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# Legal Profession Act

## INTERPRETATION

### Definitions

1 In this Act,

**“active member”** means a member other than an inactive member or a member who is suspended; (*membre actif*)

**“bar admission course”** means the bar admission course established and operated by the Society; (*cours préparatoire à l’admission au Barreau*)

**“bar admission examination”** means an examination in general subjects related to the practice of law, including practice, procedure, ethics and the Acts of Nunavut or the Acts of Canada or both; (*examen d’admission au Barreau*)

**“Committee of Inquiry”** means a committee established under paragraph 24.1(1)(d) or (2)(d) or subsection 24.2(4); (*comité d’enquête*)

**“Discipline Committee”** means the Discipline Committee established under section 23; (*comité de discipline*)

**“Executive”** means the regulating body of the Society established by subsection 3(1); (*bureau*)

**“inactive member”** means a member shown on the Roll as being an inactive member; (*membre inactif*)

**“member”** means a person enrolled as a member of the Society but does not include an honorary member; (*membre*)

**“practice of law”** includes but is not restricted to

- (a) appearing as counsel or advocate,
- (b) drawing, revising or settling
  - (i) any petition, memorandum of association, articles of association, application, statement, affidavit, minute, resolution, by-law or other document relating to the incorporation, registration, organization, dissolution or winding-up of a corporate body,
  - (ii) any pleading for use in any judicial proceeding,
  - (iii) any will, deed of settlement, trust deed, power of attorney or document relating to any probate or letters of administration or the estate of a deceased person,

(iv) any document relating to proceedings under an Act of Nunavut or an Act of Canada, and

(v) any instrument relating to property that is intended, permitted or required to be registered, recorded or filed in any registry or other public office,

(c) drawing any act or deed or negotiating in any way for the settlement of, or settling, any claim or demand for damages founded in tort,

(d) agreeing to place at the disposal of any other person the services of a member, and

(e) giving legal advice,

but does not include

(f) any act referred to in paragraphs (a) to (e) if it is not done for or in expectation of a fee, gain or reward direct or indirect, from any other person,

(g) any act referred to in paragraphs (a) to (e) done by a public officer or a member of the Legislative Assembly or a council of a municipality in the course of his or her duty, or

(h) the lawful practice of a notary public; (*exercice du droit*)

**“Roll”** means the Roll of the Law Society of Nunavut referred to in subsection 14(1); (*Tableau*)

**“rules”** means the rules of the Society made under this Act; (*règles*)

**“Secretary”** means the Secretary of the Society chosen under subsection 6(1); (*secrétaire*)

**“Society”** means the Law Society of Nunavut established by subsection 2(1); (*Barreau*)

**“Sole Inquirer”** means a Sole Inquirer appointed under paragraph 24.1(1)(c) or (2)(c); (*enquêteur unique*)

**“special examination”** means an examination at university standards in subjects pertaining to substantive law in force in Nunavut; (*examen spécial*)

**“student-at-law”** means a person serving articles of clerkship approved by the Society to a member; (*stagiaire en droit*)

**“witness”**, with reference to any proceedings, includes a member whose conduct is being investigated. (*témoin*)

R.S.N.W.T. 1988,c.40(Supp.),s.2; S.N.W.T. 1995, c.11,s.28; S.N.W.T. 1995,c.7,s.2; S.N.W.T. 1997,c.8, s.18(2); S.Nu. 2004,c.9,s.2(1); S.Nu. 2010,c.14, s.10(2); S.Nu. 2017,c.27,s.10.1.

**Barrister and solicitor includes reference to other members**

**1.1** In this Act or another enactment, unless the context requires otherwise, a reference to a barrister or solicitor includes a reference to a member known and designated under a designation provided for in rules made under subparagraph 8(1)(a.1)(ii), to the extent permitted by that member's scope of practice as defined in the rules made under subparagraph 8(1)(a.1)(i).

S.Nu. 2017,c.27,s.1.1.

## PART I LAW SOCIETY OF NUNAVUT

### Establishment of Society

**Law Society of Nunavut**

**2(1)** A body corporate called the Law Society of Nunavut is established.

**Registered office**

(2) The registered office of the Society shall be the place within Nunavut designated by the Executive.

**Seal**

(3) The Society shall, by resolution, adopt a seal and shall make rules providing for the custody and use of the seal.

S.Nu. 2004,c.9,s.2(1).

### Executive

**Executive**

**3(1)** There shall be an Executive that shall manage and conduct the affairs of the Society.

**Composition**

(2) The Executive shall be composed of

(a) one person, who is not a member of the Society, appointed by the Minister for a term of three years; and

(b) not less than four other persons who are elected or appointed in accordance with the rules from among the members of the Society who are resident in Nunavut.

(3) **Repealed**, S.Nu. 2004,c.9,s.2(2).

R.S.N.W.T. 1988,c.40(Supp.),s.3; S.N.W.T. 1999,c.9,  
Sch.H,s.1; S.Nu. 2004,c.9,s.2(1),(2); S.Nu. 2017,c.27,  
s.2; S.Nu. 2018,c.15,s.142(1).

**Eligibility**

**4(1)** Every active member is eligible for nomination and election to the Executive.



**Retiring members**

(2) Every retiring member of the Executive is eligible for nomination and re-election to the Executive.

**Voting**

5 Every active member, other than an active member granted a restricted appearance certificate under the rules, is entitled to vote at an election of the Executive.

R.S.N.W.T. 1988,c.40(Supp.),s.4.

**Officers**

6(1) The members of the Executive shall choose from among themselves the officers of the Society, namely, the President, the Vice-President, the Secretary and the Treasurer, and the offices of the Secretary and Treasurer may be held by the same person.

**Deputy Secretary-Treasurer**

(2) The Executive may appoint a Deputy Secretary or a Deputy Secretary-Treasurer who, unless otherwise provided in the rules, may exercise the powers and shall perform the functions and duties of the Secretary and Treasurer.

**Powers of Executive**

7 The Executive, for and on behalf of the Society, may

- (a) exercise the powers vested in a corporation under section 36 of the *Legislation Act*;
- (b) acquire and hold real property and sell, lease or otherwise dispose of it at pleasure;
- (c) borrow money for the purposes of the Society and mortgage or charge property of the Society or its sources of funds as security for moneys borrowed;
- (d) enter into any contract;
- (e) appoint any person as an honorary member of the Society or an honorary member of the Executive;
- (f) establish, or provide for the establishment of, committees and appoint, or provide for the appointment of, members to those committees, and confer on a committee the duty, power or authority to act for the Executive in relation to the matters that the Executive directs;
- (g) appoint delegates and representatives to appear on behalf of and represent the Society;
- (h) provide for the reporting of legal decisions;
- (i) establish and maintain libraries for the use of the members of the Society;
- (j) establish and maintain a special fund for the relief of aged, infirm or disabled members or former members of the Society or their dependants and the dependants of deceased members and may discontinue the fund in whole or in part;
- (k) authorize the distribution to members of memoranda or publications relating to ethical standards of professional conduct in the practice of law;

- (l) take the action and incur the expenses that the Executive considers necessary for the promotion, protection, interest or welfare of the Society;
- (m) establish and prescribe a program of continuing legal education;
- (n) authorize the Society to enter into agreements relating to the provision of legal aid;
- (o) recommend guidelines for fees that may be charged to clients by members;
- (p) enter into co-operative arrangements with other professional bodies in any jurisdiction;
- (q) insure or underwrite its members or any class of members, reinsure its liability with regard to any insurance contracts, and generally operate insurance and pension schemes for the benefit of its members or any class of members and for the protection of the public;
- (r) grant pensions and allowances to the employees and former employees of the Society and the dependants of those persons, and make payments towards insurance to provide those pensions and allowances; and
- (s) do such things as are incidental or necessary to the exercise of the powers set out in paragraphs (a) to (r).

S.Nu. 2017,c.27,s.3; S.Nu. 2017,c.27,s.10.1; S.Nu. 2018,c.15,s.108(2).

