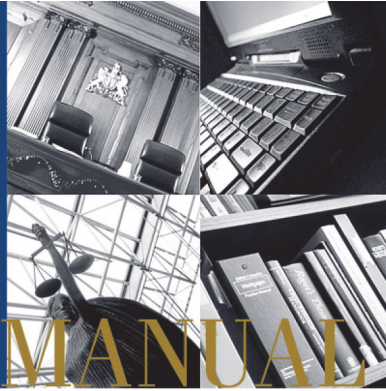


MEMBER'S MANUAL



The Law Society
of British Columbia



AMENDMENT PAGES

2018: No. 2 June

Highlights

Law Society Rules 2015:*

Substantive rule amendments implement the regulation of law firms by the Law Society, including the appointment of designated representatives, information sharing between firms and the Society and the self-assessment process; also, a number of consequential amendments bring the rules into alignment with the *Legal Profession Act* provisions that were proclaimed on April 2, 2018 (definitions of “complainant,” “complaint,” “conduct unbecoming the profession,” “disciplinary record,” “discipline violation,” “law firm” or “firm” and “trust funds” and Rules 2-12.1 to 2-12.5, 3-1, 3-2, 3-3(4.1), 3.5(9), 3-23(2.1), 3-51(2), 3-53, 3-88, 4-1(1), (2) and (4), 4-4(1), 4-7, 4-8(4.1), 4-10(2), 4-12(1), 4-13(6), 4-15(3), 4-16, 4-38(7), 4-44(1), 5-1(2), 5-5(1), 9-11(1) and Schedule 1, L., 4 and 5: pp. 12-14, 17, 44, 44.1, 101-103, 113, 126, 128, 147, 159-165, 176, 178, 187, 188, 208 and 218).

New Rule 1-44.1 clarifies that functions nominally assigned to the Executive Director may be performed by individuals employed or retained by the Law Society in the course of their employment or retainer; the definition of “Executive Director” is consequently rescinded (p. 37).

The Executive Director, rather than the Discipline Committee, now has the discretion to waive the fee for late filing of trust account where special circumstances exist (Rules 2-85(7), 3-80(4) and 5-14: pp. 86, 142 and 193).

The Complainants’ Review Committee and Practice Standards Committee are authorized to refer matters to the Executive Director for further investigation (Rules 3-14(5) and 3-17(6): pp. 108 and 110).

Two minor past errors are corrected (Rules 2-104(7) and 5-12(4) and (5): pp. 96 and 192).

Rules were amended in December 2017, *effective July 1, 2018*, to provide regulations to allow lawyers to transfer trust funds electronically using an online banking platform (Rules 3-64(4) and (6) to (8), 3-64.1, 3-64.2, 3-65(1), (1.1) and (2) and 3-66(2): pp. 133-136.1). After pages are replaced, refer to the [Law Society website](#) for provisions that are in effect until June 30, 2018.

**Historical notes are published only in the website version of the Rules.*

Filing: File the amended pages in your *Member’s Manual* as follows:

Manual section	Existing pages to be removed	Amendment pages to be inserted
Law Society Rules	11 – 14 17 – 18 37 – 40 43 – 44 85 – 86 95 – 96 101 – 104 107 – 114 125 – 128	11 – 14 17 – 18 37 – 40 43 – 44, 44.1 – 44.2 85 – 86 95 – 96 101 – 104 107 – 114 125 – 128

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Manual section	Existing pages to be removed	Amendment pages to be inserted
Law Society Rules	133 – 136 141 – 142 147 – 148 159 – 166 175 – 178 187 – 188 191 – 194 207 – 208 217 – 218	133 – 136, 136.1 – 136.2 141 – 142 147 – 148 159 – 166 175 – 178 187 – 188 191 – 194 207 – 208 217 – 218

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

Updates: This amendment package updates the *Member’s Manual* to **June 4, 2018** [note: includes rule changes adopted by the Benchers in December 2017, but made effective July 1, 2018; see Highlights above]. The previous amendment package was 2018: No. 1 March.

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 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 and *Code of Professional Conduct for British Columbia* can be accessed in the Support & Resources for Lawyers section of the Law Society website at www.lawsociety.bc.ca in both HTML (for online use) and 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

2018: No. 2 June

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RULE 1 – DEFINITIONS

Definitions

1 In these rules, unless the context indicates otherwise:

“**Act**” means the *Legal Profession Act*, SBC 1998, c. 9;

“**admission program**” means the 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 [*Membership and Authority to Practise Law*] 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 [*Appointed benchers*];

“**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 2-59 [*Articling term*];

“**Barreau**” means the Barreau du Québec;

“**Bencher**” does not include the Attorney General unless expressly stated;

“**chair**” means a person appointed to preside at meetings of a committee, panel or review board;

“**Chambre**” means the Chambre des notaires du Québec;

“**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 firm to the Society under Rule 3-2 [*Complaints*];

“complaint” means an allegation that a lawyer or a law firm has committed a discipline violation;

“conduct unbecoming the profession” 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;

“costs” includes costs assessed under Rule 3-25 [*Costs*] or 3-81 [*Failure to file trust report*] or Part 5 [*Hearings and Appeals*];

“disbarred lawyer” means a person to whom section 15 (3) [*Authority to practise law*] applies;

“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 the profession,
 - (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.

