



Rules

Law Society of Yukon

**Approved January 16, 2020,
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RULES LAW SOCIETY OF YUKON

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**RULES
LAW SOCIETY OF YUKON**

PART 1

Interpretation

1. In this Part

“Act” means the *Legal Profession Act, 2017*;

“active member” means a lawyer who is

- (a) a member in good standing; and
- (b) entitled to provide legal services in Yukon;

“election day” means,

- (a) for a general election
 - (i) for the position of President, the day before the annual general meeting in every second year; and
 - (ii) for elected positions on the Executive other than President, the day before the annual general meeting in every third year; and,
- (b) for a special election for a position on the Executive, the date set by the Executive under rule 17;

“eligible voter” means a lawyer who is a member in good standing;

“meeting of the Society” means an annual general meeting or a special meeting of the Society;

“official scrutineer” means

- (a) the two public representatives;
- (b) one public representative, if the other public representative is unavailable or unable to act; or
- (c) the Executive Director if both public representatives are unavailable or unable to act.

Division 1 - The Society

Head Office

2. The head office of the Society must be located in the City of Whitehorse, Yukon.

Seal

3. The Executive Director or any member of the Executive may affix the Society's seal to a document requiring the seal.

Financial year end

4. The financial year end of the Society is December 31 in each year.

Appointing Auditor

5. The Executive must appoint an auditor annually to prepare audited financial statements for the Society.

Banking and signing authority

6. (1) The Society must maintain its bank accounts at a chartered bank located in the City of Whitehorse, Yukon, as the Executive determines.

(2) Funds in a bank account of the Society may be paid out with authorization in writing of two members of the Executive, or one member of the Executive and the Executive Director.

Ordering Audits

7. The Executive may, at any time, order an audit of accounts, records or books of the Society.

Division 2 - Election of the Executive

Election of Executive

8. (1) A general election for the position of President must be held every second year and concluded on election day.

(2) A general election for the elected positions on the Executive other than President must be held every third year and concluded on election day.

- (3) An election for positions on the Executive must be conducted by secret ballot.

Terms on the Executive

9. (1) The term for the position of President is two years.

(2) The term for each elected position on the Executive other than President is three years.

Notice of election

10. (1) At least 45 days before election day the Executive Director must email or otherwise deliver to each eligible voter a notice of election of the Executive and a call for nominations.

(2) On request of an individual who becomes an eligible voter less than 45 days before election day, the Executive Director must provide the individual with a notice of election and call for nominations.

Candidates for Executive - eligibility and nomination

11. (1) A lawyer who is a member in good standing and resident in Yukon is eligible to be nominated as a candidate for the Executive.

(2) A nomination as a candidate for election to the Executive must

(a) be in writing and be signed by two eligible voters;

(b) specify whether the individual is being nominated as a candidate for the position of President or as a candidate for an elected position other than President;

(c) include written consent of the individual being nominated; and

(d) be delivered to the head office of the Society at least 30 days before election day.

Ballots and instructions for voting

12. (1) At least 20 days before election day the Executive Director must email or otherwise deliver to each eligible voter a ballot and instructions for voting.

(2) On request of an individual who becomes an eligible voter less than 20 days before election day, the Executive Director must provide the individual with a ballot and instructions for voting.

Voting

13. (1) To vote in an election of the Executive an eligible voter must, in accordance with the instructions for voting, mark and seal their ballot and deliver it to the head office of the Society before 12:00 p.m. on election day.

(2) A ballot that is not marked, sealed and delivered according to the instructions for voting will not be counted.

Elections results

14. (1) Starting at 1:00 p.m. on election day, the official scrutineer must open the ballots and record the votes cast for each candidate. The official scrutineer must ensure that only ballots marked, sealed and delivered according to the instructions for voting are counted.

(2) The candidate for the position of President receiving the most votes is elected as President.

(3) For the elected positions other than President, the four candidates receiving the most votes are elected to the Executive.

(4) If an equal number of votes is cast for two or more candidates and, as a result, election to a position on the Executive is undecided, the official scrutineer must

(a) put the name of each candidate with an equal number of votes on a separate piece of paper and place the names in a ballot box; and

(b) draw a name from the box.

(5) The candidate whose name is drawn under subrule (4) is deemed elected.

(6) Any candidate or their designated agent may be present when the ballots are opened, counted and the votes are recorded.

Election results published

15. (1) When the official scrutineer has completed counting the ballots, they must immediately provide a written record of the election results to the Executive Director.

(2) As soon as practicable after receiving the election results under subrule (1), the Executive Director must

(a) notify the candidates of the results; and

(b) publish the results on the Society's website.

(3) The Executive Director must provide a copy of the record of the election results to any candidate or eligible voter upon request.

Retaining election results records

16. The Executive Director must retain all ballots and the written record of election results for a period of 60 days after the date the results are published on the Society's website.

Special elections and vacancies

17. (1) If the position of President becomes vacant, the Executive may
- (a) appoint a lawyer who is a member in good standing and resident in Yukon to fill the vacancy until the next general election for the position of President; or
 - (b) order that a special election be held to fill the position until the next general election for the position of President and set the date for the special election.
- (2) If an elected position on the Executive other than President becomes vacant, the Executive may
- (a) appoint a lawyer who is a member in good standing and resident in Yukon to fill the vacancy until the next general election for positions on the Executive other than President; or
 - (b) order that a special election be held to fill the vacant position until the next general election for positions on the Executive other than President and set the date for the special election.
- (3) The provisions for a general election of the Executive set out in this Division apply, with any necessary modifications, to a special election ordered under subrules (1) or (2).

Disputing election results

18. (1) An eligible voter may dispute the validity of an election of the Executive, or the election of an individual candidate to the Executive, on application to the Supreme Court filed no later than 10 days after the election results are first published on the Society's website.
- (2) If the judge hearing the application concludes 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, the judge may find the election was valid.
- (3) If the judge hearing the application concludes the election was invalid, they must give directions for holding another election and, unless the judge orders otherwise, the members of the Executive in office immediately before the invalid election will continue in office until the first meeting of the Executive following the new election.

(4) If the judge hearing the application concludes the election of an individual candidate is invalid, but the election of the remainder of the Executive is valid, the judge may give directions for holding a special election for that position.

Division 3 - The Executive, Officers and Executive Meetings

Meeting of the new Executive

19. (1) The Executive elected at a general election must meet within 30 days after the election day.

(2) The Executive in office immediately before a general election must remain in office and continue to be the Executive of the Society until the date the newly elected Executive meets.

Officers

20. (1) The officers of the Society are the President, Past President, Vice-President, Secretary, and Treasurer.

(2) The Executive must designate from amongst the elected members of the Executive a Vice-President, a Secretary, and a Treasurer.

President

21. The President

(a) has the powers and must perform the duties and functions usual to the office of President, including being responsible for the general oversight and direction of the affairs of the Society; and

(b) may perform other duties assigned by the Executive.

Vice-President

22. The Vice-President

(a) has the powers and must perform the duties and functions usual to the office of Vice-President;

(b) must assume the powers, duties and functions of the President if the position of President is vacant or the President is absent or unable to act; and

(c) may perform other duties assigned by the Executive.

Treasurer

23. The Treasurer

(a) has the powers and must perform the duties and functions usual to the office of Treasurer, including ensuring the books of account and financial records of the Society are properly maintained; and

(b) may perform other duties assigned by the Executive.

Secretary

24. The Secretary

(a) has the powers and must perform the duties and functions usual to the office of Secretary; and

(b) may perform other duties assigned by the Executive.

Automatic removal from Executive

25. If an elected member of the Executive or the immediate Past President ceases to be a member in good standing or resident in Yukon they are automatically removed from the Executive.

Removal for cause

26. An elected member of the Executive or the immediate Past President may be removed for cause, including the refusal or inability of the elected member or the immediate Past President to perform their duties, by motion approved by at least two-thirds of the eligible voters present at a meeting of the Society.

Meetings of the Executive

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

Quorum

28. Quorum for a meeting of the Executive is 50 percent or more of the number of members on the Executive at the time of the meeting.

Resolution by consent in writing

29. A resolution of the Executive consented to in writing by a majority of the members on the Executive is as valid and effective as if duly passed at a meeting of the Executive.

Division 4 - Meetings of the Society

Notice of annual general meeting

30. At least 45 days before an annual general meeting of the Society the Executive Director must email or otherwise deliver to each member in good standing written notice of the proposed agenda and the date, time, and place for the meeting.

Special meetings

31. (1) The Executive may call a special meeting of the Society at any time.

(2) The Executive must call a special meeting of the Society within 14 days of receiving a request in writing signed by three or more active members. The request must also set out in reasonable detail the matter proposed to be considered at the meeting.

(3) Notice of a special meeting called under subrule (1) or (2) must

(a) be emailed or otherwise delivered by the Executive Director to each member in good standing at least 10 days but not more than 90 days before the special meeting is to be held; and

(b) state the proposed agenda and the date, time, and place for the meeting.

Notice for rule requiring member approval

32. If the Executive proposes to make a rule that under the Act requires approval of the members, the Executive must give each eligible voter

(a) at least 45 days' notice in writing for a rule to be presented for approval at an annual general meeting of the Society; and

(b) despite subrule 31(3)(a), at least 30 days' notice in writing for a rule to be presented for approval at a special meeting of the Society.

Quorum

33. (1) Quorum at an annual general meeting is 15 eligible voters.

(2) Quorum at a special meeting is seven eligible voters.

Chair

34. A meeting of the Society must be chaired by the President or, if the President is absent or unable to act, the Vice-President, or, if the President and Vice-President are absent or unable to act, by an active member selected by the eligible voters present at the meeting.

Voting at a general meeting

35. (1) To vote at a meeting of the Society an eligible voter must be physically present at the meeting.

(2) Subject to rule 26, at a meeting of the Society the decision of the majority of eligible voters present at the meeting determines whether a resolution is passed or defeated.

Rules requiring member approval

36. A rule that under the Act requires approval of the members is approved if a majority of the eligible voters who vote at a meeting of the Society approve the rule.

PART 2

Interpretation

37. (1) In this Part

“application” includes, unless the context indicates otherwise, the application form and all information and supporting documentation the applicant is required to provide with the application;

“approved law program” means a law degree program designated by the Executive under subrule 44(1);

“bar admission course” means the Professional Legal Training Course operated by the Law Society of British Columbia or a bar admission course approved by the Credentials Committee under rule 45;

“Canadian Legal Advisor” means an individual who is a member of the *Chambre des notaires du Québec* who applies for membership under Division 8 and is admitted as an active member;

“cash” means coins referred to in section 7 of the *Currency Act (Canada)*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act (Canada)* that are intended for circulation in Canada, and coins or bank notes of countries other than Canada;

“certificate of permission to act” means a certificate granted by the Credentials Committee under subrule 79(1), authorizing an individual to provide legal services in Yukon as an interjurisdictional practitioner;

“client” means a person who

- (a) consults a lawyer and on whose behalf the lawyer provides or agrees to provide legal services; or
- (b) having consulted the lawyer, reasonably concludes the lawyer has agreed to provide legal services on their behalf, and includes a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client’s work;

“Compensation Fund assessment” means

- (a) for an active member, the amounts set by the Executive under subrules 140(1) and 142(1); and
- (b) for an interjurisdictional practitioner, the amount referred to in subrule 141(1);

“CPD activities” means continuing professional development activities designated by the Executive under subrule 93(1);

“disbursements” means the amounts paid or required to be paid to a third party by a member or a member’s law firm on a client’s behalf in connection with the provision of legal services to the client by the member or the member’s law firm which will be reimbursed by the client;

“insurance assessment” means the assessment levied by the Executive under subrule 148(1);

“National Committee on Accreditation” means the National Committee on Accreditation of the Federation of Law Societies of Canada;

“non-practising member” means a lawyer who is a member in good standing whose application under Division 11 to be a non-practising member is approved;

“principal” means an active member approved by the Credentials Committee under rule 62 to act as a principal;

“professional conduct record” of a member or interjurisdictional practitioner, means the record for that person maintained by the Executive Director under rule 40;

“Yukon statutes exam” means an exam approved by the Credentials Committee under rule 46;

(2) The expressions “Act” and “active member” have the meanings assigned by rule 1.

Division 5 - Membership Registers, Member Files, Professional Conduct Records

Membership registers

38. (1) The Executive must record in the roll of lawyers the full name of each individual admitted as a lawyer, the date of admission, and class of membership.

(2) The Executive must record in the registry of articulated students the full name of each individual admitted as an articulated student and the date of admission.

Member file

39. (1) The Executive Director must maintain, for each individual who is admitted as a member, a file containing

- (a) the individual’s application for membership in the Society;
- (b) the date the individual was admitted to the Society and current standing in the Society;
- (c) a copy of the individual’s certificate of membership;

- (d) the individual's business address and contact information for providing legal services in Yukon for any period the individual is a member or, if the individual does not provide legal services in Yukon, the address for the individual's principal residence and their contact information for any period the individual is a member;
- (e) any application for change in the individual's class of membership or an application under subrule 90(1) to have an automatic suspension lifted;
- (f) the individual's application to act as a principal for an articled student;
- (g) the date, if any, the individual was removed from the roll of lawyers or the registry of articled students and the reason for the removal;
- (h) a copy of a notice given to the Executive Director under rule 41 and particulars of the charge;
- (i) a copy of a notice given to the Executive Director under subrule 42(1)(a) and particulars of the term of imprisonment;
- (j) a copy of a notice given to the Executive Director under subrule 42(2)(a) if the charge was disposed of by an acquittal, stay of proceedings or the charge being withdrawn;
- (k) a copy of a notice given to the Executive Director under subrule 42(2)(b) and particulars of the complaint;
- (l) a copy of a notice given to the Executive Director under rule 43;
- (m) the date and particulars of any termination of the individual's articles under rules 51, 52, or 53;
- (n) a copy of any certificate of standing issued by the Society for the individual;
- (o) the date the individual was admitted as a lawyer or articled student in a governing body or a body that regulates legal professionals in a jurisdiction outside Canada and, during the period the individual is a member of the Society, the status of the individual's membership or enrollment in that body; and
- (p) any other material or information the Executive directs to be placed in the individual's file for the purposes of the Act or these rules.

(2) A member must notify the Executive Director in writing of any change to the information contained in the member's file under subrules (1)(d) and (o) within 30 days of the change.