## Rules

### Rules

**8(1)** The Executive shall make rules for the regulation of the Society, the management and conduct of its business affairs and for the exercise of the powers conferred or the performance of the duties imposed on the Society or the Executive by or under this Act and, without restricting the generality of these powers to make rules, may make rules

- (a) prescribing the terms and conditions on which approval for admission as members or as students-at-law may be given, and the manner of proof of those terms and conditions;
  - (a.1) creating a category of membership with a limited scope of practice, including
    - (i) defining the scope of practice,
    - (ii) providing for members of that category of membership to be known and designated under a designation other than that provided under section 63, and
    - (iii) providing for different rules under this subsection for that category of membership;
  - (b) prescribing and establishing a bar admission course, the contents of the course and fees for enrollment in the course for persons required to pass a bar admission examination;

- (c) establishing a bar admission examination or a special examination or both, and respecting the contents of those examinations;
- (d) fixing the admission fees and the annual and other fees payable to the Society by members and students-at-law;
  - (d.1) fixing a levy to be paid by members of the Society for the purpose of funding the Nunavut Law Foundation established under section 50, and exempting a category of members from paying the levy;
  - (d.2) respecting annual registration documents and other administrative documents that must be submitted to the Society by its members;
  - (d.3) respecting mandatory continuing legal education, including
    - (i) setting the number of hours of continuing legal education members of the Society must complete annually, including by area of study, and
    - (ii) exempting a category of members of the Society from completing, either completely or in part, the required annual number of hours of continuing legal education;
- (e) providing that a member is suspended, with or without notice or investigation, on contravening a rule respecting
  - (i) payment of fees, levies or other monies due to the Society, or
  - (ii) submission of administrative documents;
- (e.1) providing that a member is suspended, with notice, on contravening a rule respecting mandatory continuing legal education;
- (f) providing for the reinstatement of
  - (i) members and students-at-law under suspension,
  - (ii) former members whose names have been struck from the Roll, and
  - (iii) former students-at-law whose articles have been terminated under this Act, and prescribing the terms and conditions on which reinstatement may be granted;
- (g) providing for the election to become an inactive member, for reinstatement of inactive members as active members and prescribing the terms and conditions on which reinstatement may be granted;
- (h) requiring members to open and maintain trust accounts for clients' money at a bank, treasury branch, credit union or trust company;
- (i) prescribing the manner of keeping the books, ledgers, journals, records and accounts required under section 43, requiring the furnishing of evidence that those books, ledgers, journals, records and accounts are being kept and maintained and providing for their inspection from time to time by the auditors or agents of the Society;

- (j) requiring a member to pay to the Society the cost of an inspection or audit of books and accounts of the member where the rules have not been complied with;
- (k) respecting the manner of keeping the records and accounts of the Society including the Roll and the information that may be entered in them;
- (l) providing for the procedure for the nomination of candidates for election as members of the Executive and for the appointment of members to the Discipline Committee and the Rules Committee established under section 8.1;
- (l.1) prescribing additional eligibility criteria for appointment to the Discipline Committee or the Rules Committee established under section 8.1;
- (m) prescribing the circumstances under which a member is or is not entitled to vote;
- (n) prescribing the procedure to be used for the holding of elections and for determining the elected members;
- (n.1) providing for the procedure for appointing persons as members of the Executive where a vacancy occurs between elections;
- (n.2) restricting the amount of cash or bearer instruments that a member of the Society may receive with respect to a client, a matter or a transaction;
- (n.3) respecting any matter referred to in paragraph 7(f);
- (o) respecting matters relating to the discipline and honour of the legal profession, the discipline of members and students-at-law, the making of investigations and inquiries concerning the conduct of members and students-at-law, including the procedure to be followed by and the powers and duties of the Discipline Committee or a Sole Inquirer or a Committee of Inquiry and the giving of public notice of disbarments, expulsions and suspensions of members and students-at-law;
- (o.1) respecting the procedure to be followed by and the powers and duties of the Rules Committee established under section 8.1;
- (p) respecting the powers, duties and qualifications of the officers and employees of the Society;
- (q) for the admission of members of the legal profession outside Nunavut as barristers and solicitors for occasional appearances for specified proceedings; and
- (r) prescribing the procedure for meetings of the Society and the Executive, including the calling of meetings, quorum, voting and notice of motion to be given of rules to be submitted to a meeting of the Society for confirmation or adoption.

**When rule effective**

(2) Subject to subsection (5), a rule shall have effect only until the end of the next annual meeting of the Society unless before that time the rule is confirmed by resolution of the Society.

**Rule respecting qualifications**

(3) No rule respecting the qualifications that must be satisfied by a person in order to become a member shall have effect until it is confirmed by resolution of the Society.

**How rules made**

(4) The Society at an annual or other meeting called for the purpose may make any rule.

**Where rule not confirmed**

(5) If a resolution to confirm a rule is defeated by the Society, the rule ceases to have effect immediately.

**Notice**

(6) Notice of a rule to be submitted to a meeting of the Society for confirmation or adoption must be given in accordance with subsection 10(2).

(6.1) **Repealed**, S.Nu. 2018, c.15, s.108(3).

**Publication**

(6.2) The Society shall publish its rules in a manner that makes them readily accessible to the public.

(7) **Repealed**, S.N.W.T. 1995, c.11, s.28.

R.S.N.W.T. 1988, c.40 (Supp.), s.5; S.N.W.T. 1995, c.7, s.3; S.N.W.T. 1995, c.11, s.28; S.N.W.T. 1998, c.21, s.11(2); S.Nu. 2004, c.9, s.2(1); S.Nu. 2011, c.6, s.15(2); S.Nu. 2017, c.27, s.4(1)-(3), 10.1; S.Nu. 2018, c.15, s.108(3).

**Rules Committee**

**8.1(1)** The Executive shall establish a committee called the Rules Committee composed of not less than three members at least one of whom is an active member resident in Nunavut, and shall, in accordance with the rules, appoint the members of the Rules Committee from among the members of the Society.

**Forwarding proposed rule**

(2) Prior to making a rule under this Act, the Executive or the Society shall forward a copy of the proposed rule to the Rules Committee.

**Examination**

(3) The Rules Committee shall examine any proposed rule forwarded to it to ensure that it

- (a) is authorized by this Act;
- (b) is consistent with the enactments of Nunavut and Canada;
- (c) does not trespass unduly on existing rights and freedoms; and
- (d) does not constitute an unusual or unexpected use of the authority under which it is to be made.

**Advice**

(4) Following the examination under subsection (3), the Rules Committee shall advise the Executive and the members of the Society that the proposed rule has been examined and indicate any matter referred to in that subsection to which the attention of the Executive and the members of the Society should be drawn.

**Restriction on making rules prior to examination**

(5) Despite any other provision of this Act, the Executive and the Society may not make or confirm any rule prior to receiving advice under subsection (4) respecting that rule.

S.Nu. 2017,c.27,s.5.

## Auditor

**Auditor**

9(1) The Society shall by resolution appoint an auditor for the Society at every annual general meeting.

**Acting auditor**

(2) Where the auditor is absent or for any reason is unable to act, the President may appoint any person as acting auditor and that person while acting may exercise powers and shall perform the duties of the auditor.

## Meetings

**Annual general meeting**

10(1) The Society shall hold an annual general meeting of the members of the Society once a year at the place and time that the Executive determines.

**Notice**

(2) At least 10 days before an annual general meeting, the Secretary shall cause to be mailed to each member of the Society a notice of the meeting and of any rule that is to be submitted to the meeting for confirmation or adoption.

**Report**

(3) At each annual general meeting, the President shall present a report of the proceedings of the Executive and the proceedings of the Discipline Committee since the last annual general meeting.

S.Nu. 2017,c.27,Sch.

**Quorum**

11 Eight active members constitute a quorum at an annual general meeting or a special meeting called under section 13.

**Financial statement**

**12** A statement of the financial position of the Society during the previous fiscal year shall be given by the Treasurer at each annual general meeting.

**Special meeting**

**13(1)** A special meeting of the Society shall be called by the Secretary

- (a) when the Executive directs; or
- (b) within 14 days after the receipt by the Secretary of a written request signed by five active members setting out the business to be discussed at the meeting.

**Notice**

(2) At least 10 days before a special meeting, the Secretary shall cause to be mailed to each member of the Society a notice of the meeting.

S.Nu. 2017,c.27,Sch.

**PART II  
MEMBERSHIP AND ENROLLMENT**

**The Roll**

**Roll**

**14(1)** The Secretary shall keep and maintain a record called the "Roll of The Law Society of Nunavut" in accordance with the rules.

**Record**

(2) The Secretary shall keep and maintain a record pertaining to persons admitted to the Society as members and as students-at-law.

**Inspection of Roll and record**

(3) The Roll and the record pertaining to members and students-at-law shall be open for inspection by any person on reasonable notice to the Secretary.

R.S.N.W.T. 1988,c.40 (Supp.), s.6; S.Nu. 2004,c.9, s.2(1).

**Resignation**

**15(1)** No member may resign from the Society unless his or her resignation is submitted to and accepted by the Executive.

**Where resignation accepted**

(2) Where a resignation under subsection (1) is accepted, the name of the member shall be struck from the Roll.

**Where member becomes judge**

(3) Where a member of the Society becomes a judge of the Supreme Court of Canada, the Federal Court of Canada, a superior court of Nunavut, a superior or territorial court of a

territory, or a superior, district, county or provincial court in any province, the name of the member shall be struck from the Roll.

R.S.N.W.T. 1988,c.40(Supp.), s.7; S.Nu. 2004,c.9, s.2(1).

## Evaluation of Qualifications

### Qualifications of applicants

**16(1)** The Executive shall evaluate the academic qualifications of every applicant for admission as a member of the Society and may, in its discretion, administer a special examination to any applicant.

### Waiving and varying requirements

(2) Notwithstanding anything in this Part, the Executive, where it considers that special circumstances so warrant with respect to any person, may waive or vary the requirements set out in paragraph 18(2)(a) or (b).

S.Nu. 2004,c.9,s.3.

## Student-at-Law

### Certificate

**17(1)** An applicant for admission to the Society as a student-at-law shall obtain from the Secretary a certificate as to the compliance by the applicant with the rules respecting the admission of students-at-law.