“discipline violation” means any of the following:

- (a) professional misconduct;
- (b) conduct unbecoming the profession;
- (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 the profession or a contravention of the Act or these rules if done by a lawyer or law firm;

“enrolment start date” means the date on which an articulated student’s enrolment in the admission program becomes effective;

“Executive Committee” means the Committee elected under Rule 1-41 [*Election of Executive Committee*];

“Executive Director” [rescinded]

“fiduciary property” means

(a) funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer’s appointment is derived from a solicitor-client relationship,

but does not include

(b) any funds and valuables that are subject to a power of attorney granted to the lawyer if the lawyer has not taken control of or otherwise dealt with the funds or valuables;

“firm” [rescinded – see **“law firm”** or **“firm”**]

“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) [*Law Foundation of British Columbia*];

“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 received by a lawyer in relation to the practice of law, but does not include

(a) trust funds, or

(b) fiduciary property;

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

“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, the Federal Court of Appeal or the Tax Court of Canada;
- “law firm”** or **“firm”** means a legal entity or combination of legal entities carrying on the practice of law;
- “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;
- “metadata”** includes the following information generated in respect of an electronic record:
- (a) creation date;
 - (b) modification dates;
 - (c) printing information;
 - (d) pre-edit data from earlier drafts;
 - (e) identity of an individual responsible for creating, modifying or printing the record;
- “multi-disciplinary practice”** or **“MDP”** means a partnership, including a limited liability partnership or a partnership of law corporations, that
- (a) 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
 - (b) provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;
- “National Mobility Agreement”** means the National Mobility Agreement, 2013, 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;

“qualified CPA” means a person in public accounting practice who is permitted to perform audit engagements by the Organization of Chartered Professional Accountants of British Columbia;

“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;

“record” includes metadata associated with an electronic record;

“remedial program” includes anything that may be recommended by the Practice Standards Committee under Rule 3-19 (1) (b) [*Action by Practice Standards Committee*];

“respondent” means a person whose conduct or competence is

(a) the subject of a citation directed to be issued under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*], or

(b) under review by a review board under section 47 [*Review*];

“review board” means a review board established in accordance with Part 5 [*Hearings and Appeals*];

“rule” or **“subrule”** means a rule or subrule contained in these rules;

“Second Vice-President-elect” means the Benchler elected under Rule 1-19 [*Second Vice-President-elect*], 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) [*Incorporation*];

“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 or 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 or law firm acting in that capacity, including funds

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

(b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds;

“valuables” means anything of value that can be negotiated or transferred, including but not limited to

- (a) securities,
- (b) bonds,
- (c) treasury bills, and
- (d) personal or real property;

“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.

- (8) All Benchers appointed, or eligible to be appointed, for a term that includes all or part of the calendar year for which members of the Executive Committee are to be elected are eligible for election to the Executive Committee under subrule (7).
- (9) All appointed Benchers present are entitled to vote for the member of the Executive Committee under subrule (7).
- (10) If a vote is required for an election under this rule,
 - (a) it must be conducted by secret ballot,
 - (b) a ballot must be rejected if it contains votes for more candidates than there are positions to be filled, and
 - (c) when more than one Bencher is to be elected, the candidates with the most votes, up to the number of positions to be filled, are elected.
- (11) If, because of a tie vote or for any other reason, the Benchers fail to elect 3 members of the Executive Committee under subrule (1), or if a vacancy occurs in any position elected under this rule, the Benchers or the appointed Benchers, as the case may be, must hold an election to fill the vacancy at the next regular meeting of the Benchers

Date falling on Saturday, Sunday or holiday

1-42 If the time for doing an act in this division falls or expires on a day when the Society office is not open during regular business hours, the time is extended to the next day that the office is open.

1-43 [rescinded 12/2015]

Extension of dates

1-44 The Executive Committee may, on application by the Executive Director, extend any date stated in Rule 1-20 to 1-44.

General

Executive Director's delegate

- 1-44.1** (1) Any power or authority delegated to the Executive Director under these rules may be exercised by the Executive Director's delegate.
- (2) In the absence of evidence to the contrary, an employee of the Society or a person retained by the Society is the Executive Director's delegate when acting within the scope of his or her employment or retainer to exercise a power or authority delegated to the Executive Director under these rules.

Seal

- 1-45** (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.

Laying of information

- 1-46** 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

- 1-47** The Executive Director is designated as the head of the Society for the purposes of the *Freedom of Information and Protection of Privacy Act*.