Professional conduct record

40. The Executive Director must maintain, for each individual who is admitted as a member, and for each individual who is authorized to provide legal services in Yukon as an interjurisdictional practitioner with respect to their practice of law in Yukon, a professional conduct record containing

- (a) a record of any order made against the individual under section 64 of the Act or in proceedings under Part 4, Division 4 of the Act or these rules made under those provisions, and the written decision or a summary of the findings made relating to the order;
- (b) the report of members of the Complaints Investigation Committee on a review under rule 117;
- (c) the date and circumstances of the individual
 - (i) being readmitted as a member after being removed or resigning as a member in relation to proceedings under Part 4 of the Act, or
 - (ii) having a suspension lifted after being suspended in relation to proceedings under Part 4 of the Act;
- (d) a record of any disciplinary or remedial action taken by a governing body or a body that regulates legal professionals in a jurisdiction outside Canada, and a summary of the findings made relating to the action taken;
- (e) any conditions or restrictions on the provision of legal services accepted or imposed under the Act or these rules;
- (f) a record of any payment made from the Compensation Fund for loss caused by the member and a summary of the decision made by the Executive relating to the payment;
- (g) any failure to pay a fine or other financial penalty, costs or restitution imposed under the Act or these rules, by the time the amount was to be paid;
- (h) the outcome of an application for judicial review of a decision taken in relation to proceedings under Part 4 of the Act, or taken in relation to proceedings under predecessor provisions to Part 4;
- (i) the outcome of an appeal under section 86 of the Act;
- (j) a copy of a notice given to the Executive Director under subrule 42(1)(b) and a summary of the findings made relating to the order or direction;

- (k) a copy of a notice given to the Executive Director under subrule 42(2)(a) where the disposition of a charge includes a conviction;
- (l) any decision to reject an application to act as a principal for an articulated student;
- (m) any other document or information required by the Executive to be placed in the individual's professional conduct record for the purposes of the Act or these rules.

Reporting obligations

41. A member, an applicant for admission as a member, an interjurisdictional practitioner or an applicant to be an interjurisdictional practitioner who is charged with any of the following offences must, as soon as practicable after being charged, give the Executive Director written notice and particulars of the charge:

- (a) an indictable offence under a federal enactment;
- (b) an offence under a federal enactment that is prosecutable either as an indictable offence or as a summary conviction offence;
- (c) a summary conviction offence under the federal *Income Tax Act*, *Criminal Code*, *Controlled Drugs and Substances Act* or *Food and Drugs Act*;
- (d) a summary conviction offence under personal or corporate tax legislation of any province, including a regulation or regulatory instrument made under the legislation;
- (e) an offence under the *Securities Act* or an analogous enactment in any province, including contravening a regulatory instrument made under the enactment; or
- (f) an offence in a jurisdiction outside Canada that is substantially similar to an offence referred to in subrules (a) to (e).

42. (1) A member, an applicant for admission as a member, an interjurisdictional practitioner or an applicant to be an interjurisdictional practitioner must immediately notify the Executive Director in writing of:

- (a) any order requiring the individual to serve a term of imprisonment, including a conditional or intermittent term of imprisonment;
- (b) any order or direction made against the individual in a disciplinary or conduct review proceeding of a governing body or a body that regulates legal professionals in a jurisdiction outside Canada.

(2) A member, an applicant for admission as a member, an interjurisdictional practitioner or an applicant to be an interjurisdictional practitioner must notify the Executive Director in writing of:

(a) the disposition of a charge referred to in rule 41 as soon as practicable after the disposition is known, including any conditions accepted or agreement made relating to the disposition;

(b) a complaint made against the individual to a discipline or conduct review body of a governing body or a body that regulates legal professionals in a jurisdiction outside Canada, as soon as practicable after the complaint is made.

43. A member, an applicant for admission as a member, an interjurisdictional practitioner or an applicant to be an interjurisdictional practitioner must immediately notify the Executive Director if, under the *Bankruptcy and Insolvency Act* (Canada), an application for a bankruptcy order is made against them or they file an assignment for the general benefit of creditors.

Division 6 - Articled Students

Approved law program

44. (1) For the purposes of determining qualification for admission to membership in the Society, the Executive may designate as an approved law program

(a) any common law degree program at a common law school in Canada; and

(b) on the recommendation of the Credentials Committee, a law degree program at a school in Canada other than a common law degree program at a common law school.

(2) The Credentials Committee must maintain a list of approved law programs.

Approved bar admission course

45. The Credentials Committee may approve a bar admission course administered by a governing body as satisfying the bar admission course requirements for an articled student.

Yukon statutes exam

46. The Credentials Committee may approve an exam respecting federal and Yukon enactments and rules of court for Yukon as a requirement for completing articles or qualifying for admission as a lawyer.

Admission as an articled student

47. (1) An individual with a law degree from an approved law program or a Certificate of Qualification issued by the National Committee on Accreditation may apply to the Credentials Committee for admission as an articled student.
- (2) An application under subrule (1) must be made in Form 1 and be accompanied by
- (a) a certified true copy of the degree or other official document verifying the applicant has a law degree from an approved law program, or a certified true copy of the certificate or other official document verifying the applicant has a Certificate of Qualification issued by the National Committee on Accreditation;
 - (b) a copy of an articling agreement in Form 2 completed and signed by the applicant and a principal;
 - (c) any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be admitted as an articled student; and
 - (d) the membership fee for an articled student.
- (3) The Credentials Committee may, upon the written request of an applicant, waive a requirement to provide information needed to complete an application, or waive or reduce the membership fee to be provided with the application.

Articles

48. (1) An articled student must complete 12 months of continuous service under an articling agreement approved by the Credentials Committee, attend a bar admission course and write a Yukon statutes exam.
- (2) For the purposes of subrule (1), the 12-month period of continuous service under an articling agreement includes the period of attendance at a bar admission course and a total of no more than four weeks of leave during articles.
- (3) A principal and an articled student may in writing request the Credentials Committee to extend the 12-month period of continuous service under an articling agreement to provide the student with additional time to
- (a) meet the requirements of the articling agreement;
 - (b) attend a bar admission course; or
 - (c) write a Yukon statutes exam;

and the Committee, if satisfied that there are special circumstances and that it would be reasonable to do so, may extend the period of service for a time determined by the Committee.

(4) Despite subrule (1), an individual who served as a law clerk with the Supreme Court of Canada, the Federal Court of Canada, a provincial superior court, or the Supreme Court or Territorial Court of Yukon, who is admitted to the Society as an articulated student, is entitled to count each month served as law clerk as one month of service under an articling agreement, to a maximum credit of five months.

Additional leave

49. (1) The Credentials Committee may, on the written request of an articulated student, allow the student to take leave in addition to the four weeks provided for in subrule 48(2) for sickness, maternity or parental leave, or other grounds permitted by the Committee.

(2) If the Credentials Committee allows an articulated student to take a period of leave under subrule (1), the Committee may require the student to complete a further period of articles determined by the Committee.

Assigning articles

50. (1) The Credentials Committee may, on the written request of an articulated student, consent to the student's articles being assigned to another principal.

(2) Consent under subrule (1) must be in writing and specify the date the assignment takes effect.

(3) The Credentials Committee may, as a condition of giving consent, require the articulated student and the new principal to enter an articling agreement approved by the Committee or specify amendments to the terms and conditions of the student's original articling agreement.

Automatically terminated

51. (1) An articulated student's articles are automatically terminated if the student's principal

- (a) dies;
- (b) ceases to be a member in good standing;
- (c) is removed from the roll of lawyers; or
- (d) ceases to be resident in Yukon.

(2) Despite subrule (1)(b), if the principal was in good standing when the student began their articles, and the principal ceases to be in good standing solely because the principal

did not pay a fee or assessment when due, the Credentials Committee may direct in writing that the articles are not automatically terminated.

(3) If the Credentials Committee directs under subrule (2) that the articles are not automatically terminated, the Committee must set a date, no more than 30 days from the date it issues its direction, on which the articles will be automatically terminated if the fee or assessment owed by the principal remains unpaid.

Credentials Committee may terminate

52. If an order is made against a principal in proceedings under Part 4 of the Act during an articulated student's articles, the Credentials Committee may terminate the articles on notice in writing to the principal and the student, or allow the principal to continue to act as the student's principal subject to conditions set by the Committee.

Terminate with notice

53. An articulated student may terminate their articles upon reasonable notice in writing to the student's principal and the Credentials Committee.

New principal

54. (1) An articulated student whose articles are terminated under rule 51, 52, or 53, may, without further fee, apply to the Credentials Committee for approval to continue their articles under an articling agreement with a new principal.

(2) If the Credentials Committee approves an application under subrule (1), the Committee must specify the amount of time served under the student's original articles that will be credited towards the 12 months of continuous service required for articles.

Articles with another member

55. (1) A principal may allow an articulated student to serve up to one quarter of the period of the student's articles with another active member who has provided legal services as a lawyer for at least seven years, to enable the student to obtain training or instruction the principal considers beneficial to the student.

(2) The Credentials Committee may, upon the written request of a principal, allow an articulated student to serve up to one quarter of the period of the student's articles with an individual who is not an active member if the individual is licensed to practise law as a lawyer in another province and has provided legal services as a lawyer for at least seven years, to enable the student to obtain training or instruction the principal considers beneficial to the student.

Bar Admission Course

56. An articulated student must, during the term of their articling agreement, attend and pass a bar admission course, unless permitted by the Credentials Committee to do so at another time.

Yukon statutes exam

57. (1) An articulated student must, during the term of their articling agreement, write and pass a Yukon statutes exam.

(2) A Yukon statutes exam will be marked by a person designated by the Credentials Committee. If a student does not receive a passing mark, the exam will be remarked by a second person designated by the Committee. The mark determined by the second person will be the final mark.

(3) An articulated student who does not pass the Yukon statutes exam may write a supplemental Yukon statutes exam within the period set by the Credentials Committee, and the supplemental exam will be marked as set out in subrule (2).

Additional requirements

58. If an articulated student attends a bar admission course but does not pass the course, or writes but does not pass a supplemental Yukon statutes exam, the Credentials Committee may require the student to do one or more of the following:

- (a) complete further articles for a period determined by the Committee;
- (b) take and pass another Yukon statutes exam;
- (c) re-attend and pass a bar admission course.

Articled student – scope of practice

59. (1) An articulated student may, during their articles, represent another person and provide legal services in

- (a) Territorial Court
 - (i) on any small claims matter;
 - (ii) on a criminal offence proceeded with by way of summary conviction;
 - (iii) on a criminal offence proceeded with by way of indictment but only for the purpose of:

- A. speaking to an application for adjournment;
 - B. fixing a date for trial;
 - C. speaking to an application to secure the release of a person from custody;
 - D. having an election put to an accused person under sections 536 or 554 of the *Criminal Code* (Canada);
- (iv) on a matter proceeded with in youth justice court that would otherwise have proceeded by summary conviction in adult court;
 - (v) on a matter under the *Children's Law Act* or the *Family Property and Support Act* for the purpose of:
 - A. speaking to an application for adjournment;
 - B. fixing a date for trial;
 - (vi) on an offence under territorial legislation;
 - (vii) on a judgment summons or examination in aid of execution;
- (b) Supreme Court
 - (i) on an uncontested matter in chambers;
 - (ii) on a contested matter in chambers regarding a procedural application;
 - (iii) on a judgment summons or examination in aid of execution;
 - (c) any matter before an administrative tribunal; and
 - (d) any court in Yukon, including the Court of Appeal, with leave of the Court, on any matter not referred to in subrule (a) or (b), provided the student is in the presence of and directly supervised by the student's principal or an active member designated by the principal.
- (2) The principal of an articulated student or an active member supervising an articulated student must ensure
- (a) the student is supervised to the extent necessary when the student is appearing or acting as counsel, and

(b) the student is competent and properly prepared to appear or act as counsel in the matter.

(3) Despite subrule (1), an articulated student is not entitled to appear before a court or provide legal services in a matter if the student is prohibited or limited from doing so under a federal or territorial enactment.

Special Articles

60. (1) An individual who is a student enrolled in an approved law program, or is qualified for admission to the Society as an articulated student, may apply to the Credentials Committee for admission as an articulated student under special articles.

(2) An application under subrule (1) must be made in Form 3 and be accompanied by

(a) a copy of a special articles agreement in Form 4 completed and signed by the applicant and a principal;

(b) any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be admitted as an articulated student under special articles; and

(c) the membership fee for an articulated student.

(3) The Credentials Committee may, upon the written request of an applicant, waive a requirement to provide information needed to complete an application, or waive or reduce the membership fee to be provided with the application.

(4) If the Credentials Committee approves an application for special articles the Committee must specify in writing the period of the special articles and the legal services that may be provided by the articulated student during the special articles.

(5) The time spent by an articulated student under special articles does not count toward the 12 months of continuous service under an articling agreement required by subrule 48(1).

(6) Special articles may be revoked by the Credentials Committee at any time for any reason considered sufficient by the Committee.

Ceasing to be an articulated student

61. (1) An individual ceases to be a member of the Society as an articulated student

(a) when they are admitted to the Society as a lawyer or cease to be a member under subsection 17(1) of the Act; or

(b) if subrule (a) does not apply,

- (i) 60 days after the period for concluding their articles expires; or
- (ii) in the case of an articulated student under special articles, at the conclusion of the period of the special articles.

(2) Despite subrule (1)(b), if an articulated student is suspended or is the subject of proceedings under Part 4 of the Act, the student does not cease to be a member until

- (a) the suspension is lifted;
- (b) the proceedings under Part 4 have concluded and the terms of any order made under that Part have been satisfied; or
- (c) the Executive consents under section 18 of the Act to the student resigning as a member.

Principal

62. (1) An active member

- (a) who is resident in Yukon;
- (b) who has provided legal services for at least seven years as
 - (i) an active member, or
 - (ii) a lawyer licensed to practise law in another province; and
- (c) whose practice would provide an articulated student with a reasonable opportunity for instruction and training in the general practise of law

may apply to the Credentials Committee in Form 5 to be approved to be a principal for an articulated student.

(2) Despite subrule (1)(a), an active member who is not resident in Yukon may apply under subrule (1) to be approved to be a principal for an articulated student under special articles.

(3) An application under subrule (1) must be accompanied by a written direction from the applicant authorizing the Executive Director to provide the Credentials Committee with

- (a) the applicant's professional conduct record; and
- (b) the record of professional liability claims paid in respect of the applicant for which there was an admission of liability or a finding of liability made against the applicant.

(4) In determining whether to approve an active member to be a principal, the Credentials Committee must consider

- (a) whether the member's practice would provide the articulated student with a reasonable opportunity for instruction in the general practise of law;
- (b) the member's professional conduct record and record of professional liability claims paid in respect of the member; and
- (c) any other factor the Credentials Committee considers relevant to protect the public interest in the delivery of legal services.