### Articles with judge of Nunavut Court of Justice

(2) The Executive may, subject to terms and conditions that it considers proper, permit an applicant for admission as a student-at-law to serve a part of his or her period under articles with

- (a) a judge of the Nunavut Court of Justice;
- (b) a judge of the Supreme Court of Canada, the Federal Court of Canada or a judge of a superior court of a province or territory; or
- (c) a barrister and solicitor who does not reside in Nunavut, but
  - (i) who is an active member in good standing; and
  - (ii) who is and has been engaged in the practice of law for not less than five years.

### Waiving and varying requirements

(3) Where the Executive considers that special circumstances so warrant, the Executive may, subject to terms and conditions that it considers proper, waive or vary the requirements set out



in paragraph 18(2)(a) in respect of the articles of an applicant for admission as a student-at-law.

R.S.N.W.T. 1988, c.40(Supp.), s.8; S.N.W.T. 1998, c.34, Sch. C, s.17(2); S.Nu. 2004, c.9, s.4.

## Qualifications for Membership

### Qualifications for membership

**18(1)** Subject to subsection 16(1), a person is qualified for admission to the Society who

- (a) has been duly called to the bar of a province or territory or has been admitted to practise as an attorney, advocate, barrister or solicitor in any superior court of a province or territory; and
- (b) is of good character and of good standing in the law society of the province or territory of which he or she is an attorney, advocate, barrister or solicitor.

### Chambre des notaires du Québec

(1.1) Subject to subsection 16(1), the rules may provide that a person is qualified for admission to the Society who

- (a) is a member in good standing of the Chambre des notaires du Québec; and
- (b) is of good character.

### Articles of student-at-law

(2) A person is qualified for admission to the Society who

- (a) except as provided by subsections 17(2) and (3), has completed 12 months of continuous service under articles as a student-at-law approved by the Executive to a barrister and solicitor residing in Nunavut
  - (i) who is in good standing;
  - (ii) who is and has been engaged in the practice of law for not less than five years of which not less than two years were spent in Nunavut; and
  - (iii) whose practice affords reasonable opportunity for the instruction and training of the student-at-law in the general practice of the profession of a barrister and solicitor;
- (b) has taken a bar admission course and passed a bar admission examination; and
- (c) is of good character, and
  - (i) is a graduate of a law school approved by the Executive, or
  - (ii) has been duly called to the bar in a country that is a member of the British Commonwealth of Nations and has been actively engaged in the practice of law in that country for a period of not less than three years within the five years immediately before the date of his or her application and who has a legal

education that, in the opinion of the Executive, is equivalent to graduation from a law school approved by the Executive.

(3) **Repealed**, S.Nu. 2004,c.9,s.5.

(4) **Repealed**, S.Nu. 2004,c.9,s.5.

S.Nu. 2004,c.9,s.5; S.Nu. 2010,c.14,s.10(2); S.Nu. 2017,c.27,s.6.

#### Appeal

**19** Where the Society refuses or neglects to admit a person as a member, that person may, on 10-day written notice to the Society, apply to the Nunavut Court of Justice and, on due cause being shown, the Nunavut Court of Justice may

- (a) make an order directing the Society to admit the person; or
- (b) make such other order as is warranted by the facts.

S.Nu. 2004,c.9,s.2(1).

#### Nature of order

**20** An order made under section 19 is final.

#### Certificate of approval

**21(1)** When a person has been approved by the Executive as a member of the Society and the admission fee fixed by the rules has been paid, the Secretary shall issue to that person a certificate to that effect.

#### Oath

(2) Subject to subsection (4), every person to whom a certificate is issued under subsection (1) shall, before engaging in the practice of law in Nunavut, take and subscribe in Nunavut before a judge of the Nunavut Court of Justice the following oath or an oath in the manner and form and with the ceremonies that the person declares to be binding on his or her conscience:

I, ....., do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty, King Charles the Third (*or the reigning Sovereign for the time being*); that I will, as a barrister and solicitor (*or other designation pursuant to the rules*), conduct all causes and matters faithfully and to the best of my ability; that I will not pervert the law to favour or prejudice any person but will in all things conduct myself truly and with integrity; and that I will uphold and maintain His Majesty's interests and those of my fellow citizens according to the laws in force in Nunavut. So help me God.

#### Certificate and enrollment

(3) When the applicant for admission has taken and subscribed the oath set out in subsection (2), the Clerk or Deputy Clerk of the Nunavut Court of Justice shall issue a certificate to that effect and send it without delay to the Secretary who shall enroll the applicant as a member of the Society.

**Restricted appearance certificate**

(4) Where an applicant for admission has been granted a restricted appearance certificate under the rules, the Secretary shall enroll the applicant as a member of the Society if the applicant has

(a) within Nunavut and before a judge of the Nunavut Court of Justice, taken and subscribed to the oath referred to in subsection (2); or

(b) in the superior court of a province or territory, taken and subscribed to an oath in substantially the same form as the oath referred to in subsection (2).

(5) **Repealed**, S.Nu. 2004,c.9,s.2(2).

(6) **Repealed**, S.Nu. 2004,c.9,s.2(2).

(7) **Repealed**, S.Nu. 2004,c.9,s.2(2).

(8) **Repealed**, S.Nu. 2004,c.9,s.2(2).

(9) **Repealed**, S.Nu. 2004,c.9,s.2(2).

(10) **Repealed**, S.Nu. 2004,c.9,s.2(2).

(11) **Repealed**, S.Nu. 2004,c.9,s.2(2).

R.S.N.W.T. 1988,c.40(Supp.),s.9; S.N.W.T. 1999,c.9,  
Sch.H,s.2; S.Nu. 2004,c.9,s.2(1),(2); S.Nu. 2017,c.27,  
s.6.1; S.Nu. 2022,c.14,s.6.

## PART III DISCIPLINE

### Conduct Unbecoming

**Question of guilt**

**22(1)** The question of whether a person is guilty of professional misconduct or conduct unbecoming a barrister and solicitor or a student-at-law shall be determined by a Sole Inquirer or a Committee of Inquiry or, on appeal, by the Court of Appeal.

**Conduct unbecoming**

(2) Any act or conduct that in the judgment of a Sole Inquirer or a Committee of Inquiry or the Court of Appeal, as the case may be,

(a) is such as to be harmful to the best interests of the public or the members of the Society, or

(b) tends to harm the standing of the legal profession generally, is conduct unbecoming a barrister and solicitor or a student-at-law within the meaning of this section.

(3) **Repealed**, S.N.W.T. 1995,c.7,s.4.

S.N.W.T. 1995,c.7,s.4.

## Investigation

### Discipline Committee

**23(1)** The Executive shall establish a committee called the Discipline Committee composed of not less than nine persons at least one of whom shall be an active member resident in Nunavut, and shall, in accordance with the rules,

- (a) appoint the members of the Discipline Committee from among the members of the Society;
- (b) designate a chairperson of the Discipline Committee; and
- (c) designate one or more vice-chairpersons of the Discipline Committee.

### Designation of acting chairperson by Executive

(2) The Executive may, in writing, designate a vice-chairperson of the Discipline Committee to act in the place of the chairperson or to perform specified functions and duties of the chairperson where

- (a) the chairperson is absent or otherwise unavailable;
- (b) the chairperson is incapacitated; or
- (c) the Executive determines that it would be inappropriate for the chairperson to act as chairperson in respect of a particular matter or complaint or for a period of time determined by the Executive.

### Designation of acting chairperson by the chairperson

(3) The chairperson of the Discipline Committee may, in writing, designate a vice-chairperson of the Discipline Committee to act in the place of the chairperson or to perform specified functions and duties of the chairperson where

- (a) the chairperson is absent or otherwise unavailable;
- (b) the chairperson is incapacitated;
- (c) the chairperson determines that it would be inappropriate for the chairperson to act as chairperson in respect of a particular matter or complaint; or
- (d) the chairperson determines, for any other reason, that it is advisable for a vice-chairperson to act in the place of the chairperson in respect of a particular matter or complaint or for a period of time determined by the chairperson.

R.S.N.W.T. 1988,c.40(Supp.),s.10; S.N.W.T. 1995,  
c.7,s.5; S.Nu. 2004,c.9,s.2(1).

### Investigation

**24(1)** The chairperson of the Discipline Committee shall investigate every matter that comes to his or her attention in respect of the conduct of a member or student-at-law.

**Requirement to answer questions or furnish records**

(2) In the course of an investigation, the chairperson of the Discipline Committee may require the member or student-at-law concerned or the complainant, if any, to answer any questions or to furnish any records that the chairperson considers relevant to the investigation, and the member or student-at-law or the complainant shall answer the questions or furnish the records.

R.S.N.W.T. 1988,c.40(Supp.),s.10; S.N.W.T. 1995,  
c.7,s.6; S.Nu. 2017,c.27,Sch.

