



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

LEGAL PROFESSION ACT

PLEASE NOTE

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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LEGAL PROFESSION ACT

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LEGAL PROFESSION ACT CHAPTER L-6.1

PART I — INTERPRETATION

1. Definitions

In this Act

- (a) “**actual practice**” means actively engaged in the practice of law;
- (b) “**articled clerk**” means an individual who is bound by a contract in writing to serve with a member and who has filed articles of clerkship in accordance with this Act;
- (c) “**council**” means the council of the society;
- (d) “**formal complaint**” means a complaint filed by the society against a member after investigation of the conduct of the member by a discipline committee;
- (e) “**Foundation**” means the Law Foundation of Prince Edward Island continued under Part VI;
- (f) “**honorary member**” means any individual designated by the council as an honorary member;
- (f.1) “**law corporation**” means a corporation carrying on the practice of a barrister, solicitor or attorney, which has been issued a permit pursuant to section 36.1;
- (g) “**member**” means a member of the society;
- (h) “**member in good standing**” means a member who is not in any way disqualified or made incapable of practising law and who has paid all the assessments, fees, dues, rates and penalties prescribed by this Act, and includes a non-practising member and a retired member;
- (i) “**non-practising member**” means a member who has been declared by the council to be a non-practising member;
- (i.1) “**permit**”, where used as a noun, means a currently valid permit issued pursuant to section 36.1, to a corporation, permitting the corporation to carry on the practice or profession of a barrister, solicitor or attorney in the province;
- (j) “**practice of law**” includes the practice of a barrister, solicitor or attorney described in section 21;
- (j.1) “**practising member**” means a member in good standing who holds a current practice certificate;
- (k) “**president**” means the president of the society;
- (l) repealed by 2008, c.20, s.72;
- (m) “**retired member**” means a member who has acquired retired member status pursuant to section 27;
- (n) “**secretary-treasurer**” means the secretary-treasurer of the society;

- (o) “**society**” means the Law Society of Prince Edward Island continued pursuant to section 2. *1992, c.39, s.1; 1997, c.27, s.1; 1999, c.33, s.1 {eff.} July 27/99; 2008, c.20, s.72(54).*

PART II — LAW SOCIETY

INCORPORATION, MEMBERSHIP AND FUNCTIONS

2. Incorporation

The Law Society of Prince Edward Island is continued as a body corporate. *1992, c.39, s.2.*

3. Membership

(1) The membership of the society consists of

- (a) all barristers, solicitors and attorneys who hold a current practice certificate;
- (b) non-practising members;
- (c) retired members; and
- (d) honorary members.

Officer of the court

(2) A member of the society is an officer of all the courts of the province.

Determination status

(3) The council shall determine whether an individual is engaged in actual practice or is a non-practising, retired or honorary member.

Good standing

(4) No individual is entitled to attend, speak or vote at any meeting of the society unless that individual is a member in good standing or is appointed pursuant to clause 7(1)(c) or has leave of the meeting to do so, and no individual is eligible to hold an office of the society unless that individual is a member in good standing or is appointed pursuant to clause 7(1)(c).
1992, c.39, s.3; 1994, c.33, s.1.

4. Objects

The objects of the society are

- (a) to uphold and protect the public interest in the administration of justice;
- (b) to establish standards for the education, professional responsibility and competence of its members and applicants for membership;
- (c) to ensure the independence, integrity and honour of the society and its members;
- (d) to regulate the practice of law; and
- (e) to uphold and protect the interests of its members. *1992, c.39, s.4.*

5. Powers

(1) The society has all the powers and capacity of a natural person.



Reciprocal insurance exchange agreements

- (2) Without limiting the generality of subsection (1), the society, or a subsidiary of the society established in accordance with the regulations, may enter into reciprocal insurance exchange agreements.

Reserve funds

- (3) The society, or a subsidiary of the society established in accordance with the regulations, may create one or more reserve funds for one or more of the following purposes:
- (a) an insurance claims reserve fund to cover insurance claims and contingent liabilities;
 - (b) an assessment stabilization reserve fund to reduce or stabilize assessments respecting insurance payable by members;
 - (c) a legal education reserve fund to provide funding for loss prevention, legal education and continuing professional development programs.

Reserve funds not subject to attachment

- (4) The reserve funds established pursuant to subsection (3) shall be used by the society or a subsidiary, as the case may be, only for the purposes for which they are established, and are not subject to attachment or other legal process to satisfy claims of creditors against the society. *1992, c.39, s.5; 2012, c.22, s.1.*

COUNCIL AND OFFICERS**6. Council**

- (1) The council shall manage the affairs of the society.

Administrative powers

- (2) The council may
- (a) make procedures, guidelines and policies for the better administration of the society;
 - (b) determine the fiscal year of the society;
 - (c) impose a fee or special levy on members of the society for such purposes as the council may determine.

Secretary-treasurer

- (3) The council shall employ a secretary-treasurer who shall be a member in good standing. *1992, c.39, s.6.*

7. Composition of council

- (1) The council shall consist of
- (a) the officers of the society, namely, the president, past president, vice-president and secretary-treasurer;
 - (b) six other members in good standing;
 - (c) two individuals, not being members of the society appointed for a three-year term by the Lieutenant Governor in Council from a list of five individuals submitted by a committee consisting of
 - (i) the Chief Justice of Prince Edward Island,
 - (ii) one representative of the society,

- (iii) one member representing the Minister of Justice and Public Safety and Attorney General, and
- (iv) one person representing the public at large appointed by the Minister of Justice and Public Safety and Attorney General.

List of substitutes

- (1.1) The committee constituted pursuant to clause (1)(c) shall prepare an annual list of individuals who are not members of the society for the purposes of subsection (9).

Election of officers procedure

- (2) The president and vice-president of the society and the members referred to in clause (1)(b) shall be elected by ballot at each annual meeting, but the election by ballot may be dispensed with and open voting substituted therefor by the unanimous vote of the members present at the meeting.

Distribution of offices among firms

- (3) A maximum of two members from each firm, partnership or employer are eligible to be nominated, elected or appointed to the council or to any office for the same year.

Employees

- (4) For the purposes of subsection (3), all members receiving a salary from the Government of Prince Edward Island or a provincial Crown corporation or agency are deemed to be employees of the same employer.

Procedure

- (5) If more than the required number of candidates for any of the positions referred to in clause (1)(a) or (b) are proposed, and no one receives a majority of the votes cast, the ballot shall be repeated with the candidate receiving the smallest number of votes being dropped from the list of candidates after each ballot.

Eligibility for re-election

- (6) Retiring members of the council are eligible for *re*-election.

Confidentiality

- (7) The individuals appointed pursuant to clause (1)(c) shall
- (a) maintain in confidence all matters respecting dealings between clients and members coming to such individuals' knowledge, to the same extent as if such individuals were members of the society; and
 - (b) execute an oath of confidentiality in such form as may be prescribed by council.

Membership on discipline committee

- (8) Each discipline committee of the society shall have as a member
- (a) at least one of the individuals appointed pursuant to clause (1)(c);
 - (b) one additional individual, not being a member of the society, appointed by the committee constituted under clause (1)(c).

Appointment of officers and committees

- (9) If a quorum can not be assembled for a discipline committee proceeding, due to the inability to act or the disqualification of a person appointed pursuant to clause (1)(c) or subsection (8), the council shall appoint an individual selected from the list prepared under subsection (1.1)



to serve for the purposes of that proceeding only. 1992, c.39, s.7; 1993, c.29, s.4; 1996, c.23, s.1; 1997, c.20, s.3; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2012, c.22, s.2; 2015, c.28, s.3.

8. Appointment to achieve quorum

- (1) The council may appoint
 - (a) officers in replacement for or in addition to the statutory officers referred to in clause 7(1)(a);
 - (b) members of council in replacement of members who have resigned or are otherwise unable to act;
 - (c) employees;
 - (d) committees and subcommittees, which may be composed of individuals appointed pursuant to clause 7(1)(c), members of the council and members of the society,as it considers necessary for the management of the affairs of the society and may fix their remuneration.

Dismissal and replacement

- (2) The council may dismiss any member of the council, other than the individuals appointed pursuant to clause 7(1)(c), who, in the opinion of council, has failed to act as a member of council, and may appoint a member to the council in replacement of such member. 1992, c.39, s.8.

9. Meetings of council

- (1) Meetings of the council shall be held at the call of the president or secretary-treasurer or upon the written requisition to the secretary-treasurer of four members of the council.

Quorum

- (2) At meetings of the council, six members shall constitute a quorum.

Committees

- (3) Meetings of any committee or subcommittee shall be held at the call of the chairperson or secretary-treasurer.