(5) An active member must apply separately under subrule (1) each time they propose to be a principal for an articulated student.

Request a review

63. (1) If the Credentials Committee

- (a) does not approve an applicant under rule 62 to be a principal; or
- (b) fails to make a decision within 30 days after receiving a valid application,

the applicant may ask the Executive for a review under this subrule.

(2) Subsections 16(3) to (8) of the Act apply, with any necessary modifications, to a review requested under subrule (1).

One articulated student

64. A principal may not have more than one articulated student serving their articles under the principal at any one time.

Supervision

65. The principal of an articulated student is responsible for ensuring the student is supervised in the provision of legal services by the student in the manner set out in the articling agreement.

Division 7 - Members - Lawyers

Application for membership – articulated student to active member

66. (1) An individual who has successfully completed their articles under Division 6 may apply to the Credentials Committee for admission as an active member.

- (2) An application under subrule (1) must be made in Form 6 and be accompanied by
 - (a) a declaration in Form 7 from each principal with whom the applicant articulated;
 - (b) a statement signed by the applicant certifying they are aware of their obligations under the Code of Conduct to perform all legal services undertaken on behalf of a client to the standard of a competent lawyer, including knowing the substantive law and procedures in Yukon for the areas of law in which the applicant provides legal services in Yukon;
 - (c) any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be admitted as an active member;
 - (d) the membership fee for an articulated student to become an active member;
 - (e) the Compensation Fund assessment; and
 - (f) the insurance assessment if the applicant on admission will be a subject member insured under the group insurance contract.

(3) If it is more than 24 months between the time an applicant completes their articles and they apply for admission, the Credentials Committee may, as a condition for considering their application valid, require the applicant to do one or both of the following:

- (a) complete further articles as an articulated student for a period determined by the Committee;
- (b) complete part or all of a bar admission course;

and submit proof in a form satisfactory to the Committee that the articles or bar admission course have been completed successfully.

Application for membership – licensed lawyer from another province

67. (1) An individual who is licensed to practise law as a lawyer in another province, and eligible to provide legal services in that province, may apply to the Credentials Committee for admission as an active member.

- (2) An application under subrule (1) must be made in Form 6 and be accompanied by
 - (a) a certificate of standing from each governing body, and each body regulating legal professionals in a jurisdiction outside Canada, in which the applicant is or has been a member, dated no more than 60 days before the date the application is received by the Credentials Committee;

- (b) two letters of reference and good character satisfactory to the Credentials Committee from
 - (i) members in good standing of each governing body, and each body regulating legal professionals in a jurisdiction outside Canada, in which the applicant is a member; or
 - (ii) judges of a superior court, or the equivalent, in the jurisdiction where each governing body or body outside Canada operates;
- (c) a statement signed by the applicant certifying they are aware of their obligations under the Code of Conduct to perform all legal services undertaken on behalf of a client to the standard of a competent lawyer, including knowing the substantive law and procedures in Yukon for the areas of law in which the applicant provides legal services in Yukon;
- (d) any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be admitted as an active member;
- (e) the application fee for admission as an active member;
- (f) the membership fee for an active member;
- (g) the Compensation Fund assessment; and
- (h) the insurance assessment if the applicant on admission will be a subject member insured under the group insurance contract.

Application for membership – other

68. (1) An individual who
- (a) has been licensed to practise law as a lawyer in another province but is not currently licensed; or
 - (b) is licensed as a lawyer in another province but is not entitled to provide legal services as a lawyer in that province,

may apply to the Credentials Committee for admission as an active member.

- (2) An application under subrule (1) must be made in Form 6 and be accompanied by
 - (a) a certificate of standing from each governing body, and each body regulating legal professionals in a jurisdiction outside Canada, in which the

applicant is or has been a member, dated no more than 60 days before the date the application is received by the Credentials Committee;

- (b) two letters of reference and good character satisfactory to the Credentials Committee from
 - (i) members in good standing of each governing body, and each body regulating legal professionals in a jurisdiction outside Canada, in which the applicant is a member; or
 - (ii) judges of a superior court, or the equivalent, in the jurisdiction where each governing body or body outside Canada operates;
- (c) a statement signed by the applicant certifying they are aware of their obligations under the Code of Conduct to perform all legal services undertaken on behalf of a client to the standard of a competent lawyer, including knowing the substantive law and procedures in Yukon for the areas of law in which the applicant provides legal services in Yukon;
- (d) any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be admitted as an active member;
- (e) the application fee for admission as an active member;
- (f) the membership fee for an active member;
- (g) the Compensation Fund assessment; and
- (h) the insurance assessment if the applicant on admission will be a subject member insured under the group insurance contract.

69. The Credentials Committee may, as a condition for considering an application valid, require an applicant under rule 68 to do any or all of the following:

- (a) complete articles as an articulated student for a period determined by the Committee;
- (b) complete part or all of a bar admission course;
- (c) write a Yukon statutes exam;

and submit proof in a form satisfactory to the Committee that the articles, bar admission course or statutes exam have been completed successfully.

Application for membership – lawyer from outside Canada

70. (1) An individual who is or has been licensed to practise law as a lawyer in a jurisdiction outside Canada who

- (a) has not been licensed to provide legal services as a lawyer in a province; and
- (b) has a law degree from an approved law program or a Certificate of Qualification issued by the National Committee on Accreditation

may apply to the Credentials Committee for admission as an active member.

- (2) An application under subrule (1) must be made in Form 6 and be accompanied by
 - (a) a certified true copy of the degree or other official document verifying the applicant has a law degree from an approved law program, or a certified true copy of the certificate or other official document verifying the applicant has a Certificate of Qualification issued by the National Committee on Accreditation;
 - (b) a certificate of standing from each body regulating legal professionals in a jurisdiction outside Canada in which the applicant is or has been a member, dated no more than 60 days before the date the application is received by the Credentials Committee;
 - (c) two letters of reference and good character satisfactory to the Credentials Committee from members in good standing of each body regulating legal professionals in a jurisdiction outside Canada in which the applicant is a member, or from judges of a superior court, or the equivalent, in the jurisdiction where each body operates;
 - (d) any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be admitted as an active member;
 - (e) the application fee for admission as an active member;
 - (f) the membership fee for an active member;
 - (g) the Compensation Fund assessment; and
 - (h) the insurance assessment if the applicant on admission will be a subject member insured under the group insurance contract.

Conditions

71. The Credentials Committee may, as a condition for considering an application valid, require an applicant under rule 70 to do any or all of the following:

- (a) complete articles as an articulated student for a period determined by the Committee;
- (b) complete part or all of a bar admission course;
- (c) write a Yukon statutes exam;

and submit proof in a form satisfactory to the Committee that the articles, bar admission course or statutes exam have been completed successfully.

Division 8 - Canadian Legal Advisors

Application for membership – Canadian Legal Advisor

72. (1) An individual who is a member of the Chambre des notaires du Québec may apply to the Credentials Committee for admission as an active member as a Canadian Legal Advisor.

- (2) An application under subrule (1) must be made in Form 6 and be accompanied by
 - (a) a certificate of standing from each governing body, and each body regulating legal professionals in a jurisdiction outside Canada, in which the applicant is or has been a member, dated no more than 60 days before the date the application is received by the Credentials Committee;
 - (b) two letters of reference and good character satisfactory to the Credentials Committee from
 - (i) members in good standing of each governing body and each body regulating legal professionals in a jurisdiction outside Canada in which the applicant is a member; or
 - (ii) judges of a superior court, or the equivalent, in the jurisdiction where each governing body or body outside Canada operates;
 - (c) any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be admitted as a member; and
 - (d) the application fee for admission as an active member;
 - (e) the membership fee for an active member;

- (f) the Compensation Fund assessment; and
- (g) the insurance assessment if the applicant on admission will be a subject member insured under the group insurance contract.

Practice restrictions

73. (1) An individual who is a member of the Chambre des notaires du Québec who is admitted as an active member as a Canadian Legal Advisor must only provide legal services in Yukon by

- (a) giving legal advice on
 - (i) the law of Québec and matters involving the law of Québec,
 - (ii) matters under federal jurisdiction, and
 - (iii) matters involving public international law;
- (b) drawing, revising or settling a document for use in a proceeding concerning matters under federal jurisdiction, if expressly permitted to do so by a federal statute or regulation; and
- (c) appearing as counsel or as an advocate before a tribunal on a matter under federal jurisdiction if expressly permitted to do so by a federal statute or regulation.

(2) An individual who is admitted as an active member as a Canadian Legal Advisor

- (a) must not, in respect of their membership in the Society or provision of legal services in Yukon, refer to themselves otherwise than as a Canadian Legal Advisor;
- (b) must not provide legal services in Yukon except as permitted under subrule (1); and
- (c) must not provide legal services in Yukon at any time the member is not authorized to provide those services in Québec.

(3) An individual who is an active member as a Canadian Legal Advisor who ceases to be authorized to provide legal services in Québec

- (a) is automatically suspended; and
- (b) must immediately notify the Executive Director in writing.

Division 9 - Interjurisdictional Practitioners

Application for certificate

74. (1) An individual who is licensed to practise law as a lawyer in another province may apply to the Credentials Committee for a certificate of permission to act authorizing the individual to provide legal services in Yukon as an interjurisdictional practitioner.

(2) An application under subrule (1) must be made in Form 8 and be accompanied by

(a) a certificate of standing from each governing body, and each body regulating legal professionals in a jurisdiction outside Canada, in which the applicant is or has been a member, dated no more than 60 days before the date the application is received by the Credentials Committee;

(b) any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be granted a certificate of permission to act;

(c) the application fee for a certificate of permission to act;

(d) the fee for a certificate of permission to act; and

(e) the Compensation Fund assessment, unless exempt from paying the assessment under subrule 141(2).

Scope of certificate

75. Authorization to provide legal services in Yukon under a certificate of permission to act is limited to the particular matter specified in the certificate and expires one year from the date the certificate is issued.

Certificate renewal

76. An interjurisdictional practitioner may apply to the Credentials Committee to renew a certificate of permission to act. The application for renewal must

(a) be in Form 9;

(b) be received by the Committee before the certificate being renewed expires; and

(c) be accompanied by

(i) the certificate of permission to act renewal fee; and

- (ii) the Compensation Fund assessment, unless exempt from paying the assessment under subrule 141(2).

Code of Conduct applies

77. For greater certainty, the Code of Conduct applies to an interjurisdictional practitioner respecting their provision of legal services in Yukon.

Division 10 - Credentials Committee Determinations and Reviews

Request to waive requirements

78. The Credentials Committee may, upon the written request of an applicant for admission as an active member or an applicant for a certificate of permission to act, do one or more of the following:

- (a) accept a certificate of standing dated more than 60 days before the date the application is received by the Committee;
- (b) waive a requirement to provide information needed to complete an application or that is to accompany an application;
- (c) waive or reduce the application fee, membership fee, or certificate of permission to act fee to be provided with the application.

Determination

79. (1) As soon as practicable after receiving a valid application for membership or application for a certificate of permission to act, the Credentials Committee must determine whether the applicant qualifies for membership or to be granted a certificate of permission to act, as the case may be, and direct the Executive Director to give the applicant written notice of the Committee's determination.

(2) The Credentials Committee may, in respect of an application for membership,

- (a) determine that the applicant does not meet the requisite standards of integrity, good character or competence for admission, or does not otherwise qualify for admission; or
- (b) impose conditions or restrictions on the admission that the Committee considers necessary to uphold and protect the public interest in the delivery of legal services.

(3) The Credentials Committee may, in respect of an application for a certificate of permission to act,

- (a) determine that the applicant does not meet the requisite standards of integrity, good character or competence to be granted a certificate of permission to act, or does not otherwise qualify for the certificate; or
- (b) impose conditions or restrictions on the certificate of permission to act that the Committee considers necessary to uphold and protect the public interest in the delivery of legal services.

Request a review

80. (1) An applicant for membership may request the Executive for a review
- (a) under section 16 of the Act if the Credentials Committee
 - (i) determines under subrule 79(2)(a) the applicant does not qualify for admission; or
 - (ii) fails to make a determination within 30 days after receiving a valid application; or
 - (b) under this subrule if the Credentials Committee imposes conditions or restrictions on the admission under subrule 79(2)(b) that the applicant opposes.
- (2) An applicant for a certificate of permission to act may request the Executive for a review under subsection 38(2) of the Act if the Credentials Committee
- (a) determines under subrule 79(3)(a) not to grant the applicant a certificate of permission to act;
 - (b) imposes conditions or restrictions on the certificate of permission to act under subrule 79(3)(b) that the applicant opposes; or
 - (c) fails to make a determination within 30 days after receiving a valid application.
- (3) A request for a review referred to in subrules (1) and (2) must
- (a) be made in writing and set out a detailed explanation of the grounds for the review; and
 - (b) be delivered to the Executive
 - (i) within 15 days after the applicant is notified by the Executive Director of the Credentials Committee's determination; or

(ii) if the Credentials Committee fails to make a determination within 30 days after receiving a valid application, within 15 days after the expiry of the 30-day period.

(4) Section 16 of the Act applies to a review referred to in subrule (1)(a) and, with any necessary modifications, to a review referred to in subrules (1)(b) and (2).

Division 11 -Non-practising Members, Retired Members and Resignation

Arrangements

81. An active member in private practice who intends to apply to become a non-practising member or a retired member or who intends to resign as a member must, in relation to the provision of legal services in Yukon by the member, prior to applying or giving notice of their resignation,

(a) arrange with each of the member's clients to transfer or close the member's open files with those clients;

(b) arrange for wills, titles and any other important documents in the possession of or under the control of the member to be returned to the client or transferred to the possession of another person as instructed by the client;

(c) arrange for the books, records and accounts required to be maintained by the member under Division 16 to be kept in the form and for the periods required under subrule 163(6)(c); and

(d) in respect of all money and other property held in trust for a client or other person,

(i) return the money and property to the client or other person on whose behalf it is held; or

(ii) under a written arrangement with the client or other person on whose behalf it is held, transfer the money or property to another active member subject to any conditions that apply to the money or property under the written arrangement; or

(iii) if the member provides legal services through a law firm and the money or property is held in trust by the member's law firm, under a written arrangement with the client or other person on whose behalf it is held, confirm the member's law firm will continue to hold the money or property in trust subject to any conditions that apply to the money or property under the written arrangement.

Application to be a non-practising member

82. (1) An active member may apply to the Credentials Committee to be a non-practising member.

(2) An application under subrule (1) must be made in Form 10 and be accompanied by any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be approved to be a non-practising member.

