Law Society of Yukon Executive

ANNOTATED PROPOSED RULE AMENDMENTS

1. Rule 37.1 added

The following heading and rule are added after rule 37

Activities not considered provision of legal services

37.1 (1) For the purpose of paragraph 31(1)(e) of the Act, the activities described in section 30 of the Act are not treated as the provision of legal services if:

(a) they are performed by an individual who is not

(i) a member of the Society, or

(ii) a lawyer or the equivalent licensed to practise law in another province or in a jurisdiction outside Canada,

and the activities are performed without fee, gain or reward, or the expectation of fee, gain or reward, direct or indirect, from any person; or

(b) they are performed by an agent on behalf of a corporation and Yukon or federal legislation authorizes those activities to be performed by agent.

(2) For greater certainty, despite subrule (1), a person to whom section 46 of the Act applies must not provide a legal service unless authorized to do so under that section.

Substantive change - new rule 37.1. This rule would provide limited exceptions to allow an individual who is not a lawyer to provide legal services without compensation and for an agent to represent a corporation where that is allowed under Yukon or federal legislation. For example, the Yukon Small Claims Court Act and Summary Convictions Act both refer to a party being represented or appearing by an agent who is not a lawyer.

Other Canadian jurisdictions have equivalent provisions to allow non-lawyers and agents to provide legal services in similar circumstances.

Lawyers who have been disbarred or are under suspension or prohibition from providing legal services are not allowed to provide legal services as a non-lawyer under these provisions.

2. Rule 41 amended

(1) The heading to rule 41 is replaced with the following:

Reporting obligations – listed offences

Editorial - revised heading better reflects content of the rule

(2) Rule 41 is renumbered as subrule 41(1).

Editorial - renumbering required to accommodate new subrule 41(2)

(3) In subrule 41(1) the expression “who is” **is repealed.**

Editorial - repealed expression is unnecessary

(4) Subrule 41(1)(e) is replaced with the following:

(e) an offence under the *Securities Act* or an analogous enactment in any province, including a regulation or regulatory instrument made under the Act or enactment; or

Editorial - drafting improvement, no substantive change

(5) The following subrule is added after subrule 41(1):

(2) Subject to subrule 42(a), as soon as practicable after the disposition of a charge referred to in subrule (1), the member, applicant for admission as a member, interjurisdictional practitioner or applicant to be an interjurisdictional practitioner must give the Executive Director written notice and particulars of the disposition, including any conditions accepted or agreement made relating to the disposition.

Editorial - drafting improvement - groups the "as soon as practicable" reporting provisions for listed offences and specifies that particulars of the disposition must accompany the notice - currently addressed in subrule 42(2)(a)

3. Rule 41.1 added

The following heading and rule are added after rule 41:

Reporting obligations – complaint in another jurisdiction

41.1 A member, an applicant for admission as a member, an interjurisdictional practitioner or an applicant to be an interjurisdictional practitioner must give the Executive Director written notice and particulars of any complaint made about the individual to a governing body or a body that regulates legal professionals in a jurisdiction outside Canada, as soon as practicable after the complaint is made.

*Editorial - drafting improvement - specifies individual must provide notice **and** particulars of the complaint - renumbering enables a heading to be added - currently addressed in subrule 42(2)(b)*

4. Rule 42 replaced

Rule 42 is replaced with the following:

Reporting obligations – imprisonment, sanction, undertaking, etc.

42. A member, an applicant for admission as a member, an interjurisdictional practitioner or an applicant to be an interjurisdictional practitioner must immediately give the Executive Director written notice and particulars of:

(a) any order requiring the individual to serve a term of imprisonment, including a conditional or intermittent term of imprisonment;

(b) any order, sanction, or direction, whether interim or final, 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;

(c) any undertaking given or agreement made by the individual with a governing body or a body that regulates legal professionals in a jurisdiction outside Canada that places, whether on an interim or permanent basis, conditions, restrictions or prohibitions on the provision of legal services by the individual.

Editorial: *(i) adds a heading to the rule*

*(ii) specifies individual must provide notice **and** particulars*

(iii) clarifies reporting obligation is not limited to "final" orders, etc.

New: *subrule (c) is new - expressly requires undertakings or agreements to be reported that may have been made without an order, sanction, or direction from a disciplinary or conduct review proceeding*

5. Rule 43 replaced

Rule 43 is replaced with the following:

Reporting obligations – bankruptcy, assignment for creditors

> 43. A member, an applicant for admission as a member, an interjurisdictional practitioner or an applicant to be an interjurisdictional practitioner must immediately give the Executive Director written notice
>
> (a) of an application for a bankruptcy order against them, or
>
> (b) if they file for an assignment for the general benefit of creditors.

Editorial - adds a heading and drafting improvement, no substantive change

6. Rule 103 amended

In subrule 103(c)(iii) the expression “Committee” **is replaced with** “committee”.

Editorial - expression shouldn't be capitalized

7. Rule 105 amended

In subrule 105(2) the expression “Code of Conduct” **is replaced with** “code of conduct”.

Editorial - expression shouldn't be capitalized

8. Rule 107 replaced

Rule 107 is replaced with the following:

Concern about competence or conduct where no complaint

107. (1) If, by means other than a complaint, information comes to the attention of the Society that indicates a member may have, because of incapacity or otherwise:

(a) been incompetent in the provision of legal services;

(b) engaged in professional misconduct or conduct unbecoming a member; or

(c) breached a provision of the Act, the regulations or these rules,

the Society may forward the information in writing to the CIC chair.