Purpose, when notice required

- (4) It shall not be necessary, in calling a meeting of the council, to state the object thereof, unless the meeting is called for the purpose of filling a vacancy in the membership of the council. 1992, c.39, s.9.

10. Liability of council officers

- (1) No action or other proceedings for damages shall be instituted against the secretary-treasurer or any member of the council, officer of the society, or individual appointed at a meeting of the society or the council, for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, or for any neglect or default in the performance or exercise in good faith of any such duty or power.

Indemnification

- (2) The society shall indemnify any individual referred to in subsection (1) for any costs or expenses incurred in any legal proceedings taken against that individual for anything done or

not done by him or her in good faith acting or purporting to act on behalf of the society under this Act. 1992, c.39, s.10.

MEETINGS

11. Annual general meeting

- (1) An annual general meeting of the members of the society shall be held each year at a place and time designated by council.

Report of council

- (2) The council shall, at the annual general meeting, present a report of its management of the affairs of the society since the last annual general meeting.

Notice

- (3) The secretary-treasurer shall send to each member of the society a notice of the meeting together with an unaudited financial statement of the society covering the last fiscal year and all material relating to matters requiring a vote of the society, at least ten days before the annual general meeting is to be held.

Idem

- (4) The accidental omission to give notice of the meeting to any member or the non-receipt of the notice does not invalidate anything done at the meeting. 1992, c.39, s.11.

12. Special general meeting

- (1) The council may at any time convene a special general meeting of the society.

Request by members

- (2) The council shall convene a special general meeting of the society on the written request of twenty members of the society that
- (a) is delivered to the secretary-treasurer; and
 - (b) states the nature of the business that is proposed to be considered at the meeting.

When held

- (3) A special general meeting convened under subsection (2) shall be held within sixty days of the receipt of the request.

Idem

- (4) Subject to subsection (3), a special general meeting shall be held at a time and place that the council may determine.

Notice

- (5) At least ten days before a special general meeting, the secretary-treasurer shall send to each member of the society a notice of the meeting stating the business that will be considered at the meeting and including all material relating to matters requiring a vote of the society.

Idem

- (6) The accidental omission to give notice of the meeting to any member or the non-receipt of the notice does not invalidate anything done at the meeting.



Only business on agenda considered

- (7) No business other than the business stated in the notice under subsection (5) shall be considered at a special general meeting. *1992, c.39, s.12.*

13. Quorum

At a general meeting of the society, twenty members in good standing constitute a quorum. *1992, c.39, s.13.*

14. Auditors

- (1) At each annual general meeting, the members shall appoint an auditor, who shall be a person qualified to conduct audits in Prince Edward Island.

Disqualified persons

- (2) A member of council or an employee of the society shall not be appointed as an auditor.

Access to records

- (3) The auditor shall at all times have access to every record of the society and is entitled to require from the council, officers and employees of the society information and explanations that the auditor considers necessary to prepare a report.

Report

- (4) The auditor shall report to the society at the annual meeting of the society. *1992, c.39, s.14.*

PART III — MEMBERSHIP**ADMISSION TO SOCIETY****15. Eligibility as member of society**

An individual who

- (a) is a Canadian citizen or a permanent resident of Canada;
- (b) is of the full age of eighteen years;
- (c) complies with the educational qualifications, training requirements and other qualifications prescribed by or under this Act; and
- (d) pays any fees and special levies payable to the society as prescribed by or under the Act,

is eligible to be registered as a member. *1992, c.39, s.15.*

16. Application for admission as a member of society

- (1) Any individual referred to in section 15 intending to be registered as a member shall make application to the council on a form prescribed by the regulations.

Fees

- (2) An application made under subsection (1) shall be accompanied by such fees and special levies as may be prescribed.

Disposition of application

- (3) The council shall within a reasonable time after receipt of an application made under subsection (1) review the application and accept or reject it.

Notification of applicant

- (4) The council upon acceptance or rejection of an application shall by registered mail notify the applicant of the decision of the council respecting the application. *1992, c.39, s.16.*

17. Admission to Bar, application for

- (1) An applicant for registration as a member shall, upon receipt of the notification that his or her application has been accepted, make application in the manner prescribed by the regulations to a judge of the Supreme Court for administration of the oaths of office.

Administration of oaths

- (2) The judge shall, upon receipt of a certificate from the secretary-treasurer stating that the applicant has complied with this Act and that his or her application for membership has been accepted, administer the following oaths to the applicant:
- (a) “I, (name of applicant), do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or as the case may be), Her heirs and successors, according to law. So Help Me God;”
- (b) “I, (name of applicant), do solemnly and sincerely swear that I will faithfully and honestly fulfill the duties which devolve upon me as a barrister, solicitor and attorney, or as a member of the Law Society of Prince Edward Island, and that I will as a barrister, solicitor and attorney conduct all causes and matters faithfully and to the best of my ability; I will not seek to destroy any person’s property; I will not promote suits upon frivolous pretences; I will not pervert the law to favour or prejudice any person; but in all things conduct myself truly and with integrity; in fine, the Sovereign’s interests and that of my fellow citizens I will uphold and maintain according to the law in force in this province. So Help Me God.” *1992, c.39, s.17.*

18. Registration of new member

- (1) The secretary-treasurer shall, after the judge has administered the oaths to the applicant, forthwith register the applicant on the roll as a member of the society and issue the applicant a certificate evidencing that the applicant has been admitted to the bar and is a member in good standing, and specifying the period during which the certificate is valid.

Certificate

- (2) The certificate shall be executed by the secretary-treasurer and shall be under the seal of the society.

Member becomes commissioner for deeds and notary public

- (3) An individual admitted and registered as a member of the society automatically and without any further formality becomes
- (a) a commissioner for deeds in all counties for the purposes of the *Registry Act* R.S.P.E.I. 1988, Cap. R-10;
- (b) a notary public in and for the province.

Notice

- (4) Upon the admission and registration of an individual as a member, the secretary-treasurer shall give notice thereof to the Clerk of the Executive Council and the Registrar of Deeds for each county in the prescribed form. *1992, c.39, s.18.*

ARTICLED CLERKS**19. Eligibility as articulated clerk**

- (1) An individual who
- (a) is of the full age of eighteen years;
 - (b) complies with the educational qualifications, training requirements and other qualifications prescribed by or under this Act;
 - (c) is indentured to a principal who meets the requirements prescribed by the regulations;
 - (d) pays any fees and levies payable to the society as prescribed by or under this Act and the regulations; and
 - (e) complies with all other requirements prescribed by the regulations,
- is eligible to be registered as an articulated clerk.

Registration as articulated clerk

- (2) The council may register any individual referred to in subsection (1) as an articulated clerk after that individual has paid any fees and levies prescribed and has complied with any other requirements imposed by or under this Act.

Articles with and assignment of articles

- (3) An individual registered under subsection (2) shall be articulated to his or her principal but articles of clerkship may be assigned with the consent of the articulated clerk and the council to any other principal.

Filing articles

- (4) No individual shall be considered to be an articulated clerk until the individual's articles of clerkship have been filed with the secretary-treasurer.

Rights of articulated clerk

- (5) An articulated clerk may, unaccompanied by, but on the direction of, his or her principal
- (a) act as counsel or agent before a provincial court judge, a youth court judge or a justice of the peace,
 - (i) in a civil proceeding, or
 - (ii) in a proceeding pertaining to an offence under provincial legislation punishable on summary conviction,
 - (iii) on an arraignment, or
 - (iv) to enter a plea in a criminal proceeding;
 - (b) with the consent in writing of the client and the clerk's principal, act as counsel or agent before a provincial court judge or a youth court judge in a criminal proceeding punishable on summary conviction or pertaining to an indictable offence in respect of which a provincial court judge or a youth court judge has absolute jurisdiction;
 - (c) act as counsel on any uncontested motion, petition or other proceeding before a judge sitting in chambers;

- (d) act as counsel in the Small Claims Section of the Supreme Court.

Appearance with principal

- (6) An articulated clerk may appear before any court, board or administrative tribunal accompanied by his or her principal. *1992, c.39, s.19; 1994, c.33, s.1.*

AUTHORITY TO PRACTISE

20. Authority to practise

- (1) No individual may practise as a barrister, solicitor or attorney unless that individual is a member in good standing and holds a current practice certificate.

Holding out

- (2) No individual may hold himself or herself out as being a member unless that individual is a member in good standing.

Office staff

- (3) For the avoidance of doubt, an individual who is employed by a member, a firm of members, a law corporation or the province and who acts under the direction and supervision of a member does not contravene subsection (1).