Appointment of Law Society counsel

- 1-48** (1) Subject to Rule 1-51 (a) [*Powers and duties*], 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 1-51 (a) [*Powers and duties*] 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

- 1-49** 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

1-50 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 1-41 (1) [*Election of Executive Committee*];
 - (e) one appointed Bencher elected under Rule 1-41 (7).
- (2) The President is the chair of the Executive Committee, and the First Vice-President is the vice chair.
- (3) The Executive Committee is accountable and reports directly to the Benchers as a whole.

Powers and duties

1-51 The powers and duties of the Executive Committee include the following:

- (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) appointing persons to affix the seal of the Society to documents;
- (d) approving forms under these rules;
- (e) approving agreements relating to the employment, termination or resignation of the Executive Director and the remuneration and benefits paid to him or her;
- (f) assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;
- (g) planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;
- (h) assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources;
- (i) providing constructive performance feedback to the President;
- (j) recommending to the appointing bodies on Law Society appointments to outside bodies;
- (k) determining the date, time and locations for the annual general meeting;
- (l) overseeing Bencher elections in accordance with Division 1 of this Part;
- (m) appointing members of the Board of Governors of the Foundation under section 59 [*Board of Governors*];

- (n) deciding matters referred by the Executive Director under Rule 2-113
[Referral to Executive Committee];
- (o) declaring that a financial institution is not or ceases to be a savings institution
under Rule 3-57 *[Removal of designation]*;
- (p) adjudicating claims for unclaimed trust funds under Rule 3-91 *[Adjudication of
claims]*;
- (q) other functions authorized or assigned by these rules or the Benchers.

Division 3 – Law Society Rules

Act, Rules and Handbook

- 1-52** The Executive Director must provide each lawyer and each articulated student with a copy of the *Legal Profession Act*, all rules made by the Benchers, and the *Code of Professional Conduct*.

Member information

Annual practice declaration

- 2-8** (1) In this rule, “**declaration**” means the Annual Practice Declaration in a form approved by the Executive Committee.
- (2) A practising lawyer must complete and deliver a declaration to the Executive Director in each calendar year.
- (3) A declaration is not delivered under this rule unless it is
- (a) complete to the satisfaction of the Executive Director,
 - (b) received by the Executive Director by the date set by the Executive Director, and
 - (c) signed by the practising lawyer.
- (4) The Executive Director must not issue a practising certificate to a lawyer who fails to deliver a declaration as required under this rule, unless the Credentials Committee directs otherwise.

Definitions

- 2-9** In Rules 2-10 [*Business address*] and 2-11 [*Residential address*], “**address**” includes
- (a) the name under which a lawyer carries on business, and
 - (b) street address, including suite number if applicable, and mailing address, if that is different from the street address;

“**contact information**” includes the following for the purpose of a lawyer receiving communication from the Society, including confidential communication:

- (a) a telephone number;
- (b) an email address;

“**place of practice**” includes

- (a) a lawyer’s chief place of practice or employment, including the residence of a lawyer who carries on a law practice from the lawyer’s residence, and
- (b) any other location from which a lawyer conducts the practice of law or is held out to conduct the practice of law.

Business address

- 2-10** A lawyer must advise the Executive Director of the address and contact information of all of the lawyer’s places of practice and inform the Executive Director immediately of a change of address or contact information of any of the lawyer’s places of practice.

Residential address

- 2-11** A lawyer who does not carry on the practice of law must advise the Executive Director of the address and contact information of the lawyer’s residence and any change in the address and contact information of the lawyer’s residence.

Practice history

- 2-12** (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) At the request of any person, the Executive Director may disclose all or part of the practice history of any member or former member of the Society.

Law firms

Definitions and application

- 2-12.1** (1) In Rules 2-12.1 to 2-12.5
- “**deliver**” means to deliver to the Executive Director;
 - “**designated representative**” means a practising lawyer designated by a law firm under Rule 2-12.5;
 - “**registration form**” means a form required under Rule 2-12.2 completed to the satisfaction of the Executive Director;
 - “**self-assessment report**” means a report required under Rule 2-12.3 in a form approved by the Executive Committee completed to the satisfaction of the Executive Director.
- (2) Rules 2-12.1 to 2-12.5 do not apply to
- (a) a public body such as government or a Crown corporation,
 - (b) a corporation that is not a law corporation, or
 - (c) a law corporation that provides legal services solely as part of another law firm as a partner, associate or employee of the firm.

Registration

- 2-12.2** (1) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must deliver a registration form within 30 days.
- (2) A law firm must inform the Executive Director immediately of a change of any information included in the registration form.

Self-assessment report

- 2-12.3** (1) From time to time, the Executive Director may require a law firm to complete and deliver a self-assessment report.
- (2) The Executive Director must notify the law firm of the requirement to deliver a self-assessment report at least 3 months before the date on which the Executive Director requires the law firm to deliver it.
- (3) All information and documents received by the Society under this rule are confidential, and no person is permitted to disclose them to any person.
- (4) Despite subrule (3), the Society may use information and documents received under this rule only for the purpose of statistical and other analysis regarding the practice of law.