**Duties of chairperson after an investigation of conduct of member**

**24.1(1)** The chairperson of the Discipline Committee shall, after an investigation in respect of the conduct of a member,

- (a) direct that no further action be taken, where the chairperson is of the opinion that the matter does not constitute professional misconduct or conduct unbecoming a barrister and solicitor, and the chairperson is of the further opinion that the matter does not call for advice and direction under paragraph (b);
- (b) direct the member to appear before such member or members as may be designated by the chairperson, where the chairperson is of the opinion that the matter does not constitute professional misconduct or conduct unbecoming a barrister and solicitor but does call for advice and direction in respect of conduct which may not be in the interest of the public or the profession;
- (c) appoint a member of the Discipline Committee as a Sole Inquirer to conduct an inquiry, where the chairperson is of the opinion that the matter should be inquired into and the chairperson is of the further opinion that
  - (i) the matter would not likely result, if the member were to be found guilty of professional misconduct or conduct unbecoming a barrister and solicitor before a Committee of Inquiry, in an order that
    - (A) the name of the member be struck from the Roll,
    - (B) the member be suspended, or
    - (C) the member pay to the Society a fine in an amount exceeding \$2,000, and
  - (ii) the public interest does not require that the matter be inquired into by a Committee of Inquiry; or
- (d) in any other case, establish a Committee of Inquiry to conduct an inquiry and appoint its members from among the members of the Discipline Committee.

**Duties of chairperson after an investigation of conduct of student-at-law**

(2) The chairperson of the Discipline Committee shall, after an investigation in respect of the conduct of a student-at-law,

- (a) direct that no further action be taken, where the chairperson is of the opinion that the matter does not constitute conduct unbecoming a student-at-law, and the chairperson is of the further opinion that the matter does not call for advice and direction under paragraph (b);
- (b) direct the student-at-law concerned to appear before such member or members as may be designated by the chairperson, where the chairperson is of the opinion that the matter does not constitute conduct unbecoming a student-at-law but does call for advice and direction in respect of conduct which may not be in the interest of the public or the profession;
- (c) appoint a member of the Discipline Committee as a Sole Inquirer to conduct an inquiry, where the chairperson is of the opinion that the matter should be inquired into and the chairperson is of the further opinion that
  - (i) the matter would not likely result, if the student-at-law were to be found guilty of conduct unbecoming a student-at-law before a Committee of Inquiry, in an order that
    - (A) the articles of the student-at-law be terminated,
    - (B) the articles of the student-at-law be suspended, or
    - (C) the student-at-law pay to the Society a fine in an amount exceeding \$1,000, and
  - (ii) the public interest does not require that the matter be inquired into by a Committee of Inquiry; or
- (d) in any other case, establish a Committee of Inquiry to conduct an inquiry and appoint its members from among the members of the Discipline Committee.

**Notice of direction**

(3) The chairperson of the Discipline Committee shall notify the Executive, the member or student-at-law, the complainant, if any, and any other person the chairperson determines to have a legitimate interest in the matter, of the direction taken under this section.

S.N.W.T. 1995,c.7,s.6; S.Nu. 2010,c.14,s.10(2).

**Discontinuance by Sole Inquirer of inquiry into conduct of member**

**24.2(1)** A Sole Inquirer may discontinue an inquiry in respect of the conduct of a member at any stage of the proceedings prior to the making of a finding that the member is either guilty or not guilty of professional misconduct or conduct unbecoming a barrister and solicitor, if the Sole Inquirer is of the opinion that

- (a) it would be likely, if the member were to be found guilty of professional misconduct or conduct unbecoming a barrister and solicitor before a Committee of Inquiry inquiring into his or her conduct, for the name of the member to be struck from the Roll or for the member to be suspended for a specified period of time; or

- (b) the public interest otherwise requires that the matter be inquired into by a Committee of Inquiry.

**Discontinuance by Sole Inquirer of inquiry into conduct of student-at-law**

(2) A Sole Inquirer may discontinue an inquiry in respect of the conduct of a student-at-law at any stage of the proceedings prior to the making of a finding that the student-at-law is guilty or not guilty of conduct unbecoming a student-at-law, if the Sole Inquirer is of the opinion that

- (a) it would be likely, if the student-at-law were to be found guilty of conduct unbecoming a student-at-law before a Committee of Inquiry inquiring into his or her conduct, for the articles of the student-at-law to be terminated or to be suspended for a specified period of time; or
- (b) the public interest otherwise requires that the matter be inquired into by a Committee of Inquiry.

**Notice to chairperson of Discipline Committee**

(3) Where a Sole Inquirer discontinues an inquiry into a matter under this section, the Sole Inquirer shall, without delay, submit to the chairperson of the Discipline Committee a report of his or her decision to discontinue the inquiry and the reasons for that decision.

**Establishment of Committee of Inquiry**

(4) On receiving a report of the discontinuance of an inquiry into a matter by a Sole Inquirer, the chairperson of the Discipline Committee shall establish a Committee of Inquiry to conduct an inquiry into that matter.

**Notice to interested persons**

(5) The chairperson of the Discipline Committee shall notify the Executive, the member or student-at-law, the complainant, if any, and any other person the chairperson determines to have a legitimate interest in the matter, of the

- (a) discontinuance of the inquiry before the Sole Inquirer and the reasons for such discontinuance; and
- (b) establishment of the Committee of Inquiry.

S.N.W.T. 1995,c.7,s.6.

**Natural justice**

25(1) A Sole Inquirer or a Committee of Inquiry shall conduct an inquiry in accordance with the rules of natural justice.

**Powers of Committee of Inquiry or Sole Inquirer**

(2) A Sole Inquirer or Committee of Inquiry has the power to

- (a) summon and bring before the inquiry any person whose attendance the Sole Inquirer or Committee of Inquiry considers necessary to facilitate a proper inquiry into the matter complained of;

- (b) ascertain the facts in the manner that the Sole Inquirer or Committee of Inquiry considers necessary;
- (c) administer oaths and affirmations and examine all persons sworn;
- (d) do all things that the Sole Inquirer or Committee of Inquiry considers necessary to provide a full and proper inquiry; and
- (e) make findings as to the conduct and discipline of a member or student-at-law.

#### **Laws of evidence**

(3) Subject to subsection (1), a Sole Inquirer or Committee of Inquiry conducting an inquiry is not bound by the laws of evidence applicable to judicial proceedings.

R.S.N.W.T. 1988,c.40(Supp.),s.10; S.N.W.T. 1995,  
c.7,s.6.

#### **Counsel**

**26** The Society and a member or student-at-law whose conduct is being inquired into has the right to be represented by counsel.

S.N.W.T. 1995,c.7,s.7.

#### **Suspension or limitation of privileges pending inquiry**

**27** Notwithstanding any other provision of this Act, the chairperson of the Discipline Committee, in his or her discretion, or a Committee of Inquiry, in its discretion, may

- (a) make an order limiting the rights and privileges of a member or student-at-law, or
- (b) suspend a member or suspend the articles of a student-at-law,

pending the inquiry of a matter concerning the conduct of the member or student-at-law and pending the making of its finding as to the matter, but in no case shall a limitation or suspension exceed a period of 90 days.

S.N.W.T. 1995,c.7,s.8.

#### **Trust moneys**

**28** Where it is established or admitted that a member or student-at-law has received any moneys on trust, the burden of proof that the moneys have been properly dealt with lies on the member or student-at-law.

S.N.W.T. 1995,c.7,s.9.

#### **Inquiry where member or student-at-law absent**

**29(1)** It is the duty of a member or student-at-law whose conduct is inquired into to appear at an inquiry, but in the event of his or her non-attendance, the Sole Inquirer or the Committee of Inquiry may, on receiving proof of service of notice to the member or student-at-law, proceed with the inquiry in his or her absence and may, without further notice to the member or student-at-law, make a report of the findings of the inquiry or take such other action as is authorized under this Act.



**Witness**

(2) A witness may be examined on oath on all matters relevant to the inquiry and shall not be excused from answering any question on the ground that the answer might

- (a) tend to incriminate the witness,
- (b) subject the witness to punishment under this Part, or
- (c) tend to establish the liability of the witness
  - (i) to a civil proceeding at the instance of the Crown or of any person, or
  - (ii) to prosecution under any Act,

but the answer so given shall not be used or received against the witness in any civil proceedings or in any proceeding under any other Act.

**Solicitor and client privilege**

(3) A member or student-at-law may not in any proceedings under this Part refuse to give evidence or produce any books, papers or documents on the ground of solicitor and client privilege.

**Commission evidence**

(4) For the purpose of obtaining the testimony of a witness who is out of Nunavut, a judge of the Nunavut Court of Justice on an application *ex parte* by the Sole Inquirer or the Committee of Inquiry or the member or student-at-law whose conduct is being inquired into may direct the issuing of a commission for the obtaining of the evidence of the witness under the Rules of the Nunavut Court of Justice in that behalf.

R.S.N.W.T. 1988, c.40(Supp.), s.11; S.N.W.T. 1995, c.7, s.10; S.Nu. 2004, c.9, s.2(1).

**Discipline of member by Sole Inquirer**

**29.1(1)** Where a member is found by a Sole Inquirer to be guilty of professional misconduct or conduct unbecoming a barrister and solicitor, the Sole Inquirer shall reprimand the member.