Occasional appearances

- (4) The council may permit a barrister or solicitor of another province or territory

- (a) to act as a solicitor on a particular matter; or
(b) to appear as counsel in the province on a particular cause or matter,

subject to such conditions as may be required by the regulations. *1992, c.39, s.20; 1999, c.33, s.2 [eff.] July 27/99.*

21. Practice of law defined

- (1) The practice or profession of a barrister, solicitor or attorney includes, for all purposes of this Act, the holding out to the public or the doing by any person, for fee gain, reward or otherwise, directly or indirectly, of any of the following things:

- (a) drawing or preparing a will, deed of settlement, trust deed, power of attorney or a document relating to any probate or letters of administration or the estate of a deceased person;
- (b) drawing or preparing an instrument relating to real or personal estate which is intended, permitted or required to be registered, recorded or filed in a registry or other public office;
- (c) drawing or preparing a document relating to incorporation, organization, re-organization or winding-up of a corporation;
- (d) drawing or preparing any document to be used in proceedings in any court in the province;
- (e) appearing in or before any public
- (i) court,
- (ii) board, or
- (iii) commission
- on behalf of another person;



- (f) giving legal advice to any person, including the Crown or any Crown agency or Crown corporation;
- (g) placing at the disposal of any other person, the services of a barrister or solicitor, except where the agreement is pursuant to
 - (i) a prepaid legal services plan which complies with this Act and any applicable provisions of the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4, and which provides that any barrister or solicitor entitled to practice law in the province may provide the legal services under the plan,
 - (ii) a contract or policy of liability insurance, or
 - (iii) a collective agreement or collective bargaining relationship.

Exception

- (2) Notwithstanding subsection (1),
 - (a) a person who in the course of his employment does any of the things referred to in clauses (1)(a) to (f), excluding subclause (1)(e)(i), exclusively for his or her employer, is not carrying on the practice or profession of a barrister, solicitor or attorney, and for the purpose of this section 'fee, gain, reward, or otherwise' does not include a salary paid to such a person;
 - (b) an employee or designated agent of any
 - (i) employers' organization,
 - (ii) employees' organization,
 - (iii) trade union, or
 - (iv) association representing trade unions or employees,may appear before any public board or commission on behalf of any person affiliated with any such organization, union or association with respect to any matter related to labour or employment;
 - (c) any person may appear on behalf of any other person before any Labour Arbitration Board.

Attorneys etc. Government employees

- (3) Clause (2)(a) does not apply to individuals employed as barristers, solicitors and attorneys by the Government of Prince Edward Island.

Exceptions

- (4) Subsection (1) does not apply to
 - (a) public officers who draw or prepare any document in the course of their duties;
 - (b) notaries public exercising the powers conferred on them by law;
 - (c) an articulated clerk in the course of acting as counsel in any of the cases enumerated in subsection 19(5) or in doing anything in the course of service under articles, if it is done under the direction and supervision of a member engaged in actual practice;
 - (d) those persons specified in the regulations.

Solicitation

- (5) No member shall advertise in respect of any activities referred to in subsection (1), except as otherwise permitted in this Act or the regulations.

Employees

- (6) No person, except a member or a law corporation carrying on the practice or profession of a barrister, solicitor or attorney, shall hold out that the person has in his or her employ a barrister whose services are available to the public.

Federal public officers

- (7) An individual who is not a member and who is employed by the Government of Canada as a barrister, solicitor and attorney in Prince Edward Island shall not be required to be a member if he or she is employed exclusively for the Government of Canada or appears solely before federally constituted tribunals or courts.

Members of public boards, etc.

- (8) A member of the society who is engaged in full-time employment as a member of a public board or commission shall be deemed to be engaged in the actual practice of law. *1992, c.39, s.21; 1996, c.23, s.2; 1999, c.33, s.3 {eff.} July 27/99.*

PRIVILEGES

22. Practice in the courts

- (1) Members in good standing who hold a current practice certificate are entitled to practise in all courts in this province and to prosecute and defend all actions and proceedings.

Saving for powers of court

- (2) Subsection (1) does not affect any powers that a court may exert over practitioners. *1992, c.39, s.22.*

23. Recovery of fees and charges

Members in good standing may sue for and recover their reasonable and lawful fees, costs, charges and necessary disbursements for and in connection with professional services rendered by them while entitled to practise. *1992, c.39, s.23.*

24. Taxation of accounts

No account of a member for fees and disbursements shall be assessed except within twelve months of the rendering of the account. *1992, c.39, s.24.*

25. Solicitor's charge on recovered property

- (1) A member who, whether the member has acted as counsel or not, is employed to prosecute or defend a proceeding in a court or tribunal has a charge against any property that is recovered or preserved as a result of the proceeding, for the proper costs, charges and expenses of, or in relation to, the proceeding, including counsel fees.

Taxation

- (2) The court, where the proceeding has been heard or is pending, may make an order for the taxation and payment of the costs, charges and expenses out of the property as the court considers just.



Idem

- (3) Where the proceeding is before a tribunal, the member may apply to the Supreme Court for an order under subsection (2).

Directions

- (4) All acts done and conveyances made to defeat, or which operate or tend to defeat the charge shall, unless made to a *bona fide* purchaser for value without notice, be deemed to be void against the charge, but no proceeding for the purpose of realizing or enforcing a charge arising under this section shall be taken until after application has been made to a court for directions for the realization or enforcement. *1992, c.39, s.25.*

FEES AND CERTIFICATES**26. Fees**

- (1) Subject to subsection (2), every member of the society who is not a retired member or an honorary member, shall, in respect of each year, pay to the society an annual fee, fixed by the council, consisting of
- (a) a membership or practice fee;
 - (b) the annual insurance fees, unless such member is exempted by the regulations; and
 - (c) any adjusting fees or other incidental fees.

Non-practising members

- (2) All non-practising members shall pay to the society an annual membership fee in the amount prescribed by council.

Idem

- (3) The fees referred to in subsections (1) and (2) shall be fixed by the council and shall be payable at such times and in such manner as the council may determine.

Practice certificate

- (4) Upon payment of the annual fees, if the member is otherwise in good standing, the secretary-treasurer shall issue to the member an annual certificate in the prescribed form.

Suspension for default in payment of fees

- (5) A member who does not pay the required fee within the time determined by the council in any year is automatically suspended from membership in the society and the secretary-treasurer shall notify all provincial court judges and the Prothonotary accordingly.

Disbarment

- (6) A member who has not paid the required fees for two consecutive years by July 1 in the second year shall cease to be a member of the society and stands disbarred.

Failure to engage in actual practice, consequence

- (7) If a member who holds a current practice certificate is absent from the province for a period of six consecutive months, and has failed to notify council in writing of his or her whereabouts during that time, that member shall automatically become a non-practicing member and shall not be permitted to engage in the practice of law in the province, and the secretary-treasurer shall forthwith notify all provincial court judges and the Prothonotary accordingly. *1992, c.39, s.26; 1994, c.33, s.3; 2008, c.20, s.72(54).*

27. Retired member, application

- (1) A member who is of the age of 65 years or more and has ceased to be engaged in the practice of law, or who is unable to engage in the practice of law because of permanent disability, may apply to the council to acquire the status of a retired member, upon submission of the prescribed form and payment of the prescribed fee.

Approval

- (2) Upon the council being satisfied that the member has properly applied for status as a retired member and has paid the prescribed fee, the council may approve the status of the member as a retired member.

Annual fee to maintain retired status

- (3) A member who has acquired the status of a retired member need not reapply to the council annually to maintain such status, but must pay the annual prescribed fee to the society on or before July 1 of each year. *1997, c.27, s.2*

28. Special levies approval

- (1) Where the council, pursuant to clause 6(2)(c), determines to impose a special levy, such levy shall not become effective unless approved by the members at an annual or special general meeting of the society.

Notice of levy

- (2) A special levy, if approved pursuant to subsection (1), shall be payable within thirty days of the mailing of the formal notice following such approval.

Notice of default

- (3) If a member fails to pay a special levy within the period specified in subsection (2), the member shall be given ten days notice by personal service that his or her membership shall be suspended on the expiry thereof.

Automatic suspension

- (4) Upon the expiry of the ten day period referred to in subsection (3), if the payment has not been received, membership is automatically suspended.

Notice to judge

- (5) The secretary-treasurer shall notify all provincial court judges and the Prothonotary that a member has been suspended pursuant to subsection (4). *1992, c.39, s.28; 2008, c.20, s.72(54).*

29. Penalty

If any barrister, solicitor or attorney is suspended from practice for non-payment of any fee or special levy, the suspension shall continue until the member pays all outstanding fees and levies and a penalty of \$200. *1992, c.39, s.29.*

BARRISTERS ROLL AND PRECEDENCE

30. Roll of members

- (1) The secretary-treasurer shall keep and maintain a book called the “Roll of the Law Society of Prince Edward Island” in accordance with the regulations.



