of the policy will result in sanctions, up to and including dismissal.*



8. *Affidavits should be provided by the appropriate firm members, setting out that they have adhered to and will continue to adhere to all elements of the screen.*
9. *The former client, or if the former client is represented in that matter by a member, that member, should be advised:*
  - a) *that the screened member is now with the new law firm, which represents the current client, and,*
  - b) *of the measures adopted by the new law firm to ensure that there will be no disclosure of confidential information.*
10. *The screened member should not participate in the fees generated by the current client matter.*
11. *The screened member's office or workstation should be located away from the offices or workstations of those working on the matter.*
12. *The screened member should use associates and support staff different from those working on the current client matter.*

### **TRANSITIONAL PROVISIONS**

- 223.** (1) A member enrolled pursuant to s.20(1)(a) of the Act shall within 30 days of such enrolment comply with all provisions and requirements of the Act and these Rules in respect of such membership.
- (2) Failure to meet the requirements of this Rule shall, unless otherwise directed by the Executive, result in the immediate suspension of that member's membership.
- 224.** (1) A student-at-law serving articles under the provisions of the Legal Profession Ordinance R.O. 1958, c.64 shall upon the coming into force of the Act be admitted to The Society as a student-at-law.
- (2) A student-at-law admitted under this Rule shall, within 30 days of the date of admission, complete all of the requirements for admission as a student-at-law as set out in the Act and these Rules, and any failure to do so shall result in the immediate termination of articles and membership as a student-at-law.
- 225.** Every fee, assessment or other levy due and payable upon the coming into force of the Act shall be paid by each member on a pro-rata basis according to the number of weeks or parts thereof remaining from the date of proclamation of the Act up to and including the 31st day of December next following such proclamation.
- 226.** With respect to any transitional provision set out in the Act or these Rules, the Executive may, upon application by any member affected, waive any such provision and

impose such other provision as may be required in order to effect a fair and orderly transition of the affairs of The Society.

## **FORMS**

**227.** All of the forms annexed hereto may be amended from time to time by resolution of the Executive and shall be used with such variations as the circumstances require.