Late delivery

- 2-12.4** (1) A law firm that fails to deliver a document required under Rule 2-12.2 [*Registration*] or 2-12.3 [*Self-assessment report*] by the time that it is due is deemed to have been in compliance with the rules if the law firm does the following within 60 days:
- (a) deliver the document required;
 - (b) pay the late delivery fee specified in Schedule 1.
- (2) A law firm that fails to deliver a document required under Rule 2-12.2 [*Registration*] or 2-12.3 [*Self-assessment report*] beyond 60 days from the time that it is due is in breach of the rules and must immediately do the following:
- (a) deliver the document required;
 - (b) pay the late delivery fee specified in Schedule 1;
 - (c) pay an additional late delivery fee specified in Schedule 1.

Designated representative

- 2-12.5** (1) A law firm that is engaged in the practice of law must designate as its designated representative one or more practising lawyers engaged in the practice of law as members of the law firm.
- (2) A law firm that is engaged in the practice of law on May 1, 2018 or commences or resumes engaging in the practice of law after that date must notify the Executive Director of the designation of designated representative as part of the registration process under Rule 2-12.2 [*Registration*].
- (3) A law firm that changes its designation of designated representative must inform the Executive Director within 7 days.
- (4) A designated representative must respond promptly and completely to any communication from the Society.

- (5) A designated representative
 - (a) is not responsible for a disciplinary violation by a law firm as a result of being a designated representative, and
 - (b) must not knowingly or recklessly provide false or inaccurate information in any form or report required under Rules 2-12.1 to 2-12.5.

Paralegals

Supervision of limited number of designated paralegals

- 2-13** (1) In this rule, “**designated paralegal**” means an individual permitted under section 6.1 [*Supervision*] 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.

Unauthorized practice

Unauthorized practice of law

- 2-14** (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 or Rule 2-39 [*Conditions for MDP*].
- (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.

Reinstatement

Reinstatement of former lawyer

- 2-85** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (a) an application for reinstatement in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
 - (b) the appropriate application fee specified in Schedule 1.
- (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 2-89 [*Returning to practice after an absence*];
 - (b) non-practising member on compliance with Rule 2-3 [*Non-practising members*];
 - (c) retired member if the lawyer is qualified under Rule 2-4 (1) [*Retired members*] and on compliance with Rule 2-4 (2) and (3).
- (3) On an application under subrule (2) (c), the Executive Director may waive payment of all or part of the application fee on any conditions that the Executive Director considers appropriate.
- (4) The Executive Director may issue a practising certificate to an applicant on reinstatement 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 3-43 [*Exemption from professional liability insurance*];
 - (c) any surcharge for which the lawyer is liable under Rule 3-44 (2) [*Deductible, surcharge and reimbursement*].
- (5) The Executive Director may issue a non-practising or retired member certificate to an applicant on reinstatement on payment of the appropriate prorated fee specified in Schedule 3.
- (6) Subject to subrule (7), 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.

- (7) The Executive Director must not consider an application for reinstatement of a former lawyer unless the former lawyer has
 - (a) submitted all trust reports required under Rules 3-79 [*Trust report*] and 3-84 (1) [*Former lawyers*],
 - (b) paid all assessments accrued under Rule 3-80 [*Late filing of trust report*] before and after the former lawyer ceased to be a member of the Society unless the Executive Director waives all of the assessments under Rule 3-80 (3) and any conditions have been fulfilled, and
 - (c) paid all costs of trust reports ordered under Rule 3-81 (6) [*Failure to file trust report*].
- (8) If an applicant for reinstatement is a disbarred lawyer, the Executive Director must refer the application to the Credentials Committee.
- (9) On an application for reinstatement to which subrules (7) and (8) 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.
- (10) Subject to subrule (11), when the Executive Director refers an application for reinstatement to the Credentials Committee under subrule (9), the Committee may
 - (a) reinstate the applicant without conditions or limitations,
 - (b) reinstate the applicant with conditions or limitations on the applicant's practice if the applicant consents in writing to those conditions or limitations, or
 - (c) order a hearing.
- (11) The Credentials Committee must order a hearing in the following circumstances:
 - (a) section 19(3) applies;
 - (b) the Committee cannot reach another disposition of the matter under subrule (10);
 - (c) the Committee resolves to order a hearing.
- (12) An applicant for reinstatement must give written notice of the application as directed by the Executive Director, and persons so notified may appear in person or by counsel at the hearing and be heard on the application.

Subsequent application for reinstatement

- 2-86** A person whose application for reinstatement is rejected under section 22 (3) [*Credentials hearings*] 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 [*Hearings and appeals*].

