MEMBER'S MANUAL

The Law Society of British Columbia

AMENDMENT PAGES

2012: No. 4 December

Highlights

Legal Profession Act: The *Legal Profession Amendment Act, 2012* SBC 2012, c. 16, was passed by the BC Legislature on May 9, 2012. Many amendments made by the new Act were effective immediately; others come into effect on January 1, 2013, and several more are yet to be proclaimed. See "Highlights of the new *Legal Profession Act*" in the Summer 2012 *Benchers' Bulletin*.

Law Society Rules:

The new *Code of Professional Conduct* comes into effect and replaces the *Professional Conduct Handbook* on January 1, 2013. Consequential amendments are made to Rules 1-1.2(1), 1-50, 2-9.2(1), 2-14.1(1), 2-15(4), 2-19(4), 2-21, 2-22.2(1), 2-23.2, 2-23.7, 2-23.9(1), 3-19, 5-6(1), (2), (4) and (5), 5-12(4), 9-1 and 9-14 (pp. 14.3, 30, 33, 38.1, 38.3, 38.4, 40, 41, 42.3, 42.4, 70.01, 113, 116, 121 and 125).

On January 1, 2013, several provisions of the *Legal Profession Amendment Act, 2012*, SBC 2012 come into effect, triggering consequential changes in the Rules:

- *the introduction of review boards:* definitions of "conduct unbecoming a lawyer," "professional conduct record," "respondent" and "review board" and Rules 2-23.6(5) and (8), 2-26(3), 2-48(4), 2-53, 2-63, 2-69.2, 4-20, 4-38(1) and (3), 5-1, 5-2(8), 5-3(3), 5-9(0.2), (1.1), (1.2), (3) and (3.1), 5-10(4), 5-12(1) and (2), 5-12.1, 5-12.2, 5-13(2), (3) and (5), 5-14(1), 5-15, 5-16(2), 5-17(2), 5-17.1, 5-19(5), 5-20 and 5-22 (pp. 11, 14, 14.1, 42.2, 42.6, 50.5, 56, 59, 60.2, 105, 110.5, 111, 112, 114 to 116.5);
- *parties may compel witnesses to appear and give evidence at hearings:* new Rule 5-4(4) and Schedule 5 – Form of Summons (pp. 112 and 135);
- *the Special Compensation Fund provisions are rescinded:* Rule 2-49(1) and Part 3, Division 5, Rules 3-28 to 3-42 (pp. 50.6 and 71).

As well, the heading of Rule 5-10 is updated (p. 115) and 2013 fees and assessments are set out in Schedules 1, 2 and 3 (pp. 129-132).

Code of Professional Conduct / Professional Conduct Handbook: The *Code of Professional Conduct* (*BC Code*) replaces the *Professional Conduct Handbook* on January 1, 2013. See "The Code of Professional Conduct for British Columbia" in the Winter 2012 *Benchers' Bulletin*.

Insurance Policies: Insurance Policy No. LPL 12-01-01 will be amended effective January 1, 2013 by the 2013 Renewal Endorsement. Minor revisions are made to the definition of "reciprocal jurisdiction" and Condition 5.4, and a statement as required by the *Insurance Act*, s.11(1)(j) is added. Further details will be provided in the *Insurance Issues: Program Report* published with the Spring 2013 newsletter.

[continued over]

Filing: File the enclosed sheet in your *Member's Manual* as follows:

Manual section	Existing pages to be removed	Amendment pages to be inserted
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Code of Professional Conduct / Professional Conduct Handbook	Professional Conduct Handbook Title page, i – iv, 1 – 74	Code of Professional Conduct Title page, i – vi, 1 – 116
Insurance Policies	–	2013 Endorsement (1 – 2) *[insert directly in front of Policy No. LPL 12-01-01]*

After filing, insert this sheet at the front of the *Manual* for reference.

Updates: This amendment package updates the *Member's Manual* to **December 10, 2012**, and includes changes that come into effect on **January 1, 2013**. The previous amendment package was 2012: No. 3 September.

To check that your copy of the *Manual* is up to date, consult the contents checklist on the next page. If you have further questions about updating your *Manual*, contact Sherry Sarnowsky in the Communications department: telephone 604.697.5838 or toll-free 1.800.903.5300 or email communications@lsbc.org.

Website: The *Legal Profession Act*, Law Society Rules, *Code of Professional Conduct* and *Professional Conduct Handbook* can be accessed in the Publications and Resources section of the Law Society website at **lawsociety.bc.ca** in both HTML (for online use) and in PDF (for printout, including printout of *Member's Manual* replacement pages).

Refer to the Law Society website for the most current versions of the Act, Rules and Code.

MEMBER'S MANUAL CONTENTS CHECKLIST

Updated to December 10, 2012

The following list of pages and tabs can be used to verify that your *Member's Manual* is complete and up to date.

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Definitions

1 (1) In this Act:

"applicant" means a person who has applied for

(a) enrollment as an articled student,

(b) call and admission, or

(c) reinstatement;

"articled student" means a person enrolled in the society's admission program;

"bencher" means a person elected or appointed under Part 1 to serve as a member of the governing body of the society;

"chair" means a person appointed to preside at meetings of a committee or panel;

"conduct unbecoming a lawyer" includes a matter, conduct or thing that is considered, in the judgment of the benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"disbar" means to declare that a lawyer or former lawyer is unsuitable to practise law and to terminate the lawyer's membership in the society;

"executive committee" means the committee established under section 10;

"executive director" means the executive director or acting executive director of the society;

"foundation" means the Law Foundation of British Columbia continued under section 58 (1);

"law corporation" means a corporation that holds a valid permit under Part 9;

"law firm" means a legal entity or combination of legal entities carrying on the practice of law;

"lawyer" means a member of the society, and

(a) in Part 2, Division 1, includes a member of the governing body of the legal profession in another province or territory of Canada who is authorized to practise law in that province or territory,

(b) in Parts 4 to 6 and 10 includes a former member of the society, and

(c) in Part 10 includes an articled student;

"member" means a member of the society;

"officer" means the executive director, deputy executive director or other person appointed as an officer of the society by the benchers;

"panel" means a panel appointed in accordance with section 41;

"practice of law" includes

(a) appearing as counsel or advocate,

(b) drawing, revising or settling

(i) a petition, memorandum, notice of articles or articles under the *Business Corporations Act,* or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,

(ii) a document for use in a proceeding, judicial or extrajudicial,

(iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person,

(iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or

(v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,

(c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,

(d) agreeing to place at the disposal of another person the services of a lawyer,

(e) giving legal advice,

(f) making an offer to do anything referred to in paragraphs (a) to (e), and

(g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e),

but does not include

(h) any of those acts if performed by a person who is not a lawyer and not for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,

(i) the drawing, revising or settling of an instrument by a public officer in the course of the officer's duty,

(j) the lawful practice of a notary public,

(k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the *Financial Institutions Act,* or

(l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program;

"practising lawyer" means a member in good standing who holds or is entitled to hold a practising certificate;

"president" means the chief elected official of the society;

"resolution" means a motion passed by a majority of those voting at a meeting;

"respondent" means a person whose conduct or competence is the subject of a hearing or an appeal under this Act;

"review board" means a review board appointed in accordance with section 47;

"rules" means rules enacted by the benchers under this Act;

"society" means the Law Society of British Columbia continued under section 2;

"suspension" means temporary disqualification from the practice of law;

"written" or **"in writing"** includes written messages communicated electronically.

(2) In Parts 1 to 5, **"costs"** means costs assessed under a rule made under section 27 (2) (e) or 46.

[2003-70-209; 2007-14-216; 2012-16-1]

Application

1.1 This Act does not apply to a person who is both a lawyer and a part time judicial justice, as that term is defined in section 1 of the *Provincial Court Act*, in the person's capacity as a part time judicial justice under that Act.

[2008-42-33]

PART 1 – ORGANIZATION

Division 1 – Law Society

Incorporation

2 (1) The Law Society of British Columbia is continued.

(2) For the purposes of this Act, the society has all the powers and capacity of a natural person.

Object and duty of society

3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

(a) preserving and protecting the rights and freedoms of all persons,

(b) ensuring the independence, integrity, honour and competence of lawyers,

(c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,

(d) regulating the practice of law, and

(e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

[2012-16-2]

Benchers

4 (1) The following are benchers:

(a) the Attorney General;

(b) the persons appointed under section 5;

(c) the lawyers elected under section 7;

(d) the president, first vice-president and second vice-president.

(2) The benchers govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society.

(3) The benchers may take any action consistent with this Act by resolution.

(4) Subsections (2) and (3) are not limited by any specific power or responsibility given to the benchers by this Act.

(5) The benchers may

(a) use the fees, assessments and other funds of the society, including funds previously collected or designated for a special purpose before this Act came into force, for the purposes of the society,

(b) raise funds by the issue of debentures, with or without a trust deed, for the purposes of the society,

(c) provide for a pension scheme for its officers and employees out of the funds of the society, and

(d) approve forms to be used for the purposes of this Act.

Appointed benchers

5 (1) The Lieutenant Governor in Council may appoint up to 6 persons to be benchers.

(2) Members and former members of the society are not eligible to be appointed under this section.

(3) A bencher appointed under this section has all the rights and duties of an elected bencher, unless otherwise stated in this Act.

(4) If a bencher appointed under this section fails to complete a term of office, the Lieutenant Governor in Council may appoint a replacement to hold office for the balance of the term of the bencher who left office.

(5) A bencher appointed under this section is not eligible to hold the position of president, first vice-president or second vice-president.

[heading updated 2009]

Meetings

6 (1) The benchers may make rules respecting meetings of the benchers.

(2) For a quorum at a meeting of the benchers, at least 7 benchers must be present and a majority of those present must be members of the society.

(3) A motion assented to in writing by at least 75% of the benchers has the same effect as a resolution passed at a regularly convened meeting of the benchers.

[2012-16-3]

Elections

7 (1) The benchers may make rules respecting the election of benchers and of the second vice-president.

(2) The rules made under subsection (1) must be consistent with the following:

(a) voting is by secret ballot;

(b) the right of each member to vote for a bencher or the second vice-president carries the same weight as any other member who is entitled to vote for that bencher or the second vice-president;

(c) only members in good standing are entitled to vote.

(3) Section 11 (4) applies to the rules made under subsection (1) of this section unless they deal directly with a matter referred to in section 12.

(4) Section 12 applies to the rules made under subsection (1) of this section that deal directly with a matter referred to in that section.

Officers and employees

8 The benchers may make rules to do either or both of the following:

(a) delegate to the executive director, or the executive director's delegate, any power or authority of the benchers under this Act except rule-making authority;

(b) authorize a committee established under this Act to delegate authority granted to it under this Act to the executive director or the executive director's delegate.

[2007-14-201]

Division 2 – Committees

Law Society committees

9 (1) The benchers may establish committees in addition to those established by this Act.

(2) The benchers may authorize a committee to do any act or to exercise any jurisdiction that, by this Act, the benchers are authorized to do or to exercise, except the exercise of rule-making authority.

(3) The benchers may make rules providing for

(a) the appointment and termination of appointments of persons to committees, and

(b) the practice and procedure for meetings of committees, including proceedings before committees.

(4) For a quorum at a meeting of a committee, at least 1/2 of the members of the committee must be present.

[2012-16-4]

Executive committee

10 (1) The benchers must establish an executive committee.

(2) The benchers may delegate any of the powers and duties of the benchers to the executive committee, subject to any conditions they consider necessary.

(3) A quorum of the executive committee is 4.

(4) A motion assented to in writing by at least 75% of the executive committee's members has the same effect as a resolution passed at a regularly convened meeting of the executive committee.

Division 3 – Rules and Resolutions

Law Society rules

11 (1) The benchers may make rules for the governing of the society, lawyers, law firms, articled students and applicants, and for the carrying out of this Act.

(2) Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this Act.

(3) The rules are binding on the society, lawyers, law firms, the benchers, articled students, applicants and persons referred to in section 16 (2) (a) or 17 (1) (a).

(4) Enactment, amendment or rescission of a rule is not effective unless at least 2/3 of the benchers present at the meeting at which the rule, amendment or rescission is considered vote in favour of it.

(5) Unless section 12 applies, no approval other than that required under subsection (4) of this section is necessary to enact, rescind or amend a rule.

[2012-16-5]

Rules requiring membership approval

12 (1) The benchers must make rules respecting the following:

(a) the offices of president, first vice-president or second vice-president;

(b) the term of office of benchers;

(c) the removal of the president, first vice-president, second vice-president or a bencher;

(d) the electoral districts for the election of benchers;

(e) the eligibility to be elected and to serve as a bencher;

(f) the filling of vacancies among elected benchers;

(g) the general meetings of the society, including the annual general meeting;

(h) the appointment, duties and powers of the auditor of the society;

(i) life benchers;

(j) [repealed]

(k) the qualifications to act as auditor of the society when an audit is required under this Act.

(2) The first rules made under subsection (1) after this Act comes into force must be consistent with the provisions of the *Legal Profession Act,* R.S.B.C. 1996, c. 255, relating to the same subject matter.

(3) The benchers may amend or rescind rules made under subsection (1) or enact new rules respecting the matters referred to in subsection (1), in accordance with an affirmative vote of 2/3 of those members voting at a general meeting or in a referendum respecting the proposed rule, or the amendment or rescission of a rule.

[2007-14-216; 2012-16-6]

Implementing resolutions of general meeting

13 (1) A resolution of a general meeting of the society is not binding on the benchers except as provided in this section.

(2) A referendum of all members must be conducted on a resolution if

(a) it has not been substantially implemented by the benchers within 12 months following the general meeting at which it was adopted, and

(b) the executive director receives a petition signed by at least 5% of members in good standing of the society requesting a referendum on the resolution.

(3) Subject to subsection (4), the resolution is binding on the benchers if at least

(a) 1/3 of all members in good standing of the society vote in the referendum, and

(b) 2/3 of those voting vote in favour of the resolution.

(4) The benchers must not implement a resolution if to do so would constitute a breach of their statutory duties.

[2012-16-7]

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

14 (1) The benchers may make rules to do any of the following:

(a) establish categories of members;

(b) determine the rights and privileges associated with categories of members;

(c) set the annual fee for categories of members other than practising lawyers;

(d) determine whether or not a person is a member in good standing of the society.

(2) A member in good standing of the society is an officer of all courts of British Columbia.

(3) A practising lawyer is entitled to use the style and title of "Notary Public in and for the Province of British Columbia," and has and may exercise all the powers, rights, duties and privileges of the office of notary public.

Authority to practise law

15 (1) No person, other than a practising lawyer, is permitted to engage in the practice of law, except

(a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf,

(b) as permitted by the *Court Agent Act,*

(c) an articled student, to the extent permitted by the benchers,

(d) an individual or articled student referred to in section 12 of the *Legal Services Society Act,* to the extent permitted under that Act,

(e) a lawyer of another jurisdiction permitted to practise law in British Columbia under section 16 (2) (a), to the extent permitted under that section,

(f) a practitioner of foreign law holding a permit under section 17 (1) (a), to the extent permitted under that section, and

(g) a lawyer who is not a practising lawyer to the extent permitted under the rules.

(2) A person who is employed by a practising lawyer, a law firm, a law corporation or the government and who acts under the supervision of a practising lawyer does not contravene subsection (1).

(3) A person must not do any act described in paragraphs (a) to (g) of the definition of "practice of law" in section 1 (1), even though the act is not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, if

(a) the person is a member or former member of the society who is suspended or has been disbarred, or who, as a result of disciplinary proceedings, has resigned from membership in the society or otherwise ceased to be a member as a result of disciplinary proceedings, or

(b) the person is suspended or prohibited for disciplinary reasons from practising law in another jurisdiction.

(4) A person must not falsely represent himself, herself or any other person as being

(a) a lawyer,

(b) an articled student, a student-at-law or a law clerk, or

(c) a person referred to in subsection (1) (e) or (f).

(5) Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court.

(6) The benchers may make rules prohibiting lawyers from facilitating or participating in the practice of law by persons who are not authorized to practise law.

[2002-30-29; 2012-16-8]

Interprovincial practice

16 (1) In this section, **"governing body"** means the governing body of the legal profession in another province or a territory of Canada.

(2) The benchers may permit qualified lawyers of other Canadian jurisdictions to practise law in British Columbia and may promote cooperation with the governing bodies of the legal profession in other Canadian jurisdictions by doing one or more of the following:

(a) permitting a lawyer or class of lawyers of another province or a territory of Canada to practise law in British Columbia;

(b) attaching conditions or limitations to a permission granted under paragraph (a);

(c) submitting disputes concerning the interjurisdictional practice of law to an independent adjudicator under an arbitration program established by agreement with one or more governing bodies;

(d) participating with one or more governing bodies in establishing and operating a fund to compensate members of the public for misappropriation or wrongful conversion by lawyers practising outside their home jurisdictions;

(e) making rules

(i) establishing conditions under which permission may be granted under paragraph (a), including payment of a fee,

(ii) respecting the enforcement of a fine imposed by a governing body, and

(iii) allowing release of information about a lawyer to a governing body, including information about practice restrictions, complaints, competency and discipline.

(3) Parts 3 to 8 and 10 apply to a lawyer or class of lawyers given permission under this section.

Practitioners of foreign law

17 (1) The benchers may do any or all of the following:

(a) permit a person holding professional legal qualifications obtained in a country other than Canada to practise law in British Columbia;

(b) attach conditions or limitations to a permission granted under paragraph (a);

(c) make rules establishing conditions or limitations under which permission may be granted under paragraph (a), including payment of a fee.

(2) Parts 3 to 8 and 10 apply to a person given permission under this section.

[2012-16-9]

Association with non-resident lawyers or law firms

18 The benchers may make rules concerning the association of members of the society or law firms in British Columbia with lawyers or law firms in other jurisdictions.

[2012-16-10]

Division 2 – Admission and Reinstatement

Applications for enrollment, call and admission, or reinstatement

19 (1) No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

(2) On receiving an application for enrollment, call and admission or reinstatement, the benchers may

(a) grant the application,

(b) grant the application subject to any conditions or limitations to which the applicant consents in writing, or

(c) order a hearing.

(3) If an applicant for reinstatement is a person referred to in section 15 (3) (a) or (b), the benchers must order a hearing.

(4) A hearing may be ordered, commenced or completed despite the applicant's withdrawal of the application.

(5) The benchers may vary conditions or limitations made under subsection (2) (b) if the applicant consents in writing to the variation.

Articled students

20 (1) The benchers may make rules to do any of the following:

(a) establish requirements, including academic requirements, and procedures for enrollment of articled students;

(b) set fees for enrollment;

(c) establish requirements for lawyers to serve as principals to articled students;

(d) limit the number of articled students who may be articled to a principal;

(e) stipulate the duties of principals and articled students;

(f) permit the investigation and consideration of the fitness of a lawyer to act as a principal to an articled student.

(2) The benchers may establish and maintain an educational program for articled students.

Admission, reinstatement and requalification

21 (1) The benchers may make rules to do any of the following:

(a) establish a credentials committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;

(b) establish requirements, including academic requirements, and procedures for call to the Bar of British Columbia and admission as a solicitor of the Supreme Court;

(c) set a fee for call and admission;

(d) establish requirements and procedures for the reinstatement of former members of the society;

(e) set a fee for reinstatement;

(f) establish conditions under which a member in good standing of the society who is not permitted to practise law, may apply to become a practising lawyer.

(2) The fee set under subsection (1) (c) must not exceed 1/6 of the practice fee set under section 23 (1) (a).

(3) The benchers may impose conditions or limitations on the practice of a lawyer who, for a cumulative period of 3 years of the 5 years preceding the imposition of the conditions, has not engaged in the practice of law.

[2012-16-11]

Prohibition on resignation from membership

21.1 (1) A lawyer may not resign from membership in the society without the consent of the benchers if the lawyer is the subject of

(a) a citation or other discipline process under Part 4,

(b) an investigation under this Act, or

(c) a practice review under the rules.

(2) In granting consent under subsection (1), the benchers may impose conditions.

[2012-16-12]

Credentials hearings

22 (1) This section applies to a hearing ordered under section 19 (2) (c).

(2) A hearing must be conducted before a panel.

(3) Following a hearing, the panel must do one of the following:

(a) grant the application;

(b) grant the application subject to conditions or limitations that the panel considers appropriate;

(c) reject the application.

(4) If an application is rejected,

(a) the panel must, on the written request of the applicant, give written reasons for its decision, and

(b) the applicant must not be enrolled as an articled student, called and admitted or reinstated as a member.

(5) On application, the benchers may vary or remove conditions or limitations imposed by a panel under this section.

(6) The benchers may make rules requiring payment of security for costs of a hearing.

Division 3 – Fees and Assessments

Annual fees and practising certificate

23 (1) A practising lawyer must pay to the society an annual fee consisting of

(a) a practice fee in an amount set by the benchers, and

(b) [repealed]

(c) an insurance fee set under section 30 (3) (a), unless exempted from payment of the insurance fee under section 30 (4) (b).

(2) The benchers may waive payment of all or part of the annual fee or a special assessment for a lawyer whom they wish to honour.

(3) A lawyer who is suspended under section 38 (5) (d) or the rules made under section 25 (2), 32 (2) (b), 36 (h) or 39 (1) (a) must pay the annual fee or special assessment when it is due in order to remain a member of the society.

(4) The executive director must issue to each practising lawyer a practising certificate on payment of the annual fee, if the lawyer is otherwise in good standing and has complied with this Act and the rules.

(5) A certificate purporting to contain the signature of the executive director stating that a person is, or was at the time specified in the certificate, a member in good standing of the society is proof of that fact, in the absence of evidence to the contrary.

(6) A lawyer who is suspended or who, for any other reason, ceases to be a member in good standing of the society must immediately surrender to the executive director his or her practising certificate and any proof of professional liability insurance issued by the society.

(7) The benchers may make rules to do any of the following:

(a) set the date by which the annual fee is payable, subject to rules made under section 30 (4) (a);

(b) permit late payment of the annual fee or a special assessment;

(c) set a fee for late payment of fees and assessments;

(d) determine the circumstances in which a full or partial refund of a fee or assessment may be made;

(e) deem a lawyer to have been a practising lawyer during a period in which the lawyer was in default of payment of fees or an assessment on conditions that the benchers consider appropriate.

[2012-16-13]

Fees and assessments

24 (1) The benchers may

(a) set fees, and

(b) set special assessments to be paid by lawyers and applicants for the purposes of the society and set the date by which they must be paid.

(c) [repealed]

(2) [repealed]

(3) If the benchers set a special assessment for a stated purpose and do not require all of the money collected for that stated purpose, they must return the excess to the members.

(4) On or before the date established by the benchers, each lawyer and applicant must pay to the society any special assessments set under subsection (1) (b), unless the benchers otherwise direct.

[2012-16-14]

Failure to pay fee or penalty

25 (1) If a lawyer fails to pay the annual fee or a special assessment as required under this Act by the time that it is required to be paid, the lawyer ceases to be a member, unless the benchers otherwise direct, subject to rules made under section 23 (7).

(2) The benchers may make rules providing for the suspension of a lawyer who fails to pay a fine, costs or a penalty by the time payment is required.

[2007-14-145]

PART 3 – PROTECTION OF THE PUBLIC

Complaints from the public

26 (1) A person who believes that a lawyer, former lawyer or articled student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming a lawyer or a breach of this Act or the rules may make a complaint to the society.

(2) The benchers may make rules authorizing an investigation into the conduct of a law firm or the conduct or competence of a lawyer, former lawyer or articled student, whether or not a complaint has been received under subsection (1).

(3) For the purposes of subsection (4), the benchers may designate an employee of the society or appoint a practising lawyer or a person whose qualifications are satisfactory to the benchers.

(4) For the purposes of an investigation authorized by rules made under subsection (2), an employee designated or person appointed under subsection (3) may make an order requiring a person to do either or both of the following:

(a) attend, in person or by electronic means, before the designated employee or appointed person to answer questions on oath or affirmation, or in any other manner;

(b) produce for the designated employee or appointed person a record or thing in the person's possession or control.

(5) The society may apply to the Supreme Court for an order

(a) directing a person to comply with an order made under subsection (4), or

(b) directing an officer or governing member of a person to cause the person to comply with an order made under subsection (4).

(6) The failure or refusal of a person subject to an order under subsection (4) to

(a) attend before the designated employee or appointed person,

(b) take an oath or make an affirmation,

(c) answer questions, or

(d) produce records or things in the person's possession or control

makes the person, on application to the Supreme Court by the society, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

[2012-16-15]

Suspension during investigation

26.01 (1) The benchers may make rules permitting 3 or more benchers to make the following orders during an investigation, if those benchers are satisfied it is necessary to protect the public:

(a) suspend a lawyer who is the subject of the investigation;

(b) impose conditions or limitations on the practice of a lawyer who is the subject of the investigation;

(c) suspend the enrollment of an articled student who is the subject of the investigation;

(d) impose conditions or limitations on the enrollment of an articled student who is the subject of the investigation.

(2) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made,

(b) set out the term of a suspension, condition or limitation, and

(c) provide for review of an order made under subsection (1) and for confirmation, variance or rescission of the order.

(3) Rules made under this section and section 26.02 may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) or section 26.02 (3) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

[2012-16-16]

Medical examination

26.02 (1) The benchers may make rules permitting 3 or more benchers to make an order requiring a lawyer or an articled student to

(a) submit to an examination by a medical practitioner specified by the benchers, and

(b) instruct the medical practitioner to report to the benchers on the ability of the lawyer to practise law or, in the case of an articled student, the ability of the student to complete his or her articles.

(2) Before making an order under subsection (1), the benchers making the order must be of the opinion that the order is likely necessary to protect the public.

(3) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made, and

(b) provide for review of an order under subsection (1) and for confirmation, variation or rescission of the order.

[2012-16-16]

Written notification to chief judge

26.1 If an investigation is conducted in accordance with the rules established under section 26 (2) of this Act respecting a lawyer or former lawyer who is also a "part time judicial justice", as that term is defined in section 1 of the *Provincial Court Act*, the society must, as soon as practicable, provide a written notification to the chief judge designated under section 10 of the *Provincial Court Act* that includes the following information:

(a) the name of the lawyer or former lawyer;

(b) confirmation that an investigation is being conducted with respect to that lawyer or former lawyer.

[2008-42-34]

Practice standards

27 (1) The benchers may

(a) set standards of practice for lawyers,

(b) establish and maintain a program to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems, and

(c) establish and maintain a program to assist lawyers on issues arising from the practice of law.

(2) The benchers may make rules to do any of the following:

(a) establish a practice standards committee and delegate any or all authority and responsibility under this section, other than rule-making authority, to that committee;

(b) permit an investigation into a lawyer's competence to practise law if

(i) there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner, or

(ii) the lawyer consents;

(c) require a lawyer whose competence to practise law is under investigation to answer questions and provide access to information, files or records in the lawyer's possession or control;

(d) provide for a report to the benchers of the findings of an investigation into the competence of a lawyer to practise law;

(d.1) permit the practice standards committee established under paragraph (a) to make orders imposing conditions and limitations on lawyers' practices, and to require lawyers whose competence to practise law has been investigated to comply with those orders;

(e) permit the benchers to order that a lawyer, a former lawyer, an articled student or a law firm pay to the society the costs of an investigation or remedial program under this Part and set and extend the time for payment;

(f) permit the discipline committee established under section 36 (a) to consider

(i) the findings of an investigation into a lawyer's competence to practise law,

(ii) any remedial program undertaken or recommended,

(iii) any order that imposes conditions or limitations on the practice of a lawyer, and

(iv) any failure to comply with an order that imposes conditions or limitations on the practice of a lawyer.

(3) The amount of costs ordered to be paid by a person under the rules made under subsection (2) (e) may be recovered as a debt owing to the society and, when collected, the amount is the property of the society.

(3.1) For the purpose of recovering a debt under subsection (3), the executive director may

(a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(3.2) A certificate filed under subsection (3.1) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

(4) Rules made under subsection (2) (d.1)

(a) may include rules respecting

(i) the making of orders by the practice standards committee, and

(ii) the conditions and limitations that may be imposed on the practice of a lawyer, and

(b) must not permit the imposition of conditions or limitations on the practice of a lawyer before the lawyer has been notified of the reasons for the proposed order and given a reasonable opportunity to make representations respecting those reasons.

[2007-14-38; 2012-16-17]

Education

28 The benchers may take any steps they consider advisable to promote and improve the standard of practice by lawyers, including but not limited to the following:

(a) establishing and maintaining or otherwise supporting a system of legal education, including but not limited to the following programs:

(i) professional legal training;

(ii) continuing legal education;

(iii) remedial legal education;

(iv) loss prevention;

(b) granting scholarships, bursaries and loans to persons engaged in a program of legal education;

(c) providing funds of the society and other assistance to establish or maintain law libraries in British Columbia;

(d) providing for publication of court and other legal decisions and legal resource materials.

Specialization and restricted practice

29 The benchers may make rules to do any of the following:

(a) provide for the manner and extent to which lawyers or law firms may hold themselves out as engaging in restricted or preferred areas of practice;

(b) provide for the qualification and certification of lawyers as specialists in areas of practice designated under paragraph (c);

(c) designate specialized areas of practice and provide that lawyers must not hold themselves out as restricting their practices to, preferring or specializing in a designated area of practice unless the lawyer has met the qualifications required for certification under a rule made under paragraph (b);

(d) establish qualifications for and conditions under which practising lawyers may practise as mediators.

[2012-16-18]

Insurance

30 (1) In this section, **"trust protection insurance"** means insurance for lawyers to compensate persons who suffer pecuniary loss as a result of dishonest appropriation of money or other property entrusted to and received by a lawyer in his or her capacity as a barrister and solicitor.

(1.1) The benchers must make rules requiring lawyers to maintain professional liability and trust protection insurance.

(2) The benchers may establish, administer, maintain and operate a professional liability insurance program and may use for that purpose fees set under this section.

(2.1) The benchers

(a) must establish, administer, maintain and operate a trust protection insurance program and may use for that purpose fees set under this section,

(b) may establish conditions and qualifications for a claim against a lawyer under the trust protection insurance program, including time limitations for making a claim, and

(c) may place limitations on the amounts that may be paid out of the insurance fund established under subsection (6) in respect of a claim against a lawyer under the trust protection insurance program.

(3) The benchers may, by resolution, set

(a) the insurance fee, and

(b) the amount to be paid for each class of transaction under subsection (4) (c).

(4) The benchers may make rules to do any of the following:

(a) permit lawyers to pay the insurance fee by installments on or before the date by which each installment of that fee is due;

(b) establish classes of membership for insurance purposes and exempt a class of lawyers from the requirement to maintain professional liability insurance or trust protection insurance or from payment of all or part of the insurance fee;

(c) designate classes of transactions for which the lawyer must pay a fee to fund the professional liability or trust protection insurance program.

(5) The benchers may use fees set under this section to act as the agent for the members in obtaining professional liability or trust protection insurance.

(6) The benchers must establish an insurance fund, comprising fees set under this section and other income of the professional liability and trust protection insurance programs, and the fund

(a) must be accounted for separately from other funds,

(b) is not subject to any process of seizure or attachment by a creditor of the society and

(c) is not subject to a trust in favour of a person who has sustained a loss.

(7) Subject to rules made under section 23 (7), a lawyer must not practise law unless the lawyer has paid the insurance fee when it is due, or is exempted from payment of the fee.

(8) A lawyer must immediately surrender to the executive director his or her practising certificate and any proof of professional liability or trust protection insurance issued by the society, if

(a) the society has, on behalf of the lawyer,

(i) paid a deductible amount under the professional liability insurance program in respect of a claim or potential claim under that program, or

(ii) made an indemnity payment under the trust protection insurance program in respect of a claim under that program, and

(b) the lawyer has not reimbursed the society, at the date that the insurance fee or an installment of that fee is due.

(9) The benchers may waive or extend the time

(a) to pay all or part of the insurance fee, or

(b) to repay all or part of a deductible amount paid under the professional liability insurance program or an indemnity payment made under the trust protection program on behalf of a lawyer.

(10) If the benchers extend the time for a payment under subsection (9), the later date for payment is the date when payment is due for the purposes of subsections (7) and (8).

(11) A payment made from the insurance fund established under subsection (6) in respect of a claim against a lawyer under the trust protection insurance program

(a) may be recovered from the lawyer or former lawyer on whose account it was paid, or from the estate of that person, as a debt owing to the society, and

(b) if collected, is the property of the society and must be accounted for as part of the fund.

[2012-16-19]

31 [repealed 2012-16-20]

Financial responsibility

32 (1) The benchers may establish standards of financial responsibility relating to the integrity and financial viability of the professional practice of a lawyer or law firm.

(2) The benchers may make rules to do any of the following:

(a) provide for the examination of lawyers' books, records and accounts of lawyers and law firms and the answering of questions by lawyers and representatives of law firms to determine whether standards established under this section are being met;

(b) permit the suspension of a lawyer who does not meet the standards established under subsection (1);

(c) permit the imposition of conditions and limitations on a law firm that, or the practice of a lawyer who, does not meet the standards established under subsection (1).

(3) Rules made under subsection (2) (b) and (c) must not permit the suspension of a lawyer or imposition of conditions and limitations on the practice of a lawyer or the imposition of conditions and limitations on a law firm before the lawyer or law firm, as the case may be, has been notified of the reasons for the proposed action and given a reasonable opportunity to make representations respecting those reasons.

[2012-16-21]

Trust accounts

33 (1) The benchers may require a lawyer or law firm to do any of the following:

(a) provide information or an annual report concerning the lawyer's or law firm's books and accounts;

(b) have all or part of the lawyer's or law firm's books and accounts audited or reviewed annually;

(c) provide the executive director with an accountant's report on the lawyer's or law firm's books and accounts.

(2) The benchers may

(a) exempt classes of lawyers or law firms from some or all of the requirements of subsection (1), and

(b) determine the qualifications required of a person performing an audit or review referred to in subsection (1).

(3) The benchers may make rules to do any of the following:

(a) establish standards of accounting for and management of funds held in trust by lawyers or law firms;

(b) designate savings institutions and classes of savings institutions in which lawyers or law firms may deposit money that they hold in trust;

(c) provide for precautions to be taken by lawyers and law firms for the care of funds or property held in trust by them.

(4) The rules referred to in subsection (3) apply despite section 19 of the *Trustee Act*.

(5) The rules made under subsection (3) may be different for

(a) lawyers and law firms, or

(b) different classes of lawyers and law firms.

[2012-16-22]

Unclaimed trust money

34 (1) A lawyer who has held money in trust on behalf of a person whom the lawyer has been unable to locate for 2 years may pay the money to the society.

(2) On paying money to the society under subsection (1), the liability of the lawyer to pay that money to the person on whose behalf it was held or to that person's legal representative is extinguished.

(3) The society must hold in trust any money paid to it under subsection (1).

(4) The society is entitled to retain, for its purposes, interest on any money held by it under subsection (3).

(5) A person or the person's legal representative who, but for subsections (1) and (2), could have claimed money held by a lawyer may claim the money from the society.

(6) On being satisfied that the person claiming money under subsection (5) is entitled to it, the society must pay the money to that person together with interest on it at a rate that the benchers consider reflects market rates during the time the society held the money.

(7) If the money is not paid out under subsection (6) within 5 years after its receipt by the society under subsection (1), the society must pay the money, excluding any interest retained under subsection (4), to the foundation for its purposes, but subsections (5) and (6) continue to apply as though the money had not been paid to the foundation.

(8) The foundation must indemnify the society for any claims paid under subsection (6) in respect of money received from the society under subsection (7), including interest paid by the society under subsection (6) for the period when the money was held by the foundation.

(9) A person whose claim against the society under subsection (5) has been refused may apply to the Supreme Court for a review of the decision of the society.

(10) On a claim under subsection (9), the court may allow the claim plus interest in an amount determined by it.

(11) The benchers may make rules to do any of the following:

(a) create and maintain a fund consisting of money paid to the society under subsection (1);

(b) establish procedures for investigating and adjudicating claims made under subsection (5).

(12) [repealed]

[1999-48-28]

Restriction on suspended and disbarred lawyers

35 On application of the society, the Supreme Court may order that a person referred to in section 15 (3) (a) or (b) be prohibited from acting as any or all of the following until the person is a member in good standing of the society or until the court orders otherwise:

(a) a personal representative of a deceased person;

(b) a trustee of the estate of a deceased person;

(c) a statutory property guardian or guardian under the *Adult Guardianship Act*;

(c.1) an attorney under Part 2 of the *Power of Attorney Act*;

(d) a representative under the *Representation Agreement Act*.

[1998-9-107; 2007-34-92]

PART 4 – DISCIPLINE

Discipline rules

36 The benchers may make rules to do any of the following:

(a) establish a discipline committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;

(b) authorize an investigation of the books, records and accounts of a lawyer if there is reason to believe that the lawyer may have committed any misconduct, conduct unbecoming a lawyer or a breach of this Act or the rules;

(c) authorize an examination of the books, records and accounts of a lawyer or law firm;

(d) require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request;

(e) require a lawyer or articled student to appear before the benchers, a committee or other body to discuss the conduct or competence of the lawyer or articled student;

(e.1) require a representative of a law firm to appear before the benchers, a committee or other body to discuss the conduct of the firm;

(f) authorize the ordering of a hearing into the conduct or competence of a lawyer or an articled student, or the conduct of a law firm, by issuing a citation;

(g) authorize the rescission of a citation;

(h) permit the benchers to summarily suspend or disbar a lawyer convicted of an offence that was proceeded with by way of indictment or convicted in another jurisdiction of an offence that, in the opinion of the benchers, is equivalent to an offence that may be proceeded with by way of indictment.

(i) establish a process for the protection of the privacy and the severing, destruction or return of personal, business or other records that are unrelated to an investigation or examination and that, in error or incidentally, form part of

(i) the books, records or accounts of a lawyer, an articled student or a law firm authorized to be investigated or examined under a rule made under paragraph (b) or section 26, or

(ii) files or other records that are seized in accordance with an order of the Supreme Court under section 37.

[2012-16-24]

Search and seizure

37 (1) The society may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer or articled student be seized from the person named in the order, if there are reasonable grounds to believe that a lawyer or articled student may have committed or will commit any

(a) misconduct,

(b) conduct unbecoming a lawyer, or

(c) breach of this Act or the rules.

(2) An application under subsection (1) may be made without notice to anyone or on such notice as the judge requires.

(3) If the application under subsection (1) is in relation to the conduct of an articled student, the order may be made in respect of the books, accounts, files or other records of the student's principal or the principal's firm.

(4) In an application under subsection (1), the person making the application must state on oath or affirmation the grounds for believing the matter referred to in subsection (1) and the grounds for believing that the seizure will produce evidence relevant to that matter.

(5) In an order under subsection (1), the court may

(a) designate the person who will conduct the seizure and authorize that person to conduct it,

(b) state the time and place where the seizure will take place, and

(c) give any other directions that are necessary to carry out the seizure.

Personal records in investigation or seizure

37.1 In conducting an investigation or examination of books, records or accounts under section 26 or rules made under section 36 (b) or in the seizure of files or other records in accordance with an order of the Supreme Court under section 37, the society may collect personal information unrelated to the investigation or examination that, in error or incidentally, is contained in those books, accounts, files or records, but the society must, subject to rules made under section 36 (i),

(a) return that personal information if and as soon as practicable, or

(b) destroy the personal information.

[2012-16-26]

Discipline hearings

38 (1) This section applies to the hearing of a citation.

(2) A hearing must be conducted before a panel.

(3) A panel must

(a) make a determination and take action according to this section,

(b) give written reasons for its determination about the conduct or competence of the respondent and any action taken against the respondent, and

(c) record in writing any order for costs.

(4) After a hearing, a panel must do one of the following:

(a) dismiss the citation;

(b) determine that the respondent has committed one or more of the following:

(i) professional misconduct;

(ii) conduct unbecoming a lawyer;

(iii) a breach of this Act or the rules;

(iv) incompetent performance of duties undertaken in the capacity of a lawyer;

(v) if the respondent is not a member, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming a lawyer, or a breach of this Act or the rules.

(c) [repealed]

(5) If an adverse determination is made against a respondent other than an articled student, under subsection (4), the panel must do one or more of the following:

(a) reprimand the respondent;

(b) fine the respondent an amount not exceeding $50 000;

(c) impose conditions or limitations on the respondent's practice;

(d) suspend the respondent from the practice of law or from practice in one or more fields of law

(i) for a specified period of time,

(ii) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,

(iii) from a specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or

(iv) for a specific minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection;

(e) disbar the respondent;

(f) require the respondent to do one or more of the following:

(i) complete a remedial program to the satisfaction of the practice standards committee;

(ii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent is competent to practise law or to practise in one or more fields of law;

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

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

(g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under section 16 (2) (a) or 17 (1) (a) from practising law in British Columbia indefinitely or for a specified period of time.

(6) If an adverse determination is made under subsection (4) against an articled student, the panel may do one or more of the following:

(a) reprimand the articled student;

(b) fine the articled student an amount not exceeding $5 000;

(c) extend the period that the articled student is required to serve under articles;

(d) set aside the enrollment of the articled student.

(7) In addition to its powers under subsections (5) and (6), a panel may make any other orders and declarations and impose any conditions it considers appropriate.