Record of articulated clerks

- (2) The secretary-treasurer shall keep and maintain a book pertaining to persons admitted as articulated clerks.

Public inspection

- (3) The roll, and the book pertaining to articulated clerks, shall be kept at the office of the secretary-treasurer and shall be open for inspection by any person at any time that the offices are open.
1992, c.39, s.30.

31. Entries in roll

- (1) The roll shall consist of a separate page for each member or former member arranged in chronological order of registration.

Contents

- (2) Every memorandum entered in the roll shall show the date of its entry and shall be signed by the secretary-treasurer.

Date of becoming a member

- (3) An individual becomes registered as a member when a memorandum of his or her registration is entered on a page of the roll.

Date of suspension

- (4) When a member is suspended, a memorandum of the suspension shall be entered in the roll, and
- (a) when the member has been suspended for a stated period of time, the memorandum shall indicate the duration of the suspension; and
 - (b) when the member has been suspended for any reason other than as a penalty for unprofessional conduct, the memorandum shall indicate the reason.

Date of striking off

- (5) The name of a member is struck off the roll when a memorandum to that effect has been entered in the roll.

Record of death

- (6) When a member dies, the secretary-treasurer shall enter a memorandum of that fact in the roll.

32. Resignation of member

- (1) No member may resign from the society unless his or her resignation is submitted to and approved by council.

Recording resignation

- (2) When the resignation is approved, the member's name shall be struck off the roll.

Conditions

- (3) The council may approve the resignation subject to such conditions as the council may determine. *1992, c.39, s.32.*

33. Elevation to bench, striking off as member

When a member becomes a judge of the Supreme Court of Canada, the Federal Court of Canada, the Court of Appeal of Prince Edward Island, the Supreme Court of Prince Edward Island or the Provincial Court or a court in any other province of Canada, his or her name shall be struck off the roll. *1992, c.39, s.33; 2008, c.20, s.72(54).*

34. Her Majesty's Counsel learned in the law

- (1) The Lieutenant Governor in Council by Letters Patent under the Great Seal of the province may appoint, during pleasure, provincial officers under the name of Her Majesty's Counsel learned in the law, as follows:
- (a) any member who is appointed Minister of Justice, Attorney General or Solicitor General of Canada, or Attorney General of the province;
 - (b) any member of at least ten years standing who is recommended for appointment by a committee (hereinafter referred to as "the Queen's Counsel Recommendations Committee") composed of the following persons:
 - (i) the President, who shall be the chair and shall have a vote,
 - (ii) a member in good standing appointed by the council,
 - (iii) one person appointed by the Minister of Justice and Public Safety and Attorney General,
 - (iv) a judge of the Court of Appeal of Prince Edward Island or a judge of the Supreme Court of Prince Edward Island,
 - (v) a judge of the Provincial Court of Prince Edward Island.

Majority vote

- (1.1) The recommendations of the Queen's Counsel Recommendations Committee shall be by 4/5 majority of the Committee members, and shall be submitted to the Lieutenant Governor in Council on an annual basis.

Term of office

- (1.2) The term of each member on the Queen's Counsel Recommendations Committee shall be twelve months, and no person shall serve more than two consecutive terms on the Committee.

Queen's Counsel struck from rolls, status of appointment

- (2) Where, pursuant to this Act, any member appointed as one of Her Majesty's Counsel learned in the law is struck from the Roll of the Law Society of Prince Edward Island or is suspended from the practice of law for any length of time, the appointment of that member thereupon and thereby is vacated and does not at any time revive, but the Lieutenant Governor in Council may *re*-appoint the member. *1992, c.39, s.34; 1993, c.29, s.4; 1997, c.20, s.3; 1997, c.27, s.3; 2000, c.5, s.3; 2008, c.20, s.72(54); 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

35. Precedence in court

- (1) The following individuals have precedence in the courts of this province in the following order:
- (a) the Attorney General of Canada for the time being;
 - (b) the Minister of Justice and Public Safety and Attorney General of Prince Edward Island for the time being;



- (c) the members who have filled the offices of Attorney General of Canada, or Minister of Justice and Public Safety and Attorney General of this province, according to their seniority of appointment;
- (d) Her Majesty's Counsel learned in the law according to seniority of appointment;
- (e) other members in order of their admission.

Rights unaffected

- (2) Nothing in this Act affects or alters any right of precedence which applies to any member when acting as counsel for Her Majesty or for any Attorney General of Her Majesty. *1992, c.39, s.35; 1993, c.29, s.4; 1997, c.20, s.3; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

PROHIBITIONS**36. Prohibitions**

No member shall

- (a) permit any person other than a member who is a partner or employee of such member, or an articulated clerk actually serving in such member's office, to commence, prosecute or defend any action on his or her direction;
- (b) be entitled to recover any fees or charges in any court in the province or to have them assessed before the Prothonotary while
 - (i) in default of payment of fees to the society, or
 - (ii) not entitled to practise; or
- (c) engage in the practice of law while
 - (i) confined in a jail or prison, or
 - (ii) suspended from practising. *1992, c.39, s.36; 2008, c.20, s.72(54).*

PART III.1**Law Corporations****36.1 Application for permit**

- (1) A corporation that intends to carry on the practice of a barrister, solicitor or attorney shall apply for a permit in accordance with the regulations.

Secretary-treasurer may issue permit to corporation

- (2) The secretary-treasurer may issue a permit to a corporation to carry on the practice of barrister, solicitor or attorney in accordance with the regulations.

Refusal, suspension, revocation, etc.

- (3) The secretary-treasurer may refuse, place conditions on, suspend or revoke a permit issued under this section in accordance with the regulations.

Corporation practices only under Act

- (4) No corporation shall carry on, engage in or hold itself out as carrying on or engaging in the practice or profession of a barrister, solicitor or attorney except as provided by this Act.

Practice in own name or business name

- (5) Subject to the regulations, a law corporation holding a permit may carry on the practice or profession of barrister, solicitor or attorney in its own name or under a business name.

Law corporation not to be entered in roll

- (6) Notwithstanding anything contained in this Part, a law corporation shall not be entered on the roll as a barrister, solicitor or attorney pursuant to this Act.

Practice on behalf of law corporation by member only

- (7) All persons who carry on the practice or profession of a barrister, solicitor or attorney on behalf of a law corporation shall be practising members.

Clerks, secretaries, etc. not practising

- (8) The following shall be deemed not to be carrying on the practice or profession of a barrister, solicitor or attorney:
- (a) services performed by articled clerks, clerks, secretaries and other assistants employed by a law corporation to enable the member to perform the services that may be performed only by a practising member; and
 - (b) services performed by articled clerks employed by a law corporation to do anything in the course of their duties as articled clerks, if it is done under the direction or supervision of a practising member and in accordance with the this Act and the regulations. *1999,c.33,s.4 {eff.} July 27/99.*

36.2 Ownership rules for law corporations

- (1) The following principles apply to a law corporation:
- (a) all issued voting shares shall be legally and beneficially owned by one or more practising members or by a trust of which all the trustees and all the beneficiaries are practising members;
 - (b) all issued non-voting shares, if any, shall be legally and beneficially owned by one or more persons, each of whom is
 - (i) a member of the society,
 - (ii) a law corporation that is a voting shareholder,
 - (iii) any other person who is a relative of or resides with a member of the society who is a shareholder or who is a shareholder in the law corporation that is a shareholder, or
 - (iv) a trust of which all of the trustees and all of the beneficiaries fall within subclause (i), (ii) or (iii);
 - (c) notwithstanding clause (a), issued voting shares may be legally and beneficially owned by a corporation of which
 - (i) all of the issued voting shares are legally and beneficially owned by one or more practising members or by a trust of which all of the trustees and all of the beneficiaries are practising members,
 - (ii) all the issued non-voting shares are legally and beneficially owned by person described in clause (b),
 - (iii) all of the officers and directors are practising members;
 - (d) if the corporation intends to carry on the practice or profession of a barrister, solicitor or attorney under a business or a partnership name, confirmation satisfactory to the secretary-treasurer of the business name to be used by the corporation;



- (e) notwithstanding clause (b), issued non-voting shares, if any, may be legally and beneficially owned by a corporation of which
 - (i) all of the issued shares are beneficially owned by persons described in clause (b), or by a trust of which all of the trustees and beneficiaries are described in clause (b), and
 - (ii) all of the officers and directors are persons described in clause (b);
- (f) no shareholder of a law corporation shall enter into a trust agreement, proxy or other type of agreement vesting in another person who is not a practising member, the voting rights attached to any shares of the corporation;
- (g) no corporation holding voting shares of a law corporation may authorize any person to represent it at a meeting of shareholders of the law corporation unless that person is a practising member.

Officers and directors must be practising members

- (2) All officers and directors of a law corporation shall be practising members.