Publication of credentials decision

- 2-103** (1) Subject to Rule 2-104 [*Anonymous publication*], the Executive Director may publish and circulate to the profession a summary of the circumstances and of any final or interlocutory decision of a hearing panel or review board on an application under this division and the reasons given for the decision.
- (2) If a disbarred lawyer is reinstated after a hearing, the Executive Director must publish and circulate to the profession a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision.
- (3) 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 or review board and the reasons given for the decision, or
 - (b) all or part of the written reasons for the decision.
- (4) This rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Anonymous publication

- 2-104** (1) Except as required or allowed under this rule, a publication under Rule 2-103 [*Publication of credentials decision*] 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 decision is issued or oral reasons delivered.
- (5) The Executive Director must not publish under Rule 2-103 [*Publication of credentials decision*] until
- (a) 7 days after a written decision 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.

Division 3 – Fees and Assessments

Annual practising fees

- 2-105** (1) The annual practising fee and insurance fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee and first insurance fee instalment is November 30 of the year preceding the year for which they are payable.

Assessments

- 2-106** (1) The Benchers may, by resolution, set a special assessment of all
 - (a) practising lawyers,
 - (b) practising lawyers and applicants,
 - (c) members of the Society, or
 - (d) members of the Society and applicants.
- (2) A resolution under subrule (1) must set a date by which the assessment must be paid.

Application fees

- 2-107** On application from a person who has paid an application fee under these rules, the Executive Director may refund all or part of the fee if, in the view of the Executive Director, it is fair to make the refund in all the circumstances, including the extent to which Society resources have been expended to process the application for which the fee was paid.

Late payment

- 2-108** (1) A lawyer who fails to pay fees by the date required under Rule 2-105 [*Annual practising fees*] but pays all required fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this rule, continues to be a member of the Society.

PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 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 former lawyer;
- (b) an articled student;
- (c) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;
- (d) a practitioner of foreign law;
- (e) a law firm.

Complaints

3-2 Any person may deliver a written complaint against a lawyer or law firm to the Executive Director.

Confidentiality of complaints

- 3-3** (1) No one is permitted to disclose any information or records that form part of the investigation of a complaint or the review of a complaint by the Complainants' Review Committee except for the purpose of complying with the objectives of the Act or with these rules.
- (2) Despite subrule (1), the Executive Director may do any of the following:
- (a) disclose information referred to in subrule (1), with the consent of the lawyer who is the subject of the complaint;
 - (b) if a complaint has become known to the public, disclose
 - (i) the existence of the complaint,
 - (ii) its subject matter,
 - (iii) its status, including, if the complaint is closed, the general basis on which it was closed; and
 - (iv) any additional information necessary to correct inaccurate information;
 - (c) if, in the course of the investigation of a complaint, a lawyer has given an undertaking to the Society that restricts, limits or prohibits the lawyer's practice of law, disclose the fact that the undertaking was given and its effect on the lawyer's practice.

- (3) For the purpose of subrule (2) (b), the status of a complaint is its stage of progress through the complaints handling process, including, but not limited to the following:
 - (a) opened;
 - (b) under investigation;
 - (c) referred to a Committee;
 - (d) closed.
- (4) If the Executive Director discloses the existence of an undertaking under subrule (2) (c) by means of the Society's website, the information must be removed from the website within a reasonable time after the undertaking ceases to be in force.
- (4.1) Despite subrule (1), the Executive Director may disclose any information concerning a complaint to a designated representative of a law firm in which the lawyer who is the subject of the complaint engages in the practice of law.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (6) This division must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

Consideration of complaints and other information

- 3-4** (1) The Executive Director must consider every complaint received under Rule 3-2 [*Complaints*].
- (2) Information received from any source that indicates that a lawyer's conduct may constitute a discipline violation must be treated as a complaint under these rules.

Investigation of complaints

- 3-5** (1) Subject to subrule (3), the Executive Director may, and on the instruction of the Discipline Committee must, investigate a complaint to determine its validity.
- (2) For the purpose of conducting an investigation under this division and section 26 [*Complaints from the public*], the Executive Director may designate an employee of the Society or appoint a practising lawyer or a person whose qualifications are satisfactory to the Executive Director.
- (3) The Executive Director may decline to investigate a complaint if the Executive Director is satisfied that the complaint
- (a) is outside the jurisdiction of the Society,
 - (b) is frivolous, vexatious or an abuse of process, or
 - (c) does not allege facts that, if proven, would constitute a discipline violation.
- (4) The Executive Director must deliver to the lawyer who is the subject of a complaint a copy of the complaint or, if that is not practicable, a summary of it.