(8) A fine imposed under this Act may be recovered as a debt owing to the society and, when collected, it is the property of the society.

(9) For the purpose of recovering a debt under subsection (8), the executive director may

(a) issue a certificate stating that the fine is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(10) A certificate filed under subsection (9) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

[2012-16-27]

Suspension

39 (1) The benchers may make rules permitting 3 or more benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing:

(a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients;

(b) impose conditions or limitations on the practice of a respondent who is an individual;

(c) suspend the enrollment of a respondent who is an articled student;

(d) impose conditions or limitations on the enrollment of a respondent who is an articled student.

(2) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made,

(b) set out the term of a suspension, condition or limitation, and

(c) provide for review of an order made under subsection (1) and for confirmation, variation or rescission of the order.

(3) Rules made under this section may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

[2012-16-28]

40 [repealed 2012-16-29]

PART 5 – HEARINGS AND APPEALS

Panels

41 (1) The benchers may make rules providing for any of the following:

(a) the appointment and composition of panels;

(b) the practice and procedure for proceedings before panels.

(2) A panel may order an applicant or respondent, or a shareholder, director, officer or employee of a respondent law corporation, to do either or both of the following:

(a) give evidence under oath or by affirmation;

(b) at any time before or during a hearing, produce all files and records that are in the possession of that person and that may be relevant to a matter under consideration.

Failure to attend

42 (1) This section applies if an applicant or respondent fails to attend or remain in attendance at

(a) a hearing on an application for enrollment as an articled student, call and admission, or reinstatement,

(b) a hearing on a citation, or

(c) a review by a review board under section 47.

(2) If satisfied that the applicant or respondent has been served with notice of the hearing or review, the panel or the review board may proceed with the hearing or review in the absence of the applicant or respondent and make any order that the panel or the review board could have made in the presence of the applicant or respondent.

[2012-16-31]

Right to counsel

43 (1) An applicant, a respondent or a person who is the subject of a proceeding may appear at any hearing with counsel.

(2) The society may employ or retain legal or other assistance in conducting an investigation under Part 2, 3 or 4 or on the issue of a citation and may be represented by counsel at any hearing.

[2012-16-32]

Witnesses

44 (1) In this section

"party" means an applicant, a respondent or the society;

"tribunal" means the benchers, a review board or a panel, or a member of the benchers, a review board or a panel, as the context requires.

(2) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, a party may prepare and serve a summons, in a form established in the rules, requiring a person to attend an oral or electronic hearing to give evidence, on oath or affirmation or in any other manner, that is admissible and relevant to an issue in the proceeding.

(3) A party may apply to the Supreme Court for an order directing

(a) a person to comply with a summons served by a party under subsection (2),

(b) any directors and officers of a person to cause the person to comply with a summons served by a party under subsection (2), or

(c) the custodian of a penal institution or another person who has custody of a person who is the subject of the summons to ensure the person in custody attends the hearing.

(4) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, a tribunal may make an order requiring a person

(a) to attend an oral or electronic hearing to give evidence, on oath or affirmation or in any other manner, that is admissible and relevant to an issue in the proceeding, or

(b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in the proceeding.

(5) A tribunal may apply to the Supreme Court for an order directing

(a) a person to comply with an order made by the tribunal under subsection (4),

(b) any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (4), or

(c) the custodian of a penal institution or another person who has custody of a person who is the subject of an order made by the tribunal under subsection (4) to ensure the person in custody attends the hearing.

(6) On an application under subsection (3) or (5), the Supreme Court may make the order requested or another order it considers appropriate.

[2007-9-54; 2010-6-97; 2012-16-33]

Application of *Administrative Tribunals Act*

44.1 (1) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, sections 48, 49 and 56 of the *Administrative Tribunals Act* apply, subject to the following:

(a) **"decision maker"** in section 56 means a member of the benchers, of a review board or of a panel;

(b) **"tribunal"** in those sections has the same meaning as in section 44(1).

(2) A tribunal may apply to the Supreme Court for an order directing a person to comply with an order referred to in section 48 of the *Administrative Tribunals Act*, and the court may make the order requested or another order it considers appropriate.

[2012-16-33]

45 [repealed 2012-16-34]

Society request for evidence

45.1 (1) On application by the society, if it appears to the Supreme Court that a person outside British Columbia may have evidence that may be relevant to an investigation or a hearing under this Act, the Supreme Court may issue a letter of request directed to the judicial authority of the jurisdiction in which the person who may have evidence is believed to be located.

(2) A letter of request issued under subsection (1) must be

(a) signed by a judge of the Supreme Court, and

(b) provided to the society for use under subsection (5).

(3) A letter of request issued under subsection (1) may request the judicial authority to which it is directed to do one or more of the following:

(a) order the person referred to in the letter of request to be examined under oath in the manner, at the place and by the date referred to in the letter of request;

(b) in the case of an examination for the purposes of a hearing, order that a person who is a party to the hearing is entitled to

(i) be present or represented by counsel during the examination, and

(ii) examine the person referred to in paragraph (a);

(c) appoint a person as the examiner to conduct the examination;

(d) order the person to be examined to produce at the examination a record or thing specified in the letter of request;

(e) direct that the evidence obtained by the examination be recorded and certified in the manner specified in the letter of request;

(f) take any other action that the Supreme Court considers appropriate.

(4) The failure of a person entitled under subsection (3) (b) to be present or represented by counsel during an examination or to examine the person referred to in subsection (3) (a) does not prevent the society from reading in the evidence from the examination at a hearing, if the examination has otherwise been conducted in accordance with the letter of request.

(5) The society must send a letter of request issued under subsection (1),

(a) if an examination is to be held in Canada, to the Deputy Attorney General for the Province of British Columbia, or

(b) if an examination is to be held outside Canada, to the Under Secretary of State for Foreign Affairs of Canada.

(6) A letter of request must have attached to it all of the following:

(a) any questions to be put to the person to be examined;

(b) if known, the name, address and telephone number of

(i) the solicitor or agent of the society,

(ii) the person to be examined, and

(iii) if applicable, the person entitled under subsection (3) (b) to be present or represented by counsel during the examination and to examine the person referred to in subsection (3) (a);

(c) a translation of the letter of request and any questions into the official language of the jurisdiction where the examination is to take place, if necessary, along with a certificate of the translator, bearing the full name and address of the translator, and certifying that the translation is a true and complete translation.

(7) The society must file with the Deputy Attorney General for the Province of British Columbia or with the Under Secretary of State for Foreign Affairs of Canada, as the case may be, an undertaking to be responsible for any charge and expense incurred by either of them in relation to the letter of request and to pay them on receiving notification from them of the amount.

(8) This section does not limit any power the society may have to obtain evidence outside British Columbia by any other means.

(9) The making of an order by a judicial authority in accordance with a letter of request issued under subsection (1) does not determine whether evidence obtained under the order is admissible in evidence in a hearing.

(10) Unless otherwise provided by this section, the practice and procedure for appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, is the same as the practice and procedure that govern similar matters in civil proceedings in the Supreme Court.

[2007-14-39]

Costs

46 (1) The benchers may make rules governing the assessment of costs by a panel, a review board or a committee under this Act including

(a) the time allowed for payment of costs, and

(b) the extension of time for payment of costs.

(2) If legal assistance employed by the benchers is provided by an employee of the society, the amount of costs that may be awarded under the rules in respect of that legal assistance may be the same as though the society had retained outside counsel.

(3) The amount of costs ordered to be paid by a respondent or applicant under the rules may be recovered as a debt owing to the society and, when collected, the amount is the property of the society.

(4) For the purpose of recovering a debt under subsection (3), the executive director may

(a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(5) A certificate filed under subsection (4) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

[2012-16-35]

Review on the record

47 (1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6) or (7), the applicant or respondent may apply in writing for a review on the record by a review board.

(2) Within 30 days after the decision of a panel under section 22 (3), the credentials committee may refer the matter for a review on the record by a review board.

(3) Within 30 days after the decision of a panel under section 38 (4), (5), (6) or (7), the discipline committee may refer the matter for a review on the record by a review board.

(3.1) Within 30 days after an order for costs assessed under a rule made under section 27 (2) (e) or 46, an applicant, a respondent or a lawyer who is the subject of the order may apply in writing for a review on the record by a review board.

(3.2) Within 30 days after an order for costs assessed by a panel under a rule made under section 46, the credentials or discipline committee may refer the matter for a review on the record by a review board.

(4) If, in the opinion of a review board, there are special circumstances, the review board may hear evidence that is not part of the record.

(4.1) [repealed]

(5) After a hearing under this section, the review board may

(a) confirm the decision of the panel, or

(b) substitute a decision the panel could have made under this Act.

(6) The benchers may make rules providing for one or more of the following:

(a) the appointment and composition of review boards;

(b) establishing procedures for an application for a review under this section;

(c) the practice and procedure for proceedings before review boards.

[2007-14-40, 216; 2012-16-36]

Appeal

48 (1) Subject to subsection (2), any of the following persons who are affected by a decision, determination or order of a panel or of a review board may appeal the decision, determination or order to the Court of Appeal:

(a) an applicant;

(b) a respondent;

(c) a lawyer who is suspended or disbarred under this Act;

(d) the society.

(2) An appeal by the society under subsection (1) is limited to an appeal on a question of law.

[2007-14-216; 2012-16-37]

PART 6 – CUSTODIANSHIPS

Definitions

49 In this Part:

"court" means the Supreme Court;

"custodian" means a person appointed by an order under section 50 (2) or 54 (2) (b);

"practice" includes a law practice carried on by a lawyer on behalf of a law corporation whether as an employee of the law corporation or otherwise;

"property" includes books, records, accounts, funds, securities and any other real or personal property, wherever located,

(a) within a lawyer's possession or control, if held or used by the lawyer for the benefit of a client or other person, or otherwise held or used in the lawyer's capacity as a barrister and solicitor,

(b) in the possession or control of a person other than a lawyer if the lawyer has a duty to account to a client or other person for the property, or

(c) referred to in paragraph (a) or (b), if held or used by a corporation, including a law corporation.

Appointment of custodian

50 (1) The society may apply to the court, with or without notice to anyone, for an order appointing a practising lawyer or the society as a custodian of the practice of another lawyer to

(a) take possession of or control over all or part of the property of the lawyer, and

(b) determine the status of, manage, arrange for the conduct of and, if appropriate, terminate the practice of the lawyer.

(2) The court may grant a custodianship order applied for under subsection (1) if, in the opinion of the court, sufficient grounds exist.

(3) Without limiting the discretion of the court to grant an order under subsection (2), sufficient grounds for the appointment of a custodian of a lawyer's practice exist if the lawyer

(a) consents to the appointment of a custodian,

(b) dies, resigns or otherwise terminates membership in the society,

(c) is unable to practise as a lawyer because of physical or mental illness or for any other reason,

(d) disappears or neglects or abandons the practice of law, or

(e) is disbarred or suspended from the practice of law in British Columbia or any other jurisdiction.

(3) The foundation may employ or retain lawyers to advance the purposes of the foundation.

(4) The funds of the foundation consist of the following:

(a) all money remitted to the foundation by or on behalf of lawyers under section 62 (2) or held in trust under section 63 (12);

(b) interest accruing from investment of the funds of the foundation;

(c) other money received by the foundation.

(5) The board may pay out of the funds of the foundation the costs, charges and expenses

(a) involved in the administration of the foundation, and

(b) incurred by the board in carrying out the purposes of the foundation.

(6) All money of the foundation must be paid into a savings institution designated under section 33 (3) (b) until invested or applied in accordance with this section, and that money must be used for the purposes of the foundation.

(7) Money that is 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 to invest trust funds.

(8) The accounts of the foundation must be audited annually by a chartered accountant or certified general accountant appointed for that purpose by the board.

[2012-16-38]

Interest on trust accounts

62 (1) A lawyer must deposit money received or held in trust in an interest bearing trust account at a savings institution designated under section 33 (3) (b).

(2) Subject to subsection (5), a lawyer who is credited by a savings institution with interest on money received or held in trust,

(a) holds the interest in trust for the foundation, and

(b) must remit the interest to the foundation in accordance with the rules.

(3) The benchers may make rules

(a) permitting a lawyer to hold money in trust for more than one beneficiary in the same trust account, and

(b) respecting payment to the foundation of interest on trust accounts.

(4) A relationship between a lawyer and client or a trust relationship between a lawyer, as trustee, and the beneficiary of the trust does not make the lawyer liable to account to the client or beneficiary for interest received by the lawyer on money received or held in an account established under subsection (1).

(5) On instruction from his or her client, a lawyer may place money held on behalf of the client in a separate trust account, in which case

(a) this section and the rules made under it do not apply, and

(b) interest paid on money in the account is the property of the client.

Security and investment of trust funds

63 (1) In this section:

"pooled trust funds" means money that has been received by a lawyer in trust and that is not the subject of instructions under section 62 (5);

"society trust account" means a Law Society Pooled Trust Account established under subsection (5).

(2) The benchers may make rules requiring that a lawyer do any or all of the following:

(a) use an approved form of agreement respecting the terms and conditions under which pooled trust funds will be held at designated savings institutions;

(b) tender the agreement, prepared and approved under paragraph (a), at a designated savings institution before the lawyer deposits pooled trust funds at that savings institution;

(c) report annually to any savings institution into which the lawyer has deposited pooled trust funds the information required under the *Canada Deposit Insurance Corporation Act.*

(3) The society may enter into an agreement with a savings institution with whom lawyers have deposited pooled trust funds, respecting the investment and security of pooled trust funds on deposit at all branches of that savings institution.

(4) Without limiting subsection (3), an agreement under that subsection may provide that

(a) pooled trust funds be transferred to the society, in trust, to be held in the account referred to in subsection (5) and to be invested in the manner permitted by subsection (6), and

(b) the society obtain a line of credit, either secured or unsecured, from the savings institution for the purpose of ensuring that there is always sufficient money on deposit to guarantee that lawyers' trust cheques on their pooled trust fund accounts will be honoured.

(5) The society may establish and operate an account, to be known as a Law Society Pooled Trust Account, at any branch of the savings institution into which pooled trust funds may be deposited in accordance with an agreement under subsection (3).

(6) Money in a society trust account may be invested in

(a) securities of Canada or a province,

(b) securities, the payment of the principal and interest of which is guaranteed by Canada or a province, or

(c) guaranteed trust or investment certificates of the savings institution that has the pooled trust account.

(7) Money earned on investments under subsection (6) may be used to

(a) purchase insurance in an amount that the society considers necessary to ensure that all lawyers' trust cheques drawn on their pooled trust fund accounts will be honoured, and

(b) pay service and other similar charges in respect of services provided by the savings institution at which the society operates an account under subsection (5).

(8) The society may pay money out of a society trust account to a person who has suffered a loss directly resulting from the inability or refusal of the savings institution to honour a lawyer's trust cheque drawn on a pooled trust fund account, up to a maximum, in any year, set by the benchers.

(9) The benchers must not pay out any money under subsection (8) unless they are satisfied that they will be reimbursed or indemnified, through agreements referred to in subsection (10) or the insurance purchased under subsection (7), for any money that has been paid out.

(10) The society may enter into agreements with the Canada Deposit Insurance Corporation and the Credit Union Deposit Insurance Corporation of British Columbia respecting reimbursement or indemnity by those corporations of money that has been paid out under subsection (8).

(11) The society may retain or employ a person to manage society trust accounts and may pay that person fees or remuneration out of interest earned on money in society trust accounts.

(12) Subject to subsections (7), (8) and (11), all interest earned on money deposited into a society trust account is held in trust by the society for the benefit of the foundation, and the society is not liable to account to any client of any lawyer in respect of that interest.

(13) Despite any agreement between a lawyer and a savings institution, if the lawyer's pooled trust fund account is overdrawn by an amount exceeding $1 000, the savings institution must, as soon as practicable, inform the society of the particulars.

(14) Subsection (13) and the failure of a savings institution to comply with it has no effect on the civil liability of that savings institution to any person, and that liability, if any, must be determined as though that subsection were not in force.

PART 8 – LAWYERS' FEES

Definitions and interpretation

64 (1) In this Part:

"agreement" means a written contract respecting the fees, charges and disbursements to be paid to a lawyer or law firm for services provided or to be provided and includes a contingent fee agreement;

"bill" means a lawyer's written statement of fees, charges and disbursements;

"charges" includes taxes on fees and disbursements and interest on fees and disbursements;

"contingent fee agreement" means an agreement that provides that payment to the lawyer for services provided depends, at least in part, on the happening of an event;

"court" means the Supreme Court;

"person charged" includes a person who has agreed to pay for legal services, whether or not the services were provided on the person's behalf;

"registrar" means the registrar of the court.

(2) Unless otherwise ordered by the court, this Part, except sections 65, 66 (1), 68, 77, 78 and 79 (1), (2), (3), (6) and (7), does not apply to a class proceeding within the meaning of the *Class Proceedings Act.*

(3) This Part applies to a lawyer's bill or agreement even though the lawyer has ceased to be a member of the society, if the lawyer was a member when the legal services were provided.

[2012-16-41]

Agreement for legal services

65 (1) A lawyer or law firm may enter into an agreement with any other person, requiring payment for services provided or to be provided by the lawyer or law firm.

(2) Subsection (1) applies despite any law or usage to the contrary.

(3) A provision in an agreement that the lawyer is not liable for negligence, or that the lawyer is relieved from responsibility to which the lawyer would otherwise be subject as a lawyer, is void.

(4) An agreement under this section may be signed on behalf of a lawyer or law firm by an authorized agent who is a practising lawyer.

Contingent fee agreement

66 (1) Section 65 applies to contingent fee agreements.

(2) The benchers may make rules respecting contingent fee agreements, including, but not limited to, rules that do any of the following:

(a) limit the amount that lawyers or law firms may charge for services provided under contingent fee agreements;

(b) regulate the form and content of contingent fee agreements;

(c) set conditions to be met by lawyers and law firms making contingent fee agreements.

(3) Rules under subsection (2) apply only to contingent fee agreements made after the rules come into force and, if those rules are amended, the amendments apply only to contingent fee agreements made after the amendments come into force.

(4) A contingent fee agreement that exceeds the limits established by the rules is void unless approved by the court under subsection (6).

(5) If a contingent fee agreement is void under subsection (4), the lawyer may charge the fees that could have been charged had there been no contingent fee agreement, but only if the event that would have allowed payment under the void agreement occurs.

(6) A lawyer may apply to the court for approval of a fee higher than the rule permits, only

(a) before entering into a contingent fee agreement, and

(b) after serving the client with at least 5 days' written notice.

(7) The court may approve an application under subsection (6) if

(a) the lawyer and the client agree on the amount of the lawyer's proposed fee, and

(b) the court is satisfied that the proposed fee is reasonable.

(8) The following rules apply to an application under subsection (6) to preserve solicitor client privilege:

(a) the hearing must be held in private;

(b) the style of proceeding must not disclose the identity of the lawyer or the client;

(c) if the lawyer or the client requests that the court records relating to the application be kept confidential,

(i) the records must be kept confidential, and

(ii) no person other than the lawyer or the client or a person authorized by either of them may search the records unless the court otherwise orders.

(9) Despite subsection (8), reasons for judgment relating to an application under subsection (6) may be published if the names of the lawyer and client are not disclosed and any information that may identify the lawyer or the client is not disclosed.

[2010-6-69; 2012-16-42]

Restrictions on contingent fee agreements

67 (1) This section does not apply to contingent fee agreements entered into before June 1, 1988.

(2) A contingent fee agreement must not provide that a lawyer is entitled to receive both a fee based on a proportion of the amount recovered and any portion of an amount awarded as costs in a proceeding or paid as costs in the settlement of a proceeding or an anticipated proceeding.

(3) A contingent fee agreement for services relating to a child custody or access matter is void.

(4) A contingent fee agreement for services relating to a matrimonial dispute is void unless approved by the court.

(5) A lawyer may apply to the court for approval of a contingent fee agreement for services relating to a matrimonial dispute and section 66 (7) to (9) applies.

Examination of an agreement

68 (1) This section does not apply to agreements entered into before June 1, 1988.

(2) A person who has entered into an agreement with a lawyer or law firm may apply to the registrar to have the agreement examined.

(3) An application under subsection (2) may only be made within 3 months after

(a) the agreement was made, or

(b) the termination of the solicitor client relationship.

(4) Subject to subsection (3), a person may make an application under subsection (2) even if the person has made payment under the agreement.

(5) On an application under subsection (2), the registrar must confirm the agreement unless the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into.

(6) If the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into, the registrar may modify or cancel the agreement.

(7) If an agreement is cancelled under subsection (6), a registrar

(a) may require the lawyer to prepare a bill for review, and

(b) must review the fees, charges and disbursements for the services provided as though there were no agreement.

(8) A party may appeal a decision of the registrar under subsection (5) or (6) to the court.

[2012-16-43]

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Definitions

80 In this Part:

"limited liability partnership" means a partnership registered as a limited liability partnership under Part 6 of the *Partnership Act*;

"permit" means a permit issued under section 82 and includes a permit and a renewal of a permit issued to a law corporation or personal law corporation under the *Legal Profession Act*, R.S.B.C. 1996, c. 255.

[2004-38-18]

Authorized and prohibited activities of law corporations

81 (1) A law corporation is authorized to carry on the business of providing legal services to the public through one or more persons each of whom is

(a) a practising lawyer, or

(b) subject to this Act and the rules, a person referred to in section 15 (1) (c), (e) or (f) or (2) who is an employee of the law corporation.

(2) A partnership consisting of law corporations or of one or more lawyers and one or more law corporations is authorized to carry on the business of providing legal services to the public through one or more persons described in subsection (1).

(3) A corporation that has the words "law corporation" as part of its name must not carry on any business unless it holds a valid permit.

(4) A law corporation must not carry on any activities, other than the provision of legal services or services directly associated with the provision of legal services.

(5) Subsection (4) does not prohibit a law corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance or any other type of investment.

(6) A voting trust agreement, proxy or any other type of agreement vesting in a person who is not a practising lawyer or a law corporation the authority to exercise the voting rights attached to shares in a law corporation is prohibited.

Law corporation permit

82 (1) The executive director must issue a permit to a corporation that is a company, as defined in the *Business Corporations Act,* and that is in good standing under that Act or that is an extraprovincial company as defined in that Act, if the executive director is satisfied that

(a) the corporation has complied with the rules made under this Part,

(b) the name of the corporation includes the words "law corporation,"

(c) each voting share is legally and beneficially owned by a practising lawyer or by a law corporation,

(d) each non-voting share is legally and beneficially owned by

(i) a practising lawyer,

(ii) a law corporation that is a voting shareholder,

(iii) a person who is a relative of or resides with a practising lawyer who is a shareholder or who is a shareholder in a law corporation that is a shareholder,

(iv) a corporation, all the shares of which are beneficially owned by one or more of the individuals referred to in subparagraph (i) or (iii), or

(v) a trust, all the beneficiaries of which are individuals referred to in subparagraph (i) or (iii),

(e) all of the directors and the president of the corporation are practising lawyers, and

(f) all of the persons who will be practising law on behalf of the corporation are persons described in section 81 (1).

(2) The executive director may refuse to issue a permit under subsection (1) if

(a) the law corporation has previously had its permit revoked, or

(b) a shareholder of the law corporation was a shareholder of a law corporation or personal law corporation that previously had its permit revoked.

(3) The executive director must inform the Registrar of Companies of the revocation of any permit under this Part or the rules.

(4) Unless the benchers otherwise direct and subject to rules made under this Part, if a law corporation fails to pay the renewal fee set by the benchers by the date it is due, its permit ceases to be valid and the corporation must

(a) immediately surrender its permit to the executive director, and

(b) cease providing legal services to the public.

[2003-70-210]

Law corporation rules

83 (1) The benchers may make rules as follows:

(a) establishing procedures for the issue and renewal of permits;

(b) establishing procedures for revocation of permits, including

(i) the adaptation of rules respecting practice and procedure in hearings before a panel, and

(ii) rules to authorize a panel to consider action against a law corporation as part of a hearing on a citation issued against a respondent who is or was a shareholder, director, officer or employee of a law corporation;

(c) authorizing the executive director to attach conditions or limitations to permits issued or renewed under this Part;

(d) respecting names and the approval of names including the types of names by which the following may be known, be incorporated or practise law:

(i) a law corporation;

(ii) a partnership consisting of one or more law corporations and one or more lawyers;

(iii) a partnership consisting of law corporations;

(iv) a law corporation that has shareholders that consist of one or more law corporations or one or more practising lawyers, or both;

(e) setting fees for

(i) obtaining a permit, and

(ii) renewing a permit;

(f) respecting the disposition of shares of a shareholder of a law corporation who ceases to be a practising lawyer;

(g) setting an amount of insurance that the holder of the permit must carry or must provide to each of its employees or contractors for the purpose of providing indemnity against professional liability claims;

(h) any other rules the benchers consider necessary or advisable for the purposes of this Part.

(2) The amount set by a rule made under subsection (1.1) (g) is in addition to any amount that must be carried by a lawyer under a rule made under section 30 (1), and the amount that may be set under this subsection may be different for different permit holders, at the discretion of the benchers.

(3) An act of a corporation, including a transfer of property to or by the corporation, is not invalid because it contravenes this Part or the rules made under this Act.

(4) This Act and the rules apply, insofar as is possible, to law corporations in the same way that they do to individual lawyers.

[2012-16-44]

Limited liability partnerships

83.1 The benchers may make rules

(a) authorizing lawyers and law corporations to carry on the practice of law through limited liability partnerships, and

(b) establishing prerequisites, conditions, limitations and requirements for lawyers and law corporations to carry on the practice of law through limited liability partnerships.

[2004-38-19]

Responsibility of lawyers

84 (1) The liability of a lawyer, carrying on the practice of law, for his or her own professional negligence is not affected by the fact that the lawyer is carrying on that practice

(a) as an employee, shareholder, officer, director or contractor of a law corporation or on its behalf, or

(b) through a limited liability partnership.

(2) The application of the provisions of this Act and the rules to a lawyer is not affected by the lawyer's relationship to

(a) a law corporation as an employee, shareholder, officer, director or contractor, or

(b) a limited liability partnership as a partner, employee or contractor.

(3) Nothing in this Part affects, modifies or limits any law applicable to the fiduciary, confidential or ethical relationships between a lawyer and a person receiving the professional services of the lawyer.

(4) The relationship between a law corporation carrying on business as authorized under this Part and the rules, and a person receiving legal services provided by the corporation is subject to all applicable law relating to the fiduciary, confidential and ethical relationships that exist between a lawyer and a client.

(5) All rights and obligations respecting professional communications made to or information received by a lawyer, or in respect of advice given by a lawyer, apply to a law corporation and its employees, shareholders, officers, directors and contractors.

(6) An undertaking given by or on behalf of a law corporation that would constitute a solicitor’s undertaking if given by a lawyer is deemed to be a solicitor’s undertaking given by the lawyer who gives, signs or authorizes it.

[2004-38-20; 2005-35-21]

PART 10 – GENERAL

Enforcement

85 (1) A person commits an offence if the person

(a) contravenes section 15, or

(b) uses or discloses information contrary to section 88 (3) or (4).

(2) If an offence under this Act is committed by a corporation, each director, manager, secretary or other officer of that corporation who has assented to the commission of the offence is a party to that offence.

(3) An information alleging an offence against this Act may be laid in the name of the society on oath or by affirmation of the executive director or of a person authorized by the benchers.

(4) Section 5 of the *Offence Act* does not apply to this Act or to the rules.

(5) The society may apply to the Supreme Court for an injunction restraining a person from contravening this Act or the rules.

(6) The court may grant an injunction sought under subsection (5) if satisfied that there is reason to believe that there has been or will be a contravention of this Act or the rules.

(7) The court may grant an interim injunction until the outcome of an action commenced under subsection (5).

(8) On the application of the society or a person interested in the proceeding, the court in which a proceeding is brought may find a person in breach of section 15 (5) to be in contempt and may punish that person accordingly.

Protection against actions

86 (1) No action for damages lies against a person, for anything done or not done in good faith while acting or purporting to act on behalf of the society or the foundation under this Act.

(2) The society or the foundation, as the case may be, must indemnify a person referred to in subsection (1) for any costs or expenses incurred by the person in any legal proceedings taken for anything done or not done in good faith while acting or purporting to act on behalf of the society or the foundation under this Act.

Certain matters privileged

87 (1) In this section:

"proceeding" does not include a proceeding under Part 2, 3, 4 or 5;

"report" includes any document, minute, note, correspondence or memorandum created or received by a person, committee, panel, review board or agent of the society in the course of an investigation, audit, inquiry or hearing, but does not include an original document that belongs to a complainant or respondent or to a person other than an employee or agent of the society.

(2) If a person has made a complaint to the society respecting a lawyer, neither the society nor the complainant can be required to disclose or produce the complaint and the complaint is not admissible in any proceeding, except with the written consent of the complainant.

(3) If a lawyer responds to the society in respect of a complaint or investigation, neither the lawyer nor the society can be required to disclose or produce the response or a copy or summary of it and the response or a copy or summary of it is not admissible in any proceeding, except with the written consent of the lawyer, even though the executive director may have delivered a copy or a summary of the response to the complainant.

(4) A report made under the authority of this Act or a record concerning an investigation, an audit, an inquiry, a hearing or a review must not be required to be produced and is not admissible in any proceeding except with the written consent of the executive director.

(5) Except with the consent of the executive director, the society, an employee or agent or former employee or agent of the society or a member or former member of a committee, panel or review board established or authorized under this Act

(a) must not be compelled to disclose information that the person has acquired during the course of an investigation, an audit, an inquiry, a hearing or a review or in the exercise of other powers or the performance of other duties under this Act, and

(b) is not competent to testify in a proceeding if testifying in that proceeding would result in the disclosure of information referred to in paragraph (a).

[2012-16-45]

Non-disclosure of privileged and confidential information

88 (1) [repealed]

(1.1) A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege, must do so, despite the confidentiality or privilege.

(1.2) Information, files or records that are provided in accordance with subsection (1.3) are admissible in a proceeding under Part 2, 3, 4 or 5 of this Act, despite the confidentiality or privilege.

(1.3) A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege is deemed conclusively not to have breached

any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records.

(2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act,* a person who, in the course of exercising powers or carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained.

(3) A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or the rules.

(4) A person who, during the course of an appeal under section 48 or an application under the *Judicial Review Procedure Act* respecting a matter under this Act, acquires information or records that are confidential or are subject to solicitor client privilege must not

(a) use the information other than for the purpose for which it was obtained, or

(b) disclose the information to any person.

(5) The Court of Appeal, on an appeal under section 48, and the Supreme Court, on an application under the *Judicial Review Procedure Act* respecting a matter under this Act, may exclude members of the public from the hearing of the appeal or application if the court considers the exclusion is necessary to prevent the disclosure of information, files or records that are confidential or subject to solicitor client privilege.

(6) In giving reasons for judgment on an appeal or application referred to in subsection (5), the Court of Appeal or the Supreme Court must take all reasonable precautions to avoid including in those reasons any information before the court on the appeal or application that is confidential or subject to solicitor client privilege.

(7) Despite section 14 of the *Freedom of Information and Protection of Privacy Act,* the benchers may make rules for the purpose of ensuring the non-disclosure of any confidential information or information that, but for this Act, would be subject to solicitor client privilege, and the rules may be made applicable to any person who, in the course of any proceeding under this Act, would acquire the confidential or privileged information.

(8) Section 47 (4) of the *Freedom of Information and Protection of Privacy Act* does not apply to information that, but for this Act and the production of the information to the commissioner under that Act, would be subject to solicitor client privilege.

[2012-16-46]

89 [repealed 2012-16-47]

Service

90 The benchers may make rules respecting service of documents under this Act.

[2007-14-145]

Law society insurance

91 (1) The benchers may purchase and maintain insurance protecting the society, the benchers, officers and employees of the society and former benchers, officers and employees against liability arising out of the operations or activities of the society and providing for indemnity with respect to any claims arising out of acts done or not done by those individuals in good faith while acting or purporting to act on behalf of the society.

(2) The benchers may enter into, on behalf of members, contracts of life, accident, income replacement and any other type of insurance that they consider will benefit the members.

Legal archives

92 (1) The benchers may make rules permitting a lawyer or law firm to deposit records in the possession of the lawyer or law firm in an archives, library or records management office in Canada.

(2) Rules made under this section may provide for

(a) the time after which the records may be deposited,

(b) the restrictions or limitations on public access that the lawyer or law firm may attach on depositing them, and

(c) circumstances under which the lawyer or law firm cannot be liable for disclosure of confidential or privileged information arising out of the deposit.

[2012-16-48]

PART 11 – TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

93 [repealed 2012-16-49]

94 – 109 [spent]

LEGAL PROFESSION AMENDMENT ACT, 2012

Transitional Provisions

Transition – special compensation fund

50 On repeal of section 31 of the *Legal Profession Act* by this Act, the benchers

(a) must promptly deposit any monies remaining in the "fund," as it was defined in section 31 (1) of the *Legal Profession Act* before its repeal by this Act, to the account of the insurance fund established under section 30 (6) of the *Legal Profession Act*, and

(b) may use the monies for the purposes of the insurance programs referred to in sections 30 (2) of the *Legal Profession Act* and 30 (2.1) of the *Legal Profession Act* as enacted by this Act.

Transition – power to make rules

51 (1) The benchers may make rules for the purpose of more effectively bringing into operation the amendments made to the *Legal Profession Act* by this Act and to obviate any transitional difficulties encountered in so doing.

(2) Unless earlier rescinded, a rule under subsection (1) is rescinded two years after it is made.

(3) A rule under subsection (1) may be made retroactive to a date on or after the date this section comes into force, and if made retroactive is deemed to have been made on the specified date.

(4) This section is repealed 2 years after it comes into force.

Definitions

1 In these Rules, unless the context indicates otherwise:

"Act" means the *Legal Profession Act*, S.B.C. 1998, c. 9;

"admission program" means the training program for articled students administered by the Society or its agents, commencing on an articled student's enrolment start date and including the period during which the student is

(a) articled to a principal, or

(b) registered in the training course;

"advertising" includes letterhead, business cards and the use of paid space or time in a public medium, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public or a group of people, for the purpose of promoting professional services or enhancing the image of the advertiser;

"agreed statement of facts" means a written statement of facts signed by discipline counsel and by or on behalf of the respondent;

"applicant" means a person who has applied under Part 2 for enrolment as an articled student, for call and admission or for reinstatement;

"appointed Bencher" means a person appointed as a Bencher under section 5;

"articled student" means a person who is enrolled in the admission program;

"articling agreement" means a contract in a form approved by the Credentials Committee executed by an applicant for enrolment and his or her prospective principal;

"articling start date" means the date on which an articled student begins employment with his or her principal;

"articling term" means the 9 month period referred to in Rule 2-32;

"Bencher" does not include the Attorney General unless expressly stated;

"chair" means a person appointed to preside at meetings of a committee or panel;

"company" means a company as defined in the *Business Corporations Act*;

"complainant" means a person who has delivered a complaint about a lawyer or a law corporation to the Society under Rule 3-2;

"complaint" means an allegation that a lawyer or a law corporation has committed a discipline violation;

"conduct unbecoming a lawyer" includes any matter, conduct or thing that is considered, in the judgment of the Benchers, a panel or a review board,

(a) to be contrary to the best interest of the public or of the legal profession, or

(b) to harm the standing of the legal profession;

"costs" includes costs assessed under Rule 3-18 or 3-74.1 or Part 5;

"disbarred lawyer" means a person to whom section 15(3) of the Act applies;

"discipline violation" means any of the following:

(a) professional misconduct;

(b) conduct unbecoming a lawyer;

(c) a breach of the Act or these Rules;

(d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;

(e) conduct that would constitute professional misconduct, conduct unbecoming a lawyer or a contravention of the Act or these Rules if done by a lawyer;

"enrolment start date" means the date on which an articled student's enrolment in the admission program becomes effective;

"Executive Committee" means the Committee elected under Rule 1-39;

"Executive Director" includes a person designated by the Executive Director to perform any of the duties assigned to the Executive Director in these Rules;

"firm" includes one lawyer or two or more lawyers practising together, including in the following arrangements:

(a) a sole proprietorship;

(b) a partnership, including a limited liability partnership or a partnership of law corporations;

(c) an arrangement for lawyers to share certain common expenses but otherwise practise as independent practitioners;

(d) a law corporation;

(e) a public body such as government or a Crown corporation;

(f) a corporation that is not a law corporation, or other private body;

(g) a multi-disciplinary practice;

"foreign jurisdiction" means a country other than Canada or an internal jurisdiction of a country other than Canada;

"Foundation" means the Law Foundation of British Columbia continued under section 58 (1) of the Act;

"funds" includes current coin, government or bank notes, bills of exchange, cheques, drafts, money orders, charge card sales slips, credit slips and electronic transfers;

"general" in relation to accounts, books, records and transactions means those pertaining to general funds;

"general funds" means funds other than trust funds, received by a lawyer in relation to the practice of law;

"governing body" means the governing body of the legal profession in another province or territory of Canada;

"insolvent lawyer" means a lawyer who

(a) is the respondent of a petition for a receiving order under section 43,

(b) has made an assignment of all his or her property for the general benefit of the lawyer's creditors under section 49,

(c) has made a proposal under section 50 or 66.11,

(d) has filed a notice of intention to make a proposal under section 50.4, or

(e) has applied for a consolidation order under section 219

of the *Bankruptcy and Insolvency Act*, S.C. 1992, c. 27;

"inter-jurisdictional law firm" means a firm carrying on the practice of law in British Columbia and in one or more other Canadian or foreign jurisdictions, unless all lawyers in all offices of the firm are practising lawyers;

"inter-jurisdictional practice" includes practice by a member of the Society in another Canadian jurisdiction;

"investigate" includes authorizing an investigation and continuing an investigation in progress;

"law clerk" means a law clerk employed by a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court of Canada or the Tax Court of Canada;

"lawyer" means a member of the Society;

"limited liability partnership" or **"LLP"** means a limited liability partnership under Part 6 of the *Partnership Act*, including an extraprovincial limited liability partnership registered under that Part;

"multi-disciplinary practice" or **"MDP"** means a partnership, including a limited liability partnership or a partnership of law corporations, that is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and that provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;

"National Mobility Agreement" means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

"net interest" means the total interest earned on a pooled trust account, minus any service charges and transmittal fee that the savings institution charges to that account;

"officer" means the Executive Director, a Deputy Executive Director or other person appointed as an officer by the Benchers;

"Ombudsperson" means a person appointed by the Executive Director to provide confidential dispute resolution and mediation assistance to lawyers, articled students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age, and includes anyone employed by the Ombudsperson to assist in that capacity;

"panel" means a panel established in accordance with Part 5;

"practice review" means an investigation into a lawyer's competence to practise law ordered under Rule 3-12(3)(d) or 3-13(1);

"practice year" means the period beginning on January 1 and ending on December 31 in a year;

"practitioner of foreign law" means a person qualified to practise law in a country other than Canada or in an internal jurisdiction of that country, who gives legal advice in British Columbia respecting the laws of that country or of the internal jurisdiction in which that person is qualified;

"principal" means a lawyer who is qualified to employ and employs an articled student;

"pro bono legal services" means the practice of law not performed for or in the expectation of a fee, gain or reward;

"professional conduct record" means a record of all or some of the following information respecting a lawyer:

(a) an order under Rule 2-30(4), prohibiting the lawyer from acting as a principal for an articled student;

(b) any conditions or limitations of practice or articles accepted or imposed under the Act or these Rules;

(c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;

(c.1) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;

(c.2) any suspension or disbarment under the Act or these Rules;

(d) recommendations made by the Practice Standards Committee under Rule 3-14;

(d.1) to (f) [rescinded 11/08]

(g) an admission accepted by the Discipline Committee under Rule 4-21;

(h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 4-22;

(i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-9, and any written dispute of that report considered by the Committee;

(j) a decision made under section 38(4)(b) of the Act;

(k) an action taken under section 38(5), (6) or (7) of the Act;

(l) an action taken by a review board under section 47 of the Act;

(m) and (n) [rescinded 11/08]

(o) a payment made under section 31 of the Act on account of misappropriation or wrongful conversion by the lawyer;

(p) an order for costs made against the lawyer under Part 5;

(p.1) any failure to pay any fine, costs or penalty imposed under the Act or these Rules by the time that it is to be paid;

(q) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these Rules, including a predecessor of either;

(r) the outcome of an appeal under section 48 of the Act;

(s) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

(t) a decision of or action taken by the Benchers on a review of a decision of a hearing panel;

"professional corporation" includes a law corporation and means a corporation that is a company, as defined in the *Business Corporations Act,* and that is in good standing under that Act or that is registered under Part 10 of the *Business Corporations Act,* through which a member of a profession, trade or occupation is authorized under a statute governing the profession, trade or occupation to carry on the business of providing services to the public;

"Protocol" means the Inter-Jurisdictional Practice Protocol signed on behalf of the Society on February 18, 1994, as amended from time to time;

"qualification examination" means an examination set by the Executive Director for the purposes of Rule 2-57;

"reciprocating governing body"

(a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and

(b) includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

"remedial program" includes anything that may be recommended by the Practice Standards Committee under Rule 3-14(1)(b);

"respondent" means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-13(1), or

(b) under review by a review board under section 47 of the Act;

"review board" means a review board established in accordance with Part 5;

"Rule" or **"subrule"** means a rule or subrule contained in these Rules;

"Second Vice-President-elect" means the Bencher elected under Rule 1-18, from the time of the election until he or she takes office as Second Vice-President;

"section" means a section of the *Legal Profession Act*;

"Society" means the Law Society of British Columbia continued under section 2(1) of the Act;

"suspension" means temporary disqualification from the practice of law;

"Territorial Mobility Agreement" means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time.