No trust, proxy, etc. if not practising member

- (3) No officer or director of a law corporation
 - (a) owning voting shares of a law corporation shall enter into a trust agreement, proxy or any other type of agreement vesting in a person who is not a practising member any authority or voting rights as an officer or director of a law corporation; and
 - (b) owning non-voting shares of a law corporation shall enter into a trust agreement, proxy or any other type of agreement vesting in a person who is not described in clause (1)(b) any authority or voting rights as an officer or director of a law corporation.

Circumvention of ss. (3) invalid

- (4) Any attempt to avoid or bypass subsection (3) is invalid to the extent that it purports to vest such authority or rights in a person who is not a practising member.

Notice of change in shareholders, etc.

- (5) Where there is any change in the shareholders, shareholdings, officers, directors, name or business name of a law corporation, the corporation shall provide notice in writing of the change to the secretary-treasurer, within 15 days of the change.

Voting shareholders liable as if partnership

Every person who is a voting shareholder of a law corporation and every person who is a voting shareholder of a corporation owning voting shares of the law corporation is liable to every person for whom professional services of a barrister, solicitor or attorney are undertaken or provided by a law corporation in respect of such professional services to the same extent and in the same manner as if such voting shareholders were carrying on the practice of barrister, solicitor or attorney in partnership or as an individual. *1999, c.33, s.4 {eff.} July 27/99.*

36.3 Principles applicable to practising corporation

The following principles apply to the practice or profession of barrister, solicitor or attorney carried on by a corporation:

- (a) the relationship of a practising member or of an articulated clerk to a corporation carrying on the practice of a barrister, solicitor or attorney, whether as a shareholder,

- director, officer or employee does not affect, modify or diminish the application to that person of this Act and the regulations;
- (b) nothing contained in this Part modifies or limits any law applicable to the fiduciary, confidential or ethical relationships between a barrister, solicitor or attorney and a person receiving the professional services of a barrister, solicitor or attorney;
 - (c) the relationship of a corporation carrying on the practice or profession of barrister, solicitor or attorney and a person receiving the professional services of the corporation is subject to all applicable law relating to the fiduciary, confidential and ethical relationships between a barrister, solicitor or attorney and the client of the barrister, solicitor or attorney;
 - (d) all professional responsibilities and obligations pertaining to communications made to or information received by a barrister, solicitor or attorney therein, apply to the shareholders, directors, officers and employees of a corporation carrying on the practice or profession of barrister, solicitor or attorney; and
 - (e) any undertakings given by or on behalf of a corporation carrying on the practice or profession of barrister, solicitor or attorney that, if given by a practising member, would constitute a specific undertaking, is deemed to be a solicitor's undertaking given by the corporation and by the practising members who give it, authorize it or sign it. *1999, c.33, s.4 [eff.] July 27/99.*

36.4 Law corporation deemed practising member

- (1) Notwithstanding anything contained in this Part, all provisions of this Act and the regulations that are applicable to practising members apply with all necessary modifications to law corporations, and a law corporation is deemed, for this purpose, to be a practising member, and proceedings that may be taken under this Act or the regulations against a practising member who is an individual may also be taken against a law corporation and any order that may be made against an individual may be made against a law corporation.

Law corporation may commence action

- (2) Subject to this Act and the regulations, a law corporation may commence an action and sue to recover its account for the provision of any services provided by it in the course of carrying on the practice or profession of barrister, solicitor or attorney if those services were performed while the law corporation was a holder of a permit.

Law corporation may not carry on other business

- (3) A corporation shall not, while it is the holder of a permit, carry on any business prohibited by the regulations, and no act of a corporation, including the transfer of property to or by a corporation, is invalid by reason only that it contravenes this subsection. *1999, c.33, s.4 [eff.] July 27/99.*

36.5 Appeal

- (1) A barrister, solicitor or attorney may appeal to council a decision to refuse, place conditions on, suspend or revoke a permit pursuant to subsection 36.1(2), in accordance with the regulations.

Not subject to appeal

- (2) Notwithstanding subsection (1), the following shall not be subject to appeal under this Act
 - (a) revocation of a permit at the request of the law corporation;
 - (b) conditions on a permit prescribed by the regulations. *1999, c.33, s.4 [eff.] July 27/99.*



36.6 Regulations

The society may make regulations

- (a) prescribing the requirements for the application for, issue and renewal of a permit;
- (b) providing for the refusal, placement of conditions, suspension, revocation and reinstatement of a permit;
- (c) prescribing the forms to be used respecting this Part;
- (d) regulating the practice or profession of a barrister, solicitor or attorney carried on by a law corporation;
- (e) regulating the names that may be used by a law corporation;
- (f) prescribing business and undertakings that a law corporation is prohibited from carrying on, engaging in, or holding itself out as carrying on or engaging in;
- (g) respecting an appeal pursuant to section 36.5;
- (h) respecting professional liability insurance to be carried by law corporations; and
- (i) such other matters as the society considers necessary or advisable for the carrying out of this Part. *1999, c.33, s.4 {eff.} July 27/99.*

PART IV — UNPROFESSIONAL CONDUCT AND DISCIPLINE**37. Unprofessional conduct**

(1) Unprofessional conduct means

- (a) conduct unbecoming a member or professional misconduct;
- (b) any conduct that is considered in the judgment of the council or a committee
 - (i) to be contrary to the best interests of the public or of the legal profession,
 - (ii) likely to harm the standing of the legal profession, or
 - (iii) to be contrary to any code or standard of ethics adopted by the society;
- (c) carrying on the practice of barrister, solicitor or attorney while confined or suspended in accordance with the Act;
- (d) knowingly acting as the agent of an individual who is not a member of the society in good standing so as to enable that individual to engage in the practice of law;
- (e) permitting one's name to be used or held out as such an agent; or
- (f) doing any other act to enable an individual described in clause (d) to practise as a barrister, solicitor or attorney, knowing the individual not to be duly qualified.

Misconduct

(2) Misconduct by, or conduct unbecoming, an articled clerk includes:

- (a) conduct which would, if the articled clerk were a member, constitute unprofessional conduct; and
- (b) conduct which violates any provision of this Act governing articled clerks. *1992, c.39, s.37.*

38. Unprofessional conduct, disciplinary matters

(1) Where a member is found by the council or a discipline committee appointed by council, after investigation and due inquiry, to be guilty of unprofessional conduct, the council or discipline committee may do one or more of the following:

- (a) cancel the registration as a member and strike the name of the member from the rolls;
- (b) suspend the member from practice for such period as the council or discipline committee sees fit;
- (c) fine the member in an amount not exceeding \$10,000;
- (d) impose such conditions or restrictions on practice by the member as the council or discipline committee sees fit;
- (e) reprimand and counsel the member in such a manner as the council or discipline committee sees fit;
- (f) order that the expenses of the society incurred in connection with the inquiry and investigation be paid by the member;
- (g) order that the payment of any amounts ordered to be paid pursuant to this section be made a condition of continuing membership.

Reprimand etc.

- (2) A discipline committee may, after investigation, reprimand or counsel a member in such manner as the discipline committee sees fit, and, subject to such right of appeal as may be provided for in the regulations, the reprimand or counselling shall conclude the matter.

Idem, articled clerk

- (3) Where an articled clerk is found by the council, or a discipline committee appointed by council, after investigation and due inquiry, to be guilty of misconduct or of conduct unbecoming an articled clerk, the council or discipline committee may do one or more of the following:
 - (a) cancel the registration as an articled clerk;
 - (b) refuse to grant the articled clerk any certificate necessary for admission to practise;
 - (c) fine the articled clerk in an amount not exceeding \$2,000;
 - (d) extend the period which the articled clerk shall serve under articles for such period as the council or discipline committee sees fit;
 - (e) reprimand and counsel the articled clerk in such manner as the council or discipline committee sees fit.

Limitation period for filing complaint

- (4) Repealed by *1994, c.33, s.4.*

Authority of council to act in disciplinary matter

- (5) Notwithstanding the appointment of a discipline committee by the council, the council retains the power to conduct any investigation and inquiry with respect to the discipline of members.

Suspension

- (6) The council or discipline committee at any time may suspend a member from practising pending the completion of an investigation or adjudication of a complaint if it considers it necessary to do so for the protection of the public.

Duration of suspension

- (7) Where a member has been suspended under subsection (6), the suspension shall lapse unless, within forty-five days of the date of suspension, a formal complaint has been laid against the member by the secretary-treasurer.



Audit investigation

- (8) The council or a discipline committee appointed by the council may at any time conduct an investigation, including an audit of the books, records and accounts of any member, for the purpose of ensuring that the requirements of the regulations respecting accounts are complied with, and may by resolution appoint a receiver.