- (5) Despite subrule (4), if the Executive Director considers it necessary for the effective investigation of the complaint, the Executive Director may delay notification of the lawyer.
- (6) When acting under subrule (4), the Executive Director may decline to identify the complainant or the source of the complaint.
- (7) A lawyer must co-operate fully in an investigation under this division by all available means including, but not limited to, responding fully and substantively, in the form specified by the Executive Director
 - (a) to the complaint, and
 - (b) to all requests made by the Executive Director in the course of an investigation.
- (8) When conducting an investigation of a complaint, the Executive Director may
 - (a) require production of files, documents and other records for examination or copying,
 - (b) require a lawyer to
 - (i) attend an interview,
 - (ii) answer questions and provide information relating to matters under investigation, or
 - (iii) cause an employee or agent of the lawyer to answer questions and provide information relating to the investigation,
 - (c) enter the business premises of a lawyer
 - (i) during business hours, or
 - (ii) at another time by agreement with the lawyer.
- (9) Any written response under subrule (7) must be signed by
 - (a) the lawyer personally, or
 - (b) a representative of the law firm, if the complaint is about a law firm.
- (10) The Executive Director may deliver to the complainant a copy or a summary of a response received from the lawyer, subject to solicitor and client privilege and confidentiality.
- (11) A lawyer who is required to produce files, documents and other records, provide information or attend an interview under this rule must comply with the requirement
 - (a) even if the information or files, documents and other records are privileged or confidential, and
 - (b) as soon as practicable and, in any event, by the time and date set by the Executive Director.

Failure to produce records on complaint investigation

- 3-6** (1) Subject to subrules (2) and (3), a lawyer who is required under Rule 3-5 [*Investigation of complaints*] or 4-55 [*Investigation of books and accounts*] to produce and permit the copying of files, documents and other records, provide information or attend an interview and answer questions and who fails or refuses to do so is suspended until he or she has complied with the requirement to the satisfaction of the Executive Director.
- (2) When there are special circumstances, the Discipline Committee may, in its discretion, order that
- (a) a lawyer not be suspended under subrule (1), or
 - (b) a suspension under this rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this rule 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 Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

Resolution by informal means

- 3-7** The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

Action after investigation

- 3-8** (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint
- (a) is not valid or its validity cannot be proven, or
 - (b) does not disclose conduct serious enough to warrant further action.
- (2) The Executive Director may take no further action on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.
- (3) Unless subrule (1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.

- (6) Subject to the Act and these rules, the Benchers present at a proceeding may determine the practice and procedure to be followed.
- (7) Unless the Benchers present order otherwise, the proceeding is not open to the public.
- (8) The lawyer or articled student or discipline counsel may request an adjournment of a proceeding conducted under this rule.
- (9) Rule 4-40 [*Adjournment*] applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.
- (10) Despite subrule (9), the Executive Director is not required to notify a complainant of a request made under subrule (8).
- (11) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, generally or to a specified date, time and place.
- (12) On the application of the lawyer or articled student or discipline counsel, the Benchers who made the order, or a majority of them, may rescind or vary an order made or previously varied under this rule.
- (13) On an application under subrule (12) to vary or rescind an order,
 - (a) both the lawyer or articled student and discipline counsel must be given a reasonable opportunity to make submissions in writing, and
 - (b) the Benchers present may allow oral submissions if, in their discretion, it is appropriate to do so.
- (14) If, for any reason, any of the Benchers who made an order under this rule is unable to participate in the decision on an application under subrule (12), the President may assign another Bencher who is not a member of the Discipline Committee to participate in the decision in the place of each Bencher unable to participate.

Appointment of Complainants' Review Committee

- 3-13** (1) For each calendar year, the President must appoint a Complainants' Review Committee.
- (2) If one or more Benchers have been appointed under section 5 [*Appointed benchers*], the President must appoint at least one of the appointed Benchers to the Complainants' Review Committee.

Review by Complainants' Review Committee

- 3-14** (1) A complainant may apply to the Complainants' Review Committee for a review of a decision by the Executive Director under Rule 3-8 [*Action after investigation*] to take no further action after investigating a complaint.
- (2) To initiate a review under subrule (1), the complainant must apply to the Complainants' Review Committee within 30 days after the decision is communicated to the complainant.
- (3) The chair of the Complainants' Review Committee may extend the time for applying for a review under subrule (2) in extraordinary circumstances beyond the control of the complainant.
- (4) The Complainants' Review Committee must
- (a) review the documents obtained, collected or produced by the Executive Director under Rules 3-4 to 3-9, and
 - (b) on the direction of an appointed Bench member of the Committee, make enquiries of the complainant, the lawyer or any other person.
- (5) After its review and enquiries, the Complainants' Review Committee must do one of the following:
- (a) confirm the Executive Director's decision to take no further action;
 - (b) refer the complaint to the Practice Standards Committee or to the Discipline Committee with or without recommendation;
 - (c) direct the Executive Director to conduct further investigation of the complaint to determine its validity.
- (6) The chair of the Complainants' Review Committee must notify the complainant, the lawyer and the Executive Director, in writing, of the Committee's decision under subrule (5) and the reasons for that decision.
- (7) If the Complainants' Review Committee keeps minutes of its consideration of a complaint, the Executive Director may disclose all or part of the minutes to the complainant or the lawyer concerned.