"training course" includes any assessments, examinations and remedial work taken during or after the training course, or an educational program required by the Credentials Committee;

"trust funds" includes funds received in trust by a lawyer acting

(a) in the capacity of a lawyer, including funds

(i) received from a client for services to be performed or for disbursements to be made on behalf of the client, or

(ii) belonging partly to a client and partly to the lawyer if it is not practicable to split the funds, and

(b) as a personal representative of a person or at the request of a person, or as a trustee under a trust established by a person, if the lawyer's appointment derived from a solicitor-client relationship;

"vice chair" means a person appointed to preside at meetings of a committee in the absence of the chair;

"visiting lawyer" means a member of a governing body who is qualified to practise law in another Canadian jurisdiction.

[amended 09/1999; 11/1999; 05/2000; 06/2001; 03/2003; effective 08/2003; 12/2003; 05/2004; 09/2004; "firm" amended and "limited liability partnership" added effective January 17, 2005; amended 02/2006; 06/2006; 10/2006; 09/2007; 04/2008; "professional conduct record" amended 11/2008; "statement of agreed facts" deleted and "agreed statement of facts" added 04/2009; "appointed Bencher" added 09/2009; "firm" amended and "multi-disciplinary practice" and "professional corporation" added 12/2009, effective 07/2010; "National Mobility Agreement," "reciprocating governing body" and "Territorial Mobility Agreement" added 12/2011; "pro bono legal services" added 06/2012; "conduct unbecoming a lawyer," "professional conduct record" and "respondent" amended, "review board" added 09/2012, effective 01/2013; "professional conduct record" amended 10/2012]

PART 1 – ORGANIZATION

Division 1 – Law Society

Benchers

Term of office

1-1 (1) The term of office for an appointed Bencher begins on the date that the appointment is effective and ends on January 1 of the next even-numbered year.

(1.1) Despite subrule (1), an appointed Bencher continues to hold office until a successor is appointed.

(2) An elected Bencher holds office for 2 years beginning on January 1 following his or her election.

[(1) amended 12/1999; 09/2009; (1) amended, (1.1) added 12/2009]

Term limits

1-1.1 (1) A Bencher is ineligible to be elected or appointed as a Bencher if

(a) at the conclusion of the Bencher's term of office, he or she will have served as a Bencher for more than 7 years, whether consecutive or not, or

(b) the Bencher has been elected Second Vice-President-elect.

(2) Despite subrule (1)(a) but subject to subrule (1)(b), a Bencher who was a Bencher on January 10, 1992 and who, at the conclusion of his or her term of office, will not have served as a Bencher for more than 11 years, whether consecutive or not, is eligible to be elected or appointed as a Bencher.

[added effective January 2, 2010]

Oath of office

1-1.2 (1) At the next regular meeting of the Benchers attended by a Bencher after being elected or appointed as a Bencher or taking office as President or a Vice-President, the Bencher must take an oath of office in the following form:

I, [name] do swear or solemnly affirm that:

I will abide by the *Legal Profession Act,* the Law Society Rules and the *Code of Professional Conduct*, and I will faithfully discharge the duties of [a Bencher/President/First or Second Vice-President], according to the best of my ability; and

I will uphold the objects of the Law Society and ensure that I am guided by the public interest in the performance of my duties.

(2) An oath under this Rule must be taken before a judge of the Provincial Court or a superior court in British Columbia, the President or a Life Bencher.

[added 12/2009; (1) amended effective 01/2013]

Life Benchers

1-2 (1) A person, including the Attorney General, who is ineligible for further election or appointment as a Bencher under Rule 1-1.1 is a Life Bencher on leaving office as a Bencher.

(2) [rescinded]

(3) A Life Bencher

(a) may attend and speak at meetings of the Benchers,

(b) has no vote in Bencher meetings,

(c) except as a member of a committee under Rule 1-47, may not exercise any of the powers of a Bencher, and

(d) is ineligible to be elected or appointed as a Bencher.

(4) A Bencher who was a Bencher on January 10, 1992 and who has served for at least 7 years as a Bencher is a Life Bencher on leaving office as a Bencher.

(5) A person who was a Life Bencher on January 1, 2010 continues to be a Life Bencher.

[amended, (2) rescinded, (5) added effective January 2, 2010]

President, First Vice-President and Second Vice-President

1-3 (1) The term of office for the President, First Vice-President and Second Vice-President is from January 1 to December 31 of each year.

(2) Subject to subrule (7), on January 1 of each year,

(a) the First Vice-President becomes President,

(b) the Second Vice-President becomes First Vice-President, and

(c) the Second Vice-President-elect becomes Second Vice-President.

(3) Each year, the members must elect a Bencher who is a member of the Society as the Second Vice-President-elect in accordance with Rule 1-18.

(4) Without further election by the district, the Bencher elected by the members under subrule (3) holds office as a Bencher representing the district that last elected the Bencher until he or she completes a term as President.

(5) If there is a vacancy in the office of President or a Vice-President for any reason, including the operation of this subrule or the failure of a Bencher to take office under this Rule, the Bencher who would have assumed the office at the end of the term immediately assumes the vacant office.

General

Seal

1-43 (1) Subject to subrule (2), the seal of the Society may be affixed to a document in the presence of

(a) 2 persons, one of whom must be the President or a Vice-President, and the other of whom must be an officer of the Society, or

(b) one or more persons appointed by resolution of the Executive Committee.

(2) The seal may be affixed in the presence of any one of the persons referred to in subrule (1) in the case of

(a) a certificate, or

(b) a document that certifies true copies of any document or resolution.

(3) The person or persons in whose presence the seal is affixed must sign the certificate or document of certification.

[(1) amended 07/2004]

Laying of information

1-44 Any information alleging an offence against the Act may be laid in the name of the Society on oath of an officer of the Society or a member of the Executive Committee.

Freedom of Information and Protection of Privacy Act

1-45 The Executive Director is designated as the head of the Society for the purposes of the *Freedom of Information and Protection of Privacy Act*.

[amended 09/2008]

Appointment of Law Society counsel

1-46 (1) Subject to Rule 1-49(a), the Executive Director may appoint an employee of the Society or retain another lawyer to advise or represent the Society in any legal matter.

(2) When Rule 1-49(a) applies and it is not practicable to call a meeting of the Executive Committee before the advice of counsel is required, the Executive Director may appoint counsel on an interim basis.

Division 2 – Committees

Committees of the Benchers

1-47 Subject to these Rules, the President may

(a) appoint any person as a member of a committee of the Benchers, and

(b) terminate the appointment.

Executive Committee

1-48 The Executive Committee consists of the following Benchers:

(a) the President;

(b) the First and Second Vice-Presidents;

(c) the Second Vice-President-elect, if not elected under paragraph (d);

(d) 3 other Benchers elected under Rule 1-39(1);

(e) one appointed Bencher elected under Rule 1-39(8).

[amended 09/2009]

Powers and duties

1-49 The powers and duties of the Executive Committee are as follows:

(a) authorizing appointment of counsel to advise or represent the Society when the Society is a plaintiff, petitioner or intervenor in an action or proceeding;

(b) authorizing the execution of documents relating to the business of the Society;

(c) approving the remuneration and benefits paid to the Executive Director;

(d) assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;

(e) planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;

(f) assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources;

(g) recommending to the appointing bodies on Law Society appointments to outside bodies;

(h) approving the termination of the appointment of a panel under Rule 5-2(8);

(i) appointing members of the Board of Governors of the Foundation under section 59 of the Act;

(j) other functions authorized or assigned by these Rules or the Benchers.

Division 3 – Law Society Rules

Act, Rules and Code

1-50 The Executive Director must provide each lawyer and each articled student with a copy of the *Legal Profession Act,* all Rules made by the Benchers, and the *Code of Professional Conduct*.

[amended effective 01/2013]

Residential address

2-9 A lawyer who ceases to have a place of business separate from the lawyer's residence must provide the following information to the Executive Director immediately:

(a) the address of the lawyer's residence;

(b) any change in the address of the lawyer's residence;

(c) on return to practice, employment or other business, the address of the lawyer's place of business.

Practice history

2-9.1 (1) In this Rule **"practice history"** means a record of

(a) the dates and places that a lawyer or former lawyer has practised law or been enrolled in the admission program, including the name of the firms through which the lawyer or former lawyer practised law, and

(b) dates of any periods since call and admission during which the lawyer or former lawyer has been a non-practising or retired member or a former member.

(2) On request by any person, the Executive Director may disclose all or part of the practice history of any member or former member of the Society.

[added 10/2004]

Paralegals

Supervision of limited number of designated paralegals

2-9.2 (1) In this Rule, **"designated paralegal"** means an individual permitted under section 6.1 of the *Code of Professional Conduct* to give legal advice and represent clients before a court or tribunal.

(2) A lawyer must not supervise more than 2 designated paralegals at one time.

[added 07/2012; (1) amended effective 01/2013]

Unauthorized practice

Unauthorized practice of law

2-10 (1) A lawyer must not knowingly facilitate by any means the practice of law by a person who is not a practising lawyer or otherwise permitted to practise law under sections 15 to 17 of the Act or Rule 2-23.2.

(2) Without limiting subrule (1), a lawyer must not knowingly do any of the following:

(a) act as an agent or permit his or her name to be used or held out in any way that enables a person to engage in the unauthorized practice of law;

(b) send a process or other document to a person or do any other act that enables a person to engage in the unauthorized practice of law;

(c) open or maintain an office for the practice of law unless the office is under the personal and actual control and management of a practising lawyer.

(3) When the Society obtains a court order or an agreement restraining a person who is not a practising lawyer from the practice of law, the Executive Director may publish generally a summary of the circumstances and of the order or agreement, in a form that appears appropriate to the Executive Director.

[(3) amended 02/2006; (1) amended 12/2009, effective 07/2010]

Inter-jurisdictional practice

Definitions

2-10.1 In Rules 2-10.1 to 2-17.1,

"business day" means any calendar day or part of a calendar day in which a lawyer provides legal services;

"disciplinary record" includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of

(i) professional misconduct,

(ii) incompetence,

(iii) conduct unbecoming a lawyer,

(iv) lack of physical or mental capacity to engage in the practice of law,

(v) any other breach of a lawyer's professional responsibilities;

(b) disbarment;

(c) a lawyer's resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;

(d) restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.

"entitled to practise law" means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

"legal matter" includes any activity or transaction that constitutes the practice of law and any other activity or transaction ordinarily conducted by lawyers in British Columbia in the course of practising law, whether or not persons other than lawyers are legally capable of conducting it;

"National Registry" means the National Registry of Practising Lawyers established under the National Mobility Agreement;

"permit" means an inter-jurisdictional practice permit issued under Rule 2-11;

"provide legal services" means to engage in the practice of law

(a) physically in British Columbia, except with respect to the law of a home jurisdiction, or

(b) with respect to the law of British Columbia physically in any jurisdiction,

and includes to provide legal services respecting federal jurisdiction in British Columbia;

Responsibilities of visiting lawyer

2-14.1 (1) The Act, these Rules and the *Code of Professional Conduct* apply to and bind a visiting lawyer providing legal services.

(2) It is the responsibility of a visiting lawyer providing legal services to

(a) record and verify the number of business days in which he or she provides legal services, and

(b) prove that he or she has complied with these Rules.

[added effective 07/2003; (1) amended effective 01/2013]

Enforcement

2-15 (1) On the request of a governing body that is investigating the conduct of a lawyer, former lawyer or visiting lawyer or has initiated disciplinary proceedings against a lawyer, former lawyer or visiting lawyer, the Executive Director must provide all relevant information.

(1.1) When the Executive Director provides information to a governing body under subrule (1), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

(2) A fine imposed on a lawyer or former lawyer by a governing body may be enforced under Rule 4-36(4).

(3) [rescinded]

(4) A lawyer who practises law in another Canadian jurisdiction must comply with the applicable legislation, regulations, rules and *Code of Professional Conduct* of that jurisdiction.

(5) The Executive Director may require a visiting lawyer to

(a) account for and verify the number of business days spent providing legal services, and

(b) verify compliance with any Rules specified by the Executive Director.

(6) If a visiting lawyer fails or refuses to comply with a requirement under subrule (5) within 20 days, or such longer time that the Executive Director may allow in writing,

(a) the visiting lawyer is prohibited from providing legal services without a permit,

(b) any permit issued to the visiting lawyer under Rule 2-11 is rescinded, and

(c) the Executive Director must advise each of the governing bodies of which the visiting lawyer is or has been a member, of the visiting lawyer's failure to comply and the consequences.

(7) A visiting lawyer who is affected by subrule (6) may apply to the Credentials Committee for restoration of any or all rights lost under that subrule and the Committee may, in its discretion, grant the application, subject to any conditions or limitations it considers to be in the public interest.

[(3) and (4) added 11/1999; (1) and (2) amended 06/2001; (3) rescinded, (5) to (7) added effective 07/2003; (1) and (2) amended, (1.1) added 10/2003; (7) amended 07/2012; (4) amended effective 01/2013]

Trust funds and compensation fund

2-16 (1) A visiting lawyer providing legal services must not maintain a trust account in British Columbia, and must

(a) promptly remit funds received in trust to the visiting lawyer's trust account in the home jurisdiction, or

(b) ensure that trust funds received are handled

(i) by a practising lawyer in a trust account controlled by the practising lawyer, and

(ii) in accordance with the Act and these Rules.

(2) The provisions of the Protocol concerning claims for compensation for misappropriation apply to a claim under Rule 3-30 involving inter-jurisdictional practice.

[amended, (1) added 11/1999; (1) amended 06/2001; effective 07/2003]

Dispute resolution

2-17 If a dispute arises with a governing body concerning any matter under the Protocol, the Credentials Committee may do one or both of the following:

(a) agree with a governing body to refer the matter to a single mediator;

(b) submit the dispute to arbitration under Appendix 5 of the Protocol.

National Registry of Practising Lawyers

2-17.1 (1) The Executive Director must provide to the National Registry the current and accurate information about practising lawyers required under the National Mobility Agreement.

(2) No one may use or disclose information obtained from the National Registry except for a purpose related to enforcement of the Act and these Rules.

[added effective 07/2003]

Practitioners of foreign law

Practitioners of foreign law

2-18 (1) A person who qualifies under section 17 of the Act may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering to the Executive Director

(a) a completed permit application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society, and

(b) the application fee specified in Schedule 1.

(2) The Executive Director may issue to a person applying under subrule (1) a permit to act as a practitioner of foreign law if satisfied that the person

(a) is a member of the legal profession in one or more foreign jurisdictions,

(b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,

(c) is a person of good character and repute,

(d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to act as a practitioner of foreign law in British Columbia only under the direct supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years,

(e) carries professional liability insurance or a bond, indemnity or other security

(i) in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1), and

(ii) that specifically extends to services rendered by the practitioner of foreign law while acting as such in British Columbia.

(3) Subject to subrule (4), the Executive Director may attach conditions or limitations to a permit issued or renewed under this Rule.

(4) The Executive Director may only attach under subrule (3) conditions or limitations that are authorized by the Credentials Committee.

(5) A permit issued under subrule (2) is valid for one year from the issue date shown on it.

(6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law

(a) is suspended as a result of proceedings taken under Part 4, or

(b) ceases to comply with any of the requirements of this Part.

[(1) amended 12/2011; (3) and (4) amended 07/2012]

Restrictions and limitations

2-19 (1) No one may practise the law of a foreign jurisdiction or market a foreign legal practice in British Columbia without a permit issued under Rule 2-18(2).

(2) A practitioner of foreign law who holds a current permit issued under Rule 2-18(2) may provide legal services in British Columbia respecting

(a) the law of the jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and

(b) trans-jurisdictional or international legal transactions.

(3) A practitioner of foreign law must not

(a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or

(b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.

(4) The Act, these Rules and the *Code of Professional Conduct* apply to and bind a practitioner of foreign law.

(5) A practitioner of foreign law must notify the Executive Director promptly if he or she

(a) is the subject of criminal or professional discipline proceedings in any jurisdiction,

(b) ceases to be a member in good standing of the legal profession in any jurisdiction, or

(c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

[(4) amended effective 01/2013]

Dual qualification

2-20 A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer holds liability insurance that

(a) specifically extends to the lawyer's activities as a practitioner of foreign law in British Columbia, and

(b) is in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1).

Marketing of legal services by practitioners of foreign law

2-21 A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the *Code of Professional Conduct*, section 4.2:

(a) use the term "practitioner of foreign law;"

(b) state the foreign jurisdiction in which he or she holds professional legal qualifications, and the professional title used in that jurisdiction;

(c) not use any designation or make any representation from which a recipient might reasonably conclude that the practitioner of foreign law is a member of the Society.

[amended effective 01/2013]

Renewal of permit

2-22 (1) In order to renew a practitioner of foreign law permit, a practitioner of foreign law must apply to the Executive Director for a renewal of the permit before his or her permit expires.

(2) A renewal application must include

(a) a completed permit renewal application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society,

(b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to comply with the requirements set out in Rule 2-18(2), and

(c) the renewal fee specified in Schedule 1.

(3) The Executive Director may renew the permit of a practitioner of foreign law who has complied with the Act and these Rules.

(4) Subject to subrule (5), a permit renewed under subrule (3) is valid for one year.

(5) Rule 2-18(6) applies to a permit renewed under subrule (3).

(6) A practitioner of foreign law who fails to pay when due the fee for renewal of a permit under subrule (2), including applicable taxes, or any part of it, must pay the late payment fee specified in Schedule 1.

Canadian legal advisors

Scope of practice

2-22.1 (1) A Canadian legal advisor who is a member of the Barreau du Québec may

(a) give legal advice on

(i) the law of Québec and matters involving the law of Québec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law,

(b) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

(c) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

(1.1) A Canadian legal advisor who is a member of the Chambre des notaires du Québec may

(a) give legal advice on

(i) the law of Québec and matters involving the law of Québec,

(ii) matters under federal jurisdiction, or

(iii) matters involving public international law, or

(b) where expressly permitted by federal statute or regulation

(i) draw, revise or settle a document for use in a proceeding concerning matters under federal jurisdiction, or

(ii) appear as counsel or advocate before any tribunal with respect to matters under federal jurisdiction.

(2) A Canadian legal advisor must not engage in the practice of law except as permitted under subrule (1) or (1.1).

[added effective 07/2010; amended, (1.1) added 03/2012]

Requirements

2-22.2 (1) A member in good standing who is admitted as a Canadian legal advisor has all the duties and responsibilities of a practising lawyer under the Act, these Rules and the *Code of Professional Conduct*.

(2) A Canadian legal advisor must

(a) be a member in good standing of the Barreau du Québec or the Chambre des notaires du Québec authorized to practise law in that Province,

(b) undertake to comply with Rule 2-23.1, and

(c) immediately notify the Executive Director in writing if he or she ceases to be authorized to practise law in Québec.

[added effective 07/2010; (2) amended 03/2012; (1) amended effective 01/2013]

Non-resident partners

Inter-jurisdictional law firms

2-23 (1) A lawyer who practises law as a member of an inter-jurisdictional law firm must ensure that the firm does the following respecting the firm's practice of law in British Columbia:

(a) complies with the Part 3, Division 7 of these Rules;

(b) makes its books, records and accounts, wherever they are located, available on demand by the Society or its designated agent.

(2) An inter-jurisdictional law firm is subject to discipline under Part 4 in the same way as a law corporation, except that the penalties that a panel may impose are the following:

(a) a reprimand of the firm;

(b) a fine in an amount not exceeding $100,000;

(c) an order prohibiting members of the firm who are not members of the Society from practising in British Columbia.

(3) On certification by a governing body that an inter-jurisdictional law firm has failed to pay, by the date on which it was due, a fine imposed under a provision similar to subrule (2), the Credentials Committee may make an order prohibiting lawyers from practising as members of the firm.

[(3) added 11/1999; (1) amended 12/2003]

Multi-disciplinary practice

Definition and application

2-23.1 (1) In Rules 2-23.1 to 2-23.12,

"legal services" means services that constitute the practice of law as defined in section 1 of the Act;

"member of an MDP" means a lawyer or non-lawyer who holds an ownership interest in the MDP.

(2) The responsibilities imposed under Rules 2-23.1 to 2-23.12 are not affected by the fact that a member of an MDP is carrying on the practice of a profession, trade or occupation or participating in the MDP as an employee, shareholder, officer, director or contractor of a professional corporation or on its behalf.

[added 12/2009, effective 07/2010]

Conditions for multi-disciplinary practice

2-23.2 (1) A lawyer must not practise law in an MDP unless

(a) the lawyer and all members of the MDP are in compliance with Rules 2-23.1 to 2-23.12 and the *Code of Professional Conduct*,

(b) all lawyers who are members of the MDP have obtained express permission under this Division to practise law in the MDP,

(c) all non-lawyer members of the MDP are of good character and repute,

(d) all members of the MDP agree in writing

(i) that practising lawyers who are members of the MDP will have actual control over the delivery of legal services by the MDP,

(ii) that non-lawyer members of the MDP will not interfere, directly or indirectly with the lawyer's

(A) obligation to comply with the Act, these Rules and the *Code of Professional Conduct*, and

(B) exercise of independent professional judgement,

(iii) to comply with the Act, these Rules and the *Code of Professional Conduct*, and

(iv) to cooperate with and assist the Society or its agents in the conduct of a practice review, examination or investigation, and

(e) all members of the MDP who are governed by the regulatory body of another profession agree to report to the MDP any proceedings concerning their conduct or competence.

(2) For the purposes of this Rule, a lawyer has actual control over the delivery of legal services of the MDP if, despite any partnership agreement or other contract, the lawyer is able, in all cases and without any further agreement of any member of the MDP, to

(a) exercise independent professional judgement, and

(b) take any action necessary to ensure that the lawyer complies with the Act, these Rules and the *Code of Professional Conduct*.

[added 12/2009, effective 07/2010; amended effective 01/2013]

Application to practise law in multi-disciplinary practice

2-23.3 (1) Before a lawyer may practise law as a member of an MDP that has not been granted permission under Rule 2-23.4, the lawyer must submit the following to the Executive Director:

(a) an application in a form approved by the Credentials Committee;

(b) the application fee specified in Schedule 1;

(c) the investigation fee specified in Schedule 1 for each non-lawyer member of the proposed MDP;

(d) copies of all partnership agreements and other contracts that the lawyer proposes to enter into with other members of the proposed MDP.

(2) In addition to any other requirement determined by the Credentials Committee, in the form referred to in subrule (1), the lawyer must report full details of the arrangements that the lawyer has made to ensure that

(a) no non-lawyer member of the MDP provides services to the public, except

(i) those services that support or supplement the practice of law by the MDP, and

(ii) under the supervision of a practising lawyer,

(b) privileged and confidential information is protected under Rule 2-23.8,

(c) all members of the MDP comply with the rules respecting conflicts of interest as required under Rule 2-23.9,

(d) every member of the MDP obtains and maintains liability insurance as required under Rule 2-23.10,

(e) the lawyer and the MDP maintain trust accounts and trust accounting records in accordance with Rule 2-23.11, and

(f) all non-lawyer members of the MDP enter into the agreements required under Rules 2-23.2.

(3) Any number of lawyers proposing to practise law together in an MDP may submit a joint application under this Rule.

[added 12/2009, effective 07/2010; (1) amended 06/2010]

Consideration of application to engage in multi-disciplinary practice

2-23.4 (1) On receipt of an application under Rule 2-23.3, the Executive Director must

(a) grant permission to practise law in the MDP,

(b) if the requirements for permission to practise law in an MDP have not been met, refuse permission, or

(c) refer the application to the Credentials Committee.

(2) The Executive Director must not grant permission under subrule (1) unless the Executive Director is satisfied of the following:

(a) all of the conditions set out in Rule 2-23.2 have been satisfied;

(b) the lawyer has made arrangements that will enable the lawyer and the MDP to comply with Rules 2-23.1 to 2-23.12.

(3) If the lawyer applying for permission under Rule 2-23.3 agrees, the Executive Director may impose conditions or limitations on permission granted under subrule (1).

(4) Within 30 days after being notified of the decision of the Executive Director under subrule (1)(b), the lawyer may, by written notice, request a review by the Credentials Committee.

(5) If an application is referred to the Credentials Committee under subrule (1)(c) or a review is requested under subrule (4), the Credentials Committee must direct the Executive Director to

(a) grant permission to practise law in an MDP, with or without conditions or limitations, or

(b) reject the application.

(6) If an application is rejected or if conditions or limitations are imposed, the Credentials Committee must, on the written request of the lawyer applying, give written reasons for the decision.

[added 12/2009, effective 07/2010; (3), (5) and (6) amended 07/2012]

Changes in MDP

2-23.5 (1) A lawyer practising in an MDP must immediately notify the Executive Director when

(a) ceasing to practise law in the MDP for any reason,

(b) any new person proposes to become a member of the MDP,

(c) any member of the MDP ceases to be a member of the MDP or to be actively involved in the MDP's delivery of services to clients or in the management of the MDP, or

(d) there is any change in the terms of the partnership agreement or other contract affecting the conditions under which members of the MDP participate in the MDP.

(2) When a new non-lawyer proposes to become a member of an MDP, the lawyer practising in the MDP must do the following at least 60 days before the proposed membership takes effect:

(a) notify the Executive Director in a form approved by the Credentials Committee;

(b) pay the application fee specified in Schedule 1.

(3) Any number of lawyers practising law in an MDP may notify the Executive Director jointly under subrule (1) or (2).

[added 12/2009, effective 07/2010; (2) amended 12/2011]

Cancellation of permission to practise law in an MDP

2-23.6 (1) If for any reason the Executive Director, in his or her sole discretion, is not satisfied that the lawyer is complying and will continue to comply with Rules 2-23.1 to 2-23.12, the Executive Director must cancel the permission granted under Rule 2-23.4.

(2) A cancellation under subrule (1) takes effect

(a) after 30 days notice to all lawyers who are current members of the MDP affected by the cancellation, or

(b) without notice or on notice less than 30 days on the order of the Credentials Committee.

(3) A lawyer who is notified of a cancellation under this Rule may apply within 30 days to the Credentials Committee for a review of the Executive Director's decision.

(4) When a lawyer applies for a review under subrule (3), the Credentials Committee must consider all the information available to the Executive Director, as well as submissions from or on behalf of the lawyer applying and the Executive Director and must

(a) confirm the decision of the Executive Director,

(b) direct the Executive Director to reinstate the permission, with or without conditions or limitations specified by the Credentials Committee, or

(c) order a hearing before a panel under Part 5.

(5) The lawyer applying under subrule (3) or the Executive Director may initiate a review by a review board on the record of a decision under subrule (4) by delivering to the President and the other party a notice of review.

(6) Rules 5-15 and 5-17 to 5-21 apply to a review under this Rule, insofar as they are applicable and with the necessary changes.

(7) A lawyer who has applied for a review under subrule (3) may apply to the President for a stay of the cancellation pending the decision of the Credentials Committee on the review.

(8) The person who applies for a review under subrule (5) may apply to the President for a stay of the cancellation pending the decision of the review board.

(9) When considering an application for a stay under subrule (8), the President must consider all the information available to the Executive Director, as well as submissions from or on behalf of the Executive Director and the lawyer concerned and must

(a) refuse the stay, or

(b) grant the stay, with or without conditions or limitations.

(10) On an application under subrule (7) or (8), the President may designate another Bencher to make a determination under subrule (9).

(11) When a lawyer's permission to practise law in an MDP is cancelled under this Rule, the lawyer must immediately cease practising law in the MDP.

[added 12/2009, effective 07/2010; (4) and (9) amended 07/2012; (5) and (8) amended 09/2012, effective 01/2013]

Lawyer's professional duties

2-23.7 (1) Except as provided in Rules 2-23.1 to 2-23.12, the *Act*, these Rules and the *Code of Professional Conduct* apply to lawyers who practise in an MDP.

(2) A lawyer practising law in the MDP must take all steps reasonable in the circumstances to ensure that the non-lawyer members of the MDP

(a) practise their profession, trade or occupation with appropriate skill, judgement and competence,

(b) comply with the Act, these Rules and the *Code of Professional Conduct*, and

(c) provide no services to the public except

(i) those services that support or supplement the practice of law by the MDP, and

(ii) under the supervision of a practising lawyer, as required under the *Code of Professional Conduct*, section 6.1.

(3) A lawyer practising in an MDP must not permit any member or employee of the MDP to direct or control the professional judgement of the lawyer or to cause the lawyer or other members of the MDP to compromise their duties under the Act, these Rules or the *Code of Professional Conduct.*

[added 12/2009, effective 07/2010; amended effective 01/2013]

Privilege and confidentiality

2-23.8 A lawyer practising law in an MDP must take all steps reasonable in the circumstances, including the implementation of screening measures if necessary, to ensure that no improper disclosure of privileged or confidential information is made to any person, including a person appointed by the regulatory body of another profession in relation to the practice of another member or employee of the MDP.

[added 12/2009, effective 07/2010]

Conflicts of interest

2-23.9 (1) A lawyer practising law in an MDP must take all steps reasonable in the circumstances to ensure that the other members of the MDP will comply with the provisions of the Act, these Rules and the *Code of Professional Conduct* respecting conflicts of interest as they apply to lawyers.

(2) This Rule applies when the MDP has provided legal services to a client or when a potential client has sought legal services from the MDP.

[added 12/2009, effective 07/2010; (1) amended effective 01/2013]

Liability insurance

2-23.10 (1) A lawyer practising law in an MDP must ensure that every non-lawyer member of the MDP providing services directly or indirectly to the public on behalf of the MDP

(a) maintains professional liability insurance

(i) on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pays the insurance fee, and

(ii) in an amount equivalent to the total amount of coverage that the MDP maintains in excess of that required under Rule 3-21(1), and

(b) complies with the provisions of Part 3, Division 4 of these Rules as if the non-lawyer were a lawyer.

(2) If a non-lawyer member of an MDP agrees in writing, in a form approved by the Executive Committee, to engage in activities on behalf of the MDP for an average of 25 hours or less per week, the applicable insurance base assessment is the part-time insurance fee specified in Schedule 1.

[added 12/2009, effective 07/2010]

Trust funds

2-23.11 (1) A lawyer practising law in an MDP that accepts any funds in trust from any person must maintain a trust account and a trust accounting system

(a) in accordance with Part 3, Division 7 of these Rules, and

(b) that are within the exclusive control of lawyers practising law in the MDP.

(2) A lawyer practising law in an MDP must ensure that all funds received by the MDP that would, if received by a lawyer, constitute trust funds, are handled through a trust account and accounting system that complies with these Rules.

[added 12/2009, effective 07/2010]

Notifying the Law Society

2-23.12 (1) Each lawyer who practises law in an MDP must report to the Executive Director in a form approved by the Credentials Committee concerning the following:

(a) non-lawyer members of the MDP providing services to the public;

(b) the reasonable steps taken to protect privileged and confidential information under Rule 2-23.8;

(c) compliance with the rules respecting conflicts of interest;

(d) liability insurance maintained by non-lawyers under Rule 2-23.10;

(e) trust accounts and trust accounting records maintained under Rule 2-23.11;

(f) the agreements required under Rule 2-23.2 between the lawyer and all non-lawyer members of the MDP;

(g) any other matter required by the Credentials Committee.

(2) The report required under this rule must be made annually on a date determined by the Executive Director, or more frequently as determined by the Credentials Committee.

[added 12/2009, effective 07/2010]

Division 2 – Admission and Reinstatement

Credentials Committee

Credentials Committee

2-24 (1) For each calendar year, the President must appoint a Credentials Committee, including a chair and vice chair, both of whom must be Benchers.

(2) The President may remove any person appointed under subrule (1).

(3) At any time, the President may appoint a person to the Credentials Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

[(1) and (3) amended 06/2011]

Referral to Credentials Committee

2-25 (1) The Executive Director may refer any matter for decision under this Division to the Credentials Committee.

(2) On the written request of a lawyer, former lawyer, articled student or applicant affected by a decision made by the Executive Director under this Division, the Executive Director must refer the matter to the Credentials Committee.

(3) When a matter is referred to the Credentials Committee under this Rule, the Committee may make any decision open to the Executive Director under this Division and may substitute its decision for that of the Executive Director.

Powers of the Credentials Committee

2-26 (1) The Credentials Committee may

(a) and (b) [rescinded]

(c) exercise the authority of the Benchers to call and admit barristers and solicitors,

(d) implement, administer and evaluate a training course and examinations, assignments and assessments for all articled students,

(e) establish standards for passing the training course and examinations, assignments and assessment,

(f) establish procedures to be applied by the Executive Director and faculty of the training course for

(i) the deferral, review or appeal of failed examinations, assignments and assessments, and

(ii) remedial work in the training course or examinations, assignments and assessments, and

(g) review, investigate and report to the Benchers on all aspects of legal education leading to call and admission.

(2) When the Credentials Committee is empowered to order a hearing under this Division, it may do so even though the application has been withdrawn.

(3) The Credentials Committee may, with the consent of the person concerned, vary or remove practice conditions or limitations made under this Division or imposed on a review initiated under Rule 5-13(1) or (2).

[(1) amended 11/1999; 03/2003; (3) amended 09/2012, effective 01/2013]

Application for enrolment, admission or reinstatement

Disclosure of information

2-26.1 (1) When an application has been made under this Division, the Executive Director may

(a) disclose the fact that the application has been made and the status of the application, and

(b) on the request of a governing body, provide to the governing body copies of all or part of the contents of the application and related material.

(2) For the purpose of subrule (1)(a), the status of an application is its stage of progress in processing the application, including, but not limited to the following:

(a) received and under review;

(b) granted, with or without conditions or limitations;

(c) referred to the Credentials Committee;

(d) hearing ordered, whether or not a hearing has been scheduled;

(e) withdrawn;

(f) refused.

[(2) amended 07/2012]

First call and admission

2-48 (1) An articled student who applies for call and admission must deliver the following to the Executive Director:

(a) the following in the form approved by the Credentials Committee:

(i) a petition for call and admission;

(ii) a declaration of the principal;

(iii) a declaration of the applicant;

(iii.1) a joint report of the principal and the applicant certifying completion of their obligations under the articling agreement;

(iv) a completed questionnaire;

(v) written consent for the release of relevant information to the Society;

(b) [rescinded]

(c) an errors and omissions insurance application or exemption form;

(d) the following fees:

(i) the call and admission fees specified in Schedule 1;

(ii) the prorated practice fee specified in Schedule 2;

(iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-25;

(e) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.

(2) An application under this Rule may be made at any time.

(3) If an articled student fails to meet the requirements of this Rule, including the delivery of all documents specified, the Executive Director must summarily

(a) reject the application for call and admission, and

(b) terminate the student's enrolment.

(4) When the Credentials Committee has initiated a review under Rule 5-13 of a hearing panel's decision to enrol an articled student, the articled student is not eligible for call and admission until the review board has issued a final decision on the review or the review is withdrawn by the Credentials Committee.

[(2) amended 11/1999; (4) added 05/2002; (1) amended 03/2003, 06/2012; (4) amended 09/2012, effective 01/2013]

Law school faculty

2-48.1 (1) A full-time lecturer in a faculty of law of a university in Canada who has the academic qualifications required under Rule 2-27 may apply for call and admission without completing the admission program.

(2) On an application under this Rule, the Credentials Committee may approve the application subject to the condition specified in subrule (3).

(3) A lawyer called and admitted under this Rule who ceases to be a full-time lecturer in a faculty of law of a university in Canada must complete the admission program unless the Credentials Committee otherwise orders.

(4) The Benchers may require a lawyer who fails to comply with subrule (3) to resign from the Society.

[added 11/2009]

Transfer from another Canadian jurisdiction

2-49 (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:

(a) an application for call and admission on transfer in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;

(b) a certificate of character;

(c) a certificate of standing from each body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;

(d) an errors and omissions insurance application or exemption form;

(e) proof of academic qualification as required of applicants for enrolment under Rule 2-27(4);

(f) the following fees:

(i) the application fee and call and admission fees specified in Schedule 1;

(ii) the prorated practice fee specified in Schedule 2;

(iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-25;

(iv) [rescinded]

(g) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.

(2) An applicant under this Rule must not be called and admitted unless the Executive Director is satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

(3) Unless Rule 2-49.2 applies, an applicant under this Rule must pass an examination on jurisdiction-specific substantive law, practice and procedure set by the Executive Director.

(4) An applicant who does not satisfy the Executive Director that he or she has an adequate knowledge of the English language must complete satisfactorily the training required by the Credentials Committee.

(5) An applicant required to write an examination under this Rule or Rule 2-57 must pass the required examination within 12 months after the Executive Director's decision to permit the applicant to write the examination.

(6) At least 30 days before writing the first examination, an applicant who is required to write an examination under this Rule or Rule 2-57 must pay the fee specified for the examination in Schedule 1.

(7) An applicant who fails the transfer or qualification examination

(a) is entitled to a formal re-read of the examination on application to the Executive Director in writing within 30 days of notification of his or her failure,

(b) may re-write the examination

(i) at any time, provided he or she has not failed the examination before, or

(ii) after a period of one year from the date of the failure if he or she has previously failed the examination, or

(c) may be permitted to write the examination for a third or subsequent time at any time despite subparagraph (b)(ii) on application to the Credentials Committee in writing stating

(i) compassionate grounds, supported by medical or other evidence, or

(ii) other grounds based on the applicant's past performance.

[(2) amended 11/1999; (2) and (3) amended effective 07/2003; (2), (3), (5) and (6) amended 06/2006; (1) amended 12/2011; (1) amended effective 01/2013]

In-house counsel

2-49.1 (1) An applicant under Rule 2-49 may apply to the Credentials Committee for call and admission as in-house counsel.

(2) On an application under this Rule, the Credentials Committee may exempt an applicant from the requirements to write and pass the transfer examination or the qualification examination or complete the requirement under Rule 2-49.2(3).

(3) A lawyer who is called and admitted as in-house counsel must practise law in British Columbia only on behalf of the lawyer's employer or one of its subsidiaries or affiliates.

(4) On application of a lawyer called and admitted as in-house counsel, the Credentials Committee may relieve the lawyer of the restriction under subrule (3), on the lawyer

(a) writing and passing the required examination under Rule 2-49, or

(b) completing the requirements under Rule 2-49.2(3), if the lawyer

(i) has practised law full-time in British Columbia for 2 years, or the equivalent in part-time practice, immediately preceding the application,

(ii) is entitled to practise law in the jurisdiction of a reciprocating governing body of which the applicant is a member, or

(iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body that is now a reciprocating governing body, of which the applicant was a member.

[added 11/1999; (2) and (3) amended, (4) added 07/2004]

Transfer under National Mobility Agreement and Territorial Mobility Agreement

2-49.2 (1) This Rule applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a reciprocating governing body of which the applicant is a member.

(2) An applicant under this Rule must fulfil all of the requirements in Rule 2-49 for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examination.

(2) An applicant for reinstatement may apply for the following status on reinstatement:

(a) practising lawyer, only if the applicant has met the conditions for practising law under Rule 2-57;

(b) non-practising member on compliance with Rule 2-3;

(c) retired member if the lawyer is qualified under Rule 2-4(1) and on compliance with Rule 2-4(2) and (3).

(2.1) On an application under subrule (2)(c), the Credentials Committee may waive payment of all or part of the application fee on any conditions that the Committee considers appropriate.

(3) On reinstatement, an applicant under subrule (2)(a) may be issued a practising certificate on payment of the following:

(a) the prorated practice fee specified in Schedule 2;

(b) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-25;

(c) [rescinded]

(d) any surcharge for which the lawyer is liable under Rule 3-26(2).

(4) On reinstatement, an applicant under subrule (2)(b) or (c) may be issued a non-practising or retired member certificate on payment of the appropriate prorated fee specified in Schedule 3.

(5) Subject to subrule (5.1), the Executive Director must consider an application for reinstatement of a former lawyer and may conduct or authorize any person to conduct an investigation concerning the application.

(5.1) The Executive Director must not consider the application of a former lawyer for reinstatement unless the former lawyer has

(a) submitted all trust reports required under Rules 3-72 and 3-78(1),

(b) [rescinded]

(c) paid all assessments accrued under Rule 3-74 before and after the former lawyer ceased to be a member of the Society unless the Discipline Committee orders the assessments need not be paid under Rule 3-74(3), and

(d) paid all costs of trust reports ordered under Rule 3-74.1(6).

(6) If an applicant for reinstatement is a disbarred lawyer, the Executive Director must refer the application to the Credentials Committee.

(7) On any application for reinstatement to which subrules (5.1) and (6) do not apply, the Executive Director may

(a) reinstate the applicant without conditions or limitations, or

(b) refer the application to the Credentials Committee for consideration.