Application to be a retired member

83. (1) An active member or a non-practising member who

- (a) is at least 55 years of age;
- (b) has been a member in good standing for at least 20 years; or
- (c) has provided legal services as a lawyer for at least 20 years,

may apply to the Credential Committee to be a retired member.

(2) An application under subrule (1) must be made in Form 11 and be accompanied by any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be approved to be a retired member.

Credentials Committee may approve application

84. The Credentials Committee may approve an application under subrule 82(1) or 83(1) if the Committee is satisfied

- (a) the member has met the requirements of rule 81 applicable to the member; and
- (b) there is no reason in the public interest to deny or defer the application.

Application to be an active member

85. (1) A non-practising member or a retired member may apply to the Credentials Committee to be an active member.

(2) An application under subrule (1) must be made in Form 12 and be accompanied by

- (a) a certificate of standing from each governing body, and each body regulating legal professionals in a jurisdiction outside Canada, in which the

applicant is or has been a member, dated no more than 60 days before the date the application is received by the Credentials Committee;

(b) any other information the Credentials Committee requests the applicant to provide to assist the Committee in determining whether the applicant should be approved to be an active member;

(c) the membership fee for a non-practising member to become an active member or the membership fee for a retired member to become an active member, as the case may be;

(d) the Compensation Fund assessment; and

(e) the insurance assessment if the applicant on becoming an active member will be a subject member insured under the group insurance contract.

(3) The Credentials Committee may, upon the written request of an applicant, do one or more of the following:

(a) accept a certificate of standing dated more than 60 days before the date the application is received by the Committee;

(b) waive a requirement to provide information required to complete an application;

(c) waive or reduce the membership fee to be provided with the application.

(4) If an applicant has not provided legal services as a lawyer for a period of three years or more immediately before applying under subrule (1), the Credentials Committee may approve the application with

(a) conditions or restrictions on the provision of legal services by the applicant for a period specified by the Committee; and

(b) conditions that require the applicant, within a period specified by the Committee, to do one or both of the following:

(i) write and pass a Yukon statutes exam;

(ii) complete part or all of a bar admission course.

Request a review

86. (1) If the Credentials Committee decides to not approve an application made under rule 82, 83 or 85, or fails to make a determination within 30 days after receiving a valid

application, or imposes conditions or restrictions under subrule 85(4) that the applicant opposes, the applicant may request the Executive for a review.

- (2) A request for a review referred to in subrule (1) must
 - (a) be made in writing and set out a detailed explanation of the grounds for the review; and
 - (b) be delivered to the Executive
 - (i) within 15 days after the applicant is notified by the Credentials Committee of the Committee's decision; or
 - (ii) if the Credentials Committee fails to make a determination within 30 days after receiving a valid application, within 15 days after the expiry of the 30-day period.

(3) Subsections 16(3) to (8) of the Act apply, with any necessary modifications, to a review requested under subrule (1).

Resignation

87. (1) Notice to resign as a member given under subsection 18(1) of the Act must be in Form 13.

(2) When deciding whether to consent to a member's resignation in the circumstances described in subsection 18(2) of the Act, the Executive may require the member to provide additional information if, in the opinion of the Executive, the information is required to ensure protection of the public in relation to the delivery of legal services.

Membership renewals

88. (1) A member who is a lawyer must renew their membership in the Society each calendar year. A membership renewal must be made in Form 14 and received by the Executive Director by January 31 of the calendar year to which the renewal applies.

- (2) A membership renewal under subrule (1) must be accompanied by
 - (a) the applicable membership fee; and
 - (b) the Compensation Fund assessment, if the member is renewing as an active member.

(3) A member who does not submit their membership renewal, pay their membership fee and, if applicable, pay the Compensation Fund assessment, as required under subrules (1) and (2), is automatically suspended until

- (a) the membership renewal is received by the Executive Director;
- (b) the applicable membership fee is paid;
- (c) the Compensation Fund assessment is paid, if applicable;
- (d) the fee for late membership renewal is paid; and
- (e) the member is notified in writing by the Executive Director that the suspension is lifted.

Apply to extend time or waive fees

89. (1) At any time before being automatically suspended under subrule 88(3), a member may request the Credentials Committee in writing to extend the time to file a membership renewal, or to waive or reduce the membership fee or fee for late membership renewal. The Committee, if satisfied that there are special circumstances and that it would be reasonable to do so, may extend the time to file a membership renewal for a period determined by the Committee, or waive or reduce the membership fee or the fee for late membership renewal.

(2) A member who makes a request under subrule (1) who does not file their membership renewal or pay the applicable fees within the time or in the amount set by the Credentials Committee under subrule (1) is automatically suspended until the renewal is filed, the applicable fees are paid, the Compensation Fund assessment if applicable is paid, and the member is notified in writing by the Executive Director that the suspension is lifted.

Lifting suspension after 12 months

90. (1) A member who is automatically suspended under these rules and who remains suspended for twelve consecutive months or more must apply in writing in Form 15 to the Credentials Committee to have the suspension lifted.

(2) An application under subrule (1) must, in addition to any other requirements under these rules, be accompanied by

- (a) payment of the membership fees for each calendar year during the period the member was suspended, based on the member's class of membership at the time of suspension; and
- (b) the application fee for lifting an automatic suspension after an extended period.

(3) The Credentials Committee, if satisfied that there are special circumstances and that it would be reasonable to do so, may waive or reduce some or all of the fees to be paid under subrule (2).

(4) The Credentials Committee may impose conditions or restrictions on the provision of legal services by the member for the suspension to be lifted, for a period specified by the Committee.

(5) The Credentials Committee may require the member to provide additional information if, in the opinion of the Committee, the information may be of assistance in determining whether to lift the suspension or whether to impose conditions or restrictions for the suspension to be lifted.

Request a review

91. (1) If the Credentials Committee imposes conditions or restrictions for lifting the suspension, or fails to make a determination within 30 days after receiving a valid application under subrule 90(1), the member may request the Executive for a review.

(2) A request for a review under subrule (1) must

(a) be made in writing and set out a detailed explanation of the grounds for the review; and

(b) be delivered to the Executive

(i) within 15 days after the member is notified by the Credentials Committee of the conditions or restrictions for lifting the suspension; or

(ii) if the Committee fails to make a determination within 30 days after receiving a valid application under subrule 90(1), within 15 days after the expiry of the 30-day period.

(3) Subsections 16(3) to (8) of the Act apply, with any necessary modifications, to a review requested under subrule (1).

Removal from the roll of lawyers

92. (1) The Executive may remove a member from the roll of lawyers if the member has failed to pay membership fees for three or more consecutive years.

(2) Before removing a member from the roll of lawyers under subrule (1), the Executive must make reasonable efforts to notify the member.

Division 12 - Continuing Professional Development

Designating CPD Activities

93. (1) The Executive may designate continuing professional development activities as CPD activities.
- (2) The Executive Director must maintain a list of CPD activities.

Required CPD Activities

94. (1) Subject to rule 95, a member must, by December 31 of each year, complete one hour of CPD activities for each full or partial month during the calendar year the member was an active member.
- (2) The Executive may require that CPD activities to be completed under subrule (1), include a minimum of number of hours in specific topic areas.

Exemptions

95. (1) An active member is not required to complete CPD activities during a calendar year if, during that year,
- (a) the member completed their articles or the bar admission course of a governing body; or
 - (b) they were an active member for one month or less.
- (2) The Executive may, on the written request of a member, reduce the hours of CPD activities to be completed by the member under subrule 94(1) if, during the calendar year, the member was
- (a) on maternity or parental leave for more than four consecutive weeks; or
 - (b) unable to practise law for more than four consecutive weeks due to illness.

Reporting

96. A member who was an active member at any time during a calendar year must by January 31 of the next year, file with the Executive Director a CPD Report in Form 16 setting out
- (a) the number of full or partial months during the calendar year the member was an active member and the CPD activities completed by the member during the calendar year; and,

- (b) if applicable, the basis under rule 95 that the member was not required to complete CPD activities during the calendar year.

Late CPD reporting

97. (1) A member who completes the CPD activities required under subrule 94(1) but does not file their CPD Report by January 31 as required under rule 96, must file their CPD Report and pay the fee for late CPD reporting by March 1 of that year.

(2) A member who does not file their CPD Report and pay the fee for late CPD reporting by March 1 as required under subrule (1), is automatically suspended until the Report has been filed and the late reporting fee has been paid, and the member is notified in writing by the Executive Director that the suspension is lifted.

Late CPD completion

98. (1) A member who does not complete the CPD activities required under subrule 94(1) by December 31 must, by the following March 1 of the next year:

- (a) complete the CPD activities required under subrule 94(1);
- (b) file the CPD Report required under rule 96; and
- (c) pay the fee for late CPD completion.

(2) A member who does not complete the required CPD activities, file a CPD Report and pay the fee for late CPD completion as required under subrule (1), is automatically suspended until the activities are completed, the CPD Report is filed and the fee for late CPD completion is paid, and the member is notified in writing by the Executive Director that the suspension is lifted.

Apply to extend time or waive fees

99. (1) At any time before being automatically suspended under subrule 97(2) or 98(2), a member may request the Executive in writing to extend the time to file a CPD Report or complete CPD activities, or to waive or reduce the late CPD reporting fee or late CPD completion fee. The Executive, if satisfied that there are special circumstances and that it would be reasonable to do so, may grant an extension of time for a period determined by the Executive or waive or reduce some or all of the fee.

(2) A member who does not complete the required CPD activities, file a CPD Report or pay the applicable late fee within the time or in the amount set by the Executive under subrule (1) is automatically suspended until the activities are completed, the CPD Report is filed and the late fee is paid, and the member is notified in writing by the Executive Director that the suspension is lifted.

CPD activity ruling

100. If a member is uncertain whether an activity qualifies as a CPD activity, the member may request the Executive in writing for a determination and the decision of the Executive will be final.

CPD audit

101. (1) If the Executive considers it necessary or advisable to do so, it may appoint a person to audit the records of CPD activities reported to have been completed by a member.

(2) A member whose records are subject to an audit under subrule (1) must immediately make the records available for examination by the person conducting the audit.

(3) A person appointed under subrule (1) to conduct an audit must, upon request of the member being audited, produce written confirmation of the person's appointment by the Executive to conduct the audit.

(4) The Executive may require a member to reimburse the Society for the cost of an audit under subrule (1).

Division 13 – Discipline of Members

Confidentiality and disclosure

102. Unless authorized by the Act or these rules, the Society, the complainant and any member who is involved in a complaint that is under investigation or a fitness matter under this Division must keep confidential all information concerning the complaint investigation or fitness matter.

Complaint known to the public

103. If a complaint has become known to the public, the Executive Director or another individual designated by the Executive for the purpose, may disclose to the public

- (a) the existence of the complaint;
- (b) the subject matter of the complaint;
- (c) the status of the complaint, including whether it is
 - (i) opened;
 - (ii) under investigation;
 - (iii) referred to a Committee; or

(iv) closed, and the general basis on which it was closed; and

(d) any additional information the Executive Director or designated individual considers necessary to correct inaccurate information.

Sharing information

104. (1) In this rule, “Executive Director” includes an individual designated by the Executive under subsection 55(5) of the Act.

(2) Subject to subrule (3), the Executive Director must not disclose to any person information in relation to a complaint about a member that is subject to solicitor-client privilege.

(3) The Executive Director may, under subsection 55(5) of the Act, disclose to a governing body, a body that regulates legal professionals in a jurisdiction outside Canada, or a law enforcement agency information that is subject to solicitor-client privilege if the Executive Director is satisfied that the information

(a) is adequately protected against further disclosure; and

(b) will not be used for any purpose other than the regulation of the provision of legal services in the jurisdiction of the governing body or other body or law enforcement.

Conduct outside Yukon

105. (1) A member must comply with an order of a governing body.

(2) When a member practises law in another Canadian jurisdiction, the member must comply with the applicable legislation, regulations, rules and Code of Conduct of that jurisdiction.

(3) When it comes to the attention of the CIC chair that a member

(a) has, in disciplinary proceedings of a body governing legal professionals outside Yukon, been found to have committed a disciplinary violation or disciplinary offence; or

(b) has failed to comply with a sanction imposed on the member in, or as a result of, such proceedings,

the chair may refer the matter in writing directly to the Discipline Committee.

(4) On receipt of a referral under subrule (3), the Discipline Committee must promptly convene a hearing panel without investigation or a disciplinary charge.

(5) For the purposes of this rule, a certified copy of a record of the decision or findings made or action taken by a professional body in another jurisdiction in respect of the member is proof, of the findings made or the action taken, without proof of the signature of the person purporting to have signed on behalf of the body.

(6) If the hearing panel convened under subrule (4) is satisfied that it would be just and in the public interest, the hearing panel must, by order, take one or more actions under section 80 of the Act.

(7) Subject to this rule, rules 125 to 139 apply to a proceeding initiated under this rule, with any necessary modifications.

Complaints in writing

106. A person may make a complaint about a member under section 56 of the Act by delivering it in writing to the Society.

Other information in writing

107. The Society must reduce to writing, if necessary, and forward to the CIC chair as soon as practicable information that comes to the Society's attention by means other than a complaint received under rule 106 that may indicate that a member, because of incapacity or otherwise,

- (a) has been incompetent in the provision of legal services;
- (b) has engaged in professional misconduct or conduct unbecoming a member; or
- (c) has breached a provision of the Act, the regulations or these rules.

Examination of complaints

108. When examining a complaint under subsection 57(1) of the Act or information forwarded to the CIC chair under rule 107, the CIC chair may, at any time, make reasonable enquiries of any person, including the complainant or the member concerned, as the CIC chair considers appropriate.

Complaint dismissed or referred

109. When the CIC chair has completed the examination of a complaint or other information under rule 107, they must,

- (a) dismiss the complaint if they reasonably believe that the complaint is dismissible; or
- (b) refer the matter to the Complaints Investigation Committee or the Fitness to Practise Committee in accordance with section 57 or 58 of the Act.

Notice

110. If the CIC chair dismisses a complaint, the chair must, as soon as practicable,

- (a) if the member has not been notified of the complaint, notify the member; and
- (b) provide an explanation in writing for the dismissal to the complainant and the member.

Referral to Fitness to Practise Committee

111. When a fitness matter is referred to the Fitness to Practise Committee, the person or body making the referral must provide to the Committee

- (a) the written complaint or a written explanation of concerns about the possible incapacity of the member;
- (b) all relevant documents and information; and
- (c) the written consent of the member concerned where that is required.