**Fine and costs**

- (2) In addition to reprimanding a member under subsection (1), the Sole Inquirer may
- (a) order the member to pay to the Society a fine not exceeding \$2,000 for each offence of which the member is found guilty, within the time fixed by the order; and
  - (b) order the member to pay the costs of the inquiry in an amount and within the time fixed by the order.

S.N.W.T. 1995, c.7, s.11.

**Discipline of member**

**30(1)** Where a member is found by a Committee of Inquiry to be guilty of professional misconduct or conduct unbecoming a barrister and solicitor, the Committee of Inquiry shall

- (a) order that the name of the member be struck from the Roll;

- (b) order that the member be suspended for a specified period of time; or
- (c) reprimand the member.

**Fine and costs**

(2) In addition to an order of suspension or reprimand under subsection (1), the Committee of Inquiry may

- (a) order the member to pay to the Society a fine not exceeding \$10,000 for each offence of which the member is found guilty, within the time fixed by the order; and
- (b) order the member to pay the costs of the inquiry in an amount and within the time fixed by the order.

S.N.W.T. 1995,c.7,s.12.

**Discipline of student-at-law by Sole Inquirer**

**30.1(1)** Where a student-at-law is found by a Sole Inquirer to be guilty of conduct unbecoming a student-at-law, the Sole Inquirer shall reprimand the student-at-law.

**Fine and costs**

(2) In addition to reprimanding a student-at-law under subsection (1), the Sole Inquirer may

- (a) order the student-at-law to pay to the Society a fine not exceeding \$1,000 for each offence of which the student-at-law is found guilty, within the time fixed by the order; and
- (b) order the student-at-law to pay the costs of the inquiry in an amount and within the time fixed by the order.

S.N.W.T. 1995,c.7,s.13; S.Nu. 2017,c.27,Sch.

**Discipline of student-at-law**

**31(1)** Where a student-at-law is found by a Committee of Inquiry to be guilty of conduct unbecoming a student-at-law, the Committee shall

- (a) terminate the articles of the student-at-law;
- (b) order that the articles of the student-at-law be suspended for a stated period of time; or
- (c) reprimand the student-at-law.

**Fine and costs**

(2) In addition to an order of termination, suspension or reprimand under subsection (1), the Committee of Inquiry may

- (a) order the student-at-law to pay to the Society a fine not exceeding \$2,000 for each offence of which the student-at-law is found guilty within the time fixed by the order; and
- (b) order the student-at-law to pay the costs of the inquiry in an amount and within the time fixed by the order.

R.S.N.W.T. 1988,c.40(Supp.),s.12; S.N.W.T. 1995,  
c.7,s.14.

**31.1 Repealed, S.N.W.T. 1995,c.7,s.15.**

**Report of Committee of Inquiry**

**32(1)** A Sole Inquirer or a Committee of Inquiry shall, after completing an inquiry, without delay submit to the Executive and to the chairperson of the Discipline Committee a full report of the facts and its findings together with a report of the action taken as a result of its findings.

**Notice of decision**

(2) On receipt of a report under subsection (1), the chairperson of the Discipline Committee shall notify the member or student-at-law, the complainant, if any, and any other person the chairperson determines to have a legitimate interest in the report of the findings of the Sole Inquirer or the Committee of Inquiry and the action taken by the Sole Inquirer or the Committee of Inquiry as a result of those findings.

**(3) Repealed, S.N.W.T. 1995,c.7,s.16.**

R.S.N.W.T. 1988,c.40(Supp.),s.14; S.N.W.T. 1995,  
c.7,s.16.

**Automatic suspension for failure to pay fine or costs**

**32.1** Where a member or student-at-law fails to pay a fine or costs imposed by a Sole Inquirer or Committee of Inquiry under this Part, the member or student-at-law is, without notice, suspended until the fine or costs are paid.

S.N.W.T. 1995,c.7,s.16.

**Notice of disciplinary action**

**32.2** Where, under this Part, a member is suspended, the name of a member is struck from the Roll, or the articles of a student-at-law are suspended or terminated, the Executive shall

- (a) give notice of the disciplinary action taken in respect of the member or student-at-law to the law society or other governing body of the legal profession in each province and territory;
- (b) give notice of the disciplinary action taken in respect of the member or student-at-law to members and students-at-law in accordance with the rules; and
- (c) cause notices to be published in the *Nunavut Gazette* and in such newspapers or other publications as may be necessary to inform the public of the disciplinary action taken in respect of the member or student-at-law.

S.N.W.T. 1995,c.7,s.16; S.N.W.T. 1997,c.8,s.18(4);  
S.Nu. 2004,c.9,s.2(1); S.Nu. 2010,c.14,s.10(2).

**Vacancy on Committee of Inquiry**

**32.3** Notwithstanding a vacancy on a Committee of Inquiry or the absence of a member of the Committee during any part of an inquiry, the Committee may make or continue an inquiry if a majority of the Committee is present and a member

- (a) appointed to fill a vacancy, or
- (b) absent during part, but not all, of an inquiry,

may join in the report of the inquiry as if he or she had been a member of the Committee present throughout the inquiry.

S.N.W.T. 1995,c.7,s.16.

## Appeal

### Appeal to Court of Appeal

**33(1)** A member or student-at-law whose conduct was inquired into, or the Executive, may appeal to the Court of Appeal on a question of law from any finding or action taken by a Sole Inquirer or a Committee of Inquiry by filing notice of appeal with the Registrar of the Court of Appeal and serving notice on the Secretary or the member or student-at-law within 30 days after the Sole Inquirer or Committee of Inquiry reports the findings of the inquiry or within such further time as the Court of Appeal may allow.

### Procedure

(2) The procedure in an appeal shall, with such modifications as the circumstances require, be the same as that provided in the rules of the Court of Appeal respecting civil matters.

R.S.N.W.T. 1988,c.40(Supp.),s.15; S.N.W.T. 1995, c.11,s.28; S.N.W.T. 1995,c.7,s.17.

## PART IV ASSURANCE FUND

### Assurance Fund

**34(1)** The Society may maintain a fund called the Assurance Fund, for the reimbursement, in whole or in part at the discretion of the Executive, of persons sustaining pecuniary loss by reason of the misappropriation or wrongful conversion by a member of money or other property entrusted to or received by the member in his or her capacity as a barrister and solicitor, or in such other capacity as the Society may designate.

### Rules respecting Assurance Fund

(2) The Executive may make rules

- (a) respecting the administration of the Assurance Fund;
- (b) providing for the levying on the active members of an annual assessment of an amount that may be fixed by the Executive from time to time for the purpose of maintaining and augmenting the Assurance Fund;
- (c) providing for the charging to the Assurance Fund of expenses incurred by a custodian appointed under section 39, or in connection with audits and investigations pertaining to members' accounts;

(d) providing for the exemption of categories of active members from the payment of annual assessments referred to in paragraph (b) and the conditions on which the exemptions may be given; and

(e) prescribing the conditions to be met before any claim may be paid from the Assurance Fund.

#### **Insurance**

(3) The Society may, in the manner and on the terms and conditions that the Executive considers advisable, enter into contracts with insurers or other persons by which means the Assurance Fund may be protected in whole or in part against any claim or loss to the Fund and the costs incurred by the Society under any such contracts may be defrayed from the Fund or the proceeds of the Fund.

#### **Manner of keeping Assurance Fund**

(4) The Assurance Fund

(a) shall be kept separate and apart from any other funds of the Society;

(b) shall be invested as the Executive may from time to time determine, but in investing the Executive is not subject to the provisions of the *Trustee Act* governing the investment of trust funds;

(c) shall be administered by the Executive in the manner that it considers proper; and

(d) is not subject to any trust.

#### **Reports respecting Assurance Fund**

**35** Not later than March 31 in each year, the Executive shall cause a report to be prepared respecting the Assurance Fund and all dispositions made from it during the previous calendar year.

#### **Subrogation of rights**

**36(1)** Where any payment has been made from the Assurance Fund, the Society is, to the amount of the payment, subrogated to the rights, remedies and securities to which the person receiving the payment was entitled as against the defaulting members' trustee, assign, estate or personal representative and those rights, remedies and securities may be enforced or realized in the name of the Society.

#### **Limitation on right of action**

(2) No person has any right of action against the Assurance Fund, the Society, the Executive or any committee or officer of the Society concerned with the Assurance Fund, in respect of any loss suffered by reason of dishonesty of any member of the Society or the agent or employee of a member.