(8) Subject to subrule (9), when an application for reinstatement is referred to the Credentials Committee under subrule (7), the Committee may

(a) reinstate the applicant without conditions or limitations,

(b) reinstate the applicant with conditions or limitations on the practice of the applicant if the applicant consents in writing to those conditions or limitations, or

(c) order a hearing.

(9) The Credentials Committee must order a hearing in the following circumstances:

(a) section 19(3) of the Act requires that a hearing be ordered;

(b) the Committee cannot reach another disposition of the matter under subrule (8);

(c) the Committee resolves by simple majority to order a hearing.

(10) An applicant for reinstatement must give written notice of the application to those persons that the Executive Director may direct, and the persons notified may appear in person or by counsel at the hearing and be heard on the application.

(11) If a disbarred lawyer is reinstated after a hearing, the Executive Director must publish and circulate to the profession a summary of the circumstances and the panel's reasons for the reinstatement.

[(5) and (7) amended, (5.1) added effective 08/2003; (5.1) amended 12/2003; (2.1) added 07/2004; (5.1) amended 02/2006; (2) amended 06/2006; (1) and (2.1) amended 12/2011; (3) amended 06/2012]

Subsequent application for reinstatement

2-53 A person whose application for reinstatement is rejected under section 22(3) of the Act may not make a new application for reinstatement until the earlier of the following:

(a) 2 years after the date on which the application was rejected;

(b) the date set by the panel when the application was rejected or by the review board on a review under Part 5.

[amended 09/2012, effective 01/2013]

Reinstatement of former judge or master

2-54 (1) Subject to subrules (2) and (3) a reinstated lawyer who was a judge or a master must restrict his or her practice of law as follows:

(a) a former judge of a federally appointed court in British Columbia, the Supreme Court of Canada or the Federal Court of Canada must not appear as counsel in any court in British Columbia without first obtaining the approval of the Credentials Committee;

(b) a former judge of the Provincial Court of British Columbia must not appear as counsel in that Court for 3 years after ceasing to be a judge;

(c) a former master of the Supreme Court of British Columbia must not appear as counsel before a master, a registrar, a district registrar or a deputy district registrar of the Supreme Court of British Columbia for 3 years after ceasing to be a master.

Law Society counsel

2-63 The Executive Director must appoint an employee of the Society or retain another lawyer to represent the Society when

(a) a hearing is ordered under this Division,

(a.1) a review is initiated under section 47 of the Act,

(b) a person appeals a decision to the Court of Appeal under section 48 of the Act, or

(c) the Society is a respondent in any other action involving an application relating to sections 19 to 22 of the Act or this Division.

[amended 09/2012, effective 01/2013]

Pre-hearing conference

2-63.1 (1) The President may order a pre-hearing conference at any time before a hearing ordered under this Division commences, at the request of the applicant or counsel for the Society, or on the President's own initiative.

(2) When a conference has been ordered under subrule (1), the President must

(a) set the date, time and place of the conference, and

(b) designate a Bencher to preside at the conference.

(3) Counsel for the Society, and the applicant or applicant's counsel or both, must be present at the conference.

(4) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present under subrule (3).

(5) The conference must consider

(a) the possibility of agreement on facts in order to facilitate the hearing,

(b) the discovery and production of documents,

(c) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public, or that exhibits and other evidence be excluded from public access,

(d) setting a date for the hearing,

(e) any application by counsel for the Society to withhold the identity or locating particulars of a witness, and

(f) any other matters that may aid in the disposition of the application.

(6) The Bencher presiding at a pre-hearing conference may

(a) adjourn the conference to a specified date, time and place,

(b) order discovery and production of documents,

(c) set a date for the hearing, and

(d) allow or dismiss an application under subrule (5)(f).

[added 02/04]

Appointment of panel

2-64 When a hearing is ordered under this Division, the President must appoint a panel in accordance with Rule 5-2.

Adjournment of hearing

2-65 (1) Before a hearing commences, the applicant or counsel for the Society may request that the hearing be adjourned by delivering to the Executive Director a notice in writing that sets out the reasons for the request.

(2) The Executive Director must promptly notify the following of a request under subrule (1) and the reasons for it:

(a) the party not making the request;

(b) a person given written notice of the application under Rule 2-52(10);

(c) the President;

(d) anyone else who, in the Executive Director's opinion, should be notified.

(3) Before a hearing commences, the President must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.

(4) The President may designate another Bencher to make a determination under subrule (3).

(5) After a hearing has commenced, the chair of the panel may adjourn the hearing, with or without conditions, to a specified date, time and place.

[(2) amended 10/07]

Attendance at the hearing

2-66 Unless the chair of the panel otherwise orders, the applicant must personally attend the entire hearing.

Onus and burden of proof

2-67 (1) At a hearing under this Division, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19(1) of the Act and this Division.

(2) A panel must reject an application for enrolment if it considers that the applicant's qualifications referred to in Rule 2-27(4) are deficient.

Procedure

2-68 (1) Following completion of the evidence, the panel must invite the applicant and counsel for the Society to make submissions on the issues to be decided by the panel.

(2) If the circumstances of the applicant have changed so as to make the outcome of the hearing moot, the panel may do one of the following after hearing submissions on behalf of the Society and the applicant:

(a) adjourn the hearing generally;

(b) reject the application;

(c) commence or continue with the hearing.

(3) After submissions under subrule (1), the panel must determine the facts and decide whether to

(a) grant the application

(b) grant the application subject to conditions or limitations that the panel considers appropriate, or

(c) reject the application.

(4) The panel must prepare written reasons for its findings.

(5) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (4) to the applicant and counsel for the Society.

[(3) to (5) added 07/2007]

Inactive applications

2-68.1 (1) When the Credentials Committee has ordered a hearing under this Division and the applicant has taken no steps to bring the application to a hearing for one year, the application is deemed abandoned.

(2) When an application is abandoned under this Rule, Law Society counsel may apply for an order that some or all of the funds paid under Rule 2-62 as security for costs be retained by the Society.

(3) An application under subrule (2) is made by notifying the following:

(a) the applicant;

(b) the Executive Director.

(4) On an application under subrule (3), the President may order that some or all of the funds deposited as security for costs be retained by the Society, and the remainder, if any, be refunded to the applicant.

(5) The President may designate another Bencher to make a determination under subrule (4).

[added 01/2012]

Variation or removal of conditions or limitations

2-69 (1) A lawyer or articled student on whom conditions or limitations have been imposed by a panel under this Division may apply to the President to have them varied or removed.

(2) The President must refer an application under subrule (1) to the same panel that conducted the hearing or to the Credentials Committee, as the President considers appropriate.

Publication of credentials decision

2-69.1 (1) Subject to Rule 2-69.2, the Executive Director may publish and circulate to the profession a summary of the circumstances and of any decision of a hearing panel on an application under this Division and the reasons given for the decision.

(2) When a publication is allowed under subrule (1), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision, or

(b) all or part of the report of the hearing panel.

(3) When the Executive Director publishes a document under this Rule by means of the Society's website, the Executive Director must remove the publication from the part of the website for current decisions and may relocate it to an archive part of the website when 6 months have elapsed from the decision of the hearing panel.

(4) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[added 02/2004]

Anonymous publication

2-69.2 (1) Except as required or allowed under this Rule, a publication under Rule 2-69.1 must identify the applicant.

(2) If the application that is the subject of the hearing is rejected, the publication must not identify the applicant unless the applicant consents in writing.

(3) The panel may order that publication not identify the applicant if

(a) the application is approved without conditions or limitations on the practice or articles of the applicant, and

(b) publication will cause grievous harm to the applicant or another identifiable individual that outweighs the interest of the public and the Society in full publication.

(4) An applicant may apply to the panel for an order under subrule (3)

(a) in writing or on the record in the course of a hearing, and

(b) no later than 7 days after the written hearing report is issued or oral reasons delivered.

(5) The Executive Director must not publish under Rule 2-69.1 until

(a) 7 days after a hearing report is issued or oral reasons given, unless the applicant waives the right to apply under subrule (4), or

(b) an application under subrule (4) is resolved or withdrawn.

(6) If a panel orders that an applicant's identity not be disclosed under subrule (3), the panel must state in writing the specific reasons for that decision.

(7) If, on a review of a panel decision rejecting an application, the review board approves the application, the applicant may apply to the review board under subrule (4), and subrules (3) to (6) apply as if the review board were a panel.

[added 02/2004; (3) amended 07/2012; (7) amended 09/2012, effective 01/2013]

(2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.

(3) A practising lawyer who complies with Rule 3-18.3(3)(a) by December 31 but fails to comply with Rule 3-18.3(3)(b) by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does both of the following before April 1 of the following year:

(a) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);

(b) pays the late reporting fee specified in Schedule 1.

[added 07/2008; (1) amended, (3) added 12/2011]

Failure to complete professional development

3-18.5 (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-18.3 by April 1 of the following year is suspended until all required professional development is completed and completion is certified to the Executive Director as required by Rule 3-18.3.

(2) When there are special circumstances, the Practice Standards Committee may, in its discretion, order that

(a) the lawyer not be suspended under subrule (1), or

(b) a suspension under subrule (1) be delayed for a specified period of time.

(3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:

(a) the date on which the suspension will take effect;

(b) the reasons for the suspension;

(c) the means by which the lawyer may apply to the Practice Standards Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

[added 07/2008]

Division 3 – Specialization and Restricted Practice

Advertising

3-19 A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Code of Professional Conduct*, section 4.3.

Family law mediation

3-20 (1) A lawyer may act as a family law mediator only if the lawyer has

(a) engaged in the full-time practice of law for at least 3 years or the equivalent in part-time practice, and

(b) completed a course of study in family law mediation approved by the Practice Standards Committee.

(2) The Practice Standards Committee may allow a lawyer with special qualifications or experience to act as a family law mediator without qualifying under subrule (1)(a).

(3) A lawyer who has been accredited by the Society as a family law mediator may so state in any marketing activity.

[(3) added 05/2009]

Division 4 – Professional Liability Insurance

Compulsory liability insurance

3-21 (1) A lawyer must maintain professional liability insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay the insurance fee under Rule 3-22, unless the lawyer is exempt or ineligible under Rule 3-25.

(2) A lawyer is bound by and must comply with the terms and conditions of professional liability insurance maintained under subrule (1).

(3) As soon as practicable, the Executive Director must notify all governing bodies of any change to compulsory professional liability insurance under this Division that affects the limits of liability or scope of coverage.

[(3) added 11/1999; (2) amended 07/2012]

Annual insurance fee

3-22 (1) The insurance fee to be paid under section 23(1)(c) of the Act is calculated as follows:

(a) the appropriate base assessment as specified in Schedule 1; plus

(b) any surcharge for which the lawyer is liable under Rule 3-26; minus

(c) any credit to which the lawyer is entitled under Rule 3-24.

(2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance fee specified in Schedule 1.

(3) Subject to subrule (6), a lawyer is not eligible to pay the part-time insurance fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.

(4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time insurance fee specified in Schedule 1.

(4) For the purpose of subrule (3)(b)(iii), the status of a claim is its stage of progress through the claims handling process, including, but not limited to the following:

(a) opened;

(b) under investigation;

(c) the stage of any litigation commenced;

(d) closed.

(5) In the case of a claim under Part B of the policy of professional liability insurance, the Executive Director may do any of the following:

(a) publish the name of a lawyer or former lawyer and the circumstances of a claim when a panel or the Benchers acting under Part 4 or 5 or a court has found that the lawyer or former lawyer has misappropriated property of a claimant;

(b) disclose the name of a lawyer or former lawyer and the circumstances of a claim when

(i) the lawyer's misappropriation is known to the public,

(ii) the claim arises from part of a scheme considered by a panel or the Benchers or a court in the written reasons for a decision, or

(iii) the facts are not disputed or are admitted by the lawyer or former lawyer;

(c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.

(6) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[added 07/2006]

Division 5 – [rescinded effective 01/2013]

3-28 to **3-39** [rescinded effective 01/2013]

3-40 [rescinded 03/2005]

3-41 and **3-42** [rescinded effective 01/2013]

Division 6 – Financial Responsibility

Application

3-43 This Division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

(a) a non-practising member;

(b) a retired member;

(c) an articled student;

(d) a practitioner of foreign law;

(e) a visiting lawyer permitted to practise law in British Columbia under Rules 2-10.2 to 2-12;

(f) a law corporation.

[amended 11/1999]

Standards of financial responsibility

3-43.1 Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:

(a) a lawyer against whom a monetary judgment is entered and who does not satisfy the judgment within 7 days after the date of entry;

(b) an insolvent lawyer;

(c) a lawyer who does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b);

(d) a lawyer who does not deliver a trust report as required under Rule 3-72 or 3-75(4);

(e) a lawyer who does not report and pay the trust administration fee to the Society as required under Rule 2-72.2.

[added 09/2006]

Failure to satisfy judgment

3-44 (1) A lawyer against whom a monetary judgment is entered and who does not satisfy the judgment within 7 days after the date of entry must immediately notify the Executive Director in writing of

(a) the circumstances of the judgment, including whether the judgment creditor is a client or former client of the lawyer, and

(b) his or her proposal for satisfying the judgment.

(2) Monetary judgments referred to in subrule (1) include

(a) an order nisi of foreclosure,

(b) any certificate, final order or other requirement under a statute that requires payment of money to any party,

(c) a garnishment order under the *Income Tax Act* (Canada) if a lawyer is the tax debtor, and

(d) a judgment of any kind against an MDP in which the lawyer has an ownership interest.

(3) Subrule (1) applies whether or not any party has commenced an appeal from the judgment.

(4) If a lawyer fails to deliver a proposal under subrule (1)(b) that is adequate in the discretion of the Executive Director, the Executive Director may refer the matter to the Discipline Committee or the Chair of the Discipline Committee.

[(2) amended 12/2003; (4) added 05/2005; (1) amended 09/2006; (4) amended 07/2007; (2) amended 12/2009, effective 07/2010]

Insolvent lawyer

3-45 (1) [rescinded]

(2) A lawyer who becomes an insolvent lawyer must immediately

(a) notify the Executive Director in writing that he or she has become an insolvent lawyer, and

(b) deliver to the Executive Director

(i) a copy of all material filed in the proceedings referred to in the definition,

(ii) all information about any debts to a creditor who is or has been a client of the lawyer,

(iii) all information about any debt that arose from the lawyer's practice of law, and

(iv) any other information, including copies of any books, records, accounts and other documents and information in his or her possession that are relevant to the proceedings referred to in the definition that the Executive Director may request.

(3) An insolvent lawyer who becomes bankrupt has conducted himself or herself in a manner unbecoming a lawyer in either of the following circumstances:

(a) the lawyer's wilful neglect of creditors, financial irresponsibility or personal extravagance contributed to the bankruptcy;

(b) the lawyer fails or refuses to take reasonable steps to obtain a discharge from the bankruptcy within a reasonable time.

(4) An insolvent lawyer must not operate a trust account except with

(a) the permission of the Executive Director, and

(b) a second signatory who is a practising lawyer, not an insolvent lawyer and approved by the Executive Director.

[The next page is page 79; Rule 3-45 continues on page 79]

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(12) Following completion of the evidence, the panel must

(a) invite the respondent and discipline counsel to make submissions on the issues to be decided by the panel,

(b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and

(c) make an order if required under subrule (13) or (14).

(13) If an order has been made under Rule 4-17(1) with notice to the respondent, the panel must, if cause is shown on the balance of probabilities by or on behalf of the respondent, rescind or vary the order.

(14) If an order has been made under Rule 4-17(1) without notice to the respondent, the panel must rescind or vary the order, unless discipline counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

[(6) amended, (6.1) added 09/1999; (1), (4), (12) and (14) amended, (3) rescinded 10/2006; (11) amended 04/2009; heading amended 09/2012]

Appointment of discipline counsel

4-20 The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when

(a) a direction to issue a citation is made under Rule 4-13,

(a.1) a review is initiated under section 47 of the Act,

(b) a person appeals a decision to the Court of Appeal under section 48 of the Act, or

(c) the Society is a respondent in any other action involving the investigation of a complaint against a lawyer or the discipline of a lawyer.

[amended 09/2012, effective 01/2013]

Conditional admissions

4-21 (1) A respondent may, at least 14 days before the date set for a hearing under this Part, tender to the Discipline Committee a conditional admission of a discipline violation.

(2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).

(3) The Discipline Committee may, in its discretion,

(a) accept the conditional admission,

(b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or

(c) reject the conditional admission.

(4) If the Discipline Committee accepts a conditional admission tendered under this Rule,

(a) those parts of the citation to which the conditional admission applies are resolved,

(b) the Executive Director must

(i) record the respondent's admission on the respondent's professional conduct record, and

(ii) notify the respondent and the complainant of the disposition, and

(c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.

(5) A respondent who undertakes under this Rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15(3) of the Act.

[(3) and (4) amended, (5) added 02/2003; (4) amended 05/2003; 10/2007]

Consent to disciplinary action

4-22 (1) A respondent may, at least 14 days before the date set for a hearing under this Part, tender to the Discipline Committee a conditional admission of a discipline violation and the respondent's consent to a specified disciplinary action.

(2) The chair of the Discipline Committee may waive the 14-day limit in subrule (1).

(3) The Discipline Committee may, in its discretion, accept or reject a conditional admission and proposed disciplinary action.

(4) If the Discipline Committee accepts the conditional admission and proposed disciplinary action, it must instruct discipline counsel to recommend its acceptance to the hearing panel.

(5) If the panel accepts the respondent's proposed disciplinary action it must

(a) instruct the Executive Director to record the lawyer's admission on the lawyer's professional conduct record,

(b) impose the disciplinary action that the respondent has proposed, and

(c) notify the respondent and the complainant of the disposition.

[(5) amended 10/2007]

Rejection of admissions

4-23 (1) A conditional admission tendered under Rule 4-21 must not be used against the respondent in any proceeding under this Part or Part 5 unless the admission is accepted by the Discipline Committee.

(2) A conditional admission tendered under Rule 4-22 must not be used against the respondent in any proceeding under this Part unless

(a) the admission is accepted by the Discipline Committee, and

(b) the admission and proposed disciplinary action is accepted by a hearing panel.

(3) If a panel rejects the respondent's proposed disciplinary action tendered in accordance with Rule 4-22, it must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation.

(6) When the Executive Director provides information or documentation to a governing body under subrule (4) or (5), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

[added effective 07/2003; (4) amended, (6) added 10/2003]

Public notice of suspension or disbarment

4-37 (1) When a person is suspended under this Part or Part 5 or becomes a disbarred lawyer, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

(a) publication of a notice in

(i) the *British Columbia Gazette*,

(ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-20, in which the person maintained a law office, and

(iii) the Society website;

(b) notifying the following:

(i) the Registrar of the Supreme Court;

(ii) the Public Guardian and Trustee.

(2) When a person is suspended under Part 2 or 3, the Executive Director may take any of the steps referred to in subrule (1).

(3) A lawyer who is suspended under this Part or Part 5 must inform all clients who reasonably expect the lawyer to attend to their affairs during the period of the suspension and clients or prospective clients who inquire about the availability of the lawyer's services during the suspension period of the following:

(a) the period the lawyer will not be practising;

(b) the arrangements the lawyer has put in place to protect the clients' interests during the time the lawyer will not be practising;

(c) the fact that the lawyer is not practising during the relevant period because of the suspension.

(4) A panel that suspends a lawyer may relieve the lawyer of any of the obligations set out in subrule (3) if the panel is satisfied that it is consistent with the public interest and imposing the obligation would be unreasonable in the circumstances.

[amended 03/1999; amended effective February 28, 2000; amended 10/2006; (1) amended, (2) added 04/2007; (3) and (4) added 11/2007]

Publication of disciplinary action

4-38 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken

(a) at the conclusion of the facts and determination portion of a hearing on a citation,

(a.1) at the conclusion of the disciplinary action portion of a hearing on a citation,

(a.2) at the conclusion of a hearing on a citation under Rule 4-24.1.

(b) at the conclusion of a hearing before a review board under section 47 of the Act,

(c) at the conclusion of an appeal to the Court of Appeal under section 48 of the Act,

(d) when an order is made or refused under Rule 4-19(13) or (14),

(e) when a lawyer or former lawyer is suspended or disbarred under Rule 4-40, or

(f) when an admission is accepted under Rule 4-21 or 4-22.

(2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than

(a) a decision not to accept a conditional admission under Rule 4-21 or 4-22, or

(b) any decision under Rule 4-17(1).

(3) When a publication is required under subrule (1), the Executive Director may also publish generally

(a) a summary of the circumstances of the decision, reasons and action taken,

(b) all or part of the report of the hearing panel or review board, or

(c) in the case of a conditional admission that is accepted under Rule 4-21, all or part of an agreed statement of facts.

(4) When the Executive Director publishes a document under this Rule by means of the Society's website, the Executive Director must remove the publication from the part of the website for current decisions and may relocate it to an archive part of the website when

(a) 6 months have elapsed from the decision of the hearing panel, and

(b) all aspects of the disciplinary action imposed have been completed.

(5) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[heading and (1) amended, (2) and (3) rescinded and replaced, (4) and (5) added 05/2003; (1) and (2) amended 10/2006; (1) amended 07/2007; (1) and (2) amended 12/2009; (1) and (4) amended 10/2010; (1) and (3) amended 09/2012, effective 01/2013]

Anonymous publication

4-38.1 (1) Except as allowed under this Rule, a publication under Rule 4-38 must identify the respondent.

(2) If all allegations in the citation are dismissed by a panel, the publication must not identify the respondent unless the respondent consents in writing.

(3) On an application under subrule (4) or on its own motion, the panel may order that publication not identify the respondent if

(a) the panel has imposed a disciplinary action that does not include a suspension or disbarment, and

(b) publication of the identity of the respondent could reasonably be expected to identify an individual, other than the respondent, and that individual would suffer serious prejudice as a result.

PART 5 – HEARINGS AND APPEALS

Application of Part

5-1 This Part applies to

(a) a hearing on an application for enrolment, call and admission or reinstatement,

(b) a hearing on a citation, and

(c) unless the context indicates otherwise, a review by a review board of a hearing decision.

[amended 05/2002; amended 09/2012, effective 01/2013]

Hearing panels

5-2 (1) A panel must consist of an odd number of persons but, subject to subrule (2), must not consist of one person.

(2) A panel may consist of one Bencher who is a lawyer when

(a) no facts are in dispute,

(b) the hearing is to consider a conditional admission under Rule 4-22,

(b.1) the hearing proceeds under Rule 4-24.1,

(b.2) the hearing is to consider a preliminary question under Rule 4-26.1,

(c) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time, or

(d) one or more of the original panel members cannot complete a hearing that has begun.

(3) A panel must be chaired by a Bencher who is a lawyer.

(4) Panel members must be permanent residents of British Columbia over the age of majority.

(5) The chair of a panel who ceases to be a Bencher may, with the consent of the President, continue to chair the panel, and the panel may complete any hearing or hearings already scheduled or begun.

(6) [rescinded]

(7) Two or more panels may proceed with separate matters at the same time.

(8) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel or terminate an appointment to a panel.

(9) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

[(1), (2) and (4) amended 09/2005; (2) amended 07/2007; (2), (4) and (5) amended, (6) rescinded 10/2010; (8) amended 09/2012, effective 01/2013]

Disqualification

5-3 (1) The following persons must not participate in a panel hearing a citation:

(a) a person who participated in the decision that authorized issuing the citation;

(b) one of the Benchers who made an order under Rules 3-7.1 to 3-7.3 or Rule 4-17 regarding the respondent;

(c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension or practice condition or limitation in respect of the respondent.

(2) A person who participated in the decision to order the hearing on an application for enrolment as an articled student, for call and admission or for reinstatement must not participate in the panel on that hearing.

(3) [rescinded]

(4) A person must not appear as counsel for any party for three years after

(a) serving as a Bencher, or

(b) the completion of a hearing in which the person was a member of the panel.

[(4) added 02/2002; (1) amended 09/2012; (3) rescinded 09/2012, effective 01/2013]

Compelling witnesses and production of documents

5-4 (1) In this Rule, **"respondent"** includes a shareholder, director, officer or employee of a respondent law corporation.

(2) A panel may

(a) compel the applicant or respondent to give evidence under oath, and

(b) at any time before or during a hearing, order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised by the application or in the citation.

(3) A person who is the subject of an order under subrule (2)(a) may be cross-examined by counsel representing the Society.

(4) A party to a proceeding under the Act and these Rules may prepare and serve a summons requiring a person to attend an oral or electronic hearing to give evidence in the form prescribed in Schedule 5.

[heading amended 10/2010; rule amended, (1) and (3) added 07/2011; (4) added 07/2012, effective 01/2013]

Procedure

5-5 (1) Subject to the Act and these Rules, the panel may determine the practice and procedure to be followed at a hearing.

(2) Before a court reporter begins reporting the proceedings of a hearing, the chair of the panel must ensure that the reporter takes an oath or makes a solemn affirmation to faithfully and accurately report and transcribe the proceedings.

(3) The applicant, respondent or counsel for the Society may call witnesses to testify.

(4) All witnesses, including a respondent ordered to give evidence under section 41(2)(a) of the Act,

(a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and

(b) are subject to cross-examination.

(5) The panel may make inquiries of a witness as it considers desirable.

(6) The hearing panel may accept any of the following as evidence:

(a) an agreed statement of facts;

(a.1) oral evidence;

(a.2) affidavit evidence;

(b) evidence tendered in a form agreed to by the respondent or applicant and Society counsel;

(c) any other evidence it considers appropriate.

[(6) amended 04/2009; (2) and (6) amended 10/2010]

Public hearing

5-6 (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public in any circumstances it considers appropriate.

(2) On application by anyone, or on its own motion, the panel or review board may make the following orders to protect the interests of any person:

(a) an order that specific information not be disclosed;

(b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).

(3) Despite the exclusion of the public under subrule (1) in a hearing on a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.

(4) Except as required under Rule 5-7, when a hearing is proceeding, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel or review board, which the panel or review board in its discretion may refuse or grant, with or without conditions or restrictions.

(5) When a panel or review board makes an order under this Rule or declines to make an order on an application, the panel or review board must give written reasons for its decision.

[(2) amended, (4) added 05/2003; (5) added 06/2012; (1), (2), (4) and (5) amended effective 01/2013]

Transcript and exhibits

5-7 (1) All proceedings at a hearing must be recorded by a court reporter and any person may obtain, at his or her expense, a transcript pertaining to any part of the hearing that he or she was entitled to attend.

(2) Subject to solicitor-client privilege or an order under Rule 5-6(2), any person may obtain, at his or her own expense, a copy of an exhibit entered in evidence when a hearing is open to the public.

[heading amended, (2) added 05/2003]

Decision

5-8 (1) A decision of a hearing panel is made by majority vote.

(2) On request, the Executive Director must disclose a panel's written reasons for its decision, subject to the protection of solicitor and client privilege and confidentiality.

(3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

[(2) and (3) amended 05/2003]

Costs of hearings

5-9 (0.1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1, and may set a time for payment.

(0.2) A review board may order that an applicant or respondent pay the costs of a review under section 47 of the Act, and may set a time for payment.

(1) [rescinded]

(1.1) Subject to subrule (1.2), the panel or review board must have regard to the tariff of costs in Schedule 4 to these Rules in calculating the costs payable by a respondent or the Society in respect of a hearing on a citation or a review of a decision in a hearing on a citation.

(1.2) If, in the judgment of the panel or review board, it is reasonable and appropriate for the Society or a respondent to recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4, the panel or review board may so order.

(1.3) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.

(1.4) In the tariff in Schedule 4,

(a) one day of hearing includes a day in which the hearing or proceeding takes 2 and one-half hours or more, and

(b) for a day that includes less than 2 and one-half hours of hearing, one-half the number of units applies.

(2) [rescinded]

(3) If no adverse finding is made against the applicant, the panel or review board has the discretion to direct that the applicant be awarded costs.

(3.1) If the citation is dismissed or rescinded after the hearing has begun, the panel or review board has the discretion to direct that the respondent be awarded costs in accordance with subrules (1.1) to (1.4).

(4) Costs deposited under Rule 2-62 must be applied to costs ordered under this Rule.

(5) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this Rule or the Act are paid in full.

(6) As an exception to subrule (5), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this Rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

[(0.1) added 03/1999; (3) amended 06/1999; (0.2) added, (1) and (3) amended 09/1999; (7) rescinded 06/2007; (3) amended 10/2010; (1.1) to (1.4) and (3.1) added, (1) and (2) rescinded, (3) amended 04/2012; (0.2), (1.1), (1.2), (3) and (3.1) amended 09/2012, effective 01/2013]

Extension of time or variation of condition

5-10 (1) An applicant or respondent may apply for

(a) an extension of time

(i) to pay a fine or the amount owing under Rule 5-9, or

(ii) to fulfil a condition imposed under section 21, 22, 27, 32 or 38 of the Act or accepted under section 19 of the Act, or

(b) a variation of a condition referred to in paragraph (a)(ii).

(2) An application under subrule (1) must be made to the President who must refer the application to one of the following, as may in the President's discretion appear appropriate:

(a) the same panel that made the order;

(b) a new panel;

(c) the Discipline Committee;

(d) the Credentials Committee.

(3) The panel or Committee that hears an application under subrule (1) must

(a) dismiss it,

(b) extend to a specified date the time for payment, or

(c) vary the conditions imposed, or extend to a specified date the fulfilment of the conditions.

(4) An applicant or respondent must do the following by the date set by the hearing panel or review board or extended under this Rule:

(a) pay in full a fine or the amount owing under Rule 5-9;

(b) fulfil a practice condition as established under section 21, 22, 27, 32 or 38 of the Act or accepted under section 19 of the Act, or varied under subrule (3)(c).

(5) If, on December 31, an applicant or respondent is in breach of subrule (4), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

[(1) and (4) amended, (5) added 06/2007; (1) and (4) amended 09/2007; (4) amended 09/2012, effective 01/2013; heading amended 12/2012]

Recovery of money owed to the Society

5-11 (1) A lawyer or former lawyer who is liable to pay money under the following provisions must pay to the Society the full amount owing by the date set by the Discipline Committee:

(a) costs of an audit or investigation ordered under Part 2 or Rule 4-43;

(b) a fee or assessment under Rule 3-18.4 or 3-74.

(2) A lawyer who has not paid the full amount owing under subrule (1) by the date set or extended by the Discipline Committee is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

[heading and (1) amended 12/2003; (1) amended 07/2008, 06/2012]

Reviews and appeals

Review by review board

5-12 (1) In Rules 5-12 to 5-21, **"review"** means a review of a hearing panel decision by a review board under section 47 of the Act.

(2) Subject to the Act and these Rules, a review board may determine the practice and procedure to be followed at a review.

(3) Delivery of documents to a respondent or applicant under Rules 5-12 to 5-21 may be effected by delivery to counsel representing the respondent or the applicant.

(4) If the review board finds that there are special circumstances and hears evidence under section 47(4) of the Act, the Rules that apply to the hearing of evidence before a hearing panel apply.

[amended, (3) added 05/2002; (1) and (3) amended 07/2007, 10/2007; heading, (1) and (2) amended 09/2012, effective 01/2013; (4) added effective 01/2013]

Review boards

5-12.1 (1) A review board must consist of

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a Bencher who is a lawyer.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a Bencher may, with the consent of the President, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

(5) Two or more review boards may proceed with separate matters at the same time.

(6) The President may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.

(7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

[added 09/2012, effective 01/2013]

Disqualification

5-12.2 The following must not participate in a review board reviewing the decision of a hearing panel:

(a) a member of the hearing panel;

(b) a person who was disqualified under Rule 5-3 from participation in the hearing panel.

[added 09/2012, effective 01/2013]

Initiating a review

5-13 (1) Within 30 days after the decision of the panel in a credentials hearing, the applicant may deliver a notice of review under Rule 5-15 to the Executive Director and counsel representing the Society.

(1.1) [rescinded]

(2) Within 30 days after a decision of the panel in a credentials hearing, the Credentials Committee may, by resolution, refer the decision for a review on the record by a review board.

(2.1) When a review is initiated under subrule (2), counsel representing the Society must promptly deliver a notice of review under Rule 5-15 to the Executive Director and the applicant.

(2.2) Within 30 days after the decision of the panel under Rule 4-35, the respondent may deliver a notice of review under Rule 5-15 to the Executive Director and discipline counsel.

(3) Within 30 days after a decision of the panel in a hearing on a citation, the Discipline Committee may, by resolution, refer the decision for a review on the record by a review board.

(4) When a review is initiated under subrule (3), discipline counsel must promptly deliver a notice of review under Rule 5-15 to the Executive Director and the respondent.

(5) Within 30 days after the order of the Practice Standards Committee under Rule 3-18(1), the lawyer concerned may deliver a notice of review under Rule 5-15 to the Executive Director.

[(2.1) added, (4) and (5) amended 09/1999; rescinded and replaced 05/2002; (1) amended 07/2007; (1) to (4) amended, (1.1) added 10/2007; (1.1) amended 10/2010;(1) to (4) amended, (1.1) rescinded, (2.1) and (2.2) added 12/2010; (2) and (3) amended, (5) added 09/2012, effective 01/2013]

Stay of order pending review

5-14 (1) When a review is initiated under Rule 5-13, the order of the panel or the Practice Standards Committee with respect to costs is stayed.

(2) When the Credentials Committee initiates a review under Rule 5-13(2), an order of the hearing panel to call and admit or reinstate the applicant is stayed.

(3) A person or Committee initiating a review under Rule 5-13 may apply to the President for a stay of any order not referred to in subrule (1) or (2).

(4) On an application under subrule (3), the President may designate another Bencher to make a determination.

[(5) amended 06/1999; (2.1) added, (4) and (5) amended 09/1999; rescinded and replaced 05/2002; (1) amended 09/2012, effective 01/2013]

Notice of review

5-15 A notice of review must contain the following in summary form:

(a) a clear indication of the decision to be reviewed by the review board;

(b) the nature of the order sought;

(c) the issues to be considered on the review.

[added 05/2002; amended 10/2007; amended 09/2012, effective 01/2013]

Record of credentials hearing

5-16 (1) Unless counsel for the applicant and for the Society agree otherwise, the record for a review of a credentials decision consists of the following:

(a) the application;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(c.1) any written arguments or submissions received by the panel;

(d) the panel's written reasons for any decision;

(e) the notice of review under Rule 5-15.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

[added 05/2002; (1) amended 07/2007; 10/2007; 07/2012; (2) amended 09/2012, effective 01/2013]

Record of discipline hearing

5-17 (1) Unless counsel for the respondent and for the Society agree otherwise, the record for a review of a discipline decision consists of the following:

(a) the citation;

(b) a transcript of the proceedings before the panel;

(c) exhibits admitted in evidence by the panel;

(c.1) any written arguments or submissions received by the panel;

(d) the panel's written reasons for any decision;

(e) the notice of review under Rule 5-15.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

[added 05/2002; (1) amended 07/2007; 10/2007; 07/2012; (2) amended 09/2012, effective 01/2013]

Record of an order for costs by the Practice Standards Committee

5-17.1 (1) Unless counsel for the lawyer and for the Society agree otherwise, the record for a review of an order for costs under Rule 3-18 consists of the following:

(a) the order;

(b) all correspondence between the Society and the lawyer relating to the assessment and ordering of costs;

(c) the Committee's written reasons for any decision on costs;

(d) the notice of review under Rule 5-15.

(2) If, in the opinion of the review board, there are special circumstances, the review board may admit evidence that is not part of the record.

[added 09/2012, effective 01/2013]

Pre-review conference

5-18 (1) The President may order a pre-review conference at any time before the hearing on a review, at the request of the applicant, respondent or counsel for the Law Society, or on the President's own initiative.

(2) When a conference has been ordered under subrule (1), the President must

(a) set the date, time and place of the conference, and

(b) designate a Bencher to preside at the conference.

(3) Counsel representing the Society must be present at the conference.

(3.1) The Executive Director must notify the applicant or the respondent, as the case may be, or his or her counsel, of the time and place of the conference.

(3.2) The applicant or the respondent, as the case may be, may attend the conference, in person, through counsel or both.

(3.3) If the applicant or the respondent, as the case may be, fails to attend the conference, the Bencher presiding may proceed with the conference in the absence of that party and may make any order under this Rule, if the Bencher is satisfied that the party had been notified of the conference.

(4) If the Bencher presiding at a pre-review conference considers it appropriate, he or she may allow any person to participate in the conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this Rule.

(5) The conference may consider

(a) the simplification of the issues,

(b) any issues concerning the record to be reviewed,

(c) the possibility of agreement on any issues in the review,

(d) the exchange of written arguments or outlines of argument and of authorities,

(d.1) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public or that exhibits and other evidence be excluded from public access,

(e) setting a date for the review, and

(f) any other matters that may aid in the disposition of the review.

(6) The Bencher presiding at a pre-review conference may

(a) adjourn the conference generally or to a specified date, time and place,

(b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange,

(c) set a date for the review, and

(d) make any order or allow or dismiss any application consistent with this Rule.

[added 05/2002; (5) amended 05/2003; (3) amended 04/2009; (3) to (6) amended, (3.1) to (3.3) added 10/2010]

Adjournment

5-19 (1) Before a hearing on a review commences, the applicant, respondent or counsel for the Society may apply for an order that the hearing be adjourned by delivering to the Executive Director and to the other party written notice setting out the grounds for the application.

(2) The Executive Director must promptly notify the President of an application under subrule (1).

(3) Before the hearing begins, the President must decide whether to grant the adjournment, with or without conditions, and must notify the parties accordingly.

(4) The President may

(a) designate another Bencher to make a determination under subrule (3), or

(b) refer the application to a pre-review conference.

(5) After a hearing has commenced, the chair of the review board may adjourn the hearing, with or without conditions, to a specified date, time and place.

[added 05/2002; (1) to (3) and (5) amended 10/2007; (1) to (4) amended 10/2010 ; (5) amended 09/2012, effective 01/2013]

Decision on review

5-20 (1) The decision of the review board on a review is made by majority vote.

(2) The review board must prepare written reasons for its decision on a review.

(3) [rescinded]

(4) When the review board gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

(5) The Executive Director must promptly deliver a copy of the review board's written reasons prepared under subrule (2) to the applicant or respondent and counsel for the Society.

(6) On request, the Executive Director must disclose the review board's written reasons for its decision.

[added 07/2007; (1) to (5) amended, (3) rescinded, (6) added 09/2012, effective 01/2013]

Inactive reviews

5-21 (1) If no steps have been taken for 6 months or more, a party may apply for an order dismissing a review by delivering to the Executive Director a notice in writing that sets out the basis for the application.

(2) The Executive Director must promptly notify the following of an application under subrule (1):

(a) the party not making the application;

(b) the President;

(c) anyone else who, in the Executive Director's opinion, should be notified.

(3) If it is in the public interest and not unfair to the respondent or applicant, the President may dismiss the review.

(4) The President may designate another Bencher to make a determination under subrule (3).

[added 10/2007]

Appeal to Court of Appeal

5-22 (1) The Discipline Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of a decision of a panel or review board in a discipline hearing.

(2) The Credentials Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of a decision of a panel or review board in a credentials hearing.

(3) The Practice Standards Committee may, by resolution, instruct the Executive Director to commence an appeal under section 48 of a decision of a review board with respect to an order for costs under Rule 3-18.

[added 09/2012, effective 01/2013]

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PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Corporate name

9-1 A corporation must not use a name

(a) under which another corporation holds a valid law corporation permit under this Division,

(b) that so nearly resembles the name of another corporation holding a valid law corporation permit under this Division that it is likely to confuse or mislead the public, or

(c) contrary to the *Code of Professional Conduct*, section 4.2.

[amended 09/2004, effective January 17, 2005; amended 11/2009; amended effective 01/2013]

Corporate name certificate

9-2 (1) A lawyer may apply to the Executive Director, in a form approved by the Executive Committee, for a certificate that the Society does not object to the incorporation of a company as a law corporation under a proposed name.

(2) On receipt of an application under subrule (1), the Executive Director must either

(a) issue a certificate to the lawyer if the Executive Director is satisfied that the intended name complies with Rule 9-1, or

(b) reject the application.

(3) The Executive Director must notify the lawyer in writing of his or her decision under subrule (2).

Review of Executive Director's decision

9-3 (1) A lawyer whose application is rejected under Rule 9-2 may apply in writing to the Ethics Committee for a review.

(2) After considering any submissions received from the lawyer and from the Executive Director, the Ethics Committee must

(a) direct the Executive Director to issue a certificate to the lawyer if it is satisfied that the intended name complies with Rule 9-1, or

(b) reject the application.

(3) The Ethics Committee must notify the lawyer and the Executive Director in writing of its decision under this Rule.

Law corporation permit

9-4 A company may apply to the Executive Director for a law corporation permit by delivering to the Executive Director

(a) a completed permit application in a form approved by the Executive Committee,

(b) a true copy of the certificate of incorporation of the company and any other certificates that reflect a change in name or status, and

(c) the fee specified in Schedule 1.

[(2) rescinded 09/1999]

Issuance of permit

9-5 (1) Subject to section 82 of the Act, the Executive Director must issue a law corporation permit to a company that has complied with the Act and these Rules.

(2) Subject to subrule (3), a law corporation permit issued under subrule (1) is valid from the effective date shown on it.