Referral for investigation

112. When the CIC chair refers a complaint or a matter to the Complaints Investigation Committee for investigation under paragraphs 57(2)(c) or 58(1)(a) of the Act, the chair

- (a) must provide to the Committee any documents and information acquired in the examination of the complaint or matter; and
- (b) may provide to the Committee a written explanation of the chair's concerns about the conduct of the member.

Powers of investigator

113. (1) In addition to the powers conferred by section 61 of the Act, an investigator is authorized to do the following:

- (a) on the application of a party or on the investigator's own motion, hold an investigation in abeyance for a specific period of time or until the happening of a specified event;
- (b) exercise the powers and functions of the investigator without notice to the member concerned when, in the opinion of the investigator, it is in the public interest to do so;
- (c) enter upon the business premises of a member whose conduct or competence is the subject of a complaint during normal business hours for the purposes of
 - (i) carrying out an audit, including seizing any documents required for that purpose; or
 - (ii) inspecting, seizing or copying any document or other thing in the possession or control of the member that in any way relates to the matter that is the subject of the complaint;
- (d) order that the member attend before the investigator for purposes of assisting with the investigation or for any other purpose consistent with the Act and these rules;
- (e) order any person to provide information on the record or under oath or on affirmation;
- (f) administer oaths and affirmations;
- (g) request that the member provide further particulars of their explanation concerning the circumstances of the complaint and the member's position with respect to the complaint;
- (h) impose reasonable time limitations upon the member for compliance with any request;
- (i) with the consent of the Executive Director, retain at the expense of the Society the services of experts, agents and other assistance.

(2) The investigator may apply to the Supreme Court, with or without notice to anyone, for an order authorizing the investigator to enter upon premises for the purposes stated in subrule (1)(c) if the investigator believes that

- (a) the premises are located in a dwelling-house; or
- (b) obtaining a court order is required or advisable for any other reason.

(3) On an application under subrule (2), the Supreme Court may grant all or any part of the order applied for and give any further directions the court considers appropriate.

Record seized

114. (1) The person from whom a document or other thing is seized under rule 113 or the owner of the document or other thing is entitled to inspect it during business hours and, in the case of a document, to obtain one copy at the expense of the Society.

(2) A document or other thing must not be detained under rule 113 for longer than three months without the consent of the person from whom it was seized or an order of the Supreme Court specifying a longer period of retention.

Interim orders

115. (1) In rules 115 to 122, “investigator” includes a member of the Complaints Investigation Committee designated by the Committee under subsection 63(1) of the Act for the purpose of making interim orders.

(2) Subject to subrule (3), an investigator must give the member concerned five business days’ notice before an interim order is made under section 63 of the Act.

(3) An investigator may reduce or dispense with notice to the member under subrule (2) if, in the opinion of the investigator, it is in the public interest to do so.

(4) The Society or a member who is the subject of an interim order made under section 63 of the Act may apply in writing for reconsideration, amendment or rescindment of the order

- (a) if the investigator has not referred a disciplinary charge to the Discipline Committee, to the investigator; or
- (b) if the investigator has referred a disciplinary charge to the Discipline Committee, to the hearing panel.

(5) The party applying under subrule (4) must provide the other party with a copy of the written application.

(6) The investigator or hearing panel may grant all or part of the order applied for under subrule (4) if, in the opinion of the investigator or hearing panel, as the case may be, it is in the public interest to do so.

Disposition following investigation

116. (1) When the investigator of a complaint dismisses the complaint under paragraph 64(a) of the Act, they must, as soon as practicable, provide to the complainant a written explanation for the dismissal and notice of the complainant's right of appeal under section 65 of the Act.

(2) When the investigator of a complaint refers a disciplinary charge to the Discipline Committee under paragraph 64(f) of the Act, the Society must serve the disciplinary charge on the member charged as soon as practicable.

Review and recommendations

117. (1) Before the investigator disposes of a complaint they may refer the matter without a disciplinary charge to two members of the Complaints Investigation Committee for review and recommendations.

(2) The investigator of the complaint may be one of the two members of the Complaints Investigation Committee to whom the matter is referred under subrule (1).

(3) When a complaint is referred under subrule (1), the member against whom the complaint was made and the members of the Complaints Investigation Committee must meet privately as soon as practicable to conduct the review.

(4) The members of the Complaints Investigation Committee may permit the complainant to attend a part of a meeting under this rule and may permit a complainant to participate in that part of the meeting to the extent that is appropriate in the opinion of the members of the Complaints Investigation Committee.

(5) When the review is completed, the members of the Complaints Investigation Committee must report in writing to the investigator and recommend that the investigator dispose of the complaint by doing one or more of the following:

- (a) take no further action and close the investigation;
- (b) accept the member's undertaking to take remedial steps that are appropriate and sufficient in the opinion of the members of the Complaints Investigation Committee;
- (c) if the member consents in writing, impose any sanction provided under section 80 of the Act;

- (d) impose any other disposition agreed to by the member in writing;
- (e) prepare and refer to the Discipline Committee a disciplinary charge in relation to the complaint.

(6) The members of the Complaints Investigation Committee may provide the complainant with all or part of a report on any recommendation, or a summary of all or part of it.

Publication

118. (1) The Society may make public a summary of the circumstances of a complaint reviewed under rule 117 that is not referred to the Discipline Committee as a disciplinary charge.

(2) The summary published under subrule (1) must not identify the complainant without the written consent of the complainant.

(3) The summary published under subrule (1) must not identify the member concerned unless

- (a) the member consents in writing; or
- (b) the investigator imposes a sanction or other disposition under subrule 117(5)(c) or (d).

Evidence of review

119. If a hearing is held on a disciplinary charge relating to a complaint reviewed under rule 117, unless the member puts the matter in issue

- (a) documentary evidence of the review is inadmissible; and
- (b) a member of the Complaints Investigation Committee is not permitted to testify as to any statement made by the member during the review.

Costs of investigation

120. (1) On the recommendation of the investigator of a complaint, the Executive may order that the member who is the subject of the complaint pay for or reimburse the Society for all or part of the costs of assessments, audits, examinations or reviews ordered under section 61 of the Act.

(2) The Executive must include in an order made under subrule (1) time for the member to pay the amount assessed that is reasonable in the opinion of the Executive.

(3) A member may appeal to the Supreme Court from an order under subrule (1) by a notice of appeal given within 30 days after delivery of the order appealed, unless the Supreme Court allows a longer time for instituting the appeal.

(4) If the member appeals an order made under subrule (1), the order is stayed pending the outcome of the appeal.

Enforcement

121. (1) A member who fails or refuses to pay the amount assessed under rule 120 by the time set under that rule or by the Supreme Court on an appeal is in breach of these rules and, on seven days' notice from the Executive Director, is suspended until all outstanding amounts are paid.

(2) A member who receives notice that he or she is suspended under subrule (1) may apply in writing to the Executive for a direction to the Executive Director to postpone or lift the member's suspension.

(3) The Executive may make the direction applied for under subrule (2) if, in the opinion of the Executive, there are extraordinary circumstances that justify postponing or lifting the suspension and it would not be against the public interest to do so.

Appeal from dismissal of complaint

122. (1) If the investigator dismisses a complaint under paragraph 64(a) of the Act, the complainant may appeal to the Complaint Dismissal Review Committee under section 65 of the Act by notifying the chair of the Complaint Dismissal Review Committee in writing within 30 days after a notice of the dismissal is delivered to the complainant.

(2) On the written request of a complainant, the chair of the Complaint Dismissal Review Committee may extend the time to initiate an appeal under subrule (1) if, in the opinion of the chair there are extraordinary circumstances that justify the extension of time.

(3) The notification to the chair of the Complaint Dismissal Review Committee under subrule (1) must be accompanied by a copy of the written explanation of the dismissal of the complaint and the following information in writing:

- (a) the name and contact information of the appealing complainant;
- (b) the name and law firm of the member who is the subject of the complaint;
- (c) the grounds for appealing the dismissal of the complaint.

(4) When a complainant initiates an appeal, the Complaint Dismissal Review Committee must

- (a) notify the investigator and the member who is the subject of the complaint; and
 - (b) convene a panel of three members of the Committee, one of whom is not a member of the Society, to decide the appeal.
- (5) The panel of the Complaint Dismissal Review Committee convened to decide the appeal
- (a) must review and consider the documents obtained, collected or produced by the investigator;
 - (b) may make enquiries of the complainant, the investigator or any other person;
 - (c) may hear and dispose of an appeal based on documents and written submissions and without an oral hearing; and
 - (d) must provide to the complainant, the member and the investigator written reasons for its decision.

Fitness to practise

123. (1) In addressing a fitness matter, the Fitness to Practise Committee may do any or all of the following:
- (a) require the member to appear before the Committee and answer questions relevant to the fitness matter;
 - (b) make enquiries of any person and obtain documents and other evidence relevant to the fitness matter;
 - (c) with the consent of the Executive Director, retain the services of experts and other assistance at the expense of the Society.
- (2) In addition to the terms permitted by section 71 of the Act, an agreement under that section
- (a) must specify the time for the member to pay any amount agreed to under paragraph 71(2)(e) of the Act; and
 - (b) may provide for any other measure to address the fitness matter agreed to by the parties that, in the opinion of the Fitness to Practise Committee, is reasonable and in the public interest.

(3) A member who is a party to an agreement under section 71 of the Act may apply in writing to the Fitness to Practise Committee to amend the original agreement or any further agreement.

(4) The Fitness to Practise Committee may amend the original agreement or further agreement with or without an application by the member, with the consent of the member.

(5) If a fitness matter is referred to the Fitness to Practise Committee as a result of a complaint, the Committee must notify the complainant in writing of its consideration of the matter and of its decision in a manner that does not unreasonably invade the privacy of the member concerned.

(6) Notification under subrule (5) must not include a copy of a report on a medical assessment or an investigation of the member's fitness or any other medical information.

(7) The Fitness to Practise Committee may refer a fitness matter to the Complaints Investigation Committee at any time if

(a) the Fitness to Practise Committee is satisfied that there is evidence that the member has breached a provision of the Act or these rules or committed professional misconduct or conduct unbecoming a member while the Committee has been addressing the fitness matter; or

(b) the member does not consent to an amendment to an agreement made under section 71 of the Act that the Committee considers necessary in the public interest.

Enforcement

124. (1) A member who fails or refuses to pay the amount agreed to under paragraph 71(2)(e) of the Act by the time agreed to is in breach of these rules and, on seven days' notice from the Executive Director, is suspended until all outstanding amounts are paid.

(2) A member who receives notice that he or she is suspended under subrule (1) may apply in writing to the Fitness to Practise Committee for a direction to the Executive Director to postpone or lift the member's suspension.

(3) The Fitness to Practise Committee may make the direction applied for under subrule (2) if, in the opinion of the Committee, there are extraordinary circumstances that justify postponing or lifting the suspension and it would not be against the public interest to do so.

Disciplinary charges

125. In rules 126 to 138, "court reporter" means a reporter certified by a justice of the Supreme Court or certified in another jurisdiction.

Hearing panel

126. (1) When an investigator refers a disciplinary charge to the Discipline Committee
- (a) the chair of the Discipline Committee must convene a hearing panel under section 76 of the Act and appoint a chair of the panel as soon as practicable; and
 - (b) the Executive must appoint counsel to represent the Society.
- (2) A member of the Discipline Committee who participated in the investigation or other consideration of the complaint underlying the disciplinary charge is not eligible to be a member of the hearing panel.
- (3) If, in the course of a hearing or while a hearing panel retains jurisdiction under section 84 of the Act, a member of a hearing panel cannot continue as a member of the hearing panel for any reason, the chair of the Discipline Committee may
- (a) order that the hearing panel continue with the remaining members; or
 - (b) convene a new hearing panel.

Hearing date

127. (1) A date for a hearing of the disciplinary charge may be set
- (a) by agreement of the parties, with notice to the Executive Director; or
 - (b) if the parties are not able to agree, by the Executive Director.
- (2) When a hearing date is set under subrule (1)(b),
- (a) the Executive Director must serve the parties with a notice of hearing; and
 - (b) unless the parties consent, the date for the hearing must not be within 30 days of service of the parties.

Adjournments

128. (1) A party may apply to adjourn a hearing
- (a) before the hearing commences, to the chair of the Discipline Committee; or
 - (b) once the hearing has commenced, to the hearing panel.

(2) On the application of a party under subrule (1), the chair of the Discipline Committee or the hearing panel, as the case may be, may adjourn a hearing generally or to a specific date.

Disclosure

129. (1) After service of the disciplinary charge and before the hearing begins, counsel for the Society must provide the following to the member charged:

- (a) a copy of every document in the possession of the Society that may be relevant to the disciplinary charge, whether or not it is to be placed in evidence;
- (b) a summary of the anticipated evidence of any person intended to be called as a witness;
- (c) a summary of evidence to be introduced that is not disclosed by documents provided under subrules (a) and (b);
- (d) a summary of any other evidence that may be relevant to the disciplinary charge in the possession of counsel or the Society, whether or not counsel intends to introduce the evidence in the hearing.

(2) A member charged may apply to the chair of the Discipline Committee before the hearing begins for an order for disclosure of further details of the circumstances of the misconduct or incompetence alleged in the disciplinary charge.

(3) If the chair is satisfied that the disciplinary charge and disclosure made under subrule (1) do not contain enough detail of the circumstances of the alleged misconduct or incompetence to allow the member charged to make full answer and defence, the chair must order that counsel disclose further details of the circumstances.

Preliminary question

130. (1) Before a hearing begins, either party may apply for the determination of a question relevant to the hearing by delivering to the chair of the Discipline Committee and to the other party written notice setting out the substance of the application and the grounds for it.

(2) When an application is made under subrule (1), the chair of the Discipline Committee must do one of the following as the chair considers appropriate:

- (a) determine the question;
- (b) refer the question to a pre-hearing conference;
- (c) refer the question to the hearing panel.

Open hearing

131. (1) All proceedings at an oral hearing under this Division must be recorded by a court reporter.

(2) Subject to an order of the hearing panel under subsection 77(5) of the Act, all hearings are open to the public, and anyone may obtain, at their own expense, copies of exhibits and transcripts.

(3) A party may apply to the hearing panel orally during the hearing, or in writing at any other time, for an order under subsection 77(5) of the Act excluding the public from all or part of a hearing or otherwise preventing disclosure of information.

Summons to a witness

132. (1) A party to a hearing may prepare a summons requiring a person to attend the hearing to give evidence.

(2) On the request of the party preparing a summons under subrule (1), a member of the hearing panel must sign and seal the summons and cause it to be returned to the party.