Powers

- (9) For the purpose of making an investigation or inquiry under this section,
- (a) the council or a discipline committee appointed by the council may require the attendance of witnesses and the production of books, papers or other documents may be enforced by order signed by the council or a discipline committee, issued under the hand of the president and the seal of the society;
 - (b) any person failing to attend in obedience to an order issued under clause (a) or refusing to be sworn, or to answer any question allowed upon the inquiry, or to produce any books, papers or other documents, or otherwise to comply with the order, incurs a penalty of \$500 which may be recovered as a debt in the name of the society;
 - (c) upon the certificate of the president that any person has failed to attend, or to be sworn, or to answer any questions, or to produce any books, papers or documents, or has otherwise failed to comply with the order, a judge of the Supreme Court may make an order directing the person so failing or refusing to comply with the order, in respect to the matters above mentioned, or any of them, to comply therewith in the manner provided in the order, and disobedience of an order made by a judge may be punished as for contempt of court;
 - (d) the council or a discipline committee appointed by the council may require the evidence to be given by oral examination or by oath under the *Canada Evidence Act* R.S.C. 1985, Chap. C-5, or the *Evidence Act* R.S.P.E.I. 1988, Cap. E-11;
 - (e) evidence may be taken in whole or in part either before the council, a discipline committee, or before any one or more members thereof, or before any other person either within or outside Prince Edward Island, as the council may direct;
 - (f) the Supreme Court or any judge thereof may, in the case of evidence directed to be taken outside Prince Edward Island, direct the issue of a commission for the taking of the evidence in the same manner as in an action pending in the Supreme Court.

Failure to co-operate

- (10) Failure by a member to co-operate fully in respect of an investigation or inquiry constitutes unprofessional conduct. *1992, c.39, s.38; 1995, c.23, s.1.*

39. Cancellation of registration of member

Upon it being resolved by the council or a discipline committee that a member should be suspended from practising for a period named in the resolution, or that the member's registration be cancelled, a copy of the resolution shall be forthwith communicated to the member by leaving a copy of the resolution at his or her last known business address within the province and, without any formal motion, the council shall cancel the registration of the member, and strike the member from the roll or suspend the member as may have been prescribed in the resolution. *1992, c.39, s.39.*

40. Cancellation of enrollment of articulated clerk

Upon it being resolved by the council or a discipline committee that an articulated clerk should have his or her enrollment as an articulated clerk set aside, a copy of the resolution shall be forthwith communicated to the articulated clerk by leaving a copy of the resolution with the clerk and his or her principal at the principal's last known business address within the province and without any formal motion, the council shall set aside the enrollment of the articulated clerk prescribed in the resolution. *1992, c.39, s.40.*

41. Notice of suspension, etc.

- (1) Upon a member being struck from the rolls or suspended, the secretary-treasurer shall forthwith cause a notice to be published in the Gazette and in a newspaper having general circulation in the province indicating that the member has been struck from the rolls or has been suspended, as the case may be, and the secretary-treasurer shall so notify all provincial court judges and the Prothonotary.

Reinstatement

- (2) Where a member has been suspended for an indefinite period and has been reinstated, the secretary-treasurer shall cause a notice to that effect to be published in accordance with subsection (1) and the secretary-treasurer shall so notify all provincial court judges and the Prothonotary. *1992, c.39, s.41; 2008, c.20, s.72(54).*

42. Incompetence

Where the practice standards committee by resolution determines a member to be incompetent in the practice of law, it may impose any of the penalties set out in subsection 38(1) or as may be prescribed in the regulations. *1992, c.39, s.42.*

43. Appeal to Appeal Division

- (1) Every member or articulated clerk affected by a resolution of the council or a discipline committee or the practice standards committee made under sections 38, 39, 40 or 42 may, within thirty days from the date of the resolution, appeal to the Court of Appeal against the resolution.

Resolution stays in force

- (2) The resolution appealed from shall remain in force pending the determination of an appeal, unless otherwise ordered by the court. *1992, c.39, s.43; 2008, c.20, s.72(54).*

PART V — TRUST ACCOUNTS

44. Books to be kept by solicitors

- (1) Every member shall at all times keep such books of account in connection with his or her practice as may be necessary to show, distinguish and identify
- (a) all moneys received from or on account of and all moneys paid to or on account of each of the member's clients; and
 - (b) all moneys received and all moneys paid on the member's own account.



Trust or client accounts

- (2) Every member shall deposit all moneys received in trust for a client or beneficiary trust in an interest bearing account at a financial institution that
- (a) is a member of the Canada Deposit Insurance Corporation or the Credit Union Deposit Insurance Corporation; and
 - (b) complies with such reporting requirements as may be prescribed.

Moneys payable into trust accounts

- (3) No money shall be paid into a trust or client account other than
- (a) money received on account of a client;
 - (b) such money of the member as may be necessary to open or maintain the account;
 - (c) such money as may be necessary to replace any sum withdrawn in error or otherwise improperly;
 - (d) money of the member necessarily paid in by reason of its inclusion with money of a client in a cheque or draft;
 - (e) money received as interest on such trust or client account.

Withdrawal

- (4) No money shall be withdrawn from a trust or client account other than
- (a) money properly required for payment to or on behalf of a client or for payment of a debt or liability of the client to the solicitor, but only up to the total therein held for such client;
 - (b) such money of the solicitor as may have been paid under clause (3)(b) or (d);
 - (d) money received as interest on the trust or client account.

Sufficient amounts on deposit

- (5) A member shall, at all times, maintain a sufficient balance on deposit in his or her trust account which, together with undeposited money in trust for, or on account of, a client is sufficient to meet all the member's obligations with respect to moneys held in trust for clients, but nothing herein shall relieve a member of the obligation to deposit money in the member's trust account forthwith.

Regulations

- (6) The society may make regulations for the enforcement of the requirements of this Part and for all audits, inspections and reports necessary or incidental thereto. *1992, c.39, s.44; 1999, c.33, s.5 [eff.] July 27/99.*

44.1 Money held in trust, payment to Society

- (1) Subject to subsection (2), a member who holds money in trust on behalf of a person may apply, in accordance with the regulations, to pay the money to the society, if the member has been unable to locate the person for two years or more.

Abridgement of time

- (2) The society may, where it deems appropriate to do so, abridge the time period referred to in subsection (1).

Liability of member

- (3) Where a member has paid money to the society under subsection (1), the member is not liable to pay that money to the person on whose behalf the member previously held it or to that person's legal representative.

Foundation

- (4) The society shall submit any money paid to it under subsection (1) to the Foundation, which shall hold such money in trust.

Interest received

- (5) The Foundation is entitled to retain, for its purposes, any interest on any money held in trust by it under subsection (4).

Claims for return of money

- (6) A person or the legal representative of a person who, but for subsections (1) and (3), could claim money held in trust by a member may, in accordance with the regulations, make a claim for the return of the money from the society.

Review of claim and repayment

- (7) On receipt of a claim made under subsection (6), the society shall, in accordance with the regulations,
- (a) review the claim and determine if the person is entitled to the return of the money claimed; and
 - (b) if the society is satisfied that the person is entitled to the return of the money claimed,
 - (i) request the return from the Foundation of the money, and
 - (ii) pay the money to the person.

Loss of claim

- (8) No person may make a claim under subsection (6), in respect of money paid to the society under subsection (1), after the date that is the tenth anniversary of the day on which the money was paid to the society.

Entitlement of Foundation

- (9) The Foundation is entitled to retain, and use for its own purposes, any money that the society is not liable to repay to a person pursuant to subsection (8). *2004, c.6, s.1.*

45. Liability of member for interest on money on deposit

A member is not liable, by virtue of the relationship between solicitor and client or by virtue of the trust relationship between the solicitor as trustee and the beneficiary of the trust, to account to a client or beneficiary for interest received by the member on money received or held in an account referred to in subsection 44(2). *1992, c.39, s.45.*

46. Interest on trust accounts

- (1) A member who is credited by a financial institution referred to in subsection 44(2) with interest on monies received or held on behalf of clients generally holds the interest in trust for the Foundation, and shall direct the institution to remit the interest to the Foundation in accordance with the regulations, and the society may make regulations to ensure that all interest so credited to the member is paid to the Foundation.



Application, extent of

- (2) Nothing in this Part or in the regulations made pursuant to this Part
 - (a) affects any arrangement in writing, whenever made, between a member and his or her client as to the application of the client's money or interest thereon; or
 - (b) applies to money deposited in a separate account for a client bearing interest that shall be and remain the property of the client. *1992, c.39, s.46.*

47. Report

- (1) Every financial institution authorized to operate trust accounts shall file a report with the secretary of the Foundation as to the interest accruing on money held in each interest-bearing account as provided for by section 46.