(3) A permit issued to a law corporation ceases to be valid if

(a) it is revoked under Rule 9-11,

(b) a practising lawyer who is a voting shareholder in the law corporation dies or otherwise ceases to be a practising lawyer, and no provision is made in the articles of the law corporation for the immediate and automatic disposition of that person's shares in that case,

(c) another law corporation that is a voting shareholder in the law corporation ceases to be registered as a company under the *Business Corporations Act* or ceases to hold a valid law corporation permit and no provision is made in the articles of the law corporation for the immediate and automatic disposition of the other law corporation's shares in that case, or

(d) it is surrendered by the corporation to the Executive Director.

[(3) amended 05/2004; (2) amended 12/2004]

Change of corporate name

9-6 (1) A law corporation may apply to the Executive Director in a form approved by the Executive Committee for a certificate that the Society does not object to a specific change of name for the law corporation.

(2) Rules 9-1 to 9-3 apply to an application under subrule (1), with the necessary changes and so far as they are applicable.

(3) A law corporation must not apply for a change of name under the *Business Corporations Act* unless it has been granted the certificate referred to in subrule (1).

(4) The Executive Director must issue a new permit to a law corporation that has

(a) obtained the certificate referred to in subrule (1),

Division 2 – Limited Liability Partnerships

Definition and application

9-12 In this Division "person applying" means a person applying or proposing to apply on behalf of a partnership for registration as a limited liability partnership or extraprovincial limited liability partnership under Part 6 of the *Partnership Act*.

[added 09/2004, effective January 17, 2005]

Practice through a limited liability partnership

9-13 A lawyer or law corporation is authorized to carry on the practice of law through a limited liability partnership, provided that the lawyer or law corporation and the limited liability partnership comply with the provisions of the *Partnership Act* and meet the prerequisites of this Division.

[added 09/2004, effective January 17, 2005; amended 04/2005]

LLP name

9-14 A limited liability partnership must not use a name contrary to the *Code of Professional Conduct*, section 4.2.

[added 09/2004, effective January 17, 2005; amended 11/2009; amended effective 01/2013]

Notice of application for registration

9-15 (1) Before an application to register a partnership or an extraprovincial limited liability partnership as a limited liability partnership is made on behalf of the partnership under Part 6 of the *Partnership Act*, the person applying must

(a) submit to the Executive Director a copy of the registration statement that he or she intends to file under that Act,

(b) pay the LLP registration fee specified in Schedule 1, and

(c) receive a statement of approval of LLP registration from the Executive Director.

(2) On receipt of a submission under subrule (1), the Executive Director must issue a statement of approval of LLP registration if the Executive Director is satisfied that

(a) the intended name complies with Rule 9-14, and

(b) membership in the partnership complies with subrules (2.1) and (2.2).

(2.1) Each partner in an LLP must be

(a) a member of the Society,

(b) a member of a recognized legal profession in another jurisdiction,

(c) a law corporation holding a valid permit under this Part or the equivalent in the jurisdiction in which it provides legal services, or

(d) a non-lawyer participating in the partnership in another Canadian jurisdiction as permitted in that jurisdiction.

(2.11) Despite subrule (2.1), an LLP that is an MDP in which a lawyer has permission to practise law under Rules 2-23.1 to 2-23.12 may include non-lawyer members as permitted by those Rules.

(2.2) At least one partner in an LLP must be a member of the Society or a law corporation holding a valid permit under this Part.

(2.3) If the Executive Director is not satisfied of the matters referred to in subrule (2), the Executive Director must decline to issue a statement of approval.

(3) The Executive Director must notify the person applying in writing of the Executive Director's decision under subrule (2).

[added 09/2004, effective January 17, 2005; (2) amended, (2.1) to (2.3) added 04/2005; (2.1) amended 07/2006; (2.11) added 12/2009, effective 07/2010]

Review of Executive Director's decision

9-16 (1) If the Executive Director declines to issue a statement of approval under Rule 9-15, the person applying may apply in writing to the Ethics Committee for a review.

(2) After considering any submissions received from the partners and from the Executive Director, the Ethics Committee must

(a) direct the Executive Director to issue a statement of approval if it is satisfied that

(i) the intended name complies with Rule 9-14, and

(ii) Rule 9-15(2.1) has been satisfied, or

(b) reject the application.

(3) The Ethics Committee must notify the person applying and the Executive Director in writing of its decision under this Rule.

[added 09/2004, effective January 17, 2005; (2) amended 07/2006]

Disclosure of LLP status

9-17 (1) When a firm provides legal services to the public through a limited liability partnership, all advertising for the firm must indicate that the limited liability partnership provides the legal services.

(2) When a firm is continued as a limited liability partnership, the firm must promptly take reasonable steps to notify in writing each existing client of the firm of the change and the effect of a limited liability partnership in respect of the liability of partners.

(3) The notice required under subrule (2) must include a statement to the following effect, prominently placed:

> The partners in a limited liability partnership are not personally liable for the negligent acts or omissions of another partner or an employee unless the partner knew of the negligent act or omission and did not take reasonable steps to prevent it. Each partner is personally liable for his or her own actions, and the partnership continues to be liable for the negligence of its partners, associates and employees. Accordingly, there is no reduction or limitation on the liability of the partnership.

SCHEDULE 1 – 2013 LAW SOCIETY FEES AND ASSESSMENTS

		$
A. Annual fee		
1.	Practice fee (Rule 2-70)	1,893.06
2.	[rescinded 06/2012]	
3.	Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-22(1)):	
	(a) member in full-time practice	1,750.00
	(b) member in part-time practice	875.00
4.	Liability insurance surcharge (Rule 3-26(2))	1,000.00
5.	Late payment fee for practising members (Rule 2-72(3))	100.00
6.	Retired member fee (Rule 2-4(3))	75.00
7.	Late payment fee for retired members (Rule 2-72(4))	nil
8.	Non-practising member fee (Rule 2-3(2))	300.00
9.	Late payment fee for non-practising members (Rule 2-72(5))	25.00
10.	Administration fee (Rule 2-75(3))	50.00
A.1 Trust administration fee		
1.	Each client matter subject to fee (Rule 2-72.2(1))	10.00
B. Special assessments		
C. Articled student fees		
1.	Application fee for enrolment in admission program (Rules 2-27(3)(e) and 2-33(1)(b))	250.00
2.	Application fee for temporary articles (Rule 2-42(1)(c))	125.00
3.	Application fee for temporary articles (legal clinic) (Rule 2-42(1)(c))	25.00
4.	Training course registration (Rule 2-44(4)(a))	2,250.00
5.	Remedial work (Rule 2-45(7)):	
	(a) for each piece of work	50.00
	(b) for repeating the training course	3,500.00
D. Transfer fees		
1.	Application fee for transfer from another Canadian province or territory – investigation fee (Rule 2-49(1)(f))	1,125.00
2.	Transfer or qualification examination (Rules 2-49(6) and 2-58(2))	300.00
E. Call and admission fees		
1.	After enrolment in admission program (Rule 2-48(1)(d))	200.00
2.	After transfer from another Canadian province or territory (Rule 2-49(1)(f))	200.00

F. Reinstatement fees		$
1.	Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b))	600.00
1.1	Application fee following 3 years or more as a former member (Rule 2-52(1)(b))	500.00
2.	Application fee in all other cases (Rule 2-52(1)(b))	415.00
G. Change of status fees		
1.	Application fee to become retired member (Rule 2-4(2)(b))	30.00
2.	Application fee to become non-practising member (Rule 2-3(1)(b))	60.00
3.	Application fee for non-practising or retired member applying for practising certificate (Rule 2-56(b))	60.00
H. Inter-jurisdictional practice fees		
1.	Application fee (Rule 2-11(2)(b))	500.00
2.	Renewal of permit (Rule 2-11(2)(b))	100.00
I. Corporation and limited liability partnership fees		
1.	Permit fee for law corporation (Rule 9-4(c))	300.00
2.	New permit on change of name fee (Rule 9-6(4)(c))	75.00
3.	LLP registration fee (Rule 9-15(1))	300.00
J. Practitioners of foreign law		
1.	Application fee for practitioners of foreign law (Rule 2-18(1)(b))	600.00
2.	Permit renewal fee for practitioners of foreign law (Rules 2-18(1)(b) and 2-22(2)(c))	125.00
3.	Late payment fee (Rule 2-22(6))	100.00
K. Late fees		
1.	Trust report late filing fee (Rule 3-74(2))	200.00
2.	Professional development late completion fee (Rule 3-18.4(1)(c))	500.00
2.	Professional development late reporting fee (Rule 3-18.4(3)(b))	200.00
L. Multi-disciplinary practice fees		
1.	Application fee (Rule 2-23.3(1))	300.00
2.	Application fee per proposed non-lawyer member of MDP (Rules 2-23.3(1) and 2-23.5(2))	1,125.00

Note: The harmonized sales tax or the federal goods and services tax applies to Law Society fees and assessments.

SCHEDULE 2 – 2013 PRORATED FEES AND ASSESSMENTS FOR PRACTISING MEMBERS

	Law Society fee	Liability insurance assessment	
		Payable prior to call	Payable by June 30
Full-time insurance			
January	1,893.06	875.00	875.00
February	1,733,02	729.17	875.00
March	1,577.55	583.33	875.00
April	1,328.91	437.50	875.00
May	1,183.17	291.67	875.00
June	1,033.12	145.83	875.00
July	887.38	875.00	0.00
August	737.34	729.17	0.00
September	591.58	583.33	0.00
October	441.54	437.50	0.00
November	295.80	291.67	0.00
December	145.74	145.83	0.00
Part-time insurance			
January	1,893.06	437.50	437.50
February	1,733,02	364.58	437.50
March	1,577.55	291.67	437.50
April	1,328.91	218.75	437.50
May	1,183.17	145.83	437.50
June	1,033.12	100.00	437.50
July	887.38	437.50	0.00
August	737.34	364.58	0.00
September	591.58	291.67	0.00
October	441.54	218.75	0.00
November	295.80	145.83	0.00
December	145.74	100.00	0.00

Note: The harmonized sales tax or the federal goods and services tax applies to Law Society fees and assessments.

SCHEDULE 3 – 2013 PRORATED FEES FOR NON-PRACTISING AND RETIRED MEMBERS

	Non-practising members fee	Retired members fee
January	300.00	75.00
February	275.00	68.75
March	250.00	62.50
April	225.00	56.25
May	200.00	50.00
June	175.00	43.75
July	150.00	37.50
August	125.00	31.25
September	100.00	25.00
October	75.00	18.75
November	50.00	12.50
December	25.00	6.25

Note: The harmonized sales tax or the federal goods and services tax applies to Law Society fees and assessments.

SCHEDULE 5 – FORM OF SUMMONS

[Rule 5-4(4)]

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING CONCERNING

_____

(As the case may be: a member of the Law Society of British Columbia/ an articled student/an applicant for enrolment/call and admission/reinstatement)

SUMMONS

TO: _____

TAKE NOTICE that you are required to attend to testify as a witness at the time, date and place set out below.

Time: _____

Date: _____

Place: The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9 (or other venue)

Dated at _____, _____
Party/Counsel

this ____ day of _____, 20___

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Code of Professional Conduct for British Columbia

(the BC Code)

Published under the authority of the Benchers for the guidance of BC lawyers

Published by the Law Society of British Columbia
Effective date: January 1, 2013

Table of Contents

Appendix D – Conflicts Arising as a Result of Transfer Between Law Firms

Appendix E – Supervision of Paralegals

Chapter 1 – Interpretation and Definitions

1.1 Definitions

1.1-1 In this Code, unless the context indicates otherwise,

"associate" includes:

(a) a lawyer who practises law in a law firm through an employment or other contractual relationship; and

(b) a non-lawyer employee of a multi-discipline practice providing services that support or supplement the practice of law;

"client" means a person who:

(a) consults a lawyer and on whose behalf the lawyer renders or agrees to render legal services; or

(b) having consulted the lawyer, reasonably concludes that the lawyer has agreed to render legal services on his or her behalf.

Commentary

[1] A lawyer-client relationship may be established without formality.

[2] When an individual consults a lawyer in a representative capacity, the client is the corporation, partnership, organization, or other legal entity that the individual is representing;

[3] For greater clarity, a client does not include a near-client, such as an affiliated entity, director, shareholder, employee or family member, unless there is objective evidence to demonstrate that such an individual had a reasonable expectation that a lawyer-client relationship would be established.

"**conflict of interest"** means the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person.

"consent" means fully informed and voluntary consent after disclosure

(a) in writing, provided that, if more than one person consents, each signs the same or a separate document recording the consent; or

(b) orally, provided that each person consenting receives a separate written communication recording the consent as soon as practicable;

"disclosure" means full and fair disclosure of all information relevant to a person's decision (including, where applicable, those matters referred to in commentary in this Code), in sufficient time for the person to make a genuine and independent decision, and the taking of reasonable steps to ensure understanding of the matters disclosed;

"interprovincial law firm" means a law firm that carries on the practice of law in more than one province or territory of Canada;

"law firm" includes one or more lawyers practising:

(a) in a sole proprietorship;

(b) in a partnership;

(c) as a clinic under the [provincial or territorial Act governing legal aid];

(d) in a government, a Crown corporation or any other public body; or

(e) in a corporation or other organization;

"lawyer" means a member of the Society and includes a law student enrolled in the Law Society Admission Program;

"Society" means the Law Society of British Columbia;

"tribunal" includes a court, board, arbitrator, mediator, administrative agency or other body that resolves disputes, regardless of its function or the informality of its procedures;

Chapter 2 – Standards of the Legal Profession

2.1 Canons of Legal Ethics

These Canons of Legal Ethics in rules 2.1-1 to 2.1-5 are a general guide and not a denial of the existence of other duties equally imperative and of other rights, though not specifically mentioned. A version of these Canons has formed part of the *Code of Professional Conduct* of the Law Society of British Columbia since 1921. They are included here both for their historical value and for their statement of general principles that underlie the remainder of the rules in this Code.

A lawyer is a minister of justice, an officer of the courts, a client's advocate and a member of an ancient, honourable and learned profession.

In these several capacities, it is a lawyer's duty to promote the interests of the state, serve the cause of justice, maintain the authority and dignity of the courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

2.1-1 To the state

(a) A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to act in any way contrary to the law.

(b) When engaged as a Crown prosecutor, a lawyer's primary duty is not to seek a conviction but to see that justice is done; to that end the lawyer should make timely disclosure to the defence of all facts and known witnesses whether tending to show guilt or innocence, or that would affect the punishment of the accused.

(c) A lawyer should accept without hesitation, and if need be without fee or reward, the cause of any person assigned to the lawyer by the court, and exert every effort on behalf of that person.

2.1-2 To courts and tribunals

(a) A lawyer's conduct should at all times be characterized by candour and fairness. The lawyer should maintain toward a court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of clients, at the same time discharging professional duties to clients resolutely and with self-respecting independence.

(b) Judges, not being free to defend themselves, are entitled to receive the support of the legal profession against unjust criticism and complaint. Whenever there is proper ground for serious complaint against a judicial officer, it is proper for a lawyer to submit the grievance to the appropriate authorities.

(c) A lawyer should not attempt to deceive a court or tribunal by offering false evidence or by misstating facts or law and should not, either in argument to the judge or in address to the jury, assert a personal belief in an accused's guilt or innocence, in the justice or merits of the client's cause or in the evidence tendered before the court.

(d) A lawyer should never seek privately to influence a court or tribunal, directly or indirectly, in the lawyer's or a client's favour, nor should the lawyer attempt to curry favour with juries by fawning, flattery or pretended solicitude for their personal comfort.

2.1-3 To the client

(a) A lawyer should obtain sufficient knowledge of the relevant facts and give adequate consideration to the applicable law before advising a client, and give an open and undisguised opinion of the merits and probable results of the client's cause. The lawyer should be wary of bold and confident assurances to the client, especially where the lawyer's employment may depend on such assurances. The lawyer should bear in mind that seldom are all the law and facts on the client's side, and that *audi alteram partem* (hear the other side) is a safe rule to follow.

(b) A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the controversy, if any, that might influence whether the client selects or continues to retain the lawyer. A lawyer must not act where there is a conflict of interests between the lawyer and a client or between clients.

(c) Whenever the dispute will admit of fair settlement the client should be advised to avoid or to end the litigation.

(d) A lawyer should treat adverse witnesses, litigants and counsel with fairness and courtesy, refraining from all offensive personalities. The lawyer must not allow a client's personal feelings and prejudices to detract from the lawyer's professional duties. At the same time, the lawyer should represent the client's interests resolutely and without fear of judicial disfavour or public unpopularity.

(e) A lawyer should endeavour by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence that is authorized by law. The lawyer must, however, steadfastly bear in mind that this great trust is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less demand, for any client, violation of law or any manner of fraud or chicanery. No client has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer's own sense of honour and propriety.

(f) It is a lawyer's right to undertake the defence of a person accused of crime, regardless of the lawyer's own personal opinion as to the guilt of the accused. Having undertaken such defence, the lawyer is bound to present, by all fair and honourable means and in a manner consistent with the client's instructions, every defence that the law of the land permits, to the end that no person will be convicted except by due process of law.

(g) A lawyer should not, except as by law expressly sanctioned, acquire by purchase or otherwise any interest in the subject-matter of the litigation being conducted by the lawyer. A lawyer should scrupulously guard, and not divulge or use for personal benefit, a client's secrets or confidences. Having once acted for a client in a matter, a lawyer must not act against the client in the same or any related matter.

(h) A lawyer must record, and should report promptly to a client the receipt of any moneys or other trust property. The lawyer must use the client's moneys and trust property only as authorized by the client, and not commingle it with that of the lawyer.

(i) A lawyer is entitled to reasonable compensation for services rendered, but should avoid charges that are unreasonably high or low. The client's ability to pay cannot justify a charge in excess of the value of the service, though it may require a reduction or waiver of the fee.

(j) A lawyer should try to avoid controversies with clients regarding compensation so far as is compatible with self-respect and with the right to receive reasonable recompense for services. A lawyer should always bear in mind that the profession is a branch of the administration of justice and not a mere money-making business.

(k) A lawyer who appears as an advocate should not submit the lawyer's own affidavit to or testify before a court or tribunal except as to purely formal or uncontroverted matters, such as the attestation or custody of a document, unless it is necessary in the interests of justice. If the lawyer is a necessary witness with respect to other matters, the conduct of the case should be entrusted to other counsel.

2.1-4 To other lawyers

(a) A lawyer's conduct toward other lawyers should be characterized by courtesy and good faith. Any ill feeling that may exist between clients or lawyers, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. Personal remarks or references between lawyers should be scrupulously avoided, as should quarrels between lawyers that cause delay and promote unseemly wrangling.

(b) A lawyer should neither give nor request an undertaking that cannot be fulfilled and should fulfil every undertaking given. A lawyer should never communicate upon or attempt to negotiate or compromise a matter directly with any party who the lawyer knows is represented therein by another lawyer, except through or with the consent of that other lawyer.

(c) A lawyer should avoid all sharp practice and should take no paltry advantage when an opponent has made a slip or overlooked some technical matter. A lawyer should accede to reasonable requests that do not prejudice the rights of the client or the interests of justice.

2.1-5 To oneself

(a) A lawyer should assist in maintaining the honour and integrity of the legal profession, should expose before the proper tribunals without fear or favour, unprofessional or dishonest conduct by any other lawyer and should accept without hesitation a retainer against any lawyer who is alleged to have wronged the client.

(b) It is the duty of every lawyer to guard the Bar against the admission to the profession of any candidate whose moral character or education renders that person unfit for admission.

(c) A lawyer should make legal services available to the public in an efficient and convenient manner that will command respect and confidence. A lawyer's best advertisement is the establishment of a well-merited reputation for competence and trustworthiness.

(d) No client is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the state or disrespect for judicial office, or the corruption of any persons exercising a public or private trust, or deception or betrayal of the public.

(e) A lawyer should recognize that the oaths taken upon admission to the Bar are solemn undertakings to be strictly observed.

(f) All lawyers should bear in mind that they can maintain the high traditions of the profession by steadfastly adhering to the time-honoured virtues of probity, integrity, honesty and dignity.

2.2 Integrity

2.2-1 A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

Commentary

[1] Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If a client has any doubt about his or her lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed, regardless of how competent the lawyer may be.

[2] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[3] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[4] Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

2.2-2 A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.

Commentary

[1] Collectively, lawyers are encouraged to enhance the profession through activities such as:

(a) sharing knowledge and experience with colleagues and students informally in day-to-day practice as well as through contribution to professional journals and publications, support of law school projects and participation in panel discussions, legal education seminars, bar admission courses and university lectures;

(b) participating in legal aid and community legal services programs or providing legal services on a pro bono basis;

(c) filling elected and volunteer positions with the Society;

(d) acting as directors, officers and members of local, provincial, national and international bar associations and their various committees and sections; and

(e) acting as directors, officers and members of non-profit or charitable organizations.

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Chapter 3 – Relationship to Clients

3.1 Competence

Definitions

3.1-1 In this section

"competent lawyer" means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client and the nature and terms of the lawyer's engagement, including:

(a) knowing general legal principles and procedures and the substantive law and procedure for the areas of law in which the lawyer practises;

(b) investigating facts, identifying issues, ascertaining client objectives, considering possible options and developing and advising the client on appropriate courses of action;

(c) implementing as each matter requires, the chosen course of action through the application of appropriate skills, including:

(i) legal research;

(ii) analysis;

(iii) application of the law to the relevant facts;

(iv) writing and drafting;

(v) negotiation;

(vi) alternative dispute resolution;

(vii) advocacy; and

(viii) problem solving;

(d) communicating at all relevant stages of a matter in a timely and effective manner;

(e) performing all functions conscientiously, diligently and in a timely and cost-effective manner;

(f) applying intellectual capacity, judgment and deliberation to all functions;

(g) complying in letter and spirit with all rules pertaining to the appropriate professional conduct of lawyers;

(h) recognizing limitations in one's ability to handle a matter or some aspect of it and taking steps accordingly to ensure the client is appropriately served;

(i) managing one's practice effectively;

(j) pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and

(k) otherwise adapting to changing professional requirements, standards, techniques and practices.

Competence

3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

Commentary

[1] As a member of the legal profession, a lawyer is held out as knowledgeable, skilled and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with all legal matters to be undertaken on the client's behalf.

[2] Competence is founded upon both ethical and legal principles. This rule addresses the ethical principles. Competence involves more than an understanding of legal principles: it involves an adequate knowledge of the practice and procedures by which such principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas of law in which the lawyer practises.

[2.1] For a discussion of the correct procedure in swearing an affidavit or taking a solemn declaration, see Appendix A to this Code.

[3] In deciding whether the lawyer has employed the requisite degree of knowledge and skill in a particular matter, relevant factors will include:

(a) the complexity and specialized nature of the matter;

(b) the lawyer's general experience;

(c) the lawyer's training and experience in the field;

(d) the preparation and study the lawyer is able to give the matter; and

(e) whether it is appropriate or feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

[4] In some circumstances, expertise in a particular field of law may be required; often the necessary degree of proficiency will be that of the general practitioner.

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[6] A lawyer must recognize a task for which the lawyer lacks competence and the disservice that would be done to the client by undertaking that task. If consulted about such a task, the lawyer should:

(a) decline to act;

(b) obtain the client's instructions to retain, consult or collaborate with a lawyer who is competent for that task; or

(c) obtain the client's consent for the lawyer to become competent without undue delay, risk or expense to the client.

[7] The lawyer should also recognize that competence for a particular task may require seeking advice from or collaborating with experts in scientific, accounting or other non-legal fields, and, when it is appropriate, the lawyer should not hesitate to seek the client's instructions to consult experts.

[8] A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.

[9] A lawyer should be wary of bold and over-confident assurances to the client, especially when the lawyer's employment may depend upon advising in a particular way.

[10] In addition to opinions on legal questions, a lawyer may be asked for or may be expected to give advice on non-legal matters such as the business, economic, policy or social complications involved in the question or the course the client should choose. In many instances the lawyer's experience will be such that the lawyer's views on non-legal matters will be of real benefit to the client. The lawyer who expresses views on such matters should, if necessary and to the extent necessary, point out any lack of experience or other qualification in the particular field and should clearly distinguish legal advice from other advice.

[11] In a multi-discipline practice, a lawyer must ensure that the client is made aware that the legal advice from the lawyer may be supplemented by advice or services from a non-lawyer. Advice or services from non-lawyer members of the firm unrelated to the retainer for legal services must be provided independently of and outside the scope of the legal services retainer and from a location separate from the premises of the multi-discipline practice. The provision of non-legal advice or services unrelated to the legal services retainer will also be subject to the constraints outlined in the Rules governing multi-discipline practices.

[12] The requirement of conscientious, diligent and efficient service means that a lawyer should make every effort to provide timely service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

[13] The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect.

[14] A lawyer who is incompetent does the client a disservice, brings discredit to the profession and may bring the administration of justice into disrepute. In addition to damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's partners and associates.

[15] Incompetence, negligence and mistakes – This rule does not require a standard of perfection. An error or omission, even though it might be actionable for damages in negligence or contract, will not necessarily constitute a failure to maintain the standard of professional competence described by the rule. However, evidence of gross neglect in a particular matter or a pattern of neglect or mistakes in different matters may be evidence of such a failure, regardless of tort liability. While damages may be awarded for negligence, incompetence can give rise to the additional sanction of disciplinary action.

3.2 Quality of service

3.2-1 A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

Commentary

[1] This rule should be read and applied in conjunction with section 3.1 regarding competence.

[2] A lawyer has a duty to provide a quality of service at least equal to that which lawyers generally expect of a competent lawyer in a like situation. An ordinarily or otherwise competent lawyer may still occasionally fail to provide an adequate quality of service.

[3] A lawyer has a duty to communicate effectively with the client. What is effective will vary depending on the nature of the retainer, the needs and sophistication of the client and the need for the client to make fully informed decisions and provide instructions.

[4] A lawyer should ensure that matters are attended to within a reasonable time frame. If the lawyer can reasonably foresee undue delay in providing advice or services, the lawyer has a duty to so inform the client, so that the client can make an informed choice about his or her options, such as whether to retain new counsel.

Examples of expected practices

[5] The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

(a) keeping a client reasonably informed;

(b) answering reasonable requests from a client for information;

(c) responding to a client's telephone calls;

(d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;

(e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;

(f) answering, within a reasonable time, any communication that requires a reply;

(g) ensuring that work is done in a timely manner so that its value to the client is maintained;

(h) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;

(i) maintaining office staff, facilities and equipment adequate to the lawyer's practice;

(j) informing a client of a proposal of settlement, and explaining the proposal properly;

(k) providing a client with complete and accurate relevant information about a matter;

(l) making a prompt and complete report when the work is finished or, if a final report cannot be made, providing an interim report when one might reasonably be expected;

(m) avoidance of self-induced disability, for example from the use of intoxicants or drugs, that interferes with or prejudices the lawyer's services to the client;

(n) being civil.

[6] A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in prosecuting a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

Honesty and candour

3.2-2 When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

Commentary

[1] A lawyer should disclose to the client all the circumstances of the lawyer's relations to the parties and interest in or connection with the matter, if any that might influence whether the client selects or continues to retain the lawyer.

[2] A lawyer's duty to a client who seeks legal advice is to give the client a competent opinion based on a sufficient knowledge of the relevant facts, an adequate consideration of the applicable law and the lawyer's own experience and expertise. The advice must be open and undisguised and must clearly disclose what the lawyer honestly thinks about the merits and probable results.

[3] Occasionally, a lawyer must be firm with a client. Firmness, without rudeness, is not a violation of the rule. In communicating with the client, the lawyer may disagree with the client's perspective, or may have concerns about the client's position on a matter, and may give advice that will not please the client. This may legitimately require firm and animated discussion with the client.

When the client is an organization

3.2-3 Although a lawyer may receive instructions from an officer, employee, agent or representative, when a lawyer is employed or retained by an organization, including a corporation, the lawyer must act for the organization in exercising his or her duties and in providing professional services.

Commentary

[1] A lawyer acting for an organization should keep in mind that the organization, as such, is the client and that a corporate client has a legal personality distinct from its shareholders, officers, directors and employees. While the organization or corporation acts and gives instructions through its officers, directors, employees, members, agents or representatives, the lawyer should ensure that it is the interests of the organization that are served and protected. Further, given that an organization depends on persons to give instructions, the lawyer should be satisfied that the person giving instructions for the organization is acting within that person's authority.

[2] In addition to acting for the organization, a lawyer may also accept a joint retainer and act for a person associated with the organization. For example, a lawyer may advise an officer of an organization about liability insurance. In such cases the lawyer acting for an organization should be alert to the prospects of conflicts of interests and should comply with the rules about the avoidance of conflicts of interests (section 3.4).

Encouraging compromise or settlement

3.2-4 A lawyer must advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis and must discourage the client from commencing or continuing useless legal proceedings.

Commentary

[1] A lawyer should consider the use of alternative dispute resolution (ADR) when appropriate, inform the client of ADR options and, if so instructed, take steps to pursue those options.

Threatening criminal or regulatory proceedings

3.2-5 A lawyer must not, in an attempt to gain a benefit for a client, threaten, or advise a client to threaten:

(a) to initiate or proceed with a criminal or quasi-criminal charge; or

(b) to make a complaint to a regulatory authority.

Commentary

[1] It is an abuse of the court or regulatory authority's process to threaten to make or advance a complaint in order to secure the satisfaction of a private grievance. Even if a client has a legitimate entitlement to be paid monies, threats to take criminal or quasi-criminal action are not appropriate.

[2] It is not improper, however, to notify the appropriate authority of criminal or quasi-criminal activities while also taking steps through the civil system.

Inducement for withdrawal of criminal or regulatory proceedings

3.2-6 A lawyer must not:

(a) give or offer to give, or advise an accused or any other person to give or offer to give, any valuable consideration to another person in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint, unless the lawyer obtains the consent of the Crown or the regulatory authority to enter into such discussions;

(b) accept or offer to accept, or advise a person to accept or offer to accept, any valuable consideration in exchange for influencing the Crown or a regulatory authority's conduct of a criminal or quasi-criminal charge or a complaint, unless the lawyer obtains the consent of the Crown or regulatory authority to enter such discussions; or

(c) wrongfully influence any person to prevent the Crown or regulatory authority from proceeding with charges or a complaint or to cause the Crown or regulatory authority to withdraw the complaint or stay charges in a criminal or quasi-criminal proceeding.

Commentary

[1] "Regulatory authority" includes professional and other regulatory bodies.

[2] A lawyer for an accused or potential accused must never influence a complainant or potential complainant not to communicate or cooperate with the Crown. However, this rule does not prevent a lawyer for an accused or potential accused from communicating with a complainant or potential complainant to obtain factual information, arrange for restitution or an apology from an accused, or defend or settle any civil matters between the accused and the complainant. When a proposed resolution involves valuable consideration being exchanged in return for influencing the Crown or regulatory authority not to proceed with a charge or to seek a reduced sentence or penalty, the lawyer for the accused must obtain the consent of the Crown or regulatory authority prior to discussing such proposal with the complainant or potential complainant. Similarly, lawyers advising a complainant or potential complainant with respect to any such negotiations can do so only with the consent of the Crown or regulatory authority.

[3] A lawyer cannot provide an assurance that the settlement of a related civil matter will result in the withdrawal of criminal or quasi-criminal charges, absent the consent of the Crown or regulatory authority.

[4] When the complainant or potential complainant is unrepresented, the lawyer should have regard to the rules respecting unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused. If the complainant or potential complainant is vulnerable, the lawyer should take care not to take unfair or improper advantage of the circumstances. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

Dishonesty, fraud by client

3.2-7 When acting for a client, a lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.

Commentary

[1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

[2] A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

[3] Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.

[3.1] The lawyer should also make inquiries of a client who:

(a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter, or

(b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

[3.2] The lawyer should make a record of the results of these inquiries.

[4] A bona fide test case is not necessarily precluded by this rule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case. In all situations, the lawyer should ensure that the client appreciates the consequences of bringing a test case.

Dishonesty, fraud when client an organization

3.2-8 A lawyer who is employed or retained by an organization to act in a matter in which the lawyer knows or ought to know that the organization has acted, is acting or intends to act dishonestly, criminally or fraudulently, must do the following, in addition to his or her obligations under rule 3.2-7:

(a) advise the person from whom the lawyer takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the proposed conduct is, was or would be dishonest, criminal or fraudulent and should be stopped;

(b) if necessary because the person from whom the lawyer takes instructions, the chief legal officer or the chief executive officer refuses to cause the proposed conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct was, is or would be dishonest, criminal or fraudulent and should be stopped; and

(c) if the organization, despite the lawyer's advice, continues with or intends to pursue the proposed wrongful conduct, withdraw from acting in the matter in accordance with section 3.7.

Commentary

[1] The past, present, or proposed misconduct of an organization may have harmful and serious consequences, not only for the organization and its constituency, but also for the public who rely on organizations to provide a variety of goods and services. In particular, the misconduct of publicly traded commercial and financial corporations may have serious consequences for the public at large. This rule addresses some of the professional responsibilities of a lawyer acting for an organization, including a corporation, when he or she learns that the organization has acted, is acting, or proposes to act in a way that is dishonest, criminal or fraudulent. In addition to these rules, the lawyer may need to consider, for example, the rules and commentary about confidentiality (section 3.3).

[2] This rule speaks of conduct that is dishonest, criminal or fraudulent.

[3] Such conduct includes acts of omission. Indeed, often it is the omissions of an organization, such as failing to make required disclosure or to correct inaccurate disclosures that constitute the wrongful conduct to which these rules relate. Conduct likely to result in substantial harm to the organization, as opposed to genuinely trivial misconduct by an organization, invokes these rules.

[4] In considering his or her responsibilities under this section, a lawyer should consider whether it is feasible and appropriate to give any advice in writing.

[5] A lawyer acting for an organization who learns that the organization has acted, is acting, or intends to act in a wrongful manner, may advise the chief executive officer and must advise the chief legal officer of the misconduct. If the wrongful conduct is not abandoned or stopped, the lawyer must report the matter "up the ladder" of responsibility within the organization until the matter is dealt with appropriately. If the organization, despite the lawyer's advice, continues with the wrongful conduct, the lawyer must withdraw from acting in the particular matter in accordance with rule 3.7-1. In some but not all cases, withdrawal means resigning from his or her position or relationship with the organization and not simply withdrawing from acting in the particular matter.

[6] This rule recognizes that lawyers as the legal advisers to organizations are in a central position to encourage organizations to comply with the law and to advise that it is in the organization's and the public's interest that organizations do not violate the law. Lawyers acting for organizations are often in a position to advise the executive officers of the organization, not only about the technicalities of the law, but also about the public relations and public policy concerns that motivated the government or regulator to enact the law. Moreover, lawyers for organizations, particularly in-house counsel, may guide organizations to act in ways that are legal, ethical, reputable and consistent with the organization's responsibilities to its constituents and to the public.

Clients with diminished capacity

3.2-9 When a client's ability to make decisions is impaired because of minority or mental disability, or for some other reason, the lawyer must, as far as reasonably possible, maintain a normal lawyer and client relationship.

Commentary

[1] A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions depends on such factors as age, intelligence, experience and mental and physical health and on the advice, guidance and support of others. A client's ability to make decisions may change, for better or worse, over time. A client may be mentally capable of making some decisions but not others. The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision. Accordingly, when a client is, or comes to be, under a disability that impairs his or her ability to make decisions, the lawyer will have to assess whether the impairment is minor or whether it prevents the client from giving instructions or entering into binding legal relationships.

[2] A lawyer who believes a person to be incapable of giving instructions should decline to act. However, if a lawyer reasonably believes that the person has no other agent or representative and a failure to act could result in imminent and irreparable harm, the lawyer may take action on behalf of the person lacking capacity only to the extent necessary to protect the person until a legal representative can be appointed. A lawyer undertaking to so act has the same duties under these rules to the person lacking capacity as the lawyer would with any client.

[3] If a client's incapacity is discovered or arises after the solicitor-client relationship is established, the lawyer may need to take steps to have a lawfully authorized representative, such as a litigation guardian, appointed or to obtain the assistance of the Office of the Public Trustee to protect the interests of the client. Whether that should be done depends on all relevant circumstances, including the importance and urgency of any matter requiring instruction. In any event, the lawyer has an ethical obligation to ensure that the client's interests are not abandoned. Until the appointment of a legal representative occurs, the lawyer should act to preserve and protect the client's interests.

[4] In some circumstances when there is a legal representative, the lawyer may disagree with the legal representative's assessment of what is in the best interests of the client under a disability. So long as there is no lack of good faith or authority, the judgment of the legal representative should prevail. If a lawyer becomes aware of conduct or intended conduct of the legal representative that is clearly in bad faith or outside that person's authority, and contrary to the best interests of the client with diminished capacity, the lawyer may act to protect those interests. This may require reporting the misconduct to a person or institution such as a family member or the Public Trustee.

[5] When a lawyer takes protective action on behalf of a person or client lacking in capacity, the authority to disclose necessary confidential information may be implied in some circumstances: See Commentary under rule 3.3-1 (Confidentiality) for a discussion of the relevant factors. If the court or other counsel becomes involved, the lawyer should inform them of the nature of the lawyer's relationship with the person lacking capacity.

Restricting future representation

3.2-10 A lawyer must not participate in offering or making an agreement in which a restriction on any lawyer's right to practise is part of the settlement of a client lawsuit or other controversy.

3.3 Confidentiality

Confidential information

3.3-1 A lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship and must not divulge any such information unless:

(a) expressly or impliedly authorized by the client;

(b) required by law or a court to do so;

(c) required to deliver the information to the Law Society, or

(d) otherwise permitted by this rule.

Commentary

[1] A lawyer cannot render effective professional service to a client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client's part, matters disclosed to or discussed with the lawyer will be held in strict confidence.

[2] This rule must be distinguished from the evidentiary rule of lawyer and client privilege, which is also a constitutionally protected right, concerning oral or documentary communications passing between the client and the lawyer. The ethical rule is wider and applies without regard to the nature or source of the information or the fact that others may share the knowledge.

[3] A lawyer owes the duty of confidentiality to every client without exception and whether or not the client is a continuing or casual client. The duty survives the professional relationship and continues indefinitely after the lawyer has ceased to act for the client, whether or not differences have arisen between them.

[4] A lawyer also owes a duty of confidentiality to anyone seeking advice or assistance on a matter invoking a lawyer's professional knowledge, although the lawyer may not render an account or agree to represent that person. A solicitor and client relationship is often established without formality. A lawyer should be cautious in accepting confidential information on an informal or preliminary basis, since possession of the information may prevent the lawyer from subsequently acting for another party in the same or a related matter. (See rule 3.4-1 Conflicts.)

[5] Generally, unless the nature of the matter requires such disclosure, a lawyer should not disclose having been:

(a) retained by a person about a particular matter; or

(b) consulted by a person about a particular matter, whether or not the lawyer-client relationship has been established between them.

[6] A lawyer should take care to avoid disclosure to one client of confidential information concerning or received from another client and should decline employment that might require such disclosure.

[7] Sole practitioners who practise in association with other lawyers in cost-sharing, space-sharing or other arrangements should be mindful of the risk of advertent or inadvertent disclosure of confidential information, even if the lawyers institute systems and procedures that are designed to insulate their respective practices. The issue may be heightened if a lawyer in the association represents a client on the other side of a dispute with the client of another lawyer in the association. Apart from conflict of interest issues such a situation may raise, the risk of such disclosure may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

[8] A lawyer should avoid indiscreet conversations and other communications, even with the lawyer's spouse or family, about a client's affairs and should shun any gossip about such things even though the client is not named or otherwise identified. Similarly, a lawyer should not repeat any gossip or information about the client's business or affairs that is overheard or recounted to the lawyer. Apart altogether from ethical considerations or questions of good taste, indiscreet shoptalk among lawyers, if overheard by third parties able to identify the matter being discussed, could result in prejudice to the client. Moreover, the respect of the listener for lawyers and the legal profession will probably be lessened. Although the rule may not apply to facts that are public knowledge, a lawyer should guard against participating in or commenting on speculation concerning clients' affairs or business.

[9] In some situations, the authority of the client to disclose may be inferred. For example, in court proceedings some disclosure may be necessary in a pleading or other court document. Also, it is implied that a lawyer may, unless the client directs otherwise, disclose the client's affairs to partners and associates in the law firm and, to the extent necessary, to administrative staff and to others whose services are used by the lawyer. But this implied authority to disclose places the lawyer under a duty to impress upon associates, employees, students and other lawyers engaged under contract with the lawyer or with the firm of the lawyer the importance of non-disclosure (both during their employment and afterwards) and requires the lawyer to take reasonable care to prevent their disclosing or using any information that the lawyer is bound to keep in confidence.

[10] The client's authority for the lawyer to disclose confidential information to the extent necessary to protect the client's interest may also be inferred in some situations where the lawyer is taking action on behalf of the person lacking capacity to protect the person until a legal representative can be appointed. In determining whether a lawyer may disclose such information, the lawyer should consider all circumstances, including the reasonableness of the lawyer's belief the person lacks capacity, the potential harm that may come to the client if no action is taken, and any instructions the client may have given the lawyer when capable of giving instructions about the authority to disclose information. Similar considerations apply to confidential information given to the lawyer by a person who lacks the capacity to become a client but nevertheless requires protection.