Division 2 – Practice Standards

Practice Standards Committee

- 3-15** (1) For each calendar year, the President must appoint a Practice Standards 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 Practice Standards 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.

Objectives

- 3-16** The objectives of the Practice Standards Committee are to
- (a) recommend standards of practice for lawyers,
 - (b) develop programs that will assist all lawyers to practise law competently, and
 - (c) identify lawyers who do not meet accepted standards in the practice of law, and recommend remedial measures to assist them to improve their legal practices.

Consideration of complaints

- 3-17** (1) The Practice Standards Committee must consider any complaint referred to it by the Executive Director, the Complainants' Review Committee or any other Committee, and may instruct the Executive Director to make or authorize any further investigation that the Practice Standards Committee considers desirable.
- (2) While considering a complaint, the Practice Standards Committee may also consider any other matter arising out of the lawyer's practice of law.
- (3) When considering a complaint, the Practice Standards Committee may do one or more of the following:
- (a) decide that no further action be taken on the complaint;
 - (b) make recommendations to the lawyer, if it considers that the carrying out of the recommendations will improve the lawyer's practice of law;
 - (c) require the lawyer to meet and discuss the circumstances of the complaint with a lawyer or Benchler designated by the Practice Standards Committee, who must then report to the Committee;
 - (d) find that there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner and order a practice review in respect of the lawyer's practice;
 - (e) refer the complaint to the Discipline Committee.
- (4) Despite subrule (3) (e), the Practice Standards Committee may refer a complaint to the chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:
- (a) breached a rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these rules.
- (5) The Practice Standards Committee is not precluded from taking any of the steps in subrule (3) or (4) because it has previously taken another of those steps in the same matter.

- (6) At any time, including after taking an action under Rule 3-19, the Practice Standards Committee may
 - (a) direct the Executive Director to conduct further investigation of the complaint to determine its validity, or
 - (b) refer any information that indicates that a lawyer's conduct may constitute a discipline violation to the Executive Director to be treated as a complaint under Division 1.

Practice review

- 3-18** (1) The Practice Standards Committee may order a practice review of the practice of a lawyer under Rule 3-17 (3) (d) [*Consideration of complaints*] or if the lawyer consents to the review.
- (2) When a practice review is ordered, the Executive Director must name one or more qualified persons to conduct the review.
 - (3) After consultation with the lawyer and the practice reviewers, the Executive Director must set a date, time and place for the practice review.
 - (4) A lawyer whose practice is being reviewed under subrule (1) must answer any inquiries and provide the practice reviewers with any information, files or records in the lawyer's possession or control as reasonably requested.
 - (5) After completing a practice review, the practice reviewers must deliver to the Practice Standards Committee and to the lawyer a written report of their findings and recommendations.
 - (6) A lawyer who is the subject of a practice review may not resign from membership in the Society without the consent of the Practice Standards Committee.
 - (7) The Practice Standards Committee may, by resolution, direct that a lawyer who is subject to a practice review and would otherwise cease to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to practise law.
 - (8) A direction under subrule (7) may be made to continue in effect until stated conditions are fulfilled.
 - (9) When a direction under subrule (7) expires on the fulfillment of all stated conditions or if the Practice Standards Committee rescinds the direction,
 - (a) the lawyer concerned ceases to be a member of the Society,
 - (b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.

Action by Practice Standards Committee

- 3-19** (1) After its consideration of a report received under Rule 3-17 (3) (c) [*Consideration of complaints*] or 3-18 (5) [*Practice review*], the Practice Standards Committee must
 - (a) decide that no further action be taken, or

- (b) recommend that the lawyer do one or more of the following:
 - (i) undertake not to practise in specified areas of law;
 - (ii) complete a remedial program to the satisfaction of the Committee;
 - (iii) complete, to the satisfaction of the Committee, an examination approved by the Committee or its designate;
 - (iv) obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;
 - (v) obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;
 - (vi) practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;
 - (vii) take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.
- (2) When making recommendations under subrule (1) (b), the Practice Standards Committee may set one or more dates by which the lawyer is to complete the recommendations.
- (3) On application by the lawyer or the Executive Director, the Practice Standards Committee may extend the date by which the lawyer is to complete a recommendation.
- (4) The Executive Director must reduce the Practice Standards Committee's recommendations to writing and deliver a copy to the lawyer.
- (5) The Practice Standards Committee is not precluded from making a recommendation under subrule (1) because it has previously made a recommendation with respect to the same matter.