## PART V SEIZURE AND CUSTODY OF PROPERTY

### Interpretation

#### Definitions

37 In this Part,

“**depository**” means any bank, treasury branch, credit union, trust company or person holding by way of deposit or otherwise any moneys, trust funds or assets of any kind relating to the business of a member as a barrister and solicitor; (*institution de dépôt*)

“**member**” includes a former member of the Society; (*membre*)

“**property**” or “**property of a member**” means any thing wherever situated kept by, acquired by or given to a member by or for a client or any other person and, without restricting the generality of this definition, includes ledgers, books of account, records, files, documents, papers, securities, shares, trust moneys in cash or on deposit, negotiable instruments, corporate seals and chattels or any of them, where they in any way relate to his or her practice or former practice as a barrister and solicitor or the business or affairs of his or her clients or former clients or any of them, and whether or not they were acquired before or after he or she ceased to practise as a barrister and solicitor. (*biens or biens d’un membre*)

### Accounting by Members

#### Failure to account to client

38(1) The chairperson of the Discipline Committee may at any time, if he or she is of the opinion that a member has failed to account to a client or to deliver to a client any property, instruct the Secretary to direct the member

- (a) to give to the client or to the Secretary, or both, an accounting of the property, or
- (b) to pay the property into or deposit the property with the Nunavut Court of Justice,

and may fix a time within which the member is to comply with the direction.

#### Order

(2) Property paid or deposited under subsection (1) may, on an order of a judge of the Nunavut Court of Justice, be paid out or delivered to the person or persons named in the order as being entitled to the property.

S.Nu. 2004,c.9,s.2(1).

## Custodian

### Appointment of custodian

**39(1)** A judge of the Nunavut Court of Justice may, on application by the Society either *ex parte* or on such notice as the judge may require, by order, appoint a person as custodian to have custody of the property of a member and to manage or wind up the legal business of a member, where

- (a) the name of the member has been struck from the Roll;
- (b) the member has been suspended;
- (c) the member has died or become mentally incapacitated;
- (d) by reason of illness or for any other reason, the member is unable to practise as a barrister and solicitor;
- (e) the member has absconded or is otherwise improperly absent from his or her place of business or has neglected his or her practice for an unduly extended period;
- (f) there is reason to believe that the trust moneys held by the member are not sufficient to meet his or her trust liabilities; or
- (g) sufficient grounds otherwise exist.

### Order

**(2)** A judge of the Nunavut Court of Justice may in an order under subsection (1) or at any time and from time to time by a subsequent order made *ex parte* or on such notice as the judge may require,

- (a) direct the Sheriff to seize and remove and place in the custody of the custodian all property of the member, and to that end the order may authorize the Sheriff to enter any premises or open any safety deposit box or other receptacle when there are grounds for believing that property of the member may be found there;
- (b) direct any bank or other depository of property of a member to deal with, hold, pay over or dispose of that property to the custodian, or in such other manner as the judge considers proper;
- (c) direct the removal of a custodian appointed by an order under subsection (1) and appoint another custodian;
- (d) give directions and advice to the custodian as to the disposition of the property in his or her hands or any part or parts of that property; and
- (e) give such directions or make such further orders as the nature of the situation requires.

S.Nu. 2004,c.9,s.2(1).

### Examination and disposal of property in custody

**40(1)** Where property of a member has been placed in the custody of a custodian under section 39, the Secretary or any person appointed by the Secretary for that purpose shall

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examine the property and after the examination the custodian shall, on reasonable notice, inform clients of the member or such other persons as the custodian considers necessary that

- (a) the property of the member is in the custody of the custodian; and
- (b) the client or other person may apply to the custodian in person or by solicitor or agent for the delivery to him or her of the property in which he or she appears to have an interest or for leave to make copies of any documents and papers among the property that he or she may consider necessary to copy, in respect of any transactions or dealings he or she had with the member, subject to any solicitor's lien of the member on or with respect to the property.

#### **Delivery of property by custodian**

(2) Where a custodian is satisfied that a person is entitled to any property in the custody of the custodian and that no solicitor's lien is claimed on that property or appears to exist, or if any, the lien is satisfied, the custodian may deliver the property to the person claiming it.

#### **Liability**

**41** The Society, its officers, the Executive, any person designated by the Executive or any person acting for any of them, does not incur any liability or obligation as trustee or otherwise to a member or to any of a member's clients or former clients or to a member's estate or to any other person by reason of any proceeding taken under this Part.

## **PART VI ACCOUNTS, AUDITS AND FINANCIAL INSPECTIONS**

### **Accounts**

#### **Definitions**

**42** In this Part,

**"client"** means a person or body of persons on whose behalf a member receives money in connection with his or her practice; (*client*)

**"clients' trust account"** means the account referred to in section 44; (*compte en fiducie des clients*)

**"member"** includes a firm of members; (*membre*)

**"money"** includes currency, government or bank notes, cheques, drafts and post office, express or bank money orders. (*sommes d'argent*)

S.Nu. 2017,c.27,s.10.1.

#### **Books of account**

**43** Every member shall keep

- (a) the books, ledgers, journals, records and accounts in connection with his or her practice as a barrister and solicitor that are necessary to show and readily distinguish



- (i) money received from or on account of, and money disbursed to or on account of, each of his or her clients, and the balance of money held on behalf of each client, and
  - (ii) money received and paid on his or her own account; and
- (b) other books, ledgers, journals, records and accounts that the Society may designate.

#### **Clients' funds**

**44(1)** Every member who holds or receives money on account of a client shall maintain in a bank, treasury branch, trust company or credit union, an account that shall be designated both in the books of the member and in the records of the bank as a clients' trust account.

#### **Cheques**

(2) Every cheque drawn on a clients' trust account shall be clearly marked as such.

S.Nu. 2017,c.27,Sch.

#### **Amount on deposit**

**45** A member shall at all times maintain on deposit in his or her clients' trust account sufficient funds to meet his or her gross liability in respect of trust funds deposited in that account and shall reconcile the gross trust liability with respect to trust funds with the funds on deposit in his or her clients' trust account at least once in each period of three months.

S.Nu. 2017,c.27,Sch.

#### **Right to money**

**46** Nothing in this Act deprives a member of any recourse or right, whether by way of lien, set-off, counter claim, charge or otherwise, against money standing to the credit of a clients' trust account.

## **Audits and Financial Inspections**

#### **Audit**

**47** The chairperson of the Discipline Committee may, where he or she considers it advisable, order an audit by a person entitled to engage in public practice under the *Chartered Professional Accountants Act* of the books, ledgers, journals, records and accounts of a member and the member shall, without delay, make them fully available for examination by the accountant.

S.N.W.T. 1998,c.21,s.11(3); S.Nu. 2018,c.15,s.98(2).

#### **Accountant's certificate**

**48(1)** Subject to this section, every member shall deliver to the Secretary on or before September 1 in each year certificates of the member and of a person entitled to engage in public practice under the *Chartered Professional Accountants Act*, which shall be in the form set out in the rules and made up to the end of a 12-month fiscal period ending no earlier than June 1 of the previous year.

**Exceptions**

(2) Where a certificate relating to a full 12-month fiscal period referred to in subsection (1) cannot be delivered by a member by reason of broken practice periods, practice within or outside of partnerships, or for any other valid reason, the certificate shall relate to the period or periods that may be designated by the Executive and in that case, application for a designation containing full particulars or the reasons for the designation shall be made in writing to the Secretary no later than June 1 in each year.

**Where accountant's certificate not required**

(3) Delivery of the certificates under subsection (1) is not required in the case of a member who satisfies the Secretary by statutory declaration or otherwise that he or she has not had occasion to maintain a clients' trust account in Nunavut.

(4) **Repealed**, R.S.N.W.T. 1988,c.40(Supp.),s.16.

R.S.N.W.T. 1988,c.40(Supp.),s.16; S.N.W.T. 1995, c.11,s.28; S.Nu. 2004,c.9,s.2(1); S.Nu. 2018,c.15, s.98(3).

**Suspension**

**48.1(1)** The Executive may suspend a member who does not comply with the requirements of this Part from the practice of law until the member has complied fully with the requirements of this Act or the directions of the Executive.

**Notification of Clerk**

(2) The Secretary shall notify the Clerk of the Nunavut Court of Justice of a suspension made under subsection (1).

S.N.W.T. 1988,c.40(Supp.),s.17; S.Nu. 2004,c.9, s.2(1).

## PART VII NUNAVUT LAW FOUNDATION

**Definitions**

**49** In this Part,

**"board"** means the board of directors referred to in subsection 52(1); (*conseil*)

**"Foundation"** means the Nunavut Law Foundation established by section 50.  
(*Fondation*)

S.Nu. 2004,c.9,s.2(1); S.Nu. 2010,c.14,s.10(2).

**Nunavut Law Foundation**

**50** A body corporate called the Nunavut Law Foundation is established.

S.Nu. 2004,c.9,s.2(1).

**Objects**

**51** The objects of the Foundation are

- (a) to receive moneys and property and to maintain and manage a fund, the interest and capital of which is to be used from time to time as the board sees fit for
  - (i) conducting or contributing to research into and recommending reform of law and the administration of justice,
  - (ii) contributing to the establishment, maintenance and operation of law libraries,
  - (iii) contributing to the legal education and knowledge of members and the people of Nunavut and providing programs and facilities for that purpose,
  - (iii.1) awarding bursaries and scholarships for the study of law or related subjects, and
  - (iv) providing assistance to legal aid programs, restorative justice programs and programs of a similar nature,
  - (v) **repealed**, S.Nu. 2013,c.14,s.2(2)(e);
- (b) to do all other things that are, in the opinion of the board, incidental or conducive to the attainment of the objects set out in paragraph (a).