[11] A lawyer may have an obligation to disclose information under rules 5.5-2, 5.5-3 and 5.6-3. If client information is involved in those situations, the lawyer should be guided by the provisions of this rule.

Use of confidential information

3.3-2 A lawyer must not use or disclose a client's or former client's confidential information to the disadvantage of the client or former client, or for the benefit of the lawyer or a third person without the consent of the client or former client.

Commentary

[1] The fiduciary relationship between a lawyer and a client forbids the lawyer or a third person from benefiting from the lawyer's use of a client's confidential information. If a lawyer engages in literary works, such as a memoir or autobiography, the lawyer is required to obtain the client's or former client's consent before disclosing confidential information.

Lawyers' obligation to claim privilege when faced with requirement to surrender document

3.3-2.1 A lawyer who is required, under federal or provincial legislation, to produce a document or provide information that is or may be privileged must, unless the client waives the privilege, claim solicitor-client privilege in respect of the document.

Commentary

[1] A lawyer who is required by law or by order of a court to disclose a client's affairs must not disclose more information than is necessary.

Future harm / public safety exception

3.3-3 A lawyer may disclose confidential information, but must not disclose more information than is required, when the lawyer believes on reasonable grounds that there is an imminent risk of death or serious bodily harm, and disclosure is necessary to prevent the death or harm.

Commentary

[1] Confidentiality and loyalty are fundamental to the relationship between a lawyer and a client because legal advice cannot be given and justice cannot be done unless clients have a large measure of freedom to discuss their affairs with their lawyers. However, in some very exceptional situations identified in this rule, disclosure without the client's permission might be warranted because the lawyer is satisfied that truly serious harm of the types identified is imminent and cannot otherwise be prevented. These situations will be extremely rare.

[2] The Supreme Court of Canada has considered the meaning of the words "serious bodily harm" in certain contexts, which may inform a lawyer in assessing whether disclosure of confidential information is warranted. In *Smith* v. *Jones*, [1999] 1 SCR 455 at paragraph 83, the Court also observed that serious psychological harm may constitute serious bodily harm if it substantially interferes with the health or well-being of the individual.

[3] In assessing whether disclosure of confidential information is justified, a lawyer should consider a number of factors, including:

(a) the seriousness of the potential injury to others if the prospective harm occurs;

(b) the likelihood that it will occur and its imminence;

(c) the apparent absence of any other feasible way to prevent the potential injury; and

(d) the circumstances under which the lawyer acquired the information of the client's intent or prospective course of action.

[4] How and when disclosure should be made under this rule will depend upon the circumstances. A lawyer who believes that disclosure may be warranted should contact the Law Society for ethical advice. When practicable and permitted, a judicial order may be sought for disclosure.

[5] If confidential information is disclosed under this rule, the lawyer should prepare a written note as soon as possible, which should include:

(a) the date and time of the communication;

(b) the grounds in support of the lawyer's decision to communicate the information, including the harm he or she intended to prevent, the identity of the person who prompted him to communicate the information as well as the identity of the person or group of persons exposed to the harm; and

(c) the content of the communication, the method of communication used and the identity of the person to whom the communication was made.

3.3-4 If it is alleged that a lawyer or the lawyer's associates or employees:

(a) have committed a criminal offence involving a client's affairs;

(b) are civilly liable with respect to a matter involving a client's affairs;

(c) have committed acts of professional negligence; or

(d) have engaged in acts of professional misconduct or conduct unbecoming a lawyer,

the lawyer may disclose confidential information in order to defend against the allegations, but must not disclose more information than is required.

3.3-5 A lawyer may disclose confidential information in order to establish or collect the lawyer's fees, but must not disclose more information than is required.

3.3-6 A lawyer may disclose confidential information to another lawyer to secure legal or ethical advice about the lawyer's proposed conduct.

3.4 Conflicts

Duty to avoid conflicts of interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

Commentary

[0.1] In a real property transaction, a lawyer may act for more than one party with different interests only in the circumstances permitted by Appendix C.

[1] As defined in these rules, a conflict of interest exists when there is a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person. The risk must be more than a mere possibility; there must be a genuine, serious risk to the duty of loyalty or to client representation arising from the retainer. A client's interests may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflicts of interest.

[2] A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.

[3] The general prohibition and permitted activity prescribed by this rule apply to a lawyer's duties to current, former, concurrent and joint clients as well as to the lawyer's own interests.

Representation

[4] Representation means acting for a client and includes the lawyer's advice to and judgment on behalf of the client.

The fiduciary relationship, the duty of loyalty and conflicting interests

[5] The value of an independent bar is diminished unless the lawyer is free from conflicts of interest. The rule governing conflicts of interest is founded in the duty of loyalty which is grounded in the law governing fiduciaries. The lawyer-client relationship is a fiduciary relationship and as such, the lawyer has a duty of loyalty to the client. To maintain public confidence in the integrity of the legal profession and the administration of justice, in which lawyers play a key role, it is essential that lawyers respect the duty of loyalty. Arising from the duty of loyalty are other duties, such as a duty to commit to the client's cause, the duty of confidentiality, the duty of candour and the duty not to act in a conflict of interest. This obligation is premised on an established or ongoing lawyer client relationship in which the client must be assured of the lawyer's undivided loyalty, free from any material impairment of the lawyer and client relationship.

[6] The rule reflects the principle articulated by the Supreme Court of Canada in the cases of *R.* v. *Neil* 2002 SCC 70 and *Strother v, 3464920 Canada Inc.* 2007 SCC 24, regarding conflicting interests involving current clients, that a lawyer must not represent one client whose legal interests are directly adverse to the immediate legal interests of another client without consent. This duty arises even if the matters are unrelated. The lawyer client relationship may be irreparably damaged where the lawyer's representation of one client is directly adverse to another client's immediate interests. One client may legitimately fear that the lawyer will not pursue the representation out of deference to the other client, and an existing client may legitimately feel betrayed by the lawyer's representation of a client with adverse legal interests. The prohibition on acting in such circumstances except with the consent of the clients guards against such outcomes and protects the lawyer client relationship.

[7] Accordingly, factors for the lawyer's consideration in determining whether a conflict of interest exists include:

- the immediacy of the legal interests;
- whether the legal interests are directly adverse;
- whether the issue is substantive or procedural;
- the temporal relationship between the matters;
- the significance of the issue to the immediate and long-term interests of the clients involved; and
- the clients' reasonable expectations in retaining the lawyer for the particular matter or representation.

Examples of areas where conflicts of interest may occur

[8] Conflicts of interest can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that may give rise to conflicts of interest. The examples are not exhaustive.

(a) A lawyer acts as an advocate in one matter against a person when the lawyer represents that person on some other matter.

(c) A lawyer provides legal advice to a small business on a series of commercial transactions and at the same time provides legal advice to an employee of the business on an employment matter, thereby acting for clients whose legal interests are directly adverse.

(d) A lawyer, an associate, a law partner or a family member has a personal financial interest in a client's affairs or in a matter in which the lawyer is requested to act for a client, such as a partnership interest in some joint business venture with a client.

(i) A lawyer owning a small number of shares of a publicly traded corporation would not necessarily have a conflict of interest in acting for the corporation because the holding may have no adverse influence on the lawyer's judgment or loyalty to the client.

(e) A lawyer has a sexual or close personal relationship with a client.

(i) Such a relationship may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. The relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship and may jeopardize the client's right to have all information concerning his or her affairs held in strict confidence. The relationship may in some circumstances permit exploitation of the client by his or her lawyer. If the lawyer is a member of a firm and concludes that a conflict exists, the conflict is not imputed to the lawyer's firm, but would be cured if another lawyer in the firm who is not involved in such a relationship with the client handled the client's work.

(f) A lawyer or his or her law firm acts for a public or private corporation and the lawyer serves as a director of the corporation.

(i) These two roles may result in a conflict of interest or other problems because they may

1. affect the lawyer's independent judgment and fiduciary obligations in either or both roles,
2. obscure legal advice from business and practical advice,
3. jeopardize the protection of lawyer and client privilege, and
4. disqualify the lawyer or the law firm from acting for the organization.

(g) Sole practitioners who practise with other lawyers in cost-sharing or other arrangements represent clients on opposite sides of a dispute. See rules 3.4-42 and 3.4-43 on space-sharing arrangements.

(i) The fact or the appearance of such a conflict may depend on the extent to which the lawyers' practices are integrated, physically and administratively, in the association.

Consent

3.4-2 A lawyer must not represent a client in a matter when there is a conflict of interest unless there is express or implied consent from all clients and the lawyer reasonably believes that he or she is able to represent each client without having a material adverse effect upon the representation of or loyalty to the other client.

(a) Express consent must be fully informed and voluntary after disclosure.

(b) Consent may be inferred and need not be in writing where all of the following apply:

(i) the client is a government, financial institution, publicly traded or similarly substantial entity, or an entity with in-house counsel;

(ii) the matters are unrelated;

(iii) the lawyer has no relevant confidential information from one client that might reasonably affect the other; and

(iv) the client has commonly consented to lawyers acting for and against it in unrelated matters.

Commentary

Disclosure and consent

[1] Disclosure is an essential requirement to obtaining a client's consent. Where it is not possible to provide the client with adequate disclosure because of the confidentiality of the information of another client, the lawyer must decline to act.

[2] The lawyer should inform the client of the relevant circumstances and the reasonably foreseeable ways that the conflict of interest could adversely affect the client's interests. This would include the lawyer's relations to the parties and any interest in or connection with the matter.

[3] Following the required disclosure, the client can decide whether to give consent. As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf not be subject to other interests, duties or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the stage that the matter or proceeding has reached, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs.

Consent in advance

[4] A lawyer may be able to request that a client consent in advance to conflicts that might arise in the future. As the effectiveness of such consent is generally determined by the extent to which the client reasonably understands the material risks that the consent entails, the more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. A general, open-ended consent will ordinarily be ineffective because it is not reasonably likely that the client will have understood the material risks involved. If the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, for example, the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

[5] While not a pre-requisite to advance consent, in some circumstances it may be advisable to recommend that the client obtain independent legal advice before deciding whether to provide consent. Advance consent must be recorded, for example in a retainer letter.

Implied consent

[6] In some cases consent may be implied, rather than expressly granted. As the Supreme Court held in *Neil* and in *Strother*, however, the concept of implied consent is applicable in exceptional cases only. Governments, chartered banks and entities that might be considered sophisticated consumers of legal services may accept that lawyers may act against them in unrelated matters where there is no danger of misuse of confidential information. The more sophisticated the client is as a consumer of legal services, the more likely it will be that an inference of consent can be drawn. The mere nature of the client is not, however, a sufficient basis upon which to assume implied consent; the matters must be unrelated, the lawyer must not possess confidential information from one client that could affect the other client, and there must be a reasonable basis upon which to conclude that the client has commonly accepted that lawyers may act against it in such circumstances.

Lawyer belief in reasonableness of representation

[7] The requirement that the lawyer reasonably believe that he or she is able to represent each client without having a material adverse effect on the representation of, or loyalty to, the other client precludes a lawyer from acting for parties to a transaction who have different interests, except where joint representation is permitted under this Code.

Dispute

3.4-3 Despite rule 3.4-2, a lawyer must not represent opposing parties in a dispute.

Commentary

[1] A lawyer representing a client who is a party in a dispute with another party or parties must competently and diligently develop and argue the position of the client. In a dispute, the parties' immediate legal interests are clearly adverse. If the lawyer were permitted to act for opposing parties in such circumstances even with consent, the lawyer's advice, judgment and loyalty to one client would be materially and adversely affected by the same duties to the other client or clients. In short, the lawyer would find it impossible to act without offending these rules.

Concurrent representation with protection of confidential client information

3.4-4 Where there is no dispute among the clients about the matter that is the subject of the proposed representation, two or more lawyers in a law firm may act for current clients with competing interests and may treat information received from each client as confidential and not disclose it to the other clients, provided that:

(a) disclosure of the risks of the lawyers so acting has been made to each client;

(b) each client consents after having received independent legal advice, including on the risks of concurrent representation;

(c) the clients each determine that it is in their best interests that the lawyers so act;

(d) each client is represented by a different lawyer in the firm;

(e) appropriate screening mechanisms are in place to protect confidential information; and

(f) all lawyers in the law firm withdraw from the representation of all clients in respect of the matter if a dispute that cannot be resolved develops among the clients.

Commentary

[1] This rule provides guidance on concurrent representation, which is permitted in limited circumstances. Concurrent representation is not contrary to the rule prohibiting representation where there is a conflict of interest provided that the clients are fully informed of the risks and understand that if a dispute arises among the clients that cannot be resolved the lawyers may have to withdraw, resulting in potential additional costs.

[2] An example is a law firm acting for a number of sophisticated clients in a matter such as competing bids in a corporate acquisition in which, although the clients' interests are divergent and may conflict, the clients are not in a dispute. Provided that each client is represented by a different lawyer in the firm and there is no real risk that the firm will not be able to properly represent the legal interests of each client, the firm may represent both even though the subject matter of the retainers is the same. Whether or not a risk of impairment of representation exists is a question of fact.

[3] The basis for the advice described in the rule from both the lawyers involved in the concurrent representation and those giving the required independent legal advice is whether concurrent representation is in the best interests of the clients. Even where all clients consent, the lawyers should not accept a concurrent retainer if the matter is one in which one of the clients is less sophisticated or more vulnerable than the other.

[4] In cases of concurrent representation lawyers should employ, as applicable, the reasonable screening measures to ensure non-disclosure of confidential information within the firm set out in the rule on conflicts from transfer between law firms (see rule 3.4-26).

Joint retainers

3.4-5 Before a lawyer is retained by more than one client in a matter or transaction, the lawyer must advise each of the clients that:

(a) the lawyer has been asked to act for both or all of them;

(b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and

(c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

Commentary

[1] Although this rule does not require that a lawyer advise clients to obtain independent legal advice before the lawyer may accept a joint retainer, in some cases, the lawyer should recommend such advice to ensure that the clients' consent to the joint retainer is informed, genuine and uncoerced. This is especially so when one of the clients is less sophisticated or more vulnerable than the other. The Law Society website contains two precedent letters that lawyers may use as the basis for compliance with rule 3.4-5.

[2] A lawyer who receives instructions from spouses or partners to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint retainer and comply with rule 3.4-5. Further, at the outset of this joint retainer, the lawyer should advise the spouses or partners that, if subsequently only one of them were to communicate new instructions, such as instructions to change or revoke a will:

(a) the subsequent communication would be treated as a request for a new retainer and not as part of the joint retainer;

(b) in accordance with rule 3.3-1, the lawyer would be obliged to hold the subsequent communication in strict confidence and not disclose it to the other spouse or partner; and

(c) the lawyer would have a duty to decline the new retainer, unless:

(i) the spouses or partners had annulled their marriage, divorced, permanently ended their conjugal relationship or permanently ended their close personal relationship, as the case may be;

(ii) the other spouse or partner had died; or

(iii) the other spouse or partner was informed of the subsequent communication and agreed to the lawyer acting on the new instructions.

[3] After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with rule 3.4-7.

3.4-6 If a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts a joint retainer from that client and another client, the lawyer must advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

3.4-7 When a lawyer has advised the clients as provided under rules 3.4-5 and 3.4-6 and the parties are content that the lawyer act, the lawyer must obtain their consent.

Commentary

[1] Consent in writing, or a record of the consent in a separate letter to each client is required. Even if all the parties concerned consent, a lawyer should avoid acting for more than one client when it is likely that an issue contentious between them will arise or their interests, rights or obligations will diverge as the matter progresses.

3. 4-8 Except as provided by rule 3.4-9, if a contentious issue arises between clients who have consented to a joint retainer,

(a) the lawyer must not advise them on the contentious issue and must:

(i) refer the clients to other lawyers; or

(ii) advise the clients of their option to settle the contentious issue by direct negotiation in which the lawyer does not participate, provided:

1. no legal advice is required; and

2. the clients are sophisticated;

(b) if the contentious issue is not resolved, the lawyer must withdraw from the joint representation.

Commentary

[1] This rule does not prevent a lawyer from arbitrating or settling, or attempting to arbitrate or settle, a dispute between two or more clients or former clients who are not under any legal disability and who wish to submit the dispute to the lawyer.

[2] If, after the clients have consented to a joint retainer, an issue contentious between them or some of them arises, the lawyer is not necessarily precluded from advising them on non-contentious matters.

3.4-9 Subject to this section, if clients consent to a joint retainer and also agree that, if a contentious issue arises, the lawyer may continue to advise one of them, the lawyer may advise that client about the contentious matter and must refer the other or others to another lawyer.

Commentary

[1] This rule does not relieve the lawyer of the obligation, when the contentious issue arises, to obtain the consent of the clients if there is or is likely to be a conflicting interest, or if the representation on the contentious issue requires the lawyer to act against one of the clients.

[2] When entering into a joint retainer, the lawyer should stipulate that, if a contentious issue develops, the lawyer will be compelled to cease acting altogether unless, at the time the contentious issue develops, all parties consent to the lawyer's continuing to represent one of them. Consent given before the fact may be ineffective since the party granting the consent will not at that time be in possession of all relevant information.

Acting against former clients

3.4-10 Unless the former client consents, a lawyer must not act against a former client in:

(a) the same matter,

(b) any related matter, or

(c) any other matter, if the lawyer has relevant confidential information arising from the representation of the former client that may reasonably affect the former client.

Commentary

[1] This rule prohibits a lawyer from attacking legal work done during the retainer, or from undermining the client's position on a matter that was central to the retainer. It is not improper, however, for a lawyer to act against a former client in a matter wholly unrelated to any work the lawyer has previously done for that person if previously obtained confidential information is irrelevant to that matter.

3.4-11 When a lawyer has acted for a former client and obtained confidential information relevant to a new matter, another lawyer in the lawyer's firm may act against the former client in the new matter, if the firm establishes, in accordance with rule 3.4-20, that it is reasonable that it act in the new matter, having regard to all relevant circumstances, including:

(a) the adequacy and timing of the measures taken to ensure that no disclosure of the former client's confidential information to the partner or associate having carriage of the new matter will occur;

(b) the extent of prejudice to any party; and

(c) the good faith of the parties.

Commentary

[1] The guidelines at the end of Appendix D regarding lawyer transfers between firms provide valuable guidance for the protection of confidential information in the rare cases in which, having regard to all of the relevant circumstances, it is appropriate for the lawyer's partner or associate to act against the former client.

Limited representation

3.4-11.1 In rules 3.4-11.1 to 3.4-11.4 **"limited legal services"** means advice or representation of a summary nature provided by a lawyer to a client under the auspices of a not-for-profit organization with the expectation by the lawyer and the client that the lawyer will not provide continuing representation in the matter.

3.4-11.2 A lawyer must not provide limited legal services if the lawyer is aware of a conflict of interest and must cease providing limited legal services if at any time the lawyer becomes aware of a conflict of interest.

3.4-11.3 A lawyer may provide limited legal services notwithstanding that another lawyer has provided limited legal services under the auspices of the same not-for-profit organization to a client adverse in interest to the lawyer's client, provided no confidential information about a client is available to another client from the not-for-profit organization.

3.4-11.4 If a lawyer keeps information obtained as a result of providing limited legal services confidential from the lawyer's partners and associates, the information is not imputed to the partners or associates, and a partner or associate of the lawyer may

(a) continue to act for another client adverse in interest to the client who is obtaining or has obtained limited legal services, and

(b) act in future for another client adverse in interest to the client who is obtaining or has obtained limited legal services.

Conflicts from transfer between law firms

Application of rule

3.4-17 In rules 3.4-17 to 3.4-26:

"confidential information" means information that is not generally known to the public obtained from a client; and

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

Commentary

[2] Rules 3.4-17 to 3.4-26 apply to lawyers sharing space. Treating space-sharing lawyers as a law firm recognizes

(a) the concern that opposing clients may have about the appearance of proximity of lawyers sharing space, and

(b) the risk that lawyers sharing space may be exposed inadvertently to confidential information of an opposing client.

[3] Rules 3.4-17 to 3.4-26 apply to lawyers transferring to or from government service and into or out of an in-house counsel position, but do not extend to purely internal transfers in which, after transfer, the employer remains the same.

[4] Rules 3.4-17 to 3.4-26 treat as one "law firm" such entities as the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm and a legal aid program with many community law offices. The more autonomous that each such unit or office is, the easier it should be, in the event of a conflict, for the new firm to obtain the former client's consent.

[5] See the definition of **"MDP"** in Rule 1 and Rules 2-23.1 to 2-23.14 of the Law Society Rules.

3.4-18 Rules 3.4-17 to 3.4-26 apply when a lawyer transfers from one law firm ("former law firm") to another ("new law firm"), and either the transferring lawyer or the new law firm is aware at the time of the transfer or later discovers that:

(a) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents its client ("former client");

(b) the interests of those clients in that matter conflict; and

(c) the transferring lawyer actually possesses relevant information respecting that matter.

3.4-19 Rules 3.4-20 to 3.4-24 do not apply to a lawyer employed by a federal, provincial or territorial government who continues to be employed by that government after transferring from one department, ministry or agency to another.

Law firm disqualification

3.4-20 If the transferring lawyer actually possesses confidential information relevant to a matter referred to in rule 3.4-18 (a) respecting the former client that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must cease its representation of its client in that matter unless:

(a) the former client consents to the new law firm's continued representation of its client; or

(b) the new law firm can establish, in accordance with rule 3.4-25, when called upon to do so by a party adverse in interest, that

  (i) it is reasonable that its representation of its client in the matter continue, having regard to all relevant circumstances, including:

    (A) the adequacy and timing of the measures taken under clause (ii);

    (B) the extent of prejudice to the affected clients; and

(C) the good faith of the former client and the client of the new law firm; and

(ii) it has taken reasonable measures to ensure that there will be no disclosure of the former client's confidential information by the transferring lawyer to any member of the new law firm.

Commentary

[2] Appendix D may be helpful in determining what constitutes "reasonable measures" in this context.

[3] Issues arising as a result of a transfer between law firms should be dealt with promptly. A lawyer's failure to promptly raise any issues identified may prejudice clients and may be considered sharp practice.

Continued representation not to involve transferring lawyer

3.4-22 If the transferring lawyer actually possesses information relevant to a matter referred to in rule 3.4-18 (a) respecting the former client, but that information is not confidential information that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must notify its client of the relevant circumstances and its intended action under rules 3.4-17 to 3.4-26.

3. 4-23 Unless the former client consents, a transferring lawyer to whom rule 3.4-20 or 3.4-22 applies must not:

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

(b) disclose any confidential information respecting the former client.

3.4-24 Unless the former client consents, members of the new law firm must not discuss the new law firm's representation of its client or the former law firm's representation of the former client in that matter with a transferring lawyer to whom rule 3.4-20 or 3.4-22 applies.

Determination of compliance

3.4-25 Notwithstanding remedies available at law, a lawyer who represents a party in a matter referred to in rules 3.4-6 or 3.4-17 to 3.4-26 may seek the opinion of the Society on the application of those rules.

Due diligence

3.4-26 A lawyer must exercise due diligence in ensuring that each member and employee of the lawyer's law firm, and each other person whose services the lawyer has retained

(a) complies with rules 3.4-17 to 3.4-26, and

(b) does not disclose confidences of clients of

(i) the firm, and

(ii) another law firm in which the person has worked.

Conflicts with clients

3.4-26.1 A lawyer must not perform any legal services if it would reasonably be expected that the lawyer's professional judgment would be affected by the lawyer's or anyone else's

(a) relationship with the client, or

(b) interest in the client or the subject matter of the legal services.

Commentary

[1] Any relationship or interest that affects a lawyer's professional judgment is to be avoided under this rule, including ones involving a relative, partner, employer, employee, business associate or friend of the lawyer.

3.4-26.2 The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client is not a disqualifying interest under rule 3.4-26.1.

Commentary

[1] Generally speaking, a lawyer may act as legal advisor or as business associate, but not both. These principles are not intended to preclude a lawyer from performing legal services on his or her own behalf. Lawyers should be aware, however, that acting in certain circumstances may cause them to be uninsured as a result of Exclusion 6 in the B.C. Lawyers Compulsory Professional Liability Insurance Policy and similar provisions in other insurance policies.

[2] Whether or not insurance coverage under the Compulsory Policy is lost is determined separate and apart from the ethical obligations addressed in this chapter. Review the current policy for the exact wording of Exclusion 6 or contact the Lawyers Insurance Fund regarding the application of the Exclusion to a particular set of circumstances.

Doing business with a client

Independent legal advice

3.4-27 In rules 3.4-27 to 3.4-43, when a client is required or advised to obtain independent legal advice concerning a matter, that advice may only be obtained by retaining a lawyer who has no conflicting interest in the matter.

3.4-27.1 A lawyer giving independent legal advice under this section must:

(a) advise the client that the client has the right to independent legal representation;

(b) explain the legal aspects of the matter to the client, who appears to understand the advice given; and

(c) inform the client of the availability of qualified advisers in other fields who would be in a position to advise the client on the matter from a business point of view.

Commentary

[0.1] A client is entitled to obtain independent legal representation by retaining a lawyer who has no conflicting interest in the matter to act for the client in relation to the matter.

[1] If a client elects to waive independent legal representation and to rely on independent legal advice only, the lawyer retained has a responsibility that should not be lightly assumed or perfunctorily discharged.

[2] Either independent legal representation or independent legal advice may be provided by a lawyer employed by the client as in-house counsel.

3.4-28 Subject to this rule, a lawyer must not enter into a transaction with a client unless the transaction is fair and reasonable to the client, the client consents to the transaction and the client has independent legal representation with respect to the transaction.

Commentary

[1] This provision applies to any transaction with a client, including:

(a) lending or borrowing money;

(b) buying or selling property;

(c) accepting a gift, including a testamentary gift;

(d) giving or acquiring ownership, security or other pecuniary interest in a company or other entity;

(e) recommending an investment; and

(f) entering into a common business venture.

[2] The relationship between lawyer and client is a fiduciary one, and no conflict between the lawyer's own interest and the lawyer's duty to the client can be permitted. The remuneration paid to a lawyer by a client for the legal work undertaken by the lawyer for the client does not give rise to a conflicting interest.

Investment by client when lawyer has an interest

3.4-29 Subject to rule 4.3-30, if a client intends to enter into a transaction with his or her lawyer or with a corporation or other entity in which the lawyer has an interest other than a corporation or other entity whose securities are publicly traded, before accepting any retainer, the lawyer must

(a) disclose and explain the nature of the conflicting interest to the client or, in the case of a potential conflict, how and why it might develop later;

(b) recommend and require that the client receive independent legal advice; and

(c) if the client requests the lawyer to act, obtain the client's consent.

Commentary

[1] If the lawyer does not choose to disclose the conflicting interest or cannot do so without breaching confidence, the lawyer must decline the retainer.

[2] A lawyer should not uncritically accept a client's decision to have the lawyer act. It should be borne in mind that, if the lawyer accepts the retainer, the lawyer's first duty will be to the client. If the lawyer has any misgivings about being able to place the client's interests first, the retainer should be declined.

[3] Generally, in disciplinary proceedings under this rule, the burden will rest upon the lawyer to show good faith, that adequate disclosure was made in the matter, and that the client's consent was obtained

[4] If the investment is by borrowing from the client, the transaction may fall within the requirements of rule 3.4-32.

3.4-30 When a client intends to pay for legal services by issuing or causing to be transferred to a lawyer a share, participation or other interest in property or in an enterprise, other than a non-material interest in a publicly traded enterprise, the lawyer must recommend but need not require that the client receive independent legal advice before accepting a retainer.

Borrowing from clients

3.4-31 A lawyer must not borrow money from a client unless

(a) the client is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, or

(b) the client is a related person as defined by the *Income Tax Act* (Canada) and the lawyer is able to discharge the onus of proving that the client's interests were fully protected by the nature of the matter and by independent legal advice or independent legal representation.

Commentary

[1] Whether a person is considered a client within this rule when lending money to a lawyer on that person's own account or investing money in a security in which the lawyer has an interest is determined having regard to all circumstances. If the circumstances are such that the lender or investor might reasonably feel entitled to look to the lawyer for guidance and advice about the loan or investment, the lawyer is bound by the same fiduciary obligation that attaches to a lawyer in dealings with a client.

Certificate of independent legal advice

3.4-32 A lawyer retained to give independent legal advice relating to a transaction in which funds are to be advanced by the client to another lawyer must do the following before the client advances any funds:

(a) provide the client with a written certificate that the client has received independent legal advice, and

(b) obtain the client's signature on a copy of the certificate of independent legal advice and send the signed copy to the lawyer with whom the client proposes to transact business.

3.4-33 Subject to rule 3.4-31, if a lawyer's spouse or a corporation, syndicate or partnership in which either or both of the lawyer and the lawyer's spouse has a direct or indirect substantial interest borrow money from a client, the lawyer must ensure that the client's interests are fully protected by the nature of the case and by independent legal representation.

Lawyers in loan or mortgage transactions

3.4-34 If a lawyer lends money to a client, before agreeing to make the loan, the lawyer must:

(a) disclose and explain the nature of the conflicting interest to the client;

(b) require that the client receive independent legal representation; and

(c) obtain the client's consent.

Guarantees by a lawyer

3.4-35 Except as provided by rule 3.4-36, a lawyer must not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender.

3.4-36 A lawyer may give a personal guarantee in the following circumstances:

(a) the lender is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, and the lender is directly or indirectly providing funds solely for the lawyer, the lawyer's spouse, parent or child;

(b) the transaction is for the benefit of a non-profit or charitable institution, and the lawyer provides a guarantee as a member or supporter of such institution, either individually or together with other members or supporters of the institution; or

(c) the lawyer has entered into a business venture with a client and a lender requires personal guarantees from all participants in the venture as a matter of course and:

(i) the lawyer has complied with this section (Conflicts), in particular, rules 3.4-27 to 3.4-36 (Doing Business with a Client); and

(ii) the lender and participants in the venture who are clients or former clients of the lawyer have independent legal representation.

Testamentary instruments and gifts

3.4-37 A lawyer must not include in a client's will a clause directing the executor to retain the lawyer's services in the administration of the client's estate.

3.4-38 Unless the client is a family member of the lawyer or the lawyer's partner or associate, a lawyer must not prepare or cause to be prepared an instrument giving the lawyer or an associate a gift or benefit from the client, including a testamentary gift.

3.4 39 A lawyer must not accept a gift that is more than nominal from a client unless the client has received independent legal advice.

Judicial interim release

3.4-40 A lawyer must not act as a surety for, deposit money or other valuable security for, or act in a supervisory capacity to an accused person for whom the lawyer acts.

3.4-41 A lawyer may act as a surety for, deposit money or other valuable security for or act in a supervisory capacity to an accused who is in a family relationship with the lawyer when the accused is represented by the lawyer's partner or associate.

Space-sharing arrangements

3.4-42 Rule 4.3-43 applies to lawyers sharing office space with one or more other lawyers, but not practising or being held out to be practising in partnership or association with the other lawyer or lawyers.

3.4-43 Unless all lawyers sharing space together agree that they will not act for clients adverse in interest to the client of any of the others, each lawyer who is sharing space must disclose in writing to all of the lawyer's clients:

(a) that an arrangement for sharing space exists,

(b) the identity of the lawyers who make up the firm acting for the client, and

(c) that lawyers sharing space with the firm are free to act for other clients who are adverse in interest to the client.

Commentary

[1] Like other lawyers, those who share space must take all reasonable measures to ensure client confidentiality. Lawyers who do not wish to act for clients adverse in interest to clients of lawyers with whom they share space should establish an adequate conflicts check system.

[2] In order both to ensure confidentiality and to avoid conflicts, a lawyer must have the consent of each client before disclosing any information about the client for the purpose of conflicts checks. Consent may be implied in some cases but, if there is any doubt, the best course is to obtain express consent.

3. 5 Preservation of clients' property

3.5-1 In this section, **"property"** includes a client's money, securities as defined in the *Securities Act*, original documents such as wills, title deeds, minute books, licences, certificates and the like, and all other papers such as client's correspondence, files, reports, invoices and other such documents, as well as personal property including precious and semi-precious metals, jewellery and the like.

3.5-2 A lawyer must:

(a) care for a client's property as a careful and prudent owner would when dealing with like property; and

(b) observe all relevant rules and law about the preservation of a client's property entrusted to a lawyer.

Commentary

[1] The duties concerning safekeeping, preserving, and accounting for clients' monies and other property are set out in the Law Society Rules.

[2] These duties are closely related to those regarding confidential information. A lawyer is responsible for maintaining the safety and confidentiality of the files of the client in the possession of the lawyer and should take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information. A lawyer should keep the client's papers and other property out of sight as well as out of reach of those not entitled to see them.

[3] Subject to any rights of lien, the lawyer should promptly return a client's property to the client on request or at the conclusion of the lawyer's retainer.

[4] If the lawyer withdraws from representing a client, the lawyer is required to comply with section 3.7 (Withdrawal from Representation).

Notification of receipt of property

3.5-3 A lawyer must promptly notify a client of the receipt of any money or other property of the client, unless satisfied that the client is aware that they have come into the lawyer's custody.

Identifying clients' property

3.5-4 A lawyer must clearly label and identify clients' property and place it in safekeeping distinguishable from the lawyer's own property.

3.5-5 A lawyer must maintain such records as necessary to identify clients' property that is in the lawyer's custody.

Accounting and delivery

3.5-6 A lawyer must account promptly for clients' property that is in the lawyer's custody and deliver it to the order of the client on request or, if appropriate, at the conclusion of the retainer.

3.6 Fees and disbursements

Reasonable fees and disbursements

3.6-1 A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion.

Commentary

[1] What is a fair and reasonable fee depends on such factors as:

(a) the time and effort required and spent;

(b) the difficulty of the matter and the importance of the matter to the client;

(c) whether special skill or service has been required and provided;

(d) the results obtained;

(e) fees authorized by statute or regulation;

(f) special circumstances, such as the postponement of payment, uncertainty of reward, or urgency;

(g) the likelihood, if made known to the client, that acceptance of the retainer will result in the lawyer's inability to accept other employment;

(h) any relevant agreement between the lawyer and the client;

(i) the experience and ability of the lawyer;

(j) any estimate or range of fees given by the lawyer; and

(k) the client's prior consent to the fee.

[2] The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, extra fees, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

[3] A lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest, as is reasonable and practical in the circumstances, including the basis on which fees will be determined.

[4] A lawyer should be ready to explain the basis of the fees and disbursement charged to the client. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should give to the client an immediate explanation. A lawyer should confirm with the client in writing the substance of all fee discussions that occur as a matter progresses, and a lawyer may revise an initial estimate of fees and disbursements.

Contingent fees and contingent fee agreements

3.6-2 Subject to rule 3.6-1, a lawyer may enter into a written agreement in accordance with governing legislation that provides that the lawyer's fee is contingent, in whole or in part, on the outcome of the matter for which the lawyer's services are to be provided.

Commentary

[1] In determining the appropriate percentage or other basis of a contingency fee, a lawyer and client should consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The lawyer and client may agree that, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as a part of a settlement is to be paid to the lawyer, which may require judicial approval under the governing legislation. In such circumstances, a smaller percentage of the award than would otherwise be agreed upon for the contingency fee, after considering all relevant factors, will generally be appropriate. The test is whether the fee, in all of the circumstances, is fair and reasonable.

[2] Although a lawyer is generally permitted to terminate the professional relationship with a client and withdraw services if there is justifiable cause as set out in rule 3.7-1, special circumstances apply when the retainer is pursuant to a contingency agreement. In such circumstances, the lawyer has impliedly undertaken the risk of not being paid in the event the suit is unsuccessful. Accordingly, a lawyer cannot withdraw from representation for reasons other than those set out in Rule 3.7-7 (Obligatory withdrawal) unless the written contingency contract specifically states that the lawyer has a right to do so and sets out the circumstances under which this may occur.

Statement of account

3. 6-3 In a statement of an account delivered to a client, a lawyer must clearly and separately detail the amounts charged as fees and disbursements.

Commentary

[1] The two main categories of charges on a statement of account are fees and disbursements. A lawyer may charge as disbursements only those amounts that have been paid or are required to be paid to a third party by the lawyer on a client's behalf. However, a subcategory entitled "Other Charges" may be included under the fees heading if a lawyer wishes to separately itemize charges such as paralegal, word processing or computer costs that are not disbursements, provided that the client has agreed, in writing, to such costs.

[2] Party-and-party costs received by a lawyer are the property of the client and should therefore be accounted for to the client. While an agreement that the lawyer will be entitled to costs is not uncommon, it does not affect the lawyer's obligation to disclose the costs to the client.

Joint retainer

3.6-4 If a lawyer acts for two or more clients in the same matter, the lawyer must divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

Division of fees and referral fees

3.6-5 If there is consent from the client, fees for a matter may be divided between lawyers who are not in the same firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

3.6-6 If a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter, and the referral was not made because of a conflict of interest, the referring lawyer may accept, and the other lawyer may pay, a referral fee, provided that:

(a) the fee is reasonable and does not increase the total amount of the fee charged to the client; and

(b) the client is informed and consents.

3.6-6.1 In rule 3.6-7, **"another lawyer"** includes a person who is:

(a) a member of a recognized legal profession in any other jurisdiction; and

(b) acting in compliance with the law and any rules of the legal profession of the other jurisdiction

3.6-7 A lawyer must not:

(a) directly or indirectly share, split or divide his or her fees with any person other than another lawyer; or

(b) give any financial or other reward for the referral of clients or client matters to any person other than another lawyer.

Commentary

[1] This rule prohibits lawyers from entering into arrangements to compensate or reward non-lawyers for the referral of clients. It does not prevent a lawyer from engaging in promotional activities involving reasonable expenditures on promotional items or activities that might result in the referral of clients generally by a non-lawyer. Accordingly, this rule does not prohibit a lawyer from:

(a) making an arrangement respecting the purchase and sale of a law practice when the consideration payable includes a percentage of revenues generated from the practice sold;

(b) entering into a lease under which a landlord directly or indirectly shares in the fees or revenues generated by the law practice;

(c) paying an employee for services, other than for referring clients, based on the revenue of the lawyer's firm or practice; or

(d) occasionally entertaining potential referral sources by purchasing meals providing tickets to, or attending at, sporting or other activities or sponsoring client functions.

Exception for multi-disciplinary practices

3.6-8 Despite rule 3.6-7, a lawyer permitted to practise in a multi-disciplinary practice (MDP) under the Law Society Rules may share fees, profits or revenue from the practice of law in the MDP with a non-lawyer member of the MDP only if all the owners of the MDP are individuals or professional corporations actively involved in the MDP's delivery of legal services to clients or in the management of the MDP.

Commentary

[2] This rule also allows a lawyer to share fees or profits of an MDP with a non-lawyer for the purpose of paying out the ownership interest of the non-lawyer acquired by the non-lawyer's active participation in the MDP's delivery of services to clients or in the management of the MDP.

[3] See also the definitions of **"MDP"** and "**professional corporation**" in Rule 1 and Rules 2-23.1 to 2-23.14 of the Law Society Rules.

Payment and appropriation of funds

3.6-9 If a lawyer and client agree that the lawyer will act only if the lawyer's retainer is paid in advance, the lawyer must confirm that agreement in writing with the client and specify a payment date.

3. 6-10 A lawyer must not appropriate any client funds held in trust or otherwise under the lawyer's control for or on account of fees, except as permitted by the governing legislation.

Commentary

[1] The rule is not intended to be an exhaustive statement of the considerations that apply to payment of a lawyer's account from trust. The handling of trust money is generally governed by the Law Society Rules.

[2] Refusing to reimburse any portion of advance fees for work that has not been carried out when the contract of professional services with the client has terminated is a breach of the obligation to act with integrity.

3.6-11 If the amount of fees or disbursements charged by a lawyer is reduced on a review or assessment, the lawyer must repay the monies to the client as soon as is practicable.

Prepaid legal services plan

3.6-12 A lawyer who accepts a client referred by a prepaid legal services plan must advise the client in writing of:

(a) the scope of work to be undertaken by the lawyer under the plan; and

(b) the extent to which a fee or disbursement will be payable by the client to the lawyer.

3.7 Withdrawal from representation

3.7-1 A lawyer must not withdraw from representation of a client except for good cause and on reasonable notice to the client.

Commentary

[1] Although the client has the right to terminate the lawyer-client relationship at will, a lawyer does not enjoy the same freedom of action. Having undertaken the representation of a client, the lawyer should complete the task as ably as possible unless there is justifiable cause for terminating the relationship. It is inappropriate for a lawyer to withdraw on capricious or arbitrary grounds.

[2] An essential element of reasonable notice is notification to the client, unless the client cannot be located after reasonable efforts.-No hard and fast rules can be laid down as to what constitutes reasonable notice before withdrawal and how quickly a lawyer may cease acting after notification will depend on all relevant circumstances. When the matter is covered by statutory provisions or rules of court, these will govern. In other situations, the governing principle is that the lawyer should protect the client's interests to the best of the lawyer's ability and should not desert the client at a critical stage of a matter or at a time when withdrawal would put the client in a position of disadvantage or peril. As a general rule, the client should be given sufficient time to retain and instruct replacement counsel. Nor should withdrawal or an intention to withdraw be permitted to waste court time or prevent other counsel from reallocating time or resources scheduled for the matter in question. See rule 3.7-8 (Manner of withdrawal).