(3) To compel a person to attend the hearing, the party that prepared the summons must serve the signed and sealed summons on the person being required to attend

(a) in accordance with section 171 of the Act; or

(b) as directed by the chair of the hearing panel.

Pre-hearing conference

133. (1) The chair of a hearing panel may convene a pre-hearing conference on the request of a party or on their own motion and must do so when a question is referred to a pre-hearing conference under rule 130.

(2) The chair of the hearing panel must notify the parties of the date, time and location of the conference.

(3) The parties and their counsel may attend the conference in person or by audio or video conference.

(4) The chair of the hearing panel may

(a) conduct the pre-hearing conference alone or with the other members of the hearing panel; or

(b) designate another member of the hearing panel to conduct the pre-hearing conference.

(5) If a party does not attend the pre-hearing conference, the person conducting the pre-hearing conference may conduct the conference in the absence of the party and may make any order or other decision that they could have made in the presence of the party.

(6) The person conducting the pre-hearing conference may close the conference to the public if they consider it appropriate and consistent with the public interest.

(7) The person conducting the pre-hearing conference may:

(a) set a date for the hearing of the disciplinary charge;

(b) make orders or give directions on matters relating to the hearing;

(c) decide any question referred to the conference under rule 130; or

(d) refer any question to be determined by the hearing panel.

Evidence

134. (1) Oral evidence heard by a hearing panel must be given on oath or affirmation.

(2) Subject to the Act and these rules, the *Evidence Act* applies to hearings under this Division.

(3) A hearing panel may accept as evidence

(a) a statement of facts agreed to in writing by the member charged and the Society, signed personally by the member charged and on behalf of the Society;

(b) affidavit evidence; or

(c) any other evidence it considers appropriate.

Outcomes

135. A hearing panel must dismiss a disciplinary charge unless it finds that the member charged has been incompetent, has breached a provision of the Act or these rules or has engaged in professional misconduct or conduct unbecoming a member.

Sanctions

136. (1) In determining a sanction under section 80 of the Act, a hearing panel may consider the Professional Conduct Record of the member charged.

(2) In the absence of evidence to the contrary, the original or a certified true copy of any document in the Professional Conduct Record of the member charged is evidence of its contents without further proof.

(3) For the purposes of this rule, a true copy of a document need only be endorsed with a declaration that it is a true copy and sealed with the seal of the Society.

(4) In addition to the sanctions permitted under section 80 of the Act, a hearing panel may also by order do one or more of the following:

(a) require the member to do one or more of the following:

(i) provide to the Executive Director satisfactory proof that the member has completed a specified remedial program;

(ii) appear before a board of examiners appointed by the hearing panel or by the Executive Director and satisfy the board that the member is competent to practise law generally or to practise in one or more fields of law;

(iii) appear before a board of examiners appointed by the hearing panel or by the Executive Director and satisfy the board that the member's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;

(iv) practise law only as a partner, employee or associate of one or more other lawyers;

(b) suspend the member

(i) until the member fulfills a condition imposed under subparagraph 80(e)(ii) of the Act;

(ii) from a specified date until the member

A. complies with a requirement under subrule (a);

B. makes restitution to a person as ordered under paragraph 80(b) of the Act;

C. pays a fine imposed under paragraph 80 (d) of the Act; or

D. fulfills a condition imposed under subparagraph 80 (e)(ii) of the Act; or

- (iii) for a specific minimum period of time and until the member
 - A. complies with a requirement under subrule (a);
 - B. makes restitution to a person as ordered under paragraph 80(b) of the Act;
 - C. pays a fine imposed under paragraph 80(d) of the Act; or
 - D. fulfills a condition imposed under subparagraph 80(e)(ii) of the Act;
- (c) make any other order or take any other action the hearing panel considers appropriate in the circumstances.

Member's practice if suspended or removed

137. (1) When a member is suspended by order of a hearing panel
- (a) where the suspended member provides legal services through a law firm, other lawyer members of the law firm may assume management of the member's practice;
 - (b) the suspended member may, at his or her own expense, arrange for a locum to assume management of the member's practice; or
 - (c) the Society may apply to the court under section 110 of the Act for the appointment of a custodian.
- (2) When a member is removed from membership in the Society by order of a hearing panel
- (a) where the former member provided legal services through a law firm, other lawyer members of the law firm may assume management of the member's practice; or
 - (b) where subrule (a) does not apply or if the law firm does not agree to assume management of the former member's practice, the Society must apply to the court under section 110 of the Act for the appointment of a custodian.

Costs

138. (1) An order under paragraph 80(c) of the Act for the member charged to reimburse the Society for costs incurred may include any or all of the following:

- (a) subject to a previous order under rule 120, costs of the investigation of the complaint that could have been ordered under that rule;
- (b) all or part of witness fees and expenses payable at the rate payable to witnesses attending on a trial of an action in the Supreme Court;
- (c) court reporter's fees and transcript fees;
- (d) any reasonable mailing, advertising or other expenses in connection with the hearing or the sanction imposed;
- (e) all reasonable expenses incurred by the Society, Counsel or any witness in the proceedings;
- (f) administrative expenses of \$2,500 for each full or partial day of hearing or pre-hearing conference.

(2) The hearing panel must set a time for payment of costs ordered under paragraph 80(c) of the Act.

(3) Before the expiry of the time set under subrule (2) for payment of costs, the member concerned may apply to the hearing panel for an extension of the time to pay.

(4) When an application is made under subrule (3), the hearing panel must consider any submissions made by the member or by the Society and may, in its discretion, grant or deny the application.

(5) The hearing panel must provide written reasons for a decision on an application under subrule (3).

(6) In addition to any remedy available to the Society under section 83 of the Act, a member who fails or refuses to pay the costs ordered under paragraph 80(c) of the Act by the time set or extended under this rule is in breach of these rules, and on seven days' notice from the Executive Director, is suspended without further hearing until all outstanding amounts are paid.

(7) A member who receives notice that he or she is suspended under subrule (6) may apply in writing to the hearing panel for an order to postpone or lift the member's suspension.

(8) In extraordinary circumstances, the hearing panel may make the order applied for if, in the opinion of the hearing panel, it is in the public interest to do so.

Notice of findings

139. (1) When a hearing panel finds that the member charged is incompetent or has engaged in professional misconduct or conduct unbecoming a member, the Executive Director must provide a copy of the hearing panel's decision and order to the following:

- (a) the Registrar of the Court of Appeal of Yukon;
- (b) the Registrar of the Federal Court;
- (c) the Supreme Court;
- (d) the Territorial Court;
- (e) every governing body;
- (f) other individuals or bodies specified in the order of the hearing panel.

(2) The Executive Director must cause a copy of the decision and order to be published on the Society website and may publish the decision or a summary of it by any other means that the Executive Director considers to be in the public interest.

(3) On the application of a party or on its own motion, a hearing panel may order that the name and any other identifying information of any complainant, witness or other person be kept confidential and not published in any decision or order, notification or publication made under this Division if the hearing panel considers that the public interest, or the interest of the person, in preventing information from being disclosed outweighs the public interest in disclosure of the information.

Division 14 - Compensation Fund

Assessment – active member

140. (1) An active member must pay to the Society an annual assessment for the Compensation Fund in an amount set by the Executive.

(2) An active member who renews their membership as an active member must pay the annual assessment for the Compensation Fund by January 31 of the calendar year to which the assessment applies.

(3) An active member referred to in subrule (2) who does not pay the annual assessment by January 31 is automatically suspended until the assessment has been paid and the member is notified in writing by the Executive Director that the suspension is lifted.

(4) An individual who becomes an active member during the calendar year must pay the annual assessment for that year with their application to be admitted as an active member.

Assessment – Interjurisdictional Practitioner

141. (1) An interjurisdictional practitioner must pay to the Society for each certificate of permission to act and each certificate renewal, an assessment for the Compensation Fund equal to the amount of the annual assessment set by the Executive under subrule 140(1).

(2) Despite subrule (1) an interjurisdictional practitioner is not required to pay a Compensation Fund assessment for a certificate of permission to act or certificate renewal if,

(a) for the period the certificate will be in effect, no property belonging to another person will be entrusted to or received by them in relation to their provision of legal services under that certificate; or

(b) they provide a signed declaration to the Credentials Committee that,

(i) in another province in which they are licensed to practise law, they participate in a fund that is operated for a purpose substantially the same as the Compensation Fund; and

(ii) the other fund in which they participate provides for reimbursement of persons for pecuniary losses sustained because of the misappropriation or wrongful conversion by the practitioner of property entrusted to or received by them in relation to their provision of legal services in Yukon.

Additional assessments

142. (1) If the Executive considers it advisable for the protection of the public or the maintenance of the Compensation Fund, the Executive may levy an additional assessment on active members to augment the Compensation Fund and fix the date by which the assessment must be paid.

(2) The Executive Director must notify active members in writing of the amount of the additional assessment and the date by which the assessment must be paid. An active member who does not pay the additional assessment by the date specified in the notice is automatically suspended until the assessment has been paid and the member is notified in writing by the Executive Director that the suspension is lifted.

Application for reimbursement

143. (1) A person seeking reimbursement under subsection 94(1) of the Act for pecuniary loss must

(a) apply in writing to the Executive for reimbursement no later than six months after the date the person first became aware of the pecuniary loss or should reasonably have been aware of the loss; and

(b) no later than the date they apply to the Executive for reimbursement, make a complaint to the Society under section 56 of the Act against the member or interjurisdictional practitioner respecting the matter.

(2) The Executive must take into consideration any order or finding made in proceedings under Part 4 of the Act, respecting a complaint referred to in subrule (1)(b), that has been made at the time the Executive determines

(a) whether to make a payment to a person under section 94 of the Act; and

(b) the amount and the terms and conditions of any payment.

(3) The Executive may defer making a determination whether to make a payment under section 94 of the Act until the conclusion of the complaint proceedings under Part 4, including any appeal under that Part.

(4) Despite subrule (1), a person may not apply to be reimbursed under subsection 94(1) of the Act for pecuniary loss sustained prior to January 1, 1985.

Compensation Fund payments

144. The Executive may authorize payments to be made from the Compensation Fund for expenses incurred

(a) in administering the Fund, including expenses to protect or maintain the Fund;

(b) in connection with audits of books, records and accounts of members conducted under the Act or these rules; and

(c) in proceedings under Part 4 of the Act relating to a matter for which a claim for reimbursement from the Fund is made.

Division 15 Professional Liability Coverage

Exempt members

145. (1) A member in any of the following classes of membership is not a subject member:

(a) an articulated student;

(b) a non-practising member;

- (c) a retired member; or
- (d) an active member who provides legal services only as an employee for an employer who does not provide legal services.

(2) As stated in section 97 of the Act, a member who provides legal services in Yukon only as an employee of a government is not a subject member.

Active member coverage

146. (1) An active member must have professional liability coverage except in the circumstances referred to in subrule (2) or subrules 145(1)(d) or 145(2).

(2) An active member who

- (a) has applied to be licensed to practise law in another province;
- (b) requires professional liability coverage solely to maintain their membership as an active member while their application to be licensed in the other province is processed; and
- (c) does not provide legal services in Yukon,

may maintain their membership as an active member without having professional liability coverage for up to 90 days while their application to be licensed in another province is processed.

(3) For greater certainty, an active member who intends to remain a member of the Society but not have professional liability coverage on the basis they will not provide legal services in Yukon must become a non-practising member or a retired member:

- (a) no later than the date their professional liability coverage terminates; or
- (b) if they are exempt from the requirement to have professional liability coverage in the circumstances referred to in subrule (2) or subrule 145(1)(d) or 145(2), no later than the date the exemption terminates.

Group insurance contract - elected coverage

147. (1) An active member referred to in subrule 145(1)(d) or subrule 145(2) may elect to be insured under the group insurance contract by notifying the Executive Director in writing and paying the applicable insurance assessment.

(2) The provisions in this Division that apply to a subject member apply to an active member who elects under subrule (1) to be insured under the group insurance contract except if

the member does not pay the insurance assessment when due the member is not automatically suspended.

Insurance assessment

148. (1) The Executive may levy an insurance assessment to be paid by a subject member for professional liability coverage under the group insurance contract and set the date by which the assessment must be paid.

(2) An insurance assessment set by the Executive under subrule (1) may include amounts for

- (a) the premium payable to the insurer under the group insurance contract; and
- (b) costs to the Society to
 - (i) administer the group insurance contract;
 - (ii) administer professional liability claims against insured members;
 - (iii) operate or administer indemnity and loss prevention programs; and
 - (iv) conduct practice management reviews.

(3) Subject to subrule (4), the insurance assessment for a subject member insured under the group insurance contract will be increased automatically based on the number of professional liability claims paid in respect of the member in the preceding five years. The amount of the increase in a member's insurance assessment will be calculated as follows:

- (a) a 30% increase for five years for one paid claim in the past five years;
- (b) a 75% increase for five years for two paid claims in the past five years;
- (c) a 150% increase for five years for three paid claims in the past five years;
- (d) a 300% increase for five years for four or more paid claims in the past five years.

(4) The automatic increase to a subject member's insurance assessment under subrule (3) does not apply to a professional liability claim that is paid without an admission or finding of liability being made in respect of the claim against the member.

(5) A subject member who does not pay their insurance assessment by the date payment is due is automatically suspended until the assessment and any late payment fee is paid and the member is notified in writing by the Executive Director that the suspension is lifted.

Automatic suspension

149. A subject member who does not have professional liability coverage is automatically suspended until the member demonstrates to the satisfaction of the Executive Director that they have professional liability coverage as required under the Act and these rules and the member is notified in writing by the Executive Director that the suspension is lifted.

Notice of claim

150. (1) A subject member insured under the group insurance contract must notify the Society in writing as soon as practicable

(a) after learning of an actual or potential professional liability claim against them, or

(b) after becoming aware of circumstances that might give rise to a professional liability claim against them,

however unmeritorious the claim.

(2) The requirement to give notice under subrule (1) is in addition to and does not affect the requirements for a subject member to provide notice to the insurer under the terms of their professional liability coverage.

Cooperation with insurer, et al.

151. A subject member against whom a professional liability claim is made must cooperate with and assist the insurer, the Society, and their agents, in all matters relating to the defence, administration, and settlement of the claim.

Failure to pay the deductible

152. (1) If a subject member insured under the group insurance contract fails to pay a deductible amount when due, the Society may issue a demand in writing to the member directing the member to pay the deductible amount to the insurer within 30 days.

(2) If a subject member does not pay the deductible amount within 30 days after being directed under subrule (1), the member is automatically suspended until the deductible amount has been paid by the member and the member is notified in writing by the Executive Director that the suspension is lifted.