S.Nu. 2010,c.14,s.10(2); S.Nu. 2013,c.14,s.2(2).

**Board of directors**

**52(1)** The affairs of the Foundation shall be conducted by a board of directors composed of

- (a) a person who is not a member of the Society and who shall be appointed by the Minister, on the recommendation of the Executive; and
- (b) four other persons to be appointed from among the members of the Society by the Executive in accordance with the rules.

**Term**

(2) The term of office of the members of the board shall be two years.

**Chairperson**

(3) The Executive shall designate one member of the board as chairperson.

**Quorum**

(4) Three members of the board constitute a quorum.

S.Nu. 2013,c.14,s.2(3).

**By-laws generally**

**53(1)** The board may make by-laws

- (a) respecting the calling of meetings of the board;
- (b) respecting the conduct of business at meetings of the board;

- (c) respecting the duties and conduct of members; and
- (d) respecting the conduct of the business and affairs of the Foundation.

**Specific by-laws**

- (2) Without limiting the generality of subsection (1), the board may make by-laws respecting
- (a) the number and designation of officers of the Foundation;
  - (b) the appointment of and terms of office of officers of the Foundation and all matters relating to their offices;
  - (c) the resignation or removal from office of officers of the Foundation;
  - (d) the number and designations of employees of the Foundation other than officers, and their terms and conditions of employment;
  - (e) the remuneration, if any, of officers and employees of the Foundation; and
  - (f) the operation of the Law Foundation Account referred to in subsection 54(5).

R.S.N.W.T. 1988,c.40(Supp.),s.18.

**Application of funds**

**54(1)** The board shall apply, and cause to be applied, the funds of the Foundation in the manner that the board may decide in carrying out the objects of the Foundation.

**Funds**

(2) The funds of the Foundation shall consist of all sums paid to the Foundation under subsection 57(2), sums collected on behalf of the Foundation pursuant to a rule made under paragraph 8(1)(d.1), interest accruing from investment of the funds of the Foundation and any other moneys received by the Foundation.

**Disbursements from funds**

(3) There shall be paid out of the funds of the Foundation the costs, charges and expenses involved in the administration of the Foundation, and the costs, charges and expenses incurred by the board in carrying out the objects of the Foundation.

**Expenses of directors**

(4) No director may receive any remuneration for his or her services but the directors shall be entitled to be paid out of the funds of the Foundation their reasonable travelling and living expenses while absent from their respective ordinary places of residence in the course of their duties as members of the board.

**Law Foundation Account**

(5) All funds of the Foundation shall, pending investment or application in accordance with this section, be paid into a bank, treasury branch, credit union or trust company in Nunavut to the credit of a separate account called the Law Foundation Account.

**Investment of funds**

(6) Any funds that are not immediately required for the purposes of the Foundation may be invested in the name of the Foundation by the directors and in so doing the directors are not subject to the provisions of the *Trustee Act* respecting the investment of trust funds.

**Audit**

(7) The accounts of the Foundation shall be audited annually by a chartered accountant or a certified general accountant appointed by the board.

S.Nu. 2004,c.9,s.2(1); S.Nu. 2017,c.27,s.7.

**Annual report**

**55(1)** After the end of each year, the Foundation shall prepare and submit to the Executive a report consisting of

- (a) a general summary of its transactions and affairs during that year, and its revenues and expenditures during that year;
- (b) an audited balance sheet; and
- (c) other information that the Executive may require.

**Tabling of report before Legislative Assembly**

(2) On receiving a report under subsection (1), the Executive shall cause a copy of it to be tabled in Legislative Assembly if it is then in session, and if not, within five days after the commencement of the next session.

**Borrowing**

**56** The Foundation may borrow or raise or secure the payment of money on the credit of the Foundation from time to time as the board thinks fit to fulfil the objects of the Foundation and may for that purpose issue notes, bonds, debentures, debenture stock or other evidences of indebtedness.

**Definition of "member"**

**57(1)** In this section, "member" includes a firm of more than one member.

**Trust accounts**

(2) Every member shall maintain an interest-bearing trust account in a bank, treasury branch, credit union or trust company into which the member shall deposit any moneys received by the member on trust from or on account of any client and shall instruct the bank, treasury branch, credit union or trust company to remit the interest earned on the moneys to the Foundation semi-annually and the interest, on that instruction, becomes the property of the Foundation.

**Liability to account to client for interest**

(3) A member is not liable, by virtue of the relation between the member and his or her client, to account to a client for interest earned on money deposited in the bank, treasury branch, credit union or trust company under subsection (2).

**Where interest property of client**

(4) Nothing in this Part affects any arrangement made between a member and his or her client to deposit money received from or on behalf of the client or to which the client is entitled, in a separate account for the client at interest, which interest shall be the property of the client.

**Dissolution of Foundation**

**58** On the dissolution of the Foundation, the net assets of the Foundation shall be paid to the Society to be used for the purposes that the Society shall determine.

## PART VIII PROFESSIONAL LIABILITY CLAIMS

**Definitions**

**59** In this Part,

**“deductible amount”** means,

- (a) with reference to the Fund, the amount, if any, prescribed by the rules as the amount to be deducted from any claim paid from the Fund, and
- (b) with reference to a group contract the amount, if any, specified in the contract as the amount that the insurer is entitled to deduct from the amount of any claim for which the insurer is liable under the contract; (*franchise*)

**“Fund”** means the Professional Liability Claims Fund; (*Fonds*)

**“group contract”** means a group insurance contract entered into under subsection 61(1); (*contrat collectif*)

**“professional liability claim”** means a claim against a member for an amount of money that the member is legally obligated to pay as damages arising out of the performance of professional services for another person in the member’s capacity as a barrister and solicitor and caused by the member or any other person for whose acts the member is legally liable. (*réclamation*)

**Professional Liability Claims Fund**

**60(1)** The Executive may by resolution create and maintain a fund called the Professional Liability Claims Fund.

**Rules**

(2) The Executive may make rules

- (a) specifying the purposes mentioned in subsection (3) for which the Fund may be used;
- (b) respecting the administration of the Fund;

- (c) providing for the levying on active members of an annual assessment of the amount that may be fixed by the Executive from time to time for the purpose of maintaining and augmenting the Fund;
- (c.1) providing for the levying on active members that may be specified by the Executive of additional annual assessments in amounts that may be fixed by the Executive, based on the paid claims record of those members;
- (d) providing for the exemption of active members from the payment of annual assessments referred to in paragraphs (c) and (c.1), and from entitlement to indemnification from the Fund or under a group contract, as the case may be, and the conditions on which the exemptions may be made; and
- (e) governing the payment and recovery of the whole or part of any deductible amounts under section 62.

**Uses of Fund**

- (3) Subject to and in accordance with the rules, the Fund may be used for any of the following purposes, whichever the rules specify:
- (a) the indemnification by the Society in whole or in part, at the discretion of the Executive, of members liable to pay assessments referred to in paragraph (2)(c) in respect of professional liability claims made against them;
  - (b) the payment in whole or in part of deductible amounts under subsection 62(1);
  - (c) the payment of premiums payable by the Society under a group contract;
  - (d) the payment of premiums or other costs payable by the Society under a contract entered into under subsection (5);
  - (e) the payment of expenses incurred in connection with audits, investigations of claims against the Fund and hearings pertaining to claims against the Fund.

**Rules respecting indemnification of members**

- (4) Where the rules specify that the Fund may be used for the purpose referred to in paragraph (3)(a), the Executive may make rules
- (a) prescribing the deductible amount and the maximum amount that may be paid from the Fund in respect of any professional liability claim;
  - (b) prescribing the conditions to be met before a claim may be paid from the Fund;
  - (c) prescribing classes of professional liability claims in respect of which no payment or partial payment only shall be made from the Fund; and
  - (d) providing for any matter or procedure in connection with the filing, settling, administration and payment of claims made against the Fund.

**Insurance contracts**

(5) The Society may, in the manner and on the terms and conditions that the Executive considers advisable, enter into contracts with insurers or other persons by which means the Fund may be protected in whole or in part against any claim or loss to the Fund.

**Manner of keeping Fund**

(6) The Fund

- (a) shall be kept separate and apart from any other funds of the Society;
- (b) may be invested as the Executive may from time to time determine, but in so doing the Executive is not subject to the provisions of the *Trustee Act* governing the investment of trust funds;
- (c) shall be administered by the Executive in the manner that it considers proper; and
- (d) is not subject to any trust.

S.Nu. 2017,c.27,s.8.

**Group insurance contract**

**61(1)** The Executive may by resolution authorize the Society to enter into a group insurance contract providing for the indemnification by the insurer under the group insurance contract in whole or in part of members liable to pay assessments referred to in paragraph 60(2)(c) in respect of professional liability claims against them, on the terms and conditions that may be agreed upon.

**Other law societies**

(2) The Society may enter into a group contract with an insurer either alone or jointly with one or more law societies or governing bodies of the legal profession in the provinces or territories that are incorporated for purposes comparable to those of the Society.