[3] Every effort should be made to ensure that withdrawal occurs at an appropriate time in the proceedings in keeping with the lawyer's obligations. The court, opposing parties and others directly affected should also be notified of the withdrawal.

[4] When a lawyer leaves a law firm to practise alone or to join another law firm, the departing lawyer and the law firm have a duty to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter that the clients have a right to choose who will continue to represent them. The same duty may arise when a firm is winding up or dividing into smaller units.

[5] This duty does not arise if the lawyers affected by the changes, acting reasonably, conclude that the circumstances make it obvious that a client will continue as a client of a particular lawyer or law firm.

[6] When this Chapter requires a notification to clients, each client must receive a letter as soon as practicable after the effective date of the changes is determined, informing the client of the right to choose his or her lawyer.

[7] It is preferable that this letter be sent jointly by the firm and any lawyers affected by the changes. However, in the absence of a joint announcement, the firm or any lawyers affected by the changes may send letters in substantially the form set out in a precedent letter on the Law Society website (see Practice Resources).

[8] Lawyers whose clients are affected by changes in a law firm have a continuing obligation to protect client information and property, and must minimize any adverse effect on the interests of clients. This obligation generally includes an obligation to ensure that files transferred to a new lawyer or law firm are properly transitioned, including, when necessary, describing the status of the file and noting any unfulfilled undertakings and other outstanding commitments.

[9] The right of a client to be informed of changes to a law firm and to choose his or her lawyer cannot be curtailed by any contractual or other arrangement.

[10] With respect to communication other than that required by these rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

Optional withdrawal

3.7-2 If there has been a serious loss of confidence between the lawyer and the client, the lawyer may withdraw.

Commentary

[1] A lawyer may have a justifiable cause for withdrawal in circumstances indicating a loss of confidence, for example, if a lawyer is deceived by his client, the client refuses to accept and act upon the lawyer's advice on a significant point, a client is persistently unreasonable or uncooperative in a material respect, or the lawyer is facing difficulty in obtaining adequate instructions from the client. However, the lawyer should not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question.

Non-payment of fees

3.7-3 If, after reasonable notice, the client fails to provide a retainer or funds on account of disbursements or fees, a lawyer may withdraw.

Commentary

[1] When the lawyer withdraws because the client has not paid the lawyer's fee, the lawyer should ensure that there is sufficient time for the client to obtain the services of another lawyer and for that other lawyer to prepare adequately for a hearing or trial.

[2] In criminal matters, if withdrawal is a result of non-payment of the lawyer's fees, the court may exercise its discretion to refuse counsel's withdrawal. The court's order refusing counsel's withdrawal may be enforced by the court's contempt power. See *R.* v. *Cunningham*, 2010 SCC 10.

[3] The relationship between a lawyer and client is contractual in nature, and the general rules respecting breach of contract and repudiation apply. Except in criminal matters involving non-payment of fees, if a lawyer decides to withdraw as counsel in a proceeding, the court has no jurisdiction to prevent the lawyer from doing so, and the decision to withdraw is not reviewable by the court, subject to its authority to cite a lawyer for contempt if there is evidence that the withdrawal was done for some improper purpose. Otherwise, the decision to withdraw is a matter of professional responsibility, and a lawyer who withdraws in contravention of this Chapter is subject to disciplinary action by the Benchers. See *Re Leask and Cronin* (1985), 66 BCLR 187 (SC). In civil proceedings the lawyer is not required to obtain the court's approval before withdrawing as counsel, but must comply with the Rules of Court before being relieved of the responsibilities that attach as "solicitor acting for the party." See *Luchka* v. *Zens* (1989), 37 BCLR (2d) 127 (CA)."

Withdrawal from criminal proceedings

3.7-4 If a lawyer has agreed to act in a criminal case and the interval between a withdrawal and the trial of the case is sufficient to enable the client to obtain another lawyer and to allow such other lawyer adequate time for preparation, the lawyer who has agreed to act may withdraw because the client has not paid the agreed fee or for other adequate cause provided that the lawyer:

(a) notifies the client, in writing, that the lawyer is withdrawing because the fees have not been paid or for other adequate cause;

(b) accounts to the client for any monies received on account of fees and disbursements;

(c) notifies Crown counsel in writing that the lawyer is no longer acting;

(d) in a case when the lawyer's name appears on the records of the court as acting for the accused, notifies the clerk or registrar of the appropriate court in writing that the lawyer is no longer acting; and

(e) complies with the applicable rules of court.

3.7-5 If a lawyer has agreed to act in a criminal case and the date set for trial is not such as to enable the client to obtain another lawyer or to enable another lawyer to prepare adequately for trial and an adjournment of the trial date cannot be obtained without adversely affecting the client's interests, the lawyer who agreed to act must not withdraw because of non-payment of fees.

3.7-6 If a lawyer is justified in withdrawing from a criminal case for reasons other than non-payment of fees and there is not a sufficient interval between a notice to the client of the lawyer's intention to withdraw and the date on which the case is to be tried to enable the client to obtain another lawyer and to enable such lawyer to prepare adequately for trial, the first lawyer, unless instructed otherwise by the client, should attempt to have the trial date adjourned and may withdraw from the case only with the permission of the court before which the case is to be tried.

Commentary

[1] If circumstances arise that, in the opinion of the lawyer, require an application to the court for leave to withdraw, the lawyer should promptly inform Crown counsel and the court of the intention to apply for leave in order to avoid or minimize any inconvenience to the court and witnesses.

Obligatory withdrawal

3.7-7 A lawyer must withdraw if:

(a) discharged by a client;

(b) a client persists in instructing the lawyer to act contrary to professional ethics; or

(c) the lawyer is not competent to continue to handle a matter.

Manner of withdrawal

3.7-8 When a lawyer withdraws, the lawyer must try to minimize expense and avoid prejudice to the client and must do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor lawyer.

3.7-9 On discharge or withdrawal, a lawyer must:

(a) notify the client in writing, stating:

(i) the fact that the lawyer has withdrawn;

(ii) the reasons, if any, for the withdrawal; and

(iii) in the case of litigation, that the client should expect that the hearing or trial will proceed on the date scheduled and that the client should retain new counsel promptly;

(b) subject to the lawyer's right to a lien, deliver to or to the order of the client all papers and property to which the client is entitled;

(c) subject to any applicable trust conditions, give the client all relevant information in connection with the case or matter;

(d) account for all funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during the representation;

(e) promptly render an account for outstanding fees and disbursements;

(f) co-operate with the successor lawyer in the transfer of the file so as to minimize expense and avoid prejudice to the client; and

(g) comply with the applicable rules of court.

Commentary

[1] If the lawyer who is discharged or withdraws is a member of a firm, the client should be notified that the lawyer and the firm are no longer acting for the client.

[3] The obligation to deliver papers and property is subject to a lawyer's right of lien. In the event of conflicting claims to such papers or property, the lawyer should make every effort to have the claimants settle the dispute.

[4] Co-operation with the successor lawyer will normally include providing any memoranda of fact and law that have been prepared by the lawyer in connection with the matter, but confidential information not clearly related to the matter should not be divulged without the written consent of the client.

[5] A lawyer acting for several clients in a case or matter who ceases to act for one or more of them should co-operate with the successor lawyer or lawyers to the extent required by the rules and should seek to avoid any unseemly rivalry, whether real or apparent.

Confidentiality

3.7-9.1 Subject to exceptions permitted by law, if the reason for withdrawal results from confidential communications between the lawyer and the client, the lawyer must not disclose the reason for the withdrawal unless the client consents.

Commentary

[1] One such exception is that in *R.* v. *Cunningham*, 2010 SCC 10, which establishes that, in a criminal case, if the disclosure of information related to the payment of the lawyer's fees is unrelated to the merits of the case and does not prejudice the accused, the lawyer may properly disclose such information to the court. See para. 31:

Disclosure of non-payment of fees in cases where it is unrelated to the merits and will not cause prejudice to the accused is not an exception to privilege, such as the innocence at stake or public safety exceptions (see generally *R.* v. *McClure*, 2001 SCC 14 and *Smith* v. *Jones*, [1999] 1 S.C.R. 455). Rather, non-payment of legal fees in this context does not attract the protection of solicitor-client privilege in the first place. However, nothing in these reasons, which address the application, or non-application, of solicitor-client privilege in disclosures to a court, should be taken as affecting counsel's ethical duty of confidentiality with respect to payment or non-payment of fees in other contexts.

Duty of successor lawyer

3.7-10 Before agreeing to represent a client, a successor lawyer must be satisfied that the former lawyer has withdrawn or has been discharged by the client.

Commentary

[1] It is quite proper for the successor lawyer to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the former lawyer, especially if the latter withdrew for good cause or was capriciously discharged. But, if a trial or hearing is in progress or imminent, or if the client would otherwise be prejudiced, the existence of an outstanding account should not be allowed to interfere with the successor lawyer acting for the client.

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Chapter 4 – Marketing of Legal Services

4.2 Marketing

Application of rule

4.2-3 This section applies to any marketing activity undertaken or authorized by a lawyer in which he or she is identified as a lawyer, mediator or arbitrator.

Definitions

4.2-4 In this Chapter:

"marketing activity" includes any publication or communication in the nature of an advertisement, promotional activity or material, letterhead, business card, listing in a directory, a public appearance or any other means by which professional legal services are promoted or clients are solicited;

"lawyer" includes a member of the Law Society, and a person enrolled in the Law Society Admission Program.

Content and format of marketing activities

4.2-5 Any marketing activity undertaken or authorized by a lawyer must not be:

(a) false,

(b) inaccurate,

(c) unverifiable,

(d) reasonably capable of misleading the recipient or intended recipient, or

(e) contrary to the best interests of the public.

Commentary

[1] For example, a marketing activity violates this rule if it:

(a) is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,

(b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results that the lawyer can achieve, or

(c) otherwise brings the administration of justice into disrepute.

Former firm of current judge or master

4.2-6 A lawyer must not state on any letterhead or business card or in any other marketing activity the name of a judge or master as being a predecessor or former member of the lawyer's firm.

Notary public

4.2-7 A lawyer who, on any letterhead, business card or sign, or in any other marketing activity:

(a) uses the term "Notary," "Notary Public" or any similar designation, or

(b) in any other way represents to the public that the lawyer is a notary public,

must also indicate in the same publication or marketing activity the lawyer's status as a lawyer.

Designation

4.2-8 A lawyer must not list a person not entitled to practise law in British Columbia on any letterhead or in any other marketing activity without making it clear in the marketing activity that the person is not entitled to practise law in British Columbia.

In particular, a person who fits one or more of the following descriptions must not be listed without an appropriate indication of the person's status:

(a) a retired member,

(b) a non-practising member,

(c) a deceased member,

(d) an articled student,

(e) a legal assistant or paralegal,

(f) a patent agent, if registered as such under the *Patent Act*,

(g) a trademark agent, if registered as such under the *Trade-marks Act*, or

(h) a practitioner of foreign law, if that person holds a valid permit issued under Law Society Rule 2-18., or

(i) a qualified member of another profession, trade or occupation, provided that the lawyer and the other person are members of a Multi-Disciplinary Practice (MDP) permitted under the Law Society Rules.

4.3 Advertising nature of practice

Preferred areas of practice

4.3-0.1 A lawyer may state in any marketing activity a preference for practice in any one or more fields of law if the lawyer regularly practises in each field of law in respect of which the lawyer wishes to state a preference.

Specialization

4.3-1 Unless otherwise authorized by the *Legal Profession Act*, the Law Society Rules, or this Code or by the Benchers, a lawyer must:

(a) not use the title "specialist" or any similar designation suggesting a recognized special status or accreditation in any other marketing activity, and

(b) take all reasonable steps to discourage use, in relation to the lawyer by another person, of the title "specialist" or any similar designation suggesting a recognized special status or accreditation in any marketing activity.

Real estate sales

4.3-2 When engaged in marketing of real property for sale or lease, a lawyer must include in any marketing activity:

(a) the name of the lawyer or the lawyer's firm, and

(b) if a telephone number is used, only the telephone number of the lawyer or the lawyer's firm.

Multi-disciplinary practice

4.3-3 Unless permitted to practise law in an MDP under the Law Society Rules, a lawyer must not, in any marketing activity

(a) use the term Multi-Disciplinary Practice or MDP, or

(b) state or imply that the lawyer's practice or law firm is an MDP.

4. 3-4 A lawyer practising law in an MDP must ensure that all marketing activity for the firm indicates that the firm is an MDP.

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Chapter 5 - Relationship to the Administration of Justice

5.1 The lawyer as advocate

Advocacy

5.1-1 When acting as an advocate, a lawyer must represent the client resolutely and honourably within the limits of the law, while treating the tribunal with candour, fairness, courtesy, and respect.

Commentary

[1] Role in adversarial proceedings – In adversarial proceedings, the lawyer has a duty to the client to raise fearlessly every issue, advance every argument and ask every question, however distasteful, that the lawyer thinks will help the client's case and to endeavour to obtain for the client the benefit of every remedy and defence authorized by law. The lawyer must discharge this duty by fair and honourable means, without illegality and in a manner that is consistent with the lawyer's duty to treat the tribunal with candour, fairness, courtesy and respect and in a way that promotes the parties' right to a fair hearing in which justice can be done. Maintaining dignity, decorum and courtesy in the courtroom is not an empty formality because, unless order is maintained, rights cannot be protected.

[2] This rule applies to the lawyer as advocate, and therefore extends not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals, arbitrators, mediators and others who resolve disputes, regardless of their function or the informality of their procedures.

[3] The lawyer's function as advocate is openly and necessarily partisan. Accordingly, the lawyer is not obliged (except as required by law or under these rules and subject to the duties of a prosecutor set out below) to assist an adversary or advance matters harmful to the client's case.

[4] In adversarial proceedings that will likely affect the health, welfare or security of a child, a lawyer should advise the client to take into account the best interests of the child, if this can be done without prejudicing the legitimate interests of the client.

[5] A lawyer should refrain from expressing the lawyer's personal opinions on the merits of a client's case to a court or tribunal.

[6] When opposing interests are not represented, for example, in without notice or uncontested matters or in other situations in which the full proof and argument inherent in the adversarial system cannot be achieved, the lawyer must take particular care to be accurate, candid and comprehensive in presenting the client's case so as to ensure that the tribunal is not misled.

[7] The lawyer should never waive or abandon the client's legal rights, such as an available defence under a statute of limitations, without the client's informed consent.

[8] In civil proceedings, a lawyer should avoid and discourage the client from resorting to frivolous or vexatious objections, attempts to gain advantage from slips or oversights not going to the merits or tactics that will merely delay or harass the other side. Such practices can readily bring the administration of justice and the legal profession into disrepute.

[9] Duty as defence counsel – When defending an accused person, a lawyer's duty is to protect the client as far as possible from being convicted, except by a tribunal of competent jurisdiction and upon legal evidence sufficient to support a conviction for the offence with which the client is charged. Accordingly, and notwithstanding the lawyer's private opinion on credibility or the merits, a lawyer may properly rely on any evidence or defences, including so-called technicalities, not known to be false or fraudulent.

[10] Admissions made by the accused to a lawyer may impose strict limitations on the conduct of the defence, and the accused should be made aware of this. For example, if the accused clearly admits to the lawyer the factual and mental elements necessary to constitute the offence, the lawyer, if convinced that the admissions are true and voluntary, may properly take objection to the jurisdiction of the court, the form of the indictment or the admissibility or sufficiency of the evidence, but must not suggest that some other person committed the offence or call any evidence that, by reason of the admissions, the lawyer believes to be false. Nor may the lawyer set up an affirmative case inconsistent with such admissions, for example, by calling evidence in support of an alibi intended to show that the accused could not have done or, in fact, has not done the act. Such admissions will also impose a limit on the extent to which the lawyer may attack the evidence for the prosecution. The lawyer is entitled to test the evidence given by each individual witness for the prosecution and argue that the evidence taken as a whole is insufficient to amount to proof that the accused is guilty of the offence charged, but the lawyer should go no further than that.

5.1-2 When acting as an advocate, a lawyer must not:

(a) abuse the process of the tribunal by instituting or prosecuting proceedings that, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;

(b) knowingly assist or permit a client to do anything that the lawyer considers to be dishonest or dishonourable;

(c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that give rise to or might reasonably appear to give rise to pressure, influence or inducement affecting the impartiality of the officer, unless all parties consent and it is in the interests of justice;

(d) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of a tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;

(e) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed or otherwise assisting in any fraud, crime or illegal conduct;

(f) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;

(g) knowingly assert as fact that which cannot reasonably be supported by the evidence or taken on judicial notice by the tribunal;

(h) make suggestions to a witness recklessly or knowing them to be false;

(i) deliberately refrain from informing a tribunal of any binding authority that the lawyer considers to be directly on point and that has not been mentioned by another party;

(j) improperly dissuade a witness from giving evidence or advise a witness to be absent;

(k) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;

(l) knowingly misrepresent the client's position in the litigation or the issues to be determined in the litigation

(m) abuse, hector or harass a witness;

(n) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge;

(o) needlessly inconvenience a witness; or

(p) appear before a tribunal while under the influence of alcohol or a drug.

Commentary

[1] In civil proceedings, a lawyer has a duty not to mislead the tribunal about the position of the client in the adversarial process. Thus, a lawyer representing a party to litigation who has made or is party to an agreement made before or during the trial by which a plaintiff is guaranteed recovery by one or more parties, notwithstanding the judgment of the court, should immediately reveal the existence and particulars of the agreement to the court and to all parties to the proceedings.

[2] A lawyer representing an accused or potential accused may communicate with a complainant or potential complainant, for example, to obtain factual information, to arrange for restitution or an apology from the accused, or to defend or settle any civil claims between the accused and the complainant. However, when the complainant or potential complaint is vulnerable, the lawyer must take care not to take unfair or improper advantage of the circumstances. If the complainant or potential complainant is unrepresented, the lawyer should be governed by the rules about unrepresented persons and make it clear that the lawyer is acting exclusively in the interests of the accused or potential accused. When communicating with an unrepresented complainant or potential complainant, it is prudent to have a witness present.

[3] It is an abuse of the court's process to threaten to bring an action or to offer to seek withdrawal of a criminal charge in order to gain a benefit. See also rules 3.2-5 and 3.2-6 and accompanying commentary.

[4] When examining a witness, a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

Duty as prosecutor

5.1-3 When acting as a prosecutor, a lawyer must act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy and respect.

Commentary

[1] When engaged as a prosecutor, the lawyer's primary duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. The prosecutor should not do anything that might prevent the accused from being represented by counsel or communicating with counsel and, to the extent required by law and accepted practice, should make timely disclosure to defence counsel or directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

Disclosure of error or omission

5.1-4 A lawyer who has unknowingly done or failed to do something that, if done or omitted knowingly, would have been in breach of this rule and who discovers it, must, subject to section 3.3 (Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.

Commentary

[1] If a client desires that a course be taken that would involve a breach of this rule, the lawyer must refuse and do everything reasonably possible to prevent it. If that cannot be done, the lawyer should, subject to rule 3.7-1 (Withdrawal from Representation), withdraw or seek leave to do so.

Courtesy

5.1-5 A lawyer must be courteous and civil and act in good faith to the tribunal and all persons with whom the lawyer has dealings.

Commentary

[1] Legal contempt of court and the professional obligation outlined here are not identical, and a consistent pattern of rude, provocative or disruptive conduct by a lawyer, even though unpunished as contempt, may constitute professional misconduct.

Undertakings

5.1-6 A lawyer must strictly and scrupulously fulfill any undertakings given and honour any trust conditions accepted in the course of litigation.

Commentary

[1] A lawyer should also be guided by the provisions of rule 7.2-11 (Undertakings and trust conditions).

Agreement on guilty plea

5.1-7 Before a charge is laid or at any time after a charge is laid, a lawyer for an accused or potential accused may discuss with the prosecutor the possible disposition of the case, unless the client instructs otherwise.

5.1-8 A lawyer for an accused or potential accused may enter into an agreement with the prosecutor about a guilty plea if, following investigation,

(a) the lawyer advises his or her client about the prospects for an acquittal or finding of guilt;

(b) the lawyer advises the client of the implications and possible consequences of a guilty plea and particularly of the sentencing authority and discretion of the court, including the fact that the court is not bound by any agreement about a guilty plea;

(c) the client voluntarily is prepared to admit the necessary factual and mental elements of the offence charged; and

(d) the client voluntarily instructs the lawyer to enter into an agreement as to a guilty plea.

Commentary

[1] The public interest in the proper administration of justice should not be sacrificed in the interest of expediency.

5.2 The Lawyer as witness

Submission of evidence

5.2-1 A lawyer who appears as advocate must not testify or submit his or her own affidavit evidence before the tribunal unless

(a) permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal;

(b) the matter is purely formal or uncontroverted; or

(c) it is necessary in the interests of justice for the lawyer to give evidence.

Commentary

[1] A lawyer should not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge. The lawyer should not, in effect, appear as an unsworn witness or put the lawyer's own credibility in issue. The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer. There are no restrictions on the advocate's right to cross-examine another lawyer, however, and the lawyer who does appear as a witness should not expect or receive special treatment because of professional status.

Appeals

5.2-2 A lawyer who is a witness in proceedings must not appear as advocate in any appeal from the decision in those proceedings, unless the matter about which he or she testified is purely formal or uncontroverted.

5.3 Interviewing witnesses

5.3 Subject to the rules on communication with a represented party set out in rules 7.2-4 to 7.2-8, a lawyer may seek information from any potential witness, whether under subpoena or not, but the lawyer must disclose the lawyer's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way.

5.4 Communication with witnesses giving evidence

5.4-1 A lawyer involved in a proceeding must not, during an examination and a cross-examination, obstruct the examination and the cross-examination in any manner.

5.4-2 Subject to the direction of the tribunal, a lawyer must observe the following rules respecting communication with witnesses giving evidence:

(a) during examination-in-chief, the examining lawyer may discuss with the witness any matter;

(b) during cross-examination of the lawyer's own witness, the lawyer must not discuss with the witness the evidence given in chief or relating to any matter introduced or touched on during the examination-in-chief;

(c) upon the conclusion of cross-examination and during any re-examination, with the leave of the court, the lawyer may discuss with the witness any matter;

(d) during examination for discovery, the lawyer may discuss the evidence given or to be given by the witness on the following basis:

(i) where a discovery is to last no longer than a day, counsel for the witness should refrain from having any discussion with the witness during this time.

(ii) where a discovery is scheduled for longer than one day, counsel is permitted to discuss with his or her witness all issues relating to the case, including evidence that is given or to be given, at the conclusion of the discovery each day. However, prior to any such discussion taking place, counsel should advise the other side of his or her intention to do so.

(iii) counsel for the witness should not seek an adjournment during the examination to specifically discuss the evidence that was given by the witness. Such discussion should either wait until the end of the day adjournment or until just before re-examination at the conclusion of the cross-examination.

Commentary

[1] The application of these rules may be determined by the practice and procedures of the tribunal and may be modified by agreement of counsel.

[2] The term "cross-examination" means the examination of a witness or party adverse in interest to the client of the lawyer conducting the examination. It therefore includes an examination for discovery, examination on affidavit or examination in aid of execution. The rule prohibits obstruction or improper discussion by any lawyer involved in a proceeding and not just by the lawyer whose witness is under cross-examination.

[3] The opportunity to conduct a fully ranging and uninterrupted cross-examination is fundamental to the adversarial system. It is counterbalanced by an opposing advocate's ability to ensure clarity of testimony through initial briefing, direct examination and re-examination of that lawyer's witnesses. There is therefore no justification for obstruction of cross-examination by unreasonable interruptions, repeated objection to proper questions, attempts to have the witness change or tailor evidence, or other similar conduct while the examination is ongoing.

[6] This rule is not intended to prohibit a lawyer with no prior involvement in the proceedings, who has been retained by a witness under cross-examination, from consulting with the lawyer's new client.

[8] For a discussion of issues relating to counsel speaking to the witness during examination for discovery see *Fraser River Pile & Dredge Ltd.* v. *Can-Dive Services Ltd*. (1992), 72 B.C.L.R. (2nd) 240 (B.C.S.C) and *Iroquois Falls Power Corp.* v. *Jacobs Canada Inc.* [2006] O.J. No. 4222 (Ont.Sup.Ct.). See also Shields and Shapray, "Woodshedding, Interruptions and Objections: How to Properly Conduct and Defend an Examination for Discovery", *the Advocate*, Vol. 68, Part 5, Sept. 2010.

5.5 Relations with jurors

Communication before trial

5.5-1 When acting as an advocate before the trial of a case, a lawyer must not communicate with or cause another to communicate with anyone that the lawyer knows to be a member of the jury panel for that trial.

Commentary

[1] A lawyer may investigate a prospective juror to ascertain any basis for challenge, provided that the lawyer does not directly or indirectly communicate with the prospective juror or with any member of the prospective juror's family. But a lawyer should not conduct or cause another, by financial support or otherwise, to conduct a vexatious or harassing investigation of either a member of the jury panel or a juror.

Disclosure of information

5.5-2 Unless the judge and opposing counsel have previously been made aware of the information, a lawyer acting as an advocate must disclose to them any information of which the lawyer is aware that a juror or prospective juror:

(a) has or may have an interest, direct or indirect, in the outcome of the case;

(b) is acquainted with or connected in any manner with the presiding judge, any counsel or any litigant;

(c) is acquainted with or connected in any manner with any person who has appeared or who is expected to appear as a witness; or

(d) may be legally disqualified from serving as a juror.

5.5-3 A lawyer must promptly disclose to the court any information that the lawyer reasonably believes discloses improper conduct by a member of a jury panel or by a juror.

Communication during trial

5.5-4 Except as permitted by law, a lawyer acting as an advocate must not communicate with or cause another to communicate with any member of the jury during a trial of a case.

5.5-5 A lawyer who is not connected with a case before the court must not communicate with or cause another to communicate with any member of the jury about the case.

5.5-6 A lawyer must not have any discussion after trial with a member of the jury about its deliberations.

Commentary

[1] The restrictions on communications with a juror or potential juror should also apply to communications with or investigations of members of his or her family.

5.6 The lawyer and the administration of justice

Encouraging respect for the administration of justice

5.6-1 A lawyer must encourage public respect for and try to improve the administration of justice.

Commentary

[1] The obligation outlined in the rule is not restricted to the lawyer's professional activities but is a general responsibility resulting from the lawyer's position in the community. A lawyer's responsibilities are greater than those of a private citizen. A lawyer should take care not to weaken or destroy public confidence in legal institutions or authorities by irresponsible allegations. The lawyer in public life should be particularly careful in this regard because the mere fact of being a lawyer will lend weight and credibility to public statements. Yet, for the same reason, a lawyer should not hesitate to speak out against an injustice.

[2] Admission to and continuance in the practice of law implies, on the part of a lawyer, a basic commitment to the concept of equal justice for all within an open, ordered and impartial system. However, judicial institutions will not function effectively unless they command the respect of the public, and, because of changes in human affairs and imperfections in human institutions, constant efforts must be made to improve the administration of justice and thereby, to maintain public respect for it.

[3] Criticizing Tribunals - Proceedings and decisions of courts and tribunals are properly subject to scrutiny and criticism by all members of the public, including lawyers, but judges and members of tribunals are often prohibited by law or custom from defending themselves. Their inability to do so imposes special responsibilities upon lawyers. First, a lawyer should avoid criticism that is petty, intemperate or unsupported by a bona fide belief in its real merit, since, in the eyes of the public, professional knowledge lends weight to the lawyer's judgments or criticism. Second, if a lawyer has been involved in the proceedings, there is the risk that any criticism may be, or may appear to be, partisan rather than objective. Third, when a tribunal is the object of unjust criticism, a lawyer, as a participant in the administration of justice, is uniquely able to, and should, support the tribunal, both because its members cannot defend themselves and because, in doing so, the lawyer contributes to greater public understanding of, and therefore respect for, the legal system.

[4] A lawyer, by training, opportunity and experience, is in a position to observe the workings and discover the strengths and weaknesses of laws, legal institutions and public authorities. A lawyer should, therefore, lead in seeking improvements in the legal system, but any criticisms and proposals should be bona fide and reasoned.

Seeking legislative or administrative changes

5.6-2 A lawyer who seeks legislative or administrative changes must disclose the interest being advanced, whether the lawyer's interest, the client's interest or the public interest.

Commentary

[1] The lawyer may advocate legislative or administrative changes on behalf of a client although not personally agreeing with them, but the lawyer who purports to act in the public interest should espouse only those changes that the lawyer conscientiously believes to be in the public interest.

Security of court facilities

5.6-3 A lawyer who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility must inform the persons having responsibility for security at the facility and give particulars.

Commentary

[1] If possible, the lawyer should suggest solutions to the anticipated problem such as:

(a) further security, or

(b) reserving judgment.

[2] If possible, the lawyer should also notify other lawyers who are known to be involved in proceedings at the court facility where the dangerous situation is likely to develop. Beyond providing a warning of danger, this notice is desirable because it may allow them to suggest security measures that do not interfere with an accused's or a party's right to a fair trial.

[3] If client information is involved in those situations, the lawyer should be guided by the provisions of section 3.3 (Confidentiality).

5.7 Lawyers and mediators

Role of mediator

5.7 A lawyer who acts as a mediator must, at the outset of the mediation, ensure that the parties to it understand fully that:

(a) the lawyer is not acting as a lawyer for either party but, as mediator, is acting to assist the parties to resolve the matters in issue; and

(b) although communications pertaining to and arising out of the mediation process may be covered by some other common law privilege, they will not be covered by solicitor-client privilege.

Commentary

[1] In acting as a mediator, generally a lawyer should not give legal advice, as opposed to legal information, to the parties during the mediation process. This does not preclude the mediator from giving direction on the consequences if the mediation fails.

[2] Generally, neither the lawyer-mediator nor a partner or associate of the lawyer-mediator should render legal representation or give legal advice to either party to the mediation, bearing in mind the provisions of section 3.4 (Conflicts) and its commentaries and the common law authorities.

[3] If the parties have not already done so, a lawyer-mediator generally should suggest that they seek the advice of separate counsel before and during the mediation process, and encourage them to do so.

[4] If, in the mediation process, the lawyer-mediator prepares a draft contract for the consideration of the parties, the lawyer-mediator should expressly advise and encourage them to seek separate independent legal representation concerning the draft contract.

Chapter 6 - Relationship to Students, Employees, and Others

6.1 Supervision

Direct supervision required

6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

Commentary

[1] A lawyer may permit a non-lawyer to act only under the supervision of a lawyer. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer to educate a non-lawyer concerning the duties that the lawyer assigns to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion. A lawyer must limit the number of non-lawyers that he or she supervises to ensure that there is sufficient time available for adequate supervision of each non-lawyer.

[3] If a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

[4] A lawyer in private practice may permit a non-lawyer to perform tasks delegated and supervised by a lawyer, so long as the lawyer maintains a direct relationship with the client. A lawyer in a community legal clinic funded by a provincial legal aid plan may do so, so long as the lawyer maintains direct supervision of the client's case in accordance with the supervision requirements of the legal aid plan and assumes full professional responsibility for the work.

[5] Subject to the provisions of any statute, rule or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer generally turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which, in the public interest, must be exercised by the lawyer whenever it is required.

Definitions

6.1-2 In this section,

"designated paralegal" means an individual permitted under rule 6.1-3.3 to give legal advice and represent clients before a court or tribunal;

"non-lawyer" means an individual who is neither a lawyer nor an articled student;

"paralegal" means a non-lawyer who is a trained professional working under the supervision of a lawyer.

Delegation

6. 1-3 A lawyer must not permit a non-lawyer to:

(a) accept new matters on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b) give legal advice;

(c) give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

(d) act finally without reference to the lawyer in matters involving professional legal judgment;

(e) be held out as a lawyer;

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;

(g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h) be remunerated on a sliding scale related to the earnings of the lawyer or the lawyer's law firm, unless the non-lawyer is an employee of the lawyer or the law firm;

(i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

  (i) it is of a routine administrative nature,

  (ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated;

(m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction*;*

(n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o) issue statements of account.

Commentary

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

[3] In real estate transactions using a system for the electronic submission or registration of documents, a lawyer who approves the electronic registration of documents by a non-lawyer is responsible for the content of any document that contains the electronic signature of the non-lawyer.

6.1-3.1 The limitations imposed by rule 6.1-3 do not apply when a non-lawyer is:

(a) a community advocate funded and designated by the Law Foundation;

(b) a student engaged in a legal advice program or clinical law program run by, associated with or housed by a law school in British Columbia; and

(c) with the approval of the Executive Committee, a person employed by or volunteering with a non-profit organization providing free legal services.

6.1-3.2 A lawyer may employ as a paralegal a person who

(a) possesses adequate knowledge of substantive and procedural law relevant to the work delegated by the supervising lawyer;

(b) possesses the practical and analytic skills necessary to carry out the work delegated by the supervising lawyer; and

(c) carries out his or her work in a competent and ethical manner.

Commentary

[1] A lawyer must not delegate work to a paralegal, nor may a lawyer hold a person out as a paralegal, unless the lawyer is satisfied that the person has sufficient knowledge, skill, training and experience and is of sufficiently good character to perform the tasks delegated by the lawyer in a competent and ethical manner.

[2] In arriving at this determination, lawyers should be guided by Appendix E.

[3] Lawyers are professionally and legally responsible for all work delegated to paralegals. Lawyers must ensure that the paralegal is adequately trained and supervised to carry out each function the paralegal performs, with due regard to the complexity and importance of the matter.

6.1-3.3 Despite rule 6.1-3, where a designated paralegal has the necessary skill and experience, a lawyer may permit the designated paralegal

(a) to give legal advice; or

(b) to represent clients before a court or tribunal, as permitted by the court or tribunal.

Commentary

[1] Law Society Rule 2-9.2 limits the number of designated paralegals performing the enhanced duties of giving legal advice and appearing in court or before a tribunal.

Suspended or disbarred lawyers

6.1-4 Without the express approval of the lawyer's governing body, a lawyer must not retain, occupy office space with, use the services of, partner or associate with or employ in any capacity having to do with the practice of law any person who, in any jurisdiction, has been disbarred and struck off the Rolls, suspended, undertaken not to practise or who has been involved in disciplinary action and been permitted to resign and has not been reinstated or readmitted.

Electronic registration of documents

6.1-5 A lawyer who has personalized encrypted electronic access to any system for the electronic submission or registration of documents must not

(a) permit others, including a non-lawyer employee, to use such access; or

(b) disclose his or her password or access phrase or number to others.

6.1-6 When a non-lawyer employed by a lawyer has a personalized encrypted electronic access to any system for the electronic submission or registration of documents, the lawyer must ensure that the non-lawyer does not

(a) permit others to use such access; or

(b) disclose his or her password or access phrase or number to others.

Commentary

[1] The implementation of systems for the electronic registration of documents imposes special responsibilities on lawyers and others using the system. The integrity and security of the system is achieved, in part, by its maintaining a record of those using the system for any transactions. Statements professing compliance with law without registration of supporting documents may be made only by lawyers in good standing. It is, therefore, important that lawyers should maintain and ensure the security and the exclusively personal use of the personalized access code, diskettes, etc., used to access the system and the personalized access pass phrase or number.

[2] In a real estate practice, when it is permissible for a lawyer to delegate responsibilities to a non-lawyer who has such access, the lawyer should ensure that the non-lawyer maintains and understands the importance of maintaining the security of the system.

Real estate assistants

6.1-7 In rules 6.1-7 to 6.1-9,

"purchaser" includes a lessee or person otherwise acquiring an interest in a property;

"sale" includes lease and any other form of acquisition or disposition;

"show", in relation to marketing real property for sale, includes:

(a) attending at the property for the purpose of exhibiting it to members of the public;

(b) providing information about the property, other than preprinted information prepared or approved by the lawyer; and

(c) conducting an open house at the property.

6.1-8 A lawyer may employ an assistant in the marketing of real property for sale in accordance with this chapter, provided:

(a) the assistant is employed in the office of the lawyer; and

(b) the lawyer personally shows the property.

6.1-9 A real estate marketing assistant may:

(a) arrange for maintenance and repairs of any property in the lawyer's care and control;

(b) place or remove signs relating to the sale of a property;

(c) attend at a property without showing it, in order to unlock it and let members of the public, real estate licensees or other lawyers enter; and

(d) provide members of the public with preprinted information about the property prepared or approved by the lawyer.

6.2 Students

Recruitment and engagement procedures

6.2-1 A lawyer must observe any procedures of the Society about the recruitment and engagement of articled or other students.

Duties of principal

6.2-2 A lawyer acting as a principal to a student must provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession.

Commentary

[1] A principal or supervising lawyer is responsible for the actions of students acting under his or her direction.

Duties of articled student

6.2-3 An articled student must act in good faith in fulfilling and discharging all the commitments and obligations arising from the articling experience.

6.3 Harassment and discrimination

6.3-1 The principles of human rights laws and related case law apply to the interpretation of this section.

6.3-2 A term used in this section that is defined in human rights legislation has the same meaning as in the legislation.

6.3-3 A lawyer must not sexually harass any person.

6.3-4 A lawyer must not engage in any other form of harassment of any person.

6.3-5 A lawyer must not discriminate against any person.

Commentary

[1] A lawyer has a special responsibility to comply with the requirements of human rights laws in force in Canada, its provinces and territories and, specifically, to honour the obligations enumerated in human rights laws.

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Chapter 7 – Relationship to the Society and Other Lawyers

7.1 Responsibility to the Society and the profession generally

Regulatory compliance

7.1-1 A lawyer must

(a) reply promptly and completely to any communication from the Society;

(b) provide documents as required to the Law Society;

(c) not improperly obstruct or delay Law Society investigations, audits and inquiries;

(d) cooperate with Law Society investigations, audits and inquiries involving the lawyer or a member of the lawyer's firm;

(e) comply with orders made under the *Legal Profession Act* or Law Society Rules; and

(f) otherwise comply with the Law Society's regulation of the lawyer's practice..

Meeting financial obligations

7.1-2 A lawyer must promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability insurance policy, when called upon to do so.

Commentary

[1] In order to maintain the honour of the Bar, lawyers have a professional duty (quite apart from any legal liability) to meet financial obligations incurred, assumed or undertaken on behalf of clients, unless, before incurring such an obligation, the lawyer clearly indicates in writing that the obligation is not to be a personal one.

[2] When a lawyer retains a consultant, expert or other professional, the lawyer should clarify the terms of the retainer in writing, including specifying the fees, the nature of the services to be provided and the person responsible for payment. If the lawyer is not responsible for the payment of the fees, the lawyer should help in making satisfactory arrangements for payment if it is reasonably possible to do so.

[3] If there is a change of lawyer, the lawyer who originally retained a consultant, expert or other professional should advise him or her about the change and provide the name, address, telephone number, fax number and email address of the new lawyer.

Duty to report

7.1-3 Unless to do so would involve a breach of solicitor-client confidentiality or privilege, a lawyer must report to the Society:

(a) a shortage of trust monies;

(a.1) a breach of undertaking or trust condition that has not been consented to or waived;

(b) the abandonment of a law practice;

(c) participation in criminal activity related to a lawyer's practice;

(d) the mental instability of a lawyer of such a nature that the lawyer's clients are likely to be materially prejudiced;

(e) conduct that raises a substantial question as to another lawyer's honesty, trustworthiness, or competency as a lawyer; and

(f) any other situation in which a lawyer's clients are likely to be materially prejudiced.

Commentary

[1] Unless a lawyer who departs from proper professional conduct is checked at an early stage, loss or damage to clients or others may ensue. Evidence of minor breaches may, on investigation, disclose a more serious situation or may indicate the commencement of a course of conduct that may lead to serious breaches in the future. It is, therefore, proper (unless it is privileged or otherwise unlawful) for a lawyer to report to the Society any instance involving a breach of these rules. If a lawyer is in any doubt whether a report should be made, the lawyer should consider seeking the advice of the Society directly or indirectly (e.g., through another lawyer).

[2] Nothing in this paragraph is meant to interfere with the lawyer-client relationship. In all cases, the report must be made without malice or ulterior motive.

[3] Often, instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or in criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

Encouraging client to report dishonest conduct

7.1-4 A lawyer must encourage a client who has a claim or complaint against an apparently dishonest lawyer to report the facts to the Society as soon as reasonably practicable.

7.2 Responsibility to lawyers and others

Courtesy and good faith

7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

Commentary

[1] The public interest demands that matters entrusted to a lawyer be dealt with effectively and expeditiously, and fair and courteous dealing on the part of each lawyer engaged in a matter will contribute materially to this end. The lawyer who behaves otherwise does a disservice to the client, and neglect of the rule will impair the ability of lawyers to perform their functions properly.

[2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.

[3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

[4] A lawyer should agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities and similar matters that do not prejudice the rights of the client.

7.2-2 A lawyer must avoid sharp practice and must not take advantage of or act without fair warning upon slips, irregularities or mistakes on the part of other lawyers not going to the merits or involving the sacrifice of a client's rights.