Remission of interest

- (2) Every institution which credits a member with interest on money held in trust shall remit or cause to be remitted to the Foundation all such interest moneys.

Obligations of financial institutions

- (3) Every institution shall
 - (a) compute monthly the amount of interest earned on the average monthly balance in the interest-bearing accounts of each member;
 - (b) pay quarterly into an account held in the name of the Foundation the amount so calculated; and
 - (c) give written notice to the secretary of the Foundation when each quarterly payment is made.

Forms

- (4) The report required under subsection (1) and the written notice required under clause (3)(c) shall be in the form prescribed by the regulations and shall be filed quarterly with the secretary of the Foundation, and a copy of such report forwarded to the member. *1992, c.39, s.47.*

PART VI — REIMBURSEMENT FUND**48. Reimbursement Fund**

- (1) In this section "Fund" means the Reimbursement Fund.

Purpose of Fund

- (2) The council shall create a fund to be known as the Reimbursement Fund, for the purpose of reimbursing, in the cases and, subject to subsections (7) to (11), and to the extent, in each case, as it thinks advisable, persons who sustain a pecuniary loss as a result of the misappropriation or wrongful conversion by a member of money or other property entrusted to or received by the member while acting in the capacity of barrister, solicitor or attorney.

Monies received as trustee not covered

- (3) Where the member has no responsibility as a barrister, solicitor or attorney in connection with the money or property received for the purpose of this section, money or property entrusted to or received by a member as trustee shall be deemed not to be entrusted to or received in the member's capacity as a member of the society.

Nature of Fund

- (4) The Fund is the property of the society and
- (a) shall be accounted for separately from the other funds of the society; and
 - (b) shall not be subject to any process of seizure or attachment by any creditor of the society.

Investment

- (5) The council may invest the Fund and the proceeds from it in any securities and in the manner it thinks fit.

Fund not subject to trust

- (6) The Fund is not subject to a trust in favour of a person who alleges that he or she has sustained a loss.

Inquiry into complaint respecting loss

- (7) Upon receipt of an allegation in writing made to the society alleging that a person has sustained a pecuniary loss by reason of misappropriation or wrongful conversion of money or other property by a member, the council may, if in its opinion it is warranted, order disciplinary proceedings to be taken against such member in accordance with this Act.

Recommendation for payment out of Fund

- (8) Upon the conclusion of the disciplinary proceedings against the member, if the council is satisfied that a person has, as a result of misappropriation or wrongful conversion by a member of money or other property entrusted to or received by that member in the member's capacity as a barrister, solicitor or attorney, sustained a pecuniary loss, the council shall
- (a) recommend to the members, setting out the reasons therefor, the payment of money out of the Fund to compensate the person entitled for all or part of the loss; or
 - (b) determine that no payment shall be made.

Conditions precedent to payment out of Fund

- (9) Before deciding whether to make a payment out of the Fund, the Council may require, in respect of any application for a grant out of the Fund, that
- (a) any civil remedy which may be available in respect of the loss be pursued; or
 - (b) criminal proceedings in respect of the dishonesty leading to the claim be instituted.

Limitations

- (10) The council may place general limitations on the amounts that may be paid out of the Fund, and in no event shall payment be made in excess of the amount in the Fund.

Payment, conditions for

- (11) The council shall not make a payment out of the Fund
- (a) in respect of a misappropriation or wrongful conversion that occurred before the date upon which this section comes into force;
 - (b) where the claim for payment is made more than two years after the facts that gave rise to the claim were known by the person making it; or
 - (c) until at a special or general meeting of the society a majority of the members present at the meeting vote in favour of the council's recommendation to make the payment.

Expenses

- (12) The council may authorize payment out of the Fund for expenses incurred



- (a) to administer the Fund;
- (b) to investigate claims against the Fund; and
- (c) for any other matter relating to the protection and maintenance of the Fund.

Recovery of payment from defaulting member

- (13) A payment made pursuant to this section may be recovered from the member, former member or the estate of either, on whose account it was paid, as a debt owing to the society and, when collected, is the property of the society and shall be accounted for as part of the Fund.

Defences

- (14) In any action to recover money under subsection (13), the member, former member or the estate may raise any defence against the society that the member or the estate could have raised against the person to whom the payment was made in respect of any action that could have been brought by that person for conduct that gave rise to that person's claim under this section other than a defence under the Statute of Limitations R.S.P.E.I. 1988, Cap. S-7.

Member defined

- (15) Repealed by *1997, c.27, s.4.*

Extra jurisdiction claims

- (16) Repealed by *1997, c.27, s.4.*

Premiums

- (17) The council shall fix annually the amount to be paid into the Fund by each member, and such amount shall be payable at the same time and in the same manner as the admission fees or annual membership fees of the society, and shall give rise to the same penalties for non-payment as are applicable to non-payment of admission or annual membership fees. *1992, c.39, s.48; 1997, c.27, s.4.*

48.1 Insurance program

The society may establish, administer, maintain, operate or join an insurance program to carry out the purposes of this Part. *2010, c.38, s.1.*

PART VII — LAW FOUNDATION

49. Law Foundation

- (1) The Law Foundation of Prince Edward Island is continued as a body corporate.

Board of governors

- (2) The Foundation shall be administered by a board of governors consisting of five members comprised as follows:
- (a) the Minister of Justice and Public Safety and Attorney General or the Minister's appointee; and
 - (b) four members of the society appointed by the council.

Terms of office

- (3) The council shall appoint each of its appointees on the board for a term of two years or until a successor is appointed.

Chairperson

- (4) The chairperson of the board shall be appointed by the council for a term of one year and may be *re*-appointed.

Remuneration

- (5) The chairperson and members of the board shall serve thereon without remuneration.

Vacancies

- (6) The council shall appoint a member to fill any vacancy on the board, and the member so appointed shall hold office for the residue of the term for which he or she is appointed or until a successor is appointed.

Quorum

- (7) A quorum of the board shall consist of three members and the members may act notwithstanding any vacancy on the board.

Termination of appointment

- (8) The appointment of any member of the board shall terminate when he or she
- (a) resigns in writing;
 - (b) ceases to be a member or leaves the province permanently;
 - (c) becomes mentally incompetent or bankrupt; or
 - (d) contravenes a provision of this Act or the regulations, and a majority of the other members of the board determines that the contravention is sufficiently serious to justify the member's removal from the board.

Defect in appointment

- (9) No act of the board is invalid because a defect is afterwards found in the appointment of any of its members. *1992, c.39, s.49; 1997, c.20, s.3; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

50. Fund

- (1) The Foundation has power to establish and maintain a fund and use the proceeds thereof for the purposes of
- (a) legal education, legal research or law reform;
 - (b) the editing and printing of decisions of the Court of Appeal, Supreme Court and Provincial Court of Prince Edward Island;
 - (c) the promotion of legal aid; and
 - (d) aiding in the establishing, operating and maintaining of law libraries in Prince Edward Island.

Powers

- (2) The Foundation may take such action as is necessary to carry out the purposes referred to in subsection (1).

Funds, composition of

- (3) The funds of the Foundation shall be composed of all monies paid to the Foundation as provided in section 47, interest accruing from investment of funds of the Foundation, and any other moneys received by the Foundation. *1992, c.39, s.50; 2008, c.20, s.72(54).*



51. Powers of board

- (1) The board may, subject to this Act,
 - (a) pay out of the funds of the Foundation any costs, charges, audit and other fees and expenses involved in the administration and operation of the Foundation;
 - (b) appoint, employ or otherwise retain such persons as are required to carry out the powers and purposes of the Foundation;
 - (c) acquire, hold, mortgage, dispose of and otherwise deal with real and personal property in the name of and for the purposes of the Foundation;
 - (d) make bylaws respecting the administration of its affairs, funds and property, and of any other matter which relates to the powers and purposes of the Foundation or which is incidental thereto;
 - (e) do any other matter which relates to the powers and purposes of the Foundation or which is incidental thereto.

Use of moneys

- (2) All moneys of the Foundation shall, pending their investment or application in accordance with this section, be paid into a financial institution referred to in subsection 44(2).

Investment

- (3) All moneys that are not immediately required for the purposes of the Foundation may be invested in the name of the Foundation by the board in any manner in which trustees are authorized by law to invest trust funds.

Audit

- (4) The accounts of the Foundation shall be audited annually by a person authorized to conduct audits appointed for the purpose by the council, and he shall report to the Foundation and the council.