(3) The Society may pay the deductible on account of the subject member and, in addition to any other legal remedy or action available to the Society, recover the amount paid from the member as provided under subsection 108(2) of the Act.

(4) The Society and subject member or former subject member on whose account the deductible amount was paid may enter an agreement for the repayment of the deductible amount to the Society. The agreement may provide for the member's automatic suspension to be lifted.

(5) A member who defaults under an agreement referred to subrule (4) is automatically suspended until the default has been remedied and the member is notified in writing by the Executive Director that the suspension is lifted.

Administration

153. The Society may enter an agreement with another governing body to administer the group insurance contract or professional liability claims against subject members and the Society.

Division 16 - Books, Records and Accounts

Interpretation

154. In this Division

“expenses” means costs incurred by a member or member's law firm in connection with the provision of legal services to a client which will be reimbursed by the client;

“money” includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders, and electronic transfer of deposits at financial institutions;

“trust account” means an interest-bearing account at a financial institution that a member maintains in their name, or that is maintained in the name of the member's law firm, and that the member or the member's law firm designates as a trust account;

“trust money” means money received by a member that

(a) is directly related to legal services that the member or the member's law firm is providing; and

(b) is to be held in trust for a client or other person, and includes money advanced to a member on account for

(i) fees for services not yet provided,

(ii) disbursements not yet made, and

(iii) expenses not yet incurred.

Trust accounts

155. (1) A member who receives trust money must immediately pay the money into a trust account.
- (2) A member must only pay into a trust account money that is
- (a) trust money; or
 - (b) money paid to the member which is in part trust money and in part money belonging to the member where it is not practicable to split the payment, however the portion of money belonging to the member must be drawn from the trust account as soon as practicable.
- (3) A member who discovers that money has been mistakenly drawn from a trust account must immediately deposit sufficient money in the account to replace the amount mistakenly drawn and, as soon as practicable, report the mistake to the Executive Director in Form 17, specifying the amount mistakenly drawn and the circumstances.

For greater certainty

156. For greater certainty, a member must not pay into a trust account money that
- (a) belongs entirely to the member or to others in the member's law firm, including an amount received as a general retainer for which the member is not obligated either to account or to provide services;
 - (b) is received by the member on account of fees for which a billing has been rendered; or
 - (c) is received to reimburse the member for disbursements that have been made or expenses that have been incurred on behalf of a client.

Drawing money from trust accounts

157. (1) A member must not draw money from a trust account unless the money
- (a) is properly required for payment to or on behalf of a client;
 - (b) is required to reimburse the member for disbursements or expenses properly made or incurred on behalf of a client for which a billing has been rendered;
 - (c) is properly required for or toward payment of the member's fees for which a billing has been rendered;

(d) is directly transferred into another trust account and held on behalf of the client; or

(e) was paid into the account by mistake.

(2) Money in a member's trust account to which a member becomes entitled under subrule (1)(b) or (c) must be drawn from the account as soon as practicable. However, in no case shall the money drawn exceed the balance of the money held in the trust account for the client.

(3) Money drawn from a trust account under subrule (2) must only be drawn

(a) by a cheque made out in the name of the member or the member's law firm; or

(b) by a transfer to an account at a financial institution that is in the name of the member or the member's law firm and that is not a trust account.

Trust cheques

158. (1) Unless otherwise authorized by the Executive, a cheque drawn on a trust account must be signed by at least one person who is an active member.

(2) A cheque drawn on a trust account must not be made payable to "cash" or "to bearer".

Maintain sufficient trust money

159. (1) A member must maintain at all times sufficient money in the member's trust accounts to meet all obligations respecting the trust money held by the member.

(2) For the purposes of subrule (1), cash, a certified cheque or cheque negotiable by the member or a cheque drawn by the member on the member's trust account, in the possession and control of the member, is deemed to be money held in a trust account if the cash or cheque is deposited in the trust account no later than the next banking day.

Directions for trust account

160. (1) A member must, in relation to each trust account maintained in Yukon by the member or the member's law firm, provide the following directions in writing to the financial institution at which the trust account is maintained:

(a) the trust account is to be interest bearing and the interest paid on the account is to be remitted to the Foundation;

(b) the rate and manner of calculating interest, and any service charges or other fees to be deducted from the interest payable to the Foundation, will be as agreed to by the financial institution and the Foundation;

(c) the financial institution is to provide trust account statements to the member;

(d) the account is to be designated as a “trust” account in the records of the financial institution;

(e) the financial institution is authorized and directed to provide the Foundation with information requested by the Foundation to verify the interest paid to the Foundation has been properly calculated, including:

(i) account balance information;

(ii) the interest rate and the gross interest earned;

(iii) service charges deducted; and

(iv) the net interest paid after deduction of service charges.

(2) A member must provide the Society and the Foundation with a copy of the directions provided to a financial institution under subrule (1).

(3) Nothing in subrule (1) affects a written arrangement, whenever made, between a member and a client respecting the application of the client’s money or the interest on it.

Other written arrangements

161. (1) A member is not required to pay money into a trust account that a client has, in a written arrangement with the member, directed the member to hold or deposit elsewhere.

(2) Money referred to in subrule (1) that is not paid into a trust account must be shown and accounted for separately in the books and records of the member.

Annual CDIC Report

162. A member who holds pooled trust money in a financial institution insured by the Canadian Deposit Insurance Corporation must file an annual report for each account maintained by the member with that institution in accordance with subsection 3(3) of the Schedule to the *Canada Deposit Insurance Corporation Act* (Canada), so that the moneys held in trust for each client, rather than the account itself, are insured up to the limit of deposit insurance available under that Act.

Maintenance of books, records, and accounts

163. (1) A member must maintain books, records and accounts in connection with the member's provision of legal services to record all money and other property received, withdrawn, disbursed, returned or disposed of.

(2) The books, records and accounts maintained by the member under subrule (1) must include

(a) a book of original entry in chronological order showing the date of receipt of trust money, from whom the money was received, for which client the money was received, the amount of money received, and the method by which the money was received by the member or member's law firm;

(b) a book of original entry in chronological order showing every withdrawal out of trust money, the date of each withdrawal, the client on whose behalf each withdrawal of trust money is made, the amount of the withdrawal, the method of withdrawal including cheque number if applicable, and the name of each recipient;

(c) a client trust ledger showing separately for each person on whose behalf trust money is received, the amount of money received and withdrawn and any unexpended balance;

(d) a record showing all transfers of money between clients' trust ledger accounts, detailing from which trust ledger account and to which trust ledger account money was transferred, the amount of the transfer, and explaining the purpose for which each transfer was made;

(e) a book of original entry in chronological order showing the date of receipt of money other than trust money, from whom the money was received, for which client the money was received, the amount of money received, and the method by which the money was received by the member or member's law firm;

(f) a book of original entry in chronological order showing every withdrawal of money other than trust money, the date of each withdrawal, the client on whose behalf each withdrawal is made, the amount of the withdrawal, the method of withdrawal including cheque number if applicable, and the name of each recipient;

(g) a fees book or chronological file of copies of billings showing all fees and other billings charged to clients, the dates the charges were made, and identifying the clients so charged;

(h) a record printed, dated, and signed monthly by the member, showing a comparison of the total of balances held in trust accounts of the member or

member's law firm and the total of all unexpended trust account balances as they appear from the books and records, together with an explanation for any differences between the totals, supported by

- (i) a detailed listing made monthly showing the amount of trust money held for each client and identifying each client for whom trust money is held;
- (ii) a detailed reconciliation made monthly of each trust account; and
- (iii) a record showing all property, other than money, held in trust from time to time for each client;

(i) bank statements, cashed cheques, or printed or electronic copies of both sides of the cheques, and detailed duplicate deposit slips for all trust and general accounts;

(j) a chronological fees and disbursements receivable ledger showing the member-client position for each client, the billings rendered, payments on account and a continual running balance; and

(k) a record, printed, dated, and signed monthly by the member, showing a comparison of the total of balances held in accounts other than trust accounts of the member or the member's law firm and the total of all unexpended account balances as they appear on the books and records, together with an explanation for any differences between the totals.

(3) A member who receives cash for a client must also maintain a separate 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 member to receive cash and of the person from whom cash is received.

(4) The monthly trust comparison record required by subrule (2)(h) must be completed no later than 30 days after the relevant month end.

(5) A member must reconcile their general accounts each month, no later than 30 days after the relevant month end.

(6) The books, records, and accounts required under subrules (2) and (3)

(a) may be entered and posted by hand or by mechanical or electronic means, but if entered and posted by hand, they must be entered and posted in ink;

(b) must be maintained and kept current at all times; and

- (c) must be kept by the member in paper copy, or in an electronic or machine-readable form from which a paper copy can be readily produced, for at least six years following the member's most recent financial year end.

Notice of financial year end

164. (1) An active member in private practice who is resident in Yukon must, as soon as practicable after beginning private practice, notify the Executive Director in writing of the member's financial year end.

(2) An active member in private practice who is not resident in Yukon, but maintains a trust account in Yukon, must, as soon as practicable after opening the trust account, notify the Executive Director in writing of the member's financial year end.

(3) An active member in private practice required to notify the Executive Director of their financial year end under subrule (1) or (2) must notify the Executive Director in writing of any change to the date of their financial year end within 30 days after the change is made.

Notice of opening a trust account

165. An active member without a trust account in Yukon who opens a trust account in Yukon must notify the Executive Director in writing as soon as practicable that the account has been opened.

Year-end reporting

166. (1) An active member in private practice who is resident in Yukon must file with the Society within six months after the member's financial year end

- (a) a certification in Form 18; and

- (b) if the member had a trust account in Yukon at any time during the financial year, a trust account report in Form 19 completed and signed by a chartered professional accountant and by the member in respect of each practice the member was associated with since their last filing.

(2) An active member in private practice who is not resident in Yukon who had a trust account in Yukon at any time during the member's financial year must file with the Society, within six months after the member's financial year end, a certification in Form 18 and a trust account report in Form 19 completed and signed by a chartered professional accountant and by the member in respect of each practice for which the member had a trust account in Yukon since their last filing.

(3) A member who does not file a certification in Form 18 or a trust account report in Form 19 as required by subrule (1) or (2) is automatically suspended until the required forms

have been filed and the member is notified in writing by the Executive Director that the suspension is lifted.

- (4) The Executive may extend the time for filing a form under subrule (1) or (2) if
 - (a) the member requests a time extension in writing prior to the deadline for filing; and
 - (b) the Executive is satisfied there are special circumstances and that it would be reasonable to do so.

(5) A member who does not file a form within the time set by the Executive under subrule (4) is automatically suspended until the form is filed and the member is notified in writing by the Executive Director that the suspension is lifted.

Books, records and accounts audits, reviews, etc.

167. (1) The Executive may, on the basis of random selection or any other basis, designate a chartered professional accountant or other person to audit, review, or examine the books, records and accounts of a member or a member's firm.

(2) A member whose books, records and accounts are subject of an audit, review or examination under subrule (1) must immediately make them fully available for examination by the person designated by the Executive.

Division 17 - Cash Transactions and Client Identification and Verification

Interpretation

168. In this Division

“credit union central” means a central cooperative credit society, as defined in section 2 of the *Cooperative Credit Associations Act* (Canada), or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial Act other than one enacted by the legislature of Quebec;

“electronic funds transfer” means an electronic transmission of funds conducted by and received at a financial institution or a financial entity headquartered in and operating in a country that is a member of the Financial Action Task Force, where neither the sending nor the receiving account holders handle or transfer the funds, and where the transmission record contains a reference number, the date, transfer amount, currency and the names of the sending and receiving account holders and the conducting and receiving entities;

“expenses” has the meaning assigned in rule 154;

“financial institution” means

- (a) a bank that is regulated by the *Bank Act* (Canada);
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada;
- (c) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act;
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada);
- (e) a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire;
- (f) a credit union central;
- (g) a company that is regulated by the *Trust and Loan Companies Act* (Canada);
- (h) a trust company or loan company regulated by a provincial Act;
- (i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province when it accepts deposit liabilities in the course of providing financial services to the public; or
- (j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

“funds” mean cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or right to or interest in them;

“organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s law firm;

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province;
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada of any of them;

- (c) a council of a municipality incorporated under the *Municipal Act*, or similar body incorporated under the law of another province;
- (d) an organization that operates a public hospital authority and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization;
- (e) a body incorporated by or under an Act of a province of Canada for a public purpose;
- (f) a subsidiary of a public body whose financial statements are consolidated with those of the public body; or
- (g) a Yukon First Nation named in section 1 of the *First Nations (Yukon) Self-Government Act*.

“reporting issuer” means an organization that is a reporting issuer within the meaning of the securities laws of any province of Canada, or a corporation whose shares are traded on a stock exchange that is designated under section 262 of the *Income Tax Act* (Canada) and operates in a country that is a member of the Financial Action Task Force, and includes a subsidiary of that organization or corporation whose financial statements are consolidated with those of the organization or corporation;

“securities dealer” means a person or entity authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than a person who acts exclusively on behalf of such an authorized person or entity.

Cash transactions

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

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

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

(3) Subrule (1) applies when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities:

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

(4) Despite subrule (3), subrule (1) does not apply when a lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer's firm

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

Requirement to identify client

170. (1) Subject to subrule (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of rules 171 to 182 in keeping with the lawyer's obligation to know their client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

(2) A lawyer's responsibilities under rules 171 to 181 may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.

(3) Rules 171 to 181 do not apply to

- (a) a lawyer when they provide legal services or engage in or give instructions in respect of any of the activities described in rule 172 on behalf of their employer;
- (b) a lawyer
 - (i) who is engaged as an agent by the lawyer for a client to provide legal services to the client, or

(ii) to whom a matter for the provision of legal services is referred by the lawyer for a client, when the client's lawyer has complied with rules 171 through 181; or

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

Client identity

171. A lawyer who is retained by a client as described in subrule 170(1) must obtain and record, with the applicable date, the following information:

(a) for individuals:

(i) the client's full name;

(ii) the client's home address and home telephone number;

(iii) the client's occupation or occupations; and

(iv) the address and telephone number of the client's place of work or employment, where applicable;

(b) for organizations:

(i) the client's full name, business address and business telephone number;

(ii) other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable;

(iii) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable; and

(iv) the name and position of and contact information for the individual who is authorized to provide and gives instructions to the lawyer with respect to the matter for which the lawyer is retained;

(c) if the client is acting for or representing a third party, information about the third party as set out in subrule (a) or (b) as applicable.