7.2-3 A lawyer must not use any device to record a conversation between the lawyer and a client or another lawyer, even if lawful, without first informing the other person of the intention to do so.

Communications

7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

7.2-5 A lawyer must answer with reasonable promptness all professional letters and communications from other lawyers that require an answer, and a lawyer must be punctual in fulfilling all commitments.

7.2-6 Subject to rule 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:

(a) approach, communicate or deal with the person on the matter; or

(b) attempt to negotiate or compromise the matter directly with the person.

7.2-7 A lawyer who is not otherwise interested in a matter may give a second opinion to a person who is represented by a lawyer with respect to that matter.

Commentary

[1] Rule 7.2-6 applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract or negotiation, who is represented by a lawyer concerning the matter to which the communication relates. A lawyer may communicate with a represented person concerning matters outside the representation. This rule does not prevent parties to a matter from communicating directly with each other.

[2] The prohibition on communications with a represented person applies only where the lawyer knows that the person is represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but actual knowledge may be inferred from the circumstances. This inference may arise when there is substantial reason to believe that the person with whom communication is sought is represented in the matter to be discussed. Thus, a lawyer cannot evade the requirement of obtaining the consent of the other lawyer by closing his or her eyes to the obvious.

[3] Rule 7.2-7 deals with circumstances in which a client may wish to obtain a second opinion from another lawyer. While a lawyer should not hesitate to provide a second opinion, the obligation to be competent and to render competent services requires that the opinion be based on sufficient information. In the case of a second opinion, such information may include facts that can be obtained only through consultation with the first lawyer involved. The lawyer should advise the client accordingly and, if necessary, consult the first lawyer unless the client instructs otherwise.

7.2-8 A lawyer retained to act on a matter involving a corporate or other organization represented by a lawyer must not approach an officer or employee of the organization:

(a) who has the authority to bind the organization;

(b) who supervises, directs or regularly consults with the organization's lawyer; or

(c) whose own interests are directly at stake in the representation,

in respect of that matter, unless the lawyer representing the organization consents or the contact is otherwise authorized or required by law.

Commentary

[1] This rule applies to corporations and other organizations. "Other organizations" include partnerships, limited partnerships, associations, unions, unincorporated groups, government departments and agencies, tribunals, regulatory bodies and sole proprietorships. This rule prohibits a lawyer representing another person or entity from communicating about the matter in question with persons likely involved in the decision-making process for a corporation or other organization. If an agent or employee of the organization is represented in the matter by a lawyer, the consent of that lawyer to the communication will be sufficient for purposes of this rule. A lawyer may communicate with employees or agents concerning matters outside the representation.

[2] A lawyer representing a corporation or other organization may also be retained to represent employees of the corporation or organization. In such circumstances, the lawyer must comply with the requirements of section 3.4 (Conflicts), and particularly rules 3.4-5 to 3.4-9. A lawyer must not represent that he or she acts for an employee of a client, unless the requirements of section 3.4 have been complied with, and must not be retained by an employee solely for the purpose of sheltering factual information from another party.

7.2-9 When a lawyer deals on a client's behalf with an unrepresented person, the lawyer must:

(a) urge the unrepresented person to obtain independent legal representation;

(b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the lawyer; and

(c) make it clear to the unrepresented person that the lawyer is acting exclusively in the interests of the client.

Commentary

[1] If an unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in this rule about joint retainers.

Inadvertent communications

7.2-10 A lawyer who has access to or comes into possession of a document that the lawyer has reasonable grounds to believe belongs to or is intended for an opposing party and was not intended for the lawyer to see, must:

(a) in the case of a paper document, return it unread and uncopied to the party to whom it belongs,

(b) in the case of an electronic document, delete it unread and uncopied and advise the party to whom it belongs that that was done, or

(c) if the lawyer reads part or all of the document before realizing that it was not intended for him or her, cease reading the document and promptly return it or delete it, uncopied, to the party to whom it belongs, advising that party:

(i) of the extent to which the lawyer is aware of the contents, and

(ii) what use the lawyer intends to make of the contents of the document.

Commentary

[3] For purposes of this rule, **"electronic document"** includes email or other electronic modes of transmission subject to being read or put into readable form, such as computer hard drives and memory cards.

Undertakings and trust conditions

7.2-11 A lawyer must:

(a) not give an undertaking that cannot be fulfilled;

(b) fulfill every undertaking given; and

(c) honour every trust condition once accepted.

Commentary

[1] Undertakings should be written or confirmed in writing and should be absolutely unambiguous in their terms. If a lawyer giving an undertaking does not intend to accept personal responsibility, this should be stated clearly in the undertaking itself. In the absence of such a statement, the person to whom the undertaking is given is entitled to expect that the lawyer giving it will honour it personally. The use of such words as "on behalf of my client" or "on behalf of the vendor" does not relieve the lawyer giving the undertaking of personal responsibility.

[2] Trust conditions, which are equivalent to undertakings, should be clear, unambiguous and explicit and should state the time within which the conditions must be met. Trust conditions should be imposed in writing and communicated to the other party at the time the property is delivered. Trust conditions should be accepted in writing and, once accepted, constitute an obligation on the accepting lawyer that the lawyer must honour personally. The lawyer who delivers property without any trust condition cannot retroactively impose trust conditions on the use of that property by the other party.

[3] The lawyer should not impose or accept trust conditions that are unreasonable, nor accept trust conditions that cannot be fulfilled personally. When a lawyer accepts property subject to trust conditions, the lawyer must fully comply with such conditions, even if the conditions subsequently appear unreasonable. It is improper for a lawyer to ignore or breach a trust condition he or she has accepted on the basis that the condition is not in accordance with the contractual obligations of the clients. It is also improper to unilaterally impose cross conditions respecting one's compliance with the original trust conditions.

[4] If a lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition should be immediately returned to the person imposing the trust condition, unless its terms can be forthwith amended in writing on a mutually agreeable basis.

[5] Trust conditions can be varied with the consent of the person imposing them. Any variation should be confirmed in writing. Clients or others are not entitled to require a variation of trust conditions without the consent of the lawyer who has imposed the conditions and the lawyer who has accepted them.

[6] Any trust condition that is accepted is binding upon a lawyer, whether imposed by another lawyer or by a lay person. A lawyer may seek to impose trust conditions upon a non-lawyer, whether an individual or a corporation or other organization, but great caution should be exercised in so doing since such conditions would be enforceable only through the courts as a matter of contract law and not by reason of the ethical obligations that exist between lawyers.

Trust cheques

7.2-12 Except in the most unusual and unforeseen circumstances, which the lawyer must justify, a lawyer who withdraws or authorizes the withdrawal of funds from a trust account by cheque undertakes that the cheque

(a) will be paid, and

(b) is capable of being certified if presented for that purpose.

Commentary

[1] Unless funds are to be paid under an agreement that specifically requires another form of payment or payment by another person, a lawyer must not refuse to accept another lawyer's uncertified cheque for the funds. It is not improper for a lawyer, at his or her own expense, to have another lawyer's cheque certified.

Real estate transactions

7.2-13 If a lawyer acting for a purchaser of real property accepts the purchase money in trust and receives a registrable conveyance from the vendor in favour of the purchaser, then the lawyer is deemed to have undertaken to pay the purchase money to or as directed by the vendor on completion of registration.

7.3 Outside interests and the practice of law

Maintaining professional integrity and judgment

7.3-1 A lawyer who engages in another profession, business or occupation concurrently with the practice of law must not allow such outside interest to jeopardize the lawyer's professional integrity, independence or competence.

Commentary

[1] A lawyer must not carry on, manage or be involved in any outside interest in such a way that makes it difficult to distinguish in which capacity the lawyer is acting in a particular transaction, or that would give rise to a conflict of interest or duty to a client.

[2] When acting or dealing in respect of a transaction involving an outside interest, the lawyer should be mindful of potential conflicts and the applicable standards referred to in the conflicts rule and disclose any personal interest.

7.3-2 A lawyer must not allow involvement in an outside interest to impair the exercise of the lawyer's independent judgment on behalf of a client.

Commentary

[1] The term "outside interest" covers the widest possible range of activities and includes activities that may overlap or be connected with the practice of law such as engaging in the mortgage business, acting as a director of a client corporation or writing on legal subjects, as well as activities not so connected, such as a career in business, politics, broadcasting or the performing arts. In each case, the question of whether and to what extent the lawyer may be permitted to engage in the outside interest will be subject to any applicable law or rule of the Society.

[2] When the outside interest is not related to the legal services being performed for clients, ethical considerations will usually not arise unless the lawyer's conduct might bring the lawyer or the profession into disrepute or impair the lawyer's competence, such as if the outside interest might occupy so much time that clients' interests would suffer because of inattention or lack of preparation.

7.4 The lawyer in public office

Standard of conduct

7.4-1 A lawyer who holds public office must, in the discharge of official duties, adhere to standards of conduct as high as those required of a lawyer engaged in the practice of law.

Commentary

[1] The rule applies to a lawyer who is elected or appointed to a legislative or administrative office at any level of government, regardless of whether the lawyer attained the office because of professional qualifications. Because such a lawyer is in the public eye, the legal profession can more readily be brought into disrepute by a failure to observe its ethical standards.

[2] Generally, the Society is not concerned with the way in which a lawyer holding public office carries out official responsibilities, but conduct in office that reflects adversely upon the lawyer's integrity or professional competence may be the subject of disciplinary action.

[3] Lawyers holding public office are also subject to the provisions of section 3.4 (Conflicts) when they apply.

7.5 Public appearances and public statements

Communication with the public

7.5-1 Provided that there is no infringement of the lawyer's obligations to the client, the profession, the courts, or the administration of justice, a lawyer may communicate information to the media and may make public appearances and statements.

Commentary

[1] Lawyers in their public appearances and public statements should conduct themselves in the same manner as they do with their clients, their fellow practitioners, the courts, and tribunals. Dealings with the media are simply an extension of the lawyer's conduct in a professional capacity. The mere fact that a lawyer's appearance is outside of a courtroom, a tribunal or the lawyer's office does not excuse conduct that would otherwise be considered improper.

[2] A lawyer's duty to the client demands that, before making a public statement concerning the client's affairs, the lawyer must first be satisfied that any communication is in the best interests of the client and within the scope of the retainer.

[3] Public communications about a client's affairs should not be used for the purpose of publicizing the lawyer and should be free from any suggestion that a lawyer's real purpose is self-promotion or self-aggrandizement.

[4] Given the variety of cases that can arise in the legal system, particularly in civil, criminal and administrative proceedings, it is impossible to set down guidelines that would anticipate every possible circumstance. Circumstances arise in which the lawyer should have no contact with the media, but there are other cases in which the lawyer should contact the media to properly serve the client.

[5] Lawyers are often involved in non-legal activities involving contact with the media to publicize such matters as fund-raising, expansion of hospitals or universities, programs of public institutions or political organizations. They sometimes act as spokespersons for organizations that, in turn, represent particular racial, religious or other special interest groups. This is a well-established and completely proper role for lawyers to play in view of the obvious contribution that it makes to the community.

[6] Lawyers are often called upon to comment publicly on the effectiveness of existing statutory or legal remedies or the effect of particular legislation or decided cases, or to offer an opinion about cases that have been instituted or are about to be instituted. This, too, is an important role the lawyer can play to assist the public in understanding legal issues.

[7] Lawyers should be aware that, when they make a public appearance or give a statement, they ordinarily have no control over any editing that may follow or the context in which the appearance or statement may be used or under what headline it may appear.

Interference with right to fair trial or hearing

7.5-2 A lawyer must not communicate information to the media or make public statements about a matter before a tribunal if the lawyer knows or ought to know that the information or statement will have a substantial likelihood of materially prejudicing a party's right to a fair trial or hearing.

Commentary

[1] Fair trials and hearings are fundamental to a free and democratic society. It is important that the public, including the media, be informed about cases before courts and tribunals. The administration of justice benefits from public scrutiny. It is also important that a person's, particularly an accused person's, right to a fair trial or hearing not be impaired by inappropriate public statements made before the case has concluded.

7.6 Preventing unauthorized practice

7.6-1 A lawyer must assist in preventing the unauthorized practice of law.

Commentary

[1] Statutory provisions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, from regulation and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of confidentiality, the professional standard of care that the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include mandatory professional liability insurance, the assessment of lawyers' bills, regulation of the handling of trust monies and the maintenance of compensation funds.

7.7 Retired judges returning to practice

7.7-1 A judge who returns to practice after retiring, resigning or being removed from the bench must not, for a period of three years, unless the governing body approves on the basis of exceptional circumstances, appear as a lawyer before the court of which the former judge was a member or before any courts of inferior jurisdiction to that court or before any administrative board or tribunal over which that court exercised an appellate or judicial review jurisdiction in any province in which the judge exercised judicial functions.

7.8 Errors and omissions

Informing client of errors or omissions

7.8-1 When, in connection with a matter for which a lawyer is responsible, a lawyer discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the lawyer must:

(a) promptly inform the client of the error or omission without admitting legal liability;

(b) recommend that the client obtain independent legal advice concerning the matter, including any rights the client may have arising from the error or omission; and

(c) advise the client of the possibility that, in the circumstances, the lawyer may no longer be able to act for the client.

Commentary

[1] Under Condition 4.1 of the Lawyers' Compulsory Professional Liability Insurance Policy, a lawyer is contractually required to give written notice to the insurer immediately after the lawyer becomes aware of any actual or alleged error or any circumstances that could reasonably be expected to be the basis of a claim or suit covered under the policy. This obligation arises whether or not the lawyer considers the claim to have merit. Rule 7.8-2 imposes an ethical duty to report to the insurer. Rule 7.8-1 should not be construed as relieving a lawyer from the obligation to report to the insurer before attempting any rectification.

Notice of claim

7.8-2 A lawyer must give prompt notice of any circumstances that may reasonably be expected to give rise to a claim to an insurer or other indemnitor so that the client's protection from that source will not be prejudiced.

Commentary

[1] The introduction of compulsory insurance has imposed additional obligations upon a lawyer, but these obligations must not impair the relationship and duties of the lawyer to the client. A lawyer has an obligation to comply with the provisions of the policy of insurance. The insurer's rights must be preserved, and the lawyer, in informing the client of an error or omission, should be careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan, or otherwise. There may well be occasions when a lawyer believes that certain actions or a failure to take action have made the lawyer liable for damages to the client when, in reality, no liability exists. Further, in every case, a careful assessment will have to be made of the client's damages arising from a lawyer's negligence.

Co-operation

7.8-3 A lawyer facing a claim or potential claim of professional negligence must not fail to assist and co-operate with the insurer or other indemnitor to the extent necessary to enable the claim or potential claim to be dealt with promptly.

Responding to client's claim

7.8-4 If a lawyer is not indemnified for a client's errors and omissions claim or to the extent that the indemnity may not fully cover the claim, the lawyer must expeditiously deal with the claim and must not take unfair advantage that would defeat or impair the client's claim.

7.8-5 If liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, a lawyer has a duty to pay the balance. (See also Rule 7.1-2]

Appendix A – Affidavits, Solemn Declarations and Officer Certifications

Affidavits and solemn declarations

1. A lawyer must not swear an affidavit or take a solemn declaration unless the deponent:

(a) is physically present before the lawyer,

(b) acknowledges that he or she is the deponent,

(c) understands or appears to understand the statement contained in the document,

(d) in the case of an affidavit, swears, declares or affirms that the contents of the document are true,

(e) in the case of a solemn declaration, orally states that the deponent makes the solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath, and

(f) signs the document, or if permitted by statute, swears that the signature on the document is that of the deponent.

Commentary

Non-practising and retired members

[1] Non-practising and retired members are not permitted to act as notaries public or commissioners for the purpose of taking affidavits or solemn declarations. See Law Society Rules 2-3 and 2-4 for the definitions of non-practising and retired members.

Interjurisdictional practice

[2] A British Columbia lawyer, as a notary public, may administer oaths and take affidavits, declarations and affirmations only within British Columbia: See section 14 of the *Legal Profession Act* for a lawyer's right to act as a notary public, and section 18 of the *Notaries Act*, RSBC 1996, c. 334 for rights and powers of a notary public, including the right to draw affidavits, affirmations or statutory declarations for other jurisdictions.

[3] A British Columbia lawyer, as a commissioner for taking affidavits for British Columbia, has authority to administer oaths and take affidavits, declarations and affirmations outside of BC *for use in BC*: See sections 59, 63 and related sections of the *Evidence Act*, RSBC 1996, c.124.

[4] Notwithstanding Law Society mobility provisions across Canada, a British Columbia lawyer cannot swear an affidavit in another province or territory for use in that jurisdiction unless the lawyer is a member of the bar in that jurisdiction or the jurisdiction's own legislation allows it. For example, because of Alberta legislation, a member of the Law Society of British Columbia, while in Alberta acting under the mobility provisions on an Alberta matter, cannot swear an affidavit for use in Alberta.

[5] British Columbia lawyers should contact the law society of the other province or territory if they need to check whether they are entitled to swear an affidavit in that jurisdiction.

[6] Likewise, lawyers from other jurisdictions visiting British Columbia may not swear affidavits in BC for use in BC: See section 60 of the *Evidence Act* and the definition of "practising lawyer" in section 1(1) of the *Legal Profession Act.*

Deponent present before commissioner

[7] See *R.* v. *Schultz*, [1922] 2 WWR 582 (Sask. CA) in which the accused filled in and signed a declaration and left it on the desk of a commissioner for taking oaths, later meeting the commissioner outside and asking him to complete it. The court held that it was not a solemn declaration within the meaning of the *Canada Evidence Act*, stating that: "The mere fact that it was signed by the accused does not make it a solemn declaration. The written statement by the commissioner that it was 'declared before him' is not true. The essential requirement of the *Act* is not the signature of the declarant but his solemn declaration made before the commissioner." (p. 584) Likewise, it has been held in the U.S. that the taking of an affidavit over the telephone is grounds for a charge of negligence and professional misconduct: *Bar Association of New York City* v. *Napolis* (1915), 155 N.Y. Sup. 416 (N.Y. Sup. Ct. App. Div.). In B.C., the conduct of a lawyer who affixed his name to the jurat of the signed affidavit without ever having seen the deponent constituted professional misconduct: Law Society *Discipline Case Digest* 83/14.

Identification

[8] The commissioner should be satisfied that the deponent is who the deponent represents himself or herself to be. Where the commissioner does not know the deponent personally, identification should be inspected and/or appropriate introductions should be obtained.

Appearing to understand

[9] To be satisfied of this, the commissioner may read the document aloud to the deponent, have the deponent read it aloud or accept the deponent's statement that its contents are understood: *R.* v. *Whynot* (1954), 110 CCC 35 at 42 (NSCA).

[10] It is also important that the deponent understands the significance of the oath or declaration he or she is proposing to take. See *King* v. *Phillips* (1908), 14 CCC 239 (B.C. Co. Ct.); *R.* v. *Nichols*, [1975] 5 WWR 600 (Alta SC); and *Owen* v. *Yorke*, (6 December, 1984), Vancouver A843177 (BCSC).

[11] If it appears that a deponent is unable to read the document, the commissioner must certify in the jurat that the document was read in his or her presence and the commissioner was satisfied that the deponent understood it: B.C., *Rules of Court*, Rule 51(5). If it appears that the deponent does not understand English, the lawyer must arrange for a competent interpreter to interpret the document to the deponent and certify by endorsement in Form 60 that he or she has done so: *Rules of Court*, Rule 51(6).

Affirmation

[12] The British Columbia Law Reform Commission has raised the question of whether an affidavit may properly be created by solemn affirmation under provincial law. For this reason, in cases where a deponent does not want to swear an affidavit, it may be prudent to create the affidavit by solemn declaration rather than by solemn affirmation. See Appendix B to Law Reform Commission of British Columbia, *Report on Affidavits: Alternatives to Oaths* LRC 115 (1990).

Swear or affirm that the contents are true

[13] This can be accomplished by the commissioner asking the deponent: "Do you swear that the contents of this affidavit are true, so help you God?" or, if the affidavit is being affirmed, "Do you solemnly affirm [or words with the same effect] that the evidence given by you is the truth, the whole truth and nothing but the truth?," to which the deponent must answer in the affirmative. In taking an affirmation the lawyer should comply with section 20 of the *Evidence Act*, RSBC 1996, c. 124 and the *Affirmation Regulation*, B.C. Reg. 396/89.

[14] Section 29 of the *Interpretation Act*, RSBC 1996, c. 238, defines an affidavit or oath as follows:

> "affidavit" or "oath" includes an affirmation, a statutory declaration, or a solemn declaration made under the *Evidence Act*, or under the *Canada Evidence Act*; and the word "swear" includes solemnly declare or affirm;

[15] If an affidavit is altered after it has been sworn, it cannot be used unless it is resworn. Reswearing can be done by the commissioner initialling the alterations, taking the oath again from the deponent and then signing the altered affidavit. A second jurat should be added, commencing with the word "resworn."

[16] Generally, an affidavit is sworn and filed in a proceeding that is already commenced. An affidavit may also be sworn before the proceeding is commenced: *Rules of Court*, Rule 51(12). However, an affidavit may not be postdated: *Law Society of BC v. Foo*, [1997] LSDD No. 197.

[17] Swearing to an affidavit exhibits that are not in existence can amount to professional misconduct: *LSBC v. Foo*.

Solemn declaration

[18] A solemn declaration should be made in the words of the statute: *King* v. *Phillips*, *supra*; *R.* v. *Whynot*, *supra.*

[19] The proper form for a solemn declaration is set out in section 41 of the *Canada Evidence Act*, RSC 1985, c. C-5:

> **Solemn declaration**
>
> 41. Any judge, notary public, justice of the peace, provincial court judge, recorder, mayor or commissioner authorized to take affidavits to be used either in the provincial or federal courts, or any other functionary authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making the declaration before him, in the following form, in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing:
>
> > I, , solemnly declare that (*state the fact or facts declared to*), and I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath.
> >
> > Declared before me at this . day of , 20

and in section 69 of the *Evidence Act*, RSBC 1996, c. 124:

> **Statutory declarations**
>
> 69. A gold commissioner, mayor or commissioner authorized to take affidavits, or any other person authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making it before him or her in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing, in the following words:
>
> > I, A.B., solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

Execution

[20] A deponent unable to sign an affidavit may place his or her mark on it: *Rules of Court*, Rule 51(3)(b)(ii). An affidavit by a person who could not make any mark at all was accepted by the court in *R.* v. *Holloway* (1901), 65 JP 712 (Magistrates Ct.).

Witnessing the execution of an instrument

2. When a lawyer witnesses the execution of an instrument by an individual under the *Land Title Act*, RSBC 1996, c. 250, the lawyer's signature is a certification by the lawyer that:

(a) the individual appeared before and acknowledged to the lawyer that he or she is the person named in the instrument as transferor, and

(b) the signature witnessed by the lawyer is the signature of the individual who made the acknowledgment. (See section 43 of the *Land Title Act*.)

Commentary

[1] Non-practising and retired members are not permitted to act as officers for the purpose of witnessing the execution of instruments under the *Land Title Act*.

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Appendix B – Family Law Mediation

Definitions

1. In this Appendix:

(a) **"family law mediation"** means a process by which two adult persons ("participants") attempt, with the assistance of an impartial person (the family law mediator), to reach a consensual settlement of issues relating to their marriage, cohabitation, separation or divorce;

(b) without limiting the generality of the foregoing, **"family law mediation"** includes one or more of the following acts when performed by a lawyer acting as a family mediator:

(i) informing the participants of the legal issues involved,

(ii) advising the participants of a court's probable disposition of the issue,

(iii) preparing any agreement between the participants other than a memorandum recording the results of the mediation,

(iv) giving any other legal advice.

Disqualifications

2. (a) If a lawyer, or a partner, associate or employee of that lawyer has previously acted or is presently acting for one or both of the participants to the mediation in a solicitor-client relationship with respect to any matter which may reasonably be expected to become an issue during the family law mediation, that lawyer may not act as a family law mediator for the participants.

(b) If a lawyer has acted as a family law mediator for the participants, neither that lawyer, nor any partner, associate or employee of that lawyer may act in a solicitor-client relationship for either participant against the other participant.

(c) If a lawyer, or a partner, associate or employee of that lawyer has acted as a family law mediator for the participants, neither that lawyer, nor a partner, associate or employee of that lawyer may act for or against any person where to do so might require the lawyer to disclose or make use of confidential information given in the course of mediation.

Mediator's duties

3. A lawyer who acts as a family law mediator must ensure that if agreement is reached between the participants and as a result the lawyer drafts a document representing the agreement reached, the lawyer actively encourages each participant to obtain independent legal advice before executing the agreement.

Written agreement

4. A lawyer who acts as a family law mediator and the participants with respect of whom the lawyer mediates shall, before mediation commences, enter into a written agreement which shall include at least the following provisions:

(a) an agreement that the lawyer, throughout the mediation process, is not acting as legal counsel for either participant,

(b) an agreement that the lawyer may disclose fully to each participant all information provided by the other participant which is relevant to the issues being mediated,

(c) an agreement that the mediation process is part of an attempt to settle the differences between the participants and that all communications between the participants and between each participant and the mediator will be "without prejudice" so that:

  (i) neither participant will attempt to introduce evidence of the communications in any legal proceedings,

  (ii) neither participant will attempt to call the mediator as a witness in any legal proceedings,

(d) an acknowledgment that the lawyer must report to the Superintendent of Family and Child Services any instance arising from the mediation in which the lawyer has reasonable grounds to believe that a child is in need of protection,

(e) an agreement as to the lawyer's rate of remuneration and terms of payment,

(f) an agreement as to the circumstances in which mediation will terminate.

Appendix C – Real Property Transactions

Application

1. This Appendix does not apply to a real property transaction between corporations, societies, partnerships, trusts, or any of them, that are effectively controlled by the same person or persons or between any of them and such person or persons.

Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:

(a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,

(b) the transaction is a simple conveyance, or

(c) paragraph 8 applies.

3. When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in rule 3.4-5 to 3.4-9.

Simple conveyance

4. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:

(a) the value of the property or the amount of money involved,

(b) the existence of non-financial charges, and

(c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

Commentary

[1] The following are examples of transactions that may be treated as simple conveyances when this commentary does not apply to exclude them:

(a) the payment of all cash for clear title,

(b) the discharge of one or more encumbrances and payment of the balance, if any, in cash,

(c) the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,

(d) a mortgage that does not contain any commercial element, given by a mortgagor to an institutional lender to be registered against the mortgagor's residence, including a mortgage that is

(i) a revolving mortgage that can be advanced and re-advanced,

(ii) to be advanced in stages, or

(iii) given to secure a line of credit.

(e) transfer of a leasehold interest if there are no changes to the terms of the lease,

(f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or

(g) any combination of the foregoing.

[2] The following are examples of transactions that must not be treated as simple conveyances:

(h) a transaction in which there is any commercial element, such as

(i) a conveyance included in a sale and purchase of a business,

(ii) a transaction involving a building containing more than three residential units, or

(iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,

(i) a lease or transfer of a lease, other than as set out in subparagraph (e),

(j) a transaction in which there is a mortgage back from the purchaser to the vendor,

(k) an agreement for sale,

(l) a transaction in which the lawyer's client is a vendor who:

(i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property,

(ii) is or was the developer of property being sold, unless subparagraph (f) applies, or

(m) a conveyance of residential property with substantial improvements under construction at the time the agreement for purchase and sale was signed, unless the lawyer's clients are a purchaser and a mortgagee and construction is completed before funds are advanced under the mortgage.

[3] A transaction is not considered to have a commercial element merely because one of the parties is a corporation.

Advice and consent

5. If a lawyer acts for more than one party in the circumstances as set out in paragraph 2 of this Appendix, then the lawyer must, as soon as is practicable,

(a) advise each party in writing that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned and that, if a conflict of interest arises, the lawyer cannot continue to act for any of them in the transaction,

(b) obtain the consent in writing of all such parties, and

(c) raise and explain the legal effect of issues relevant to the transaction that may be of importance to each such party.

Commentary

[1] If a written communication is not practicable at the beginning of the transaction, the advice may be given and the consent obtained orally, but the lawyer must confirm that advice to the parties in writing as soon as possible, and the lawyer must obtain consent in writing prior to completion.

[2] The consent in writing may be set out in the documentation of the transaction or may be a blanket consent covering an indefinite number of transactions.

Foreclosure proceedings

6. In this paragraph, "mortgagor" includes "purchaser," and "mortgagee" includes "vendor" under an agreement for sale, and "foreclosure proceeding" includes a proceeding for cancellation of an agreement for sale.

If a lawyer acts for both a mortgagor and a mortgagee in the circumstances set out in paragraph 2, the lawyer must not act in any foreclosure proceeding relating to that transaction for either the mortgagor or the mortgagee.

This prohibition does not apply if

(a) the lawyer acted for a mortgagee and attended on the mortgagor only for the purposes of executing the mortgage documentation,

(b) the mortgagor for whom the lawyer acted is not made a party to the foreclosure proceeding, or

(c) the mortgagor has no beneficial interest in the mortgaged property and no claim is being made against the mortgagor personally.

Unrepresented parties in a real property transaction

7. If one party to a real property transaction does not want or refuses to obtain independent legal representation, the lawyer acting for the other party may allow the unrepresented party to execute the necessary documents in the lawyer's presence as a witness if the lawyer advises that party in writing that:

(a) the party is entitled to obtain independent legal representation but has chosen not to do so,

(b) the lawyer does not act for or represent the party with respect to the transaction, and

(c) the lawyer has not advised that party with respect to the transaction but has only attended to the execution and attestation of documents.

8. If the lawyer witnesses the execution of the necessary documents as set out in paragraph 7, it is not necessary for the lawyer to obtain the consent of the party or parties for whom the lawyer acts.

9. If one party to the real property transaction is otherwise unrepresented but wants the lawyer representing another party to the transaction to act for him or her to remove existing encumbrances, the lawyer may act for that party for those purposes only and may allow that party to execute the necessary documents in the lawyer's presence as witness if the lawyer advises the party in writing that:

(a) the lawyer's engagement is of a limited nature, and

(b) if a conflict arises between the parties, the lawyer will be unable to continue to act for that party.

Appendix D – Conflicts Arising as a Result of Transfer Between Law Firms

Matters to consider when interviewing a potential transferee

1. When a law firm considers hiring a lawyer or articled student ("transferring lawyer") from another law firm, the transferring lawyer and the new law firm need to determine, *before transfer,* whether any conflicts of interest will be created. Conflicts can arise with respect to clients of the firm that the transferring lawyer is leaving, and with respect to clients of a firm in which the transferring lawyer worked at some earlier time.

During the interview process, the transferring lawyer and the new law firm need to identify, first, all cases in which:

(a) the new law firm represents a client in a matter that is the same as or related to a matter in which the former law firm represents its client,

(b) the interests of these clients in that matter conflict, and

(c) the transferring lawyer actually possesses relevant information respecting that matter.

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

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

If this element exists, then the transferring lawyer is disqualified unless the former client consents, and the new law firm is disqualified unless the firm takes measures set out in this Code to preserve the confidentiality of information.

In rules 3.4-17 to 3.4-26, "confidential" information refers to information not generally known to the public that is obtained from a client. It should be distinguished from the general ethical duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, which duty applies without regard to the nature or source of the information or to the fact that others may share the knowledge.

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

Matters to consider before hiring a potential transferee

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

(a) If a conflict does exist

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

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

(ii) the new law firm complies with rule 3.4-20.

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

Alternatively, if the new law firm applies under rule 3.4-25 for an opinion of the Society or a determination by a court that it may continue to act, it bears the onus of establishing the matters referred to in rule 3.4-20. Again, this process must be completed before the transferring lawyer is hired.

An application under rule 3.4-25 may be made to the Society or to a court of competent jurisdiction. The Society has a procedure for considering disputes under rule 3.4-25 that is intended to provide informal guidance to applicants.

The circumstances referred to in rule 3.4-20 (b) are drafted in broad terms to ensure that all relevant facts will be taken into account.

(b) If no conflict exists

If the new law firm concludes that the transferring lawyer possesses relevant information respecting a former client, but that information is not confidential information that may prejudice the former client if disclosed to a member of the new law firm, the new law firm must notify its client "of the relevant circumstances and its intended action under rules 3.4-17 to 3.4-26.

Although Rule 3.4-20 does not require that the notice be in writing, it would be prudent for the new law firm to confirm these matters in writing. Written notification eliminates any later dispute as to the fact of notification, its timeliness and content.

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

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

A former client who alleges that the transferring lawyer has such confidential information may apply under rule 3.4-25 for an opinion of the Society or a determination by a court on that issue.

(c) If the new law firm is not sure whether a conflict exists

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

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

Reasonable measures to ensure non-disclosure of confidential information

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

(a) if the transferring lawyer actually possesses confidential information respecting a former client that may prejudice the former client if disclosed to a member of the new law firm, and

(b) if the new law firm is not sure whether the transferring lawyer possesses such confidential information, but it wants to strengthen its position if it is later determined that the transferring lawyer did in fact possess such confidential information.

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

In the case of law firms with multiple offices, the degree of autonomy possessed by each office will be an important factor in determining what constitutes "reasonable measures." For example, the various legal services units of a government, a corporation with separate regional legal departments, an inter-provincial law firm or a legal aid program may be able to argue that, because of its institutional structure, reporting relationships, function, nature of work and geography, relatively fewer "measures" are necessary to ensure the non-disclosure of client confidences.

Adoption of all guidelines may not be realistic or required in all circumstances, but lawyers should document the reasons for declining to conform to a particular guideline. Some circumstances may require extra measures not contemplated by the guidelines.

When a transferring lawyer joining a government legal services unit or the legal department of a corporation actually possesses confidential information respecting a former client that may prejudice the former client if disclosed to a member of the new "law firm," the interests of the new client (i.e., Her Majesty or the corporation) must continue to be represented. Normally, this will be effected either by instituting satisfactory screening measures or, when necessary, by referring conduct of the matter to outside counsel. As each factual situation will be unique, flexibility will be required in the application of rule 3.4-20 (b).

Guidelines:

1. The screened lawyer should have no involvement in the new law firm's representation of its client.

2. The screened lawyer should not discuss the current matter or any information relating to the representation of the former client (the two may be identical) with anyone else in the new law firm.

3. No member of the new law firm should discuss the current matter or the prior representation with the screened lawyer.

4. The measures taken by the new law firm to screen the transferring lawyer should be stated in a written policy explained to all lawyers and support staff within the firm, supported by an admonition that violation of the policy will result in sanctions, up to and including dismissal.

5. The former client, or if the former client is represented in that matter by a lawyer, that lawyer, should be advised:

(a) that the screened lawyer is now with the new law firm, which represents the current client, and

(b) of the measures adopted by the new law firm to ensure that there will be no disclosure of confidential information.

6. Unless to do otherwise is unfair, insignificant or impracticable, the screened lawyer should not participate in the fees generated by the current client matter.

7. The screened lawyer's office or work station should be located away from the offices or work stations of those working on the matter.

8. The screened lawyer should use associates and support staff different from those working on the current client matter.

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Appendix E – Supervision of Paralegals

Key concepts

Lawyers who use paralegals need to be aware of several key concepts:

1. The lawyer maintains ultimate responsibility for the supervision of the paralegal and oversight of the file;
2. Although a paralegal may be given operational carriage of a file, the retainer remains one between the lawyer and the client and the lawyer continues to be bound by his or her professional, contractual and fiduciary obligations to the client;
3. The Society will protect the public by regulating the lawyer who is responsible for supervising the paralegal in the event of misconduct or a breach of the *Legal Profession Act* or Law Society Rules committed by the paralegal;
4. A lawyer must limit the number of persons that he or she supervises to ensure that there is sufficient time available for adequate supervision of each person.
5. A paralegal must be identified as such in correspondence and documents he or she signs and in any appearance before a court of tribunal.
6. A lawyer must not delegate any matter to a paralegal that the lawyer would not be competent to conduct himself or herself.

Best practices for supervising paralegals

1. Supervision is a flexible concept that is assessed on a case-by-case basis with consideration of the relevant factors, which, depending on the circumstances, include the following:

(a) Has the paralegal demonstrated a high degree of competence when assisting the lawyer with similar subject matter?

(b) Does the paralegal have relevant work experience and or education relating to the matter being delegated?

(c) How complex is the matter being delegated?

(d) What is the risk of harm to the client with respect to the matter being delegated?

2. A lawyer must actively mentor and monitor the paralegal. A lawyer should consider the following:

(a) Train the paralegal as if he or she were training an articled student. A lawyer must be satisfied the paralegal is competent to engage in the work assigned;

(b) Ensuring the paralegal understands the importance of confidentiality and privilege and the professional duties of lawyers. Consider having the paralegal sign an oath to discharge his or her duties in a professional and ethical manner;

(c) Gradually increasing the paralegal's responsibilities;

(d) A lawyer should engage in file triage and debriefing to ensure that matters delegated are appropriate for the paralegal and to monitor competence. This may include:

(i) testing the paralegal's ability to identify relevant issues, risks and opportunities for the client;

(ii) engaging in periodic file review. File review should be a frequent practice until such time as the paralegal has demonstrated continued competence, and should remain a regular practice thereafter;

(iii) ensuring the paralegal follows best practices regarding client communication and file management.

3. Create a feedback mechanism for clients and encourage the client to keep the lawyer informed of the strengths and weaknesses of the paralegal's work. If the client has any concerns, the client should alert the lawyer promptly.

4. If a lawyer has any concerns that the paralegal has made a mistake, the lawyer must take carriage of the file and deal with the mistake.

5. Discuss paralegal supervision with a Law Society practice advisor if you have any concerns.

Best practices for training paralegals

1. Develop a formal plan for supervision and discuss it with the paralegal. Set goals and progress milestones.

2. Review the guidelines for supervising articled students and adopt concepts that are appropriate to the scope of responsibility being entrusted to the paralegal.

3. Facilitate continuing legal education for the paralegal.

4. Ensure the paralegal reviews the relevant sections of the Professional Legal Training Course materials and other professional development resources and review key concepts with the paralegal to assess their comprehension level.

5. Have their paralegals "junior" the lawyer on files and explain the thought process with respect to substantive and procedural matters as part of the paralegal's training.

6. Keep an open door policy and encourage the paralegal to discuss any concerns or red flags with the lawyer before taking further steps.

A checklist for assessing the competence of paralegals

1. Does the paralegal have a legal education? If so, consider the following:

(a) What is the reputation of the institution?

(b) Review the paralegal's transcript;

(c) Review the courses that the paralegal took and consider reviewing the course outline for relevant subject matters to assess what would have been covered in the course, consider total number of credit hours, etc.

(d) Ask the paralegal about the education experience.

2. Does the paralegal have other post-secondary education that may provide useful skills? Consider the reputation of the institution and review the paralegal's transcripts.

3. What work experience does the paralegal have, with particular importance being placed on legal work experience?:

(a) Preference/weight should be given to work experience with the supervising lawyer and/or firm;

(b) If the experience is with another firm, consider contacting the prior supervising lawyer for an assessment;

(c) Does the paralegal have experience in the relevant area of law?

(d) What responsibilities has the paralegal undertaken in the past in dealing with legal matters?

4. What personal qualities does the paralegal possess that make him or her well-suited to take on enhanced roles:

(a) How responsible, trustworthy and mature is the paralegal?

(b) Does the paralegal have good interpersonal and language skills?

(c) Is the paralegal efficient and well organized?

(d) Does the paralegal possess good interviewing and diagnostic skills?

(e) Does the paralegal display a strong understanding of both the substantive and procedural law governing the matter to be delegated?

(f) Does the paralegal strive for continuous self-improvement, rise to challenges, etc.?

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B.C. LAWYERS' COMPULSORY PROFESSIONAL LIABILITY INSURANCE
2013 RENEWAL ENDORSEMENT
ATTACHED TO AND FORMING PART OF POLICY NO. LPL 12-01-01

INSURER:
THE LSBC CAPTIVE INSURANCE COMPANY LTD.

In consideration of the premium paid, it is hereby understood and agreed that the following amendments are made to this policy effective January 1, 2013:

1. The Policy Number is changed to LPL 13-01-01.

2. The following changes are made to the DECLARATIONS:

   2. **Policy Period** From January 1, 2013 to January 1, 2014 (12:01 a m. standard time).

3. In the bolded sentence at the end of the DECLARATIONS and before the DEFINITIONS, "**2012**" is changed to "**2013**".

4. After the bolded sentence at the end of the DECLARATIONS and before the DEFINITIONS, the following sentence is added: "Every action or proceeding against an insurer for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*."

5. The following change is made to the DEFINITIONS:

   The definition of **Reciprocal Jurisdiction** is amended by replacing "the province or territory" with "the province, but not the territory,".

6. The following changes are made to the CONDITIONS:

   Condition 3.2 is revised by replacing "term, exclusion or breach of a condition" with "exclusion, breach of a condition, or any other term".

   The second sentence of Condition 5.4 is amended by adding "consent to any permitted disclosure, and" after "You" and before "agree that", and by replacing "any disclosure" with "such disclosure".

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Dated this 31 day of October, 2012.

The LSBC Captive Insurance Company Ltd.

Susan I. Forbes, QC, Secretary