Reports

- (5) The board shall report to council from time to time or when requested by the council, and shall present an annual report to the society at its general meeting. *1992, c.39, s.51.*

PART VIII — NOTARIES PUBLIC**52. Appointment of notaries**

Subject to section 53, the Lieutenant Governor in Council may, by commission under the Great Seal of the Province of Prince Edward Island, appoint, during pleasure, notaries public in and for the Province of Prince Edward Island. *1992, c.39, s.52.*

53. Examination of applicants who are not members

- (1) Any individual, other than a member, desirous of being appointed a notary public, is subject to examination in accordance with the regulations made under subsection (3) in regard to his or her qualifications for the office of notary public by a judge of the Supreme Court or by such other individual as may be appointed in that behalf by the Lieutenant Governor in Council.

Certificate of examiner

- (2) No individual shall be a notary public without a certificate from a judge of the Supreme Court or other individual appointed under subsection (1) that he or she has examined the applicant in accordance with the regulations made under subsection (3) and finds the applicant qualified for the office and that in his or her opinion a notary public is necessary for the public convenience in the place where the applicant resides and intends to carry on business.

Regulations re examination and certificate

- (3) The Lieutenant Governor in Council may make regulations for an examination referred to in subsection (1) and a certificate referred to in subsection (2). *1992, c.39, s.53; 2015, c.36, s.37.*

PART IX — LAW LIBRARIES

54. Law librarian

- (1) The society shall own, operate and maintain a law library in Charlottetown and in Summerside, at such locations as may be determined by the society.

Space

- (2) Sufficient space to accommodate law libraries shall be set aside for the purposes of law libraries in the law courts buildings in Charlottetown and Summerside.

Agreements with Justice and Public Safety and Attorney General

- (3) The council may enter into agreements with the Minister of Justice and Public Safety and Attorney General respecting
- (a) the location and refurbishing of the law libraries;
 - (b) the responsibilities of the society and the Minister of Justice and Public Safety and Attorney General for the acquisition, use and disposal of books and periodicals;
 - (c) maintenance of the accommodation and maintenance of the books and periodicals;
 - (d) who may use the law libraries;
 - (e) ingress to and egress from the law libraries.

Rules of conduct

- (4) Subject to any agreement made under subsection (3), the society may make rules respecting
- (a) the operation of the law libraries; and
 - (b) the use of the facilities of the law libraries. *1992, c.39, s.54; 1997, c.20, s.3; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.3; 2015, c.28, s.3.*

PART X — MISCELLANEOUS AND GENERAL

REGULATIONS

55. Regulations

- (1) The society may make regulations for the better carrying out of the intent and purpose of this Act and, in particular, respecting



- (a) the admission of articled clerks to the study of law and prescribing their educational qualifications, training requirements and other qualifications;
- (b) the preliminary, professional and other examinations of articled clerks;
- (c) the call and admission of barristers, solicitors and attorneys to practise and prescribing the educational qualifications, training requirements and other qualifications;
- (d) all matters relating to the discipline and honour of the bar;
- (e) the appointment of examiners to conduct examinations, the standard to be obtained thereat, and all matters relating to the conduct of examinations;
- (f) the time and places of holding preliminary, professional and other examinations;
- (g) the fees payable to the society on preliminary and professional examinations;
- (h) the terms and conditions upon which a member becomes a non-practising member;
- (i) the powers and duties of the officers of the society;
- (j) the meetings of the council;
- (k) the meetings of the society;
- (l) committees and their functions;
- (m) the management and expenditure of all moneys belonging to the society;
- (m.1) the payment under section 44.1 to the society, and the placement with the Foundation , of money held in trust by a member;
- (m.2) the making and reviewing of claims for the repayment of money referred to in clause (m.1);
- (n) the management of any room or accommodation set apart in the law courts buildings for the use and management of the society, or for the use and management of the members of the society;
- (o) forms;
- (p) advertising;
- (q) the seizure and custody of property relevant to the practice of law in a member's possession upon application to a judge of the Supreme Court;
- (r) professional liability insurance, and without limiting the generality thereof
 - (i) respecting the payment and remittance of premiums,
 - (ii) prescribing levies to be paid by members,
 - (iii) exempting members, or any class thereof, from any or all of the levies or premiums,
 - (iv) empowering the council to make arrangements respecting plans or schemes of indemnification for professional liability, including the incorporation of subsidiaries;
- (r.1) the incorporation of subsidiaries for the purposes of creating and managing the reserve funds referred to in subsection 5(3);
- (s) the establishing and imposing of fines and penalties for the non-compliance or violation of the rules and regulations respecting the law libraries;
- (t) the recovery of library books and materials;
- (u) the authorization of members of other bars in Canada to act as counsel in one civil or criminal proceeding and any other matter incidental thereto before any court, public board or commission in the province and prescribing the qualifications and fees to that purpose;

- (v) the levying of fees payable to the society for the issuing of every process and the entering of every defence pursuant to the rules of court where a fee is payable to the Supreme Court;
- (w) the levying of fees payable to the society for any bar admission course established by the society;
- (w.1) the interjurisdictional practice of law, in accordance with agreements entered into by the society with the governing bodies of other law societies;
- (x) the association of members with individuals or firms engaged in the practice of law in another jurisdiction;
- (x.1) prepaid legal services plans and the participation of members in prepaid legal services plans;
- (y) the investigation and disposition of allegations of incompetence of a member in the practice of law;
- (z) generally, the management of the society and its affairs and all purposes connected therewith.

Amendment

- (2) No resolution to amend a regulation
 - (a) shall be introduced at any general meeting of the society unless the secretary-treasurer has had at least four weeks notice in writing specifying the wording of the proposed resolution, which proposed resolution shall be included in the notice of meeting sent to the members of the society, unless the members present at the meeting unanimously agree to the introduction of the proposed resolution; or
 - (b) shall be approved unless it receives a majority vote of not less than two-thirds of the members present and entitled to vote at such meeting.

Effective date

- (3) Every regulation made by the Society shall come into force on the day it is published in the Gazette. *1992, c.39, s.55; 1994, c.33, s.5; 1996, c.23, s.3; 2004, c.6, s.2; 2008, c.20, s.72(54); 2012, c.22, s.3.*

PENALTIES

56. Offences and penalties

Where any person fails to comply with this Act or the regulations, he is guilty of an offence, and upon summary conviction is liable

- (a) in the case of an individual
 - (i) who is a member of the society, to a fine not exceeding \$10,000,
 - (ii) who is not a member of the society, to a fine not exceeding \$2,000;
- (b) in the case of a corporation other than a law corporation, to a fine not exceeding \$20,000;
- (c) in the case of a law corporation, to a fine not exceeding \$10,000. *1992, c.39, s.56; 1999, c.33, s.6 {eff.} July 27/99.*

57. Recovery of fees, etc.

- (1) All fees, fines and assessments owing by a member to the Society, including any amounts ordered to be paid pursuant to section 38, may be recovered, notwithstanding that the person



owing them, after they became due, may have resigned or may have had his or her membership cancelled or otherwise ceased to be a member.

Certificate

- (2) Where default is made in the payment of any fee, fine or assessment, or any part thereof, the Council may cause the Secretary-Treasurer to issue a certificate stating
- (a) that the fee, fine or assessment was made;
 - (b) the matter in respect of which the amount is due and payable;
 - (c) the amount remaining unpaid on account thereof; and
 - (d) the person by whom it is payable.

Filing certificate

- (3) The certificate may be filed with the Registrar of the Court of Appeal and the Supreme Court, and when so filed and sealed with the seal of the Supreme Court, becomes an order of the Supreme Court, upon which a minute of judgment may be entered for the amount set forth in the certificate, together with the fees of the Registrar of the Court of Appeal and the Supreme Court for entry of a minute of judgment.

Enforcement

- (4) The order may be enforced by execution or otherwise as an order of the Supreme Court. *2008, c.20, s.72(54).*

58. Fees payable to society

All assessments, fees, fines and penalties payable under this Act shall be paid into the general fund of the society. *1992, c.39, s.58.*

59. Injunction

The Supreme Court may, on the application of the society and on being satisfied that there is reason to believe that there is or will be a contravention of this Act or a regulation made under it, grant an injunction restraining a person from committing it, and, pending disposition of the action seeking the injunction, the court may grant an interim injunction. *1992, c.39, s.59.*

GENERAL

60. Transitional provisions

- (1) All individuals who are members in good standing on the date this Act comes into force are members in good standing.

Idem

- (2) All individuals who are registered as articled clerks on the date this Act comes into force shall continue, subject to the same conditions, as if registered under this Act.

Idem

- (3) Any individual admitted and registered as a member on the date this Act comes into force shall be deemed to have become
- (a) a notary public;
 - (b) a commissioner of deeds,

in and for the province on the date of admission and registration of the individual as a member. *1992, c.39, s.60.*

61. Repeal

Repeal. *1992, c.39, s.61.*

62. Review

This Act shall be reviewed by a Committee of the Legislative Assembly not more than five years after the date it comes into force. *1992, c.39, s.62.*