When verification of client identity required

172. Subject to rule 173, rule 174 applies where a lawyer who has been retained by a client to provide legal services engages in or gives instructions in respect of the receiving, paying or transferring of funds.

Exemptions re: certain funds

173. Rule 174 does not apply

- (a) where the client is a financial institution, public body or reporting issuer;
- (b) in respect of funds,
 - (i) paid by or to a financial institution, public body or a reporting issuer;
 - (ii) received by a lawyer from the trust account of another lawyer;
 - (iii) received from a peace officer, a law enforcement agency, or a public official acting in their official capacity;
 - (iv) paid or received to pay a fine, penalty, or bail; or
 - (v) paid or received for professional fees, disbursements, or expenses; or
- (c) to an electronic funds transfer.

Client verification and independent source documents, etc.

174. (1) When a lawyer is engaged in or gives instructions in respect of any of the activities described in rule 172, the lawyer must

- (a) obtain from the client and record, with the applicable date, information about the source of funds described in rule 172, and
- (b) verify the identity of the client, including the individual(s) described in subrule 171(b)(iv), and, where appropriate, the third party using the documents or information described in subrule (6).

(2) A lawyer may rely on an agent to obtain the information described in subrule (6) to verify the identity of an individual client, third party or individual described in subrule 171(b)(iv) provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subrule (4).

(3) Despite subrule (2), where an individual client, third party or individual described in subrule 171(b)(iv) is not physically present in Canada, a lawyer must rely on an agent to

obtain the information described in subrule (4) to verify the person's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subrule (4).

(4) A lawyer who enters into an agreement or arrangement referred to in subrule (2) or (3) must:

(a) obtain from the agent the information obtained by the agent under that agreement or arrangement; and

(b) satisfy themselves that the information is valid and current and that the agent verified identity in accordance with subrule (6).

(5) A lawyer may rely on the agent's previous verification of an individual client, third party or an individual described in subrule 171(b)(iv) if the agent was, at the time they verified the identity,

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

(b) acting as an agent under an agreement or arrangement in writing, entered into with another lawyer who is required to verify identity under this Division or equivalent provisions in another province, for the purpose of verifying identity under subrule (6).

(6) For the purposes of subrule (1)(b), the client's identity must be verified by referring to the following documents, which must be valid, original and current, or the following information, which must be valid and current, and which must not include an electronic image of a document:

(a) if the client or third party is an individual,

(i) an identification document containing the individual's name and photograph that is issued by the federal government, a provincial government or a foreign government, other than a municipal government, that is used in the presence of the individual to verify that the name and photograph are those of the individual;

(ii) information that is in the individual's credit file if that file is located in Canada and has been in existence for at least three years that is used to verify that the name, address and date of birth in the credit file are those of the individual;

(iii) any two of the following with respect to the individual:

(A) information from a reliable source that contains the individual's name and address that is used to verify that the name and address are those of the individual;

(B) information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual; or

(C) information that contains the individual's name and confirms that they have a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information.

(b) if the client or third party is an organization that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors, where applicable, such as

(i) a certificate of corporate status issued by a public body,

(ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or

(iii) a copy of a similar record obtained from a public body that confirms the organization's existence; and

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

175. For the purposes of subrule 174(6)(a)(iii)(A) to (C), the information referred to must be from different sources, and the individual, lawyer and agent cannot be a source.

176. (1) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of one of their parents or their guardian.

(2) To verify the identity of an individual who is at least 12 years of age but not more than 15 years of age, the lawyer may refer to information under subrule 174 (6)(a)(iii)(A) that contains the name and address of one of the individual's parents or their guardian, providing the lawyer also verifies the individual's address is the same as that parent or guardian.

177. (1) When a lawyer is engaged in or gives instructions in respect of any of the activities in rule 172 for a client or third party that is an organization referred to in subrule 174(6)(b) or (c), the lawyer must:

(a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer; and

(b) make reasonable efforts to obtain, and if obtained, record with the applicable date,

(i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization;

(ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust; and

(iii) in all cases, information establishing the ownership, control and structure of the organization.

(2) A lawyer must take reasonable measures to confirm the accuracy of the information obtained under subrule (1).

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

(4) If a lawyer is not able to obtain the information referred to in subrule (1) or to confirm the accuracy of that information in accordance with subrule (2), the lawyer must

(a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization;

(b) determine whether

(i) the client's information in respect of their activities,

(ii) the client's information in respect of the source of the funds described in rule 172, and

(iii) the client's instructions in respect of the transaction,

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

(c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and

(d) keep a record, with the applicable date, of the results of the determination and assessment under subrules (b) and (c).

Timing for verifying identification

178. (1) A lawyer must verify the identity of
- (a) a client who is an individual, and
 - (b) the individual(s) authorized to provide and giving instructions on behalf of an organization with respect to the matter for which the lawyer is retained,
- upon engaging in or giving instructions in respect of any of the activities described in rule 172.
- (2) Where a lawyer has verified the identity of an individual, the lawyer is not required subsequently to verify that same identity unless the lawyer has reason to believe the information, or the accuracy of it, has changed.
- (3) A lawyer must verify the identity of a client that is an organization upon engaging in or giving instructions in respect of any of the activities described in rule 172, but in any event no later than 30 days thereafter.
- (4) Where a lawyer has verified the identity of a client that is an organization and obtained information under subrule 177(1), the lawyer is not required to subsequently verify that identity or obtain that information, unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

Record keeping and retention

179. (1) A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of subrule 174(1).
- (2) The documents referred to in subrule (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.
- (3) A lawyer must retain a record of the information, with the applicable date, and any documents obtained for the purposes of rule 171 and subrules 177(1) and 181(b), and copies of all documents received for the purposes of subrule 174(1), for the longer of
- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing services to the client, and
 - (b) a period of at least six years following completion of the work for which the lawyer was retained.

Application

180. Rules 170 through 179 do not apply to matters in respect of which a lawyer was retained before December 31, 2008, but they do apply to all matters for which the lawyer is retained after that time regardless of whether the client is a new or existing client.

Monitoring

181. During a retainer with a client in which the lawyer is engaged in or gives instructions in respect of any of the activities described in rule 172, the lawyer must:

(a) monitor on a periodic basis the professional business relationship with the client for the purposes of:

(i) determining whether

(A) the client's information in respect of their activities,

(B) the client's information in respect of the source of the funds described in rule 172, and

(C) the client's instructions in respect of transactions,

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

(ii) assessing whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct;

(b) keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of subrule (a)(i).

Criminal activity, duty to withdraw

182. A lawyer must withdraw from representing a client if

(a) in the course of obtaining the information and taking the steps required in rule 171 and subrule 174(1), 177(1) or 177(4), or

(b) at any time while retained by a client, including taking the steps required under rule 181,

the lawyer knows or ought to know that they are or would be assisting the client in fraud or other illegal conduct.

Division 18 - Professional Corporations

Application

183. (1) An eligible corporation as described in subsection 151(2) of the Act may apply to the Executive to be issued a permit under section 152 of the Act.
- (2) An application under subrule (1) must be in Form 20 and be accompanied by
- (a) a copy of the articles of incorporation of the corporation;
 - (b) a copy of the certificate of incorporation of the corporation;
 - (c) written proof satisfactory to the Executive that professional liability coverage as required under the Act and these rules will be in effect for the permit period; and
 - (d) the application fee and the professional corporation permit fee.

Name

184. The name of a professional corporation may contain only the surname or surnames and any combination of the given names or initials, of one or more members or former 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 expression “professional corporation” or the expression “société professionnelle”.

Permit

185. (1) A permit issued to a professional corporation expires on December 31 of the calendar year for which it is issued unless it is revoked earlier under the Act or these rules.
- (2) A professional corporation may apply to the Executive to renew its permit. An application for renewal must
- (a) be in Form 21;
 - (b) be received by the Executive by December 1 of the calendar year the permit expires; and
 - (c) be accompanied by the permit renewal fee.
- (3) If the Executive is satisfied that a professional corporation is eligible to have its permit renewed the Executive must issue a renewed permit to the corporation.

Change notification

186. A professional corporation must notify the Executive Director in writing as soon as practicable of any change in the information set out in its application for a permit or permit renewal.

Register

187. The Executive Director must maintain a register containing for each professional corporation

- (a) the name of the corporation and the address of its registered office;
- (b) the corporation's permit application and any applications for renewal of a permit;
- (c) a copy of any permit or renewed permit issued to the corporation; and
- (d) any change of information provided by the corporation under rule 186.

Liability – fees and assessments

188. (1) A professional corporation is liable for payment of all fees and assessments levied under the Act and these rules in respect of a member of the Society who is a shareholder in the corporation.

(2) If a professional corporation fails to pay a fee or assessment in respect of a member who is a shareholder when the fee or assessment is due, the member to whom the fee or assessment relates is personally liable for the payment.

Division 19 - Committees

Committees

189. The Executive may

- (a) designate a chair and one or more vice-chairs for a committee established by the Act or established by the Executive under section 10 of the Act; and
- (b) subject to the Act and these rules, authorize the chair or vice-chair of a committee to exercise the powers and carry out the duties and functions specified by the Executive for the conduct of the committee's business.

Division 20 - Forms and Fees

Forms

190. (1) The Executive may set the format and content requirements of
- (a) forms listed in Schedule A – Forms; and
 - (b) forms and any document not listed in Schedule A – Forms, that may be issued under the Act or these rules, or is required or allowed to be submitted to the Society under the Act or these rules.
- (2) The Executive Director must maintain and make available on the Society’s website
- (a) the forms listed in Schedule A – Forms; and
 - (b) any form or document set by the Executive under subrule (1)(b).

Fees

191. The Executive may set fees for
- (a) administrative and other services provided by the Society; and
 - (b) late payment of an insurance assessment.

Non-refundable

192. Amounts to be paid for fees and assessments under the Act and these rules, including application and membership fees, and Compensation Fund and insurance assessments will not be pro-rated and are non-refundable.

Division 21 - Protection Against Actions

Protection against actions

193. No action for damages lies against a person for anything done or not done in good faith while acting or purporting to act on behalf of the Society under the Act or these rules.

Division 22 - Transitional Provisions

Definitions

194. In this Division

“former Act” means the *Legal Profession Act* in effect immediately before the new Act comes into force;

“former rules” means the Rules of the Law Society of Yukon in force immediately before the new Act comes into force;

“new Act” means the *Legal Profession Act, 2017*.

Continuation of records

195. (1) The information in the Professional Conduct Record of an individual maintained under the former rules is to be included in the professional conduct record for that individual maintained under rule 40.

(2) The information in the records of the Society maintained under the former rules respecting a member or former member, other than information in the individual’s professional conduct record, is to be included in the file for that individual maintained under rule 39.

(3) The information in the Student Record of an individual maintained under the former rules

(a) respecting a matter listed in rule 40, is to be included in the professional conduct record for that individual maintained under rule 40; and

(b) respecting a matter listed in rule 39, is to be included in the file for that individual maintained under rule 39.

(4) The information in the Professional Corporations Record maintained under the former rules for a professional corporation is to be included in the register for the professional corporation maintained under rule 187.

Pending application – active member

196. (1) An application to be admitted as an active member that was submitted and considered complete under the former rules, but for which a determination has not been made when these rules come into effect, will be considered by the Credentials Committee based on the application and admission requirements applicable under the former rules, with any modifications considered necessary by the Committee.

(2) An application by an active member to be a non-practising member or a retired member that was submitted and considered complete under the former rules, but for which a determination has not been made when these rules come into effect, will be considered by the Credentials Committee based on the requirements applicable under the former rules, with any modifications considered necessary by the Committee.

(3) A non-practising member or a retired member who submitted an application under the former rules to be an active member, whose application has not been approved by the Executive when these rules come into effect, must re-apply under rule 85 to be an active member.

Pending application – student-at-law

197. An individual who submitted an application under the former rules to be admitted as a student-at-law, whose application has not been approved by the Executive when these rules come into effect, must re-apply under Division 6 for admission as an articulated student.

Non-practising and retired members

198. An individual who is a non-practising member or a retired member immediately before the new Act comes into force is to be included in the roll of lawyers when the new Act comes into force.

Proceedings

199. A complaint, investigation, appeal, inquiry or other proceeding under Part 3 of the former Act that is in process immediately before the new Act comes into force is to be continued as though the new Act were not in force.

Schedule A – Forms

| | | |
|---------|---|--|
| Form 1 | Application for Admission as an Articled Student | |
| Form 2 | Articling Agreement | |
| Form 3 | Application for Special Articles | |
| Form 4 | Special Articles Agreement | |
| Form 5 | Application to be a Principal for an Articled Student | |
| Form 6 | Application for Admission as an Active Member | |
| Form 7 | Declaration of a Principal | |
| Form 8 | Application for a Certificate of Permission to Act | |
| Form 9 | Application to Renew a Certificate of Permission to Act | |
| Form 10 | Application to be a Non-Practising Member | |
| Form 11 | Application to be a Retired Member | |
| Form 12 | Application to Change Status to Active Member | |
| Form 13 | Notice of Resignation | |
| Form 14 | Annual Membership Renewal | |
| Form 15 | Application to Lift Suspension | |
| Form 16 | CPD Report | |
| Form 17 | Trust Account Shortage Report | |
| Form 18 | Active Member Certification | |
| Form 19 | Trust Account Report | |
| Form 20 | Application for Professional Corporation Permit | |
| Form 21 | Professional Corporation Permit Renewal | |

Schedule B – Fees

| | Amount |
|--|---------|
| Application Fees | |
| Application fee – to be an active member | \$300 |
| Application fee – to be an active member as a Canadian Legal Advisor | \$300 |
| Application fee – to lift an automatic suspension after 12 or more months | \$300 |
| Membership Fees | |
| Articled student membership fee | \$150 |
| Active member –membership fee for an articled student to be an active member | \$300 |
| Active member – annual membership fee | \$1,100 |
| Non-practising member - annual membership fee | \$300 |
| Retired member - annual membership fee | \$25 |
| Membership change fee – non-practising member to active member | \$800 |
| Membership change fee – retired member to active member | \$1,075 |
| Interjurisdictional Practitioner | |
| Application fee | \$300 |
| Certificate of permission to act – fee | \$350 |
| Certificate of permission to act – renewal fee | \$350 |
| Professional Corporation | |
| Application fee | \$150 |
| Permit fee | \$100 |
| Permit renewal fee | \$100 |
| Late Fees | |
| Fee for late membership renewal | \$300 |
| Fee for late CPD reporting | \$200 |
| Fee for late CPD completion | \$300 |
| Other | |
| Certificate of standing | \$50 |