**Rules**

(3) The Executive may make rules

- (a) providing for any matter or procedure in connection with the filing, settling, administration and payment of claims made against the insurer under the group contract and which is not otherwise provided for in the group contract; and
- (b) respecting the notice required to be given by an active member to the Society of a claim or possible claim against the member and for which the insurer may be liable for indemnification under the group contract.

S.N.W.T. 1995,c.11,s.28; S.Nu. 2004,c.9,s.2(1).

**Payment of claims**

**62(1)** Where an amount is paid or is intended to be paid from the Fund or by the insurer under a group contract as indemnification in respect of a professional liability claim, or where the amount of a professional liability claim is equal to or less than the deductible amount, the Society may, on a resolution of the Executive and in accordance with the rules,



- (a) pay the whole or part of the deductible amount to the claimant from the Fund in the event of the inability or failure of the member concerned or any other person to pay the whole or part of the deductible amount; or
- (b) pay the whole or part of the deductible amount to the claimant with the consent of and on behalf of the member concerned, on the terms as to repayment by the member to the Society that the Executive may determine.

**Subrogation of rights**

(2) Where a payment is made by the Society under paragraph (1)(a), the Society is subrogated to the rights, remedies and securities to which the claimant was entitled as against the member concerned or against the member's trustee, assign, estate or personal representative and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Society.

## PART IX GENERAL

### Members

**Designation of members**

**63** Members of the Society, other than those with a designation provided for under subparagraph 8(1)(a.1)(ii), shall be known and designated as barristers and solicitors.

S.Nu. 2017,c.27,s.9.

**Officers of the court**

**64** Active members are officers of the Nunavut Court of Justice and all other courts of record in Nunavut and have a right of audience in those courts.

S.Nu. 2004,c.9,s.2(1).

**Recovery of fees**

**65** A member may sue for fees for services performed by the member in his or her capacity as an active member at any time after the services are performed.

### Student-at-Law

**Student-at-law as counsel**

**66(1)** A student-at-law may

- (a) act as counsel or agent before a justice
  - (i) in a civil proceeding, or
  - (ii) in a proceeding pertaining to an offence punishable on summary conviction;

(b) act as counsel or agent before a judge in a proceeding pertaining to an indictable offence in respect of which a judge of the Nunavut Court of Justice has absolute jurisdiction under section 553 of the *Criminal Code*; or

(c) act as counsel on any motion, petition or other proceeding before a judge sitting in chambers.

#### Notice to client

(2) Where a student-at-law acts under subsection (1), the student-at-law shall advise his or her client that he or she is a student-at-law before so acting.

R.S.N.W.T. 1988, c.40(Supp.), s.19; S.N.W.T. 1998, c.34, Sch.C, s.17(3); S.Nu. 2004, c.9, s.2(1).

## Moneys Belonging to Society

#### Moneys belonging to Society

**67(1)** Subject to subsection (2), all fees, assessments, costs or other moneys payable by a member or student-at-law under this Act or the rules and any fines imposed by a Sole Inquirer or a Committee of Inquiry are the property of the Society and shall be paid to the Treasurer of the Society.

#### Levy for Nunavut Law Foundation

(2) Any monies received by the Society pursuant to a rule made under paragraph 8(1)(d.1) are not the property of the Society and shall forthwith be transferred by the Society to the Nunavut Law Foundation established under section 50.

S.N.W.T. 1995, c.7, s.18; S.Nu. 2017, c.27, s.10.

## Offences and Punishment

#### Practice of law

**68(1)** No person shall engage in the practice of law unless he or she is an active member of the Society.

#### Exceptions

(2) Subsection (1) does not apply to

(a) a person who acts on his or her own behalf in an action, matter or proceeding to which he or she is a party;

(b) a person who draws, prepares, revises or settles for his or her own use any will, conveyance or other instrument pertaining to real or personal property, or any other instrument or document that is or is intended to be enforceable by law or have a legal effect;

(c) an insurance adjuster acting under the *Insurance Act*;

(d) a person who appears as an agent without reward for another person before a justice of the peace or judge when authorized to do so under an Act of Nunavut or an Act of Canada; or

(e) a student-at-law in the course of acting as counsel in any of the cases set out in subsection 66(1) or in doing anything in the course of his or her service under articles, if it is done under the direction or supervision of an active member.

#### **Collection of debts**

(3) The exemption provided by paragraph (2)(a) does not apply to a person to whom a debt has been assigned for collection purposes only.

R.S.N.W.T. 1988,c.40(Supp.),s.20; S.N.W.T. 1998,  
c.34,Sch.C,s.17(4); S.Nu. 2004,c.9,s.2(1).

#### **Misrepresentation as to professional status**

**69(1)** No person shall, unless he or she is an active member of the Society, hold himself or herself out as or represent himself or herself to be an active member of the Society, or a person lawfully entitled to practise law or to carry on the practice or profession of a barrister and solicitor.

#### **Suspended member**

(2) No suspended member shall, while suspended, hold himself or herself out as or represent himself or herself to be a member in good standing or a member not under suspension.

#### **Student-at-law**

(3) No person shall, unless he or she is admitted to the Society as a student-at-law, hold himself or herself out as or represent himself or herself to be a student-at-law or an articulated law student or clerk.

#### **Restriction**

**70(1)** No active member shall, except under the authority of a resolution of the Executive, employ in connection with his or her practice a suspended member, a member whose name has been struck off the Roll, or a person who has been suspended or disbarred by a law society other than the Society.

#### **Exception**

(2) The Executive may by resolution permit an active member to employ in connection with his or her practice a suspended member, a member whose name has been struck off the Roll, or a person who has been suspended or disbarred by a law society other than the Society, but the employment shall be in the capacity and subject to the terms and conditions that the resolution may specify.

S.N.W.T. 1988,c.40(Supp.),s.21.

**Offence and punishment**

**71(1)** Every person who contravenes this Part is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or, in default of payment, to imprisonment for a term not exceeding one year.

**Limitation of actions**

(2) A prosecution for an offence under this Part may not be commenced more than two years after the time when the offence was committed.

S.Nu. 2012,c.17,s.15(2).

**Injunction**

**72** The Nunavut Court of Justice, on application by the Society by way of originating notice, may grant an injunction prohibiting a person who has been convicted of an offence under section 71 from practising or acting as a barrister or solicitor, notwithstanding that a fine has been imposed.

S.Nu. 2004,c.9,s.2(1).

**Protection from liability**

**73** No action for damages lies against any member of the Executive, the board of the Nunavut Law Foundation, a Committee of Inquiry or the Discipline Committee, a Sole Inquirer, the Secretary or any officer or employee of the Society, for any thing done by him or her in good faith under this Act.

S.N.W.T. 1995,c.7,s.19; S.Nu. 2013,c.14,s.2(4).

**Defamation action**

**74** No action for defamation may be founded on a communication that consists of or pertains to a matter regarding the conduct of a member if the communication is published to or by the Society, the Executive, or any officer or employee of the Society in the course of inquiring into the matter or in the course of any proceedings relating to the matter.

## Miscellaneous

**Secretary's certificate as evidence**

**75** A copy of any rule or resolution of the Executive or the Society, or any document or official act of the Society shall, if the copy purports to be certified by the Secretary under the seal of the Society, be accepted in any court as evidence of the rule, resolution, document or act without proof of the official character or handwriting of the Secretary or of the seal.

**Service of documents**

**76(1)** Service of any notice, order or other document under this Act or the rules may be made personally or by registered mail addressed to the last known place of residence or business of the person to be served and, if service is made by registered mail, service shall be deemed to be made on the seventh day after the notice, order or other document is mailed and proof that the notice, order or other document was so addressed and posted is proof of service.

**Service on Society**

(2) Service of any document on the Society may be made by service on the Secretary or the registered office of the Society.

**Rules of the Nunavut Court of Justice**

**77** The Rules of the Nunavut Court of Justice apply to applications and motions to the Nunavut Court of Justice or to a judge of the Nunavut Court of Justice under this Act except to the extent that other provision is made by this Act.

S.Nu. 2004,c.9,s.2(1).

**Civil contempt**

**78** Every person is in civil contempt who

- (a) fails, without adequate excuse, to obey any direction or order authorized by this Act to be given or made,
- (b) fails to attend before a Sole Inquirer or a Committee of Inquiry after having been served with a summons issued under paragraph 25(2)(a),
- (c) fails to produce any document or thing under his or her control after having been served with a notice to produce them,
- (d) refuses to be sworn or to answer any question put to him or her by a Sole Inquirer or a Committee of Inquiry, or
- (e) does any other thing before a Sole Inquirer or a Committee of Inquiry that would, if the Sole Inquirer or the Committee of Inquiry were a court of law having power to commit for contempt, be contempt of that court,

and may, on application to a judge of the Nunavut Court of Justice, be proceeded against as for contempt of the Nunavut Court of Justice.

R.S.N.W.T. 1988,c.40(Supp.),s.22; S.N.W.T. 1995,  
c.7,s.20; S.Nu. 2004,c.9,s.2(1).