(2) Information forwarded to the CIC chair under subrule (1) must be considered by the chair under subsection 58(1) of the Act and if under that subsection the chair reasonably believes that it is appropriate to do so, they may refer the matter to the Complaints Investigation Committee for investigation or to the Fitness to Practise Committee.

(3) After considering the information forwarded to them under subrule (1), if the CIC chair decides not to refer the matter to the Complaints Investigation Committee or the Fitness to Practise Committee, they must provide the Society with an explanation in writing for their decision.

Substantive change to rule 107 - objective is to explicitly enable information about the conduct or competence of a member that comes to the attention of the Society to be properly considered within and integrated into the "complaint process" established under the Act and rules. Amendment also provides the Society with discretion by removing mandatory language where information sharing may be premature, inefficient or unnecessary to protect the public interest.

9. Rule 108 replaced

Rule 108 is replaced with the following:

108. When examining a complaint under subsection 57(1) of the Act or considering a matter or information under subsection 58(1) of the Act, the CIC chair may, at any time, make reasonable enquiries of any person, including the complainant or any member, as the chair considers appropriate.

Editorial:	*(i) the new drafting for rule 108 cross references subsection 58(1) of the Act (not rule 107) to reflect the proposed revisions to rule 107 set out above* *(ii) drafting improvement - changed "the member concerned" to "any member" - in the current rule members other than the "member concerned" are included in the expression "enquiries of any person" but they are not expressly referred to*

10. Rule 109 repealed

Rule 109 is repealed.

Editorial - rule 109 is not necessary - sections 57 and 58 of the Act comprehensively list the options available to the CIC chair after examining the complaint under 57 or other information under 58

11. Rule 110 replaced

Rule 110 is replaced with the following:

Explanation for dismissing a complaint

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

(a) notify the member of the complaint, if the member was not notified earlier; and

(b) provide the complainant and the member with an explanation in writing for the dismissal.

Editorial - drafting improvement, no substantive change, revised heading

12. Rule 112 is replaced

Rule 112 is replaced with the following:

112. As soon as practicable after an investigator is designated under paragraph 59(a) of the Act, the CIC chair:

(a) must provide the investigator with the complaint and any documents and information acquired in the examination of the complaint; and

(b) may provide the investigator with a written explanation of the chair's concerns about the conduct or competence of the member.

Substantive change - This amendment limits the sharing of personal information in circumstances where the Act does not require the rules to specify that the information be shared.

13. Rule 166 is replaced with the following:

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) an active member 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 for which the member had a trust account in Yukon during the financial year.

(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) an active member certification in Form 18; and

(b) 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 during the financial year.

(3) A member who does not file an active member certification or a trust account report within the six-month period required by subrule (1) or (2), must

(a) pay the applicable late filing fees; and

(b) file the applicable forms

within 30 days after the certification or trust account report were due to be filed under subrule (1) or (2).

(3.1) A member who does not file their active member certification or trust account report, and pay the applicable late filing fees, within the 30-day period referred to in subrule (3) is automatically suspended until the required forms are filed, the late filing fees are paid, 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), (2) or (3) 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, the applicable late filing fees are paid, and the member is notified in writing by the Executive Director that the suspension is lifted.

Substantive change - the primary change is the addition of 3.1 which provides a 30-day time extension before a member is automatically suspended for not filing the required forms. The additional time is operationally important to the Society (and may be helpful to a non-compliant member). This provision is modelled on CPD rules 97 and 98 which provide a time-extension before automatic suspension. There are also some minor editorial drafting improvements to rule 166.

14. Rule 184 repealed

Rule 184 is repealed.

Substantive change - the current rule reflects legacy drafting from the old LSY rules. Paragraph 151(2)(e)(i)(A) of the Act remains in effect and requires the expression "professional corporation" or "société professionnelle" to be used in the circumstances described in that paragraph. The naming restrictions under rule 184 that extend beyond the requirements set out in the Act are no longer considered appropriate.

15. Rule 185 amended

Subrule 185(2)(b) is repealed.

Substantive change - a prof corp permit expires on Dec 31 of the calendar year for which it was issued - operationally there is no need for the rules to require the renewal application by Dec 1

Coordinating and additional editorial amendments

16. Rule 39 amended

(1) Subrule 39(1)(h) is replaced with the following:

(h) a copy of a notice and the particulars given to the Executive Director under subrule 41(1(h) a copy of a notice and the particulars given to the Executive Director under subrule 41(1)

Editorial - cross ref was 41

(2) Subrule 39(1)(i) is replaced with the following:

(i) a copy of a notice and the particulars given to the Executive Director under rule 42(a);

Editorial - cross ref was 42(1)(a)

(3) Subrule 39(1)(j) is replaced with the following:

(j) a copy of a notice and the particulars given to the Executive Director under subrule 41(2) if the charge was disposed of by an acquittal, stay of proceedings, or the charge being withdrawn;

Editorial - cross ref was 42(2)(a)

(4) Subrule 39(1)(k) is replaced with the following:

(k) a copy of a notice and the particulars given to the Executive Director under rule 41.1;

Editorial - cross ref was 42(2)(b)

17. Rule 40 amended

(1) In subrule 40(g) the expression "any failure" **is replaced with** "a record of any failure".

Editorial - drafting improvement

(2) Subrule 40(j) is replaced with the following:

(j) a copy of a notice and the particulars given to the Executive Director under subrules 42(b) or (c) and a summary of the findings made, if any, relating to the order, sanction, direction, undertaking, or agreement;

Editorial - cross ref was 42(1)(b)

(3) Subrule 40(k) is replaced with the following:

(k) a copy of a notice and the particulars given to the Executive Director under subrule 41(2) if the disposition of a charge includes a conviction;

Editorial - cross ref was 42(2)(a)