Conditions or limitations on practice

- 3-20** (1) If a lawyer refuses or fails to comply with a recommendation under Rule 3-19 (1) (b) [*Action by Practice Standards Committee*] by the time set by the Practice Standards Committee under Rule 3-19 (2), the Committee may make an order imposing conditions and limitations on the lawyer's practice, including but not limited to the following:
- (a) specifying areas of law in which the lawyer must not practise;
 - (b) requiring that the lawyer satisfactorily complete a remedial program;
 - (c) requiring that the lawyer satisfactorily complete an examination approved by the Committee or its designate;
 - (d) requiring that the lawyer obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;

- (e) requiring that the lawyer obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;
 - (f) requiring that the lawyer practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;
 - (g) requiring that the lawyer take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.
- (2) At least 30 days before the Practice Standards Committee is to make an order under subrule (1), the Executive Director must deliver to the lawyer notice of the following:
- (a) the terms of the proposed order;
 - (b) the date on which the proposed order is to take effect;
 - (c) the reasons for the proposed order;
 - (d) the means by which the lawyer may make submissions to the Practice Standards Committee concerning the proposed order and the deadline for making such submissions before the order is to be considered by the Committee.
- (3) A lawyer must comply with an order made under this rule.
- (4) On the written application of the lawyer, the Practice Standards Committee may vary or rescind an order made under this rule.

Referral to Discipline Committee

- 3-21** (1) The Practice Standards Committee may, at any stage, refer to the Discipline Committee any of the following:
- (a) all or any part of a practice review report delivered under Rule 3-18 (5) [*Practice review*];
 - (b) a report on the manner in which the lawyer has carried out or followed any recommendations or has failed or refused to do so;
 - (c) an order made under Rule 3-20 [*Conditions or limitations on practice*];
 - (d) a report on the failure to comply with an order made under Rule 3-20.
- (2) Despite subrule (1), the Practice Standards Committee may refer a report to the chair of the Discipline Committee with respect to allegations that the lawyer has done one or more of the following:
- (a) breached a rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society;
 - (d) breached an order made under the Act or these rules.
- (3) The Practice Standards Committee is not precluded from making a referral under this rule because it has previously made a referral with respect to the same matter.

Remedial program

- 3-22** (1) A remedial program under this Division may include any program intended to improve the lawyer's knowledge and skill in the practice of law, including, but not limited to, one or more of the following:
- (a) a continuing legal education course;
 - (b) a remedial course;
 - (c) a course offered by an educational institution;
 - (d) a program of mentoring or supervision by a practising lawyer approved by the Practice Standards Committee.
- (2) To form part of a remedial program, a course or program must be approved by the Practice Standards Committee or its designate.

Confidentiality of Practice Standards Committee deliberations

- 3-23** (1) Subject to subrules (2) to (6) and Rule 3-24 [*Report to complainant*], the following must be treated as confidential and must not be disclosed except for the purpose of complying with the objects of the Act:
- (a) all of the information and documents that form part of the Practice Standards Committee's consideration of a complaint;
 - (b) any action taken or decision made by the Committee;
 - (c) any report prepared for or on behalf of the Committee.
- (2) If a matter referred to or considered by the Practice Standards Committee has become known to the public, the Executive Director may disclose
- (a) the fact that the matter is or has been before the Committee,
 - (b) the status of the matter, including, if the matter is concluded, the general basis on which it was concluded, and
 - (c) any additional information necessary to correct inaccurate information.
- (2.1) The Executive Director may disclose information about Practice Standards Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.
- (3) With the consent of the Practice Standards Committee, the Executive Director may deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (4) With the consent of the lawyer concerned, the Executive Director may disclose the matters referred to in subrule (1) in responding to an enquiry made for the purpose of a potential judicial appointment.
- (5) Subrules (6) and (7) apply to
- (a) an undertaking under this division that restricts, limits or prohibits the lawyer's practice of law, and

- (b) a condition or limitation of a lawyer's practice imposed under Rule 3-20
[Conditions or limitations on practice].
- (6) The Executive Director may disclose the fact that a lawyer has given an undertaking or that the Practice Standards Committee has imposed a condition or limitation and the effect on the lawyer's practice.
- (7) If the Executive Director discloses the existence of an undertaking, condition or limitation under subrule (6) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time when the undertaking, condition or limitation is no longer in force.

Report to complainant

- 3-24** The Executive Director must notify the complainant in writing of the Practice Standards Committee's decision under Rule 3-17 *[Consideration of complaints]*, but must not deliver to the complainant a copy of any report or the Committee's recommendations about the lawyer's practice.

Costs

- 3-25** (1) The Practice Standards Committee may order that a lawyer pay to the Society the cost of a practice review, action or remedial program ordered or allowed under this Division, and may set and extend the date for payment.
- (2) A lawyer who is ordered by the Practice Standards Committee, under subrule (1), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (3) If any part of the amount owing under subrule (1) remains unpaid by the date set in Rule 2-105 *[Annual practising fees]*, the lawyer concerned must not engage in the practice of law unless the Benchers order otherwise.

Division 3 – Education

Definitions

- 3-26** In this division
- “continuing education”** means activities approved by the Executive Director for credit as professional development;
- “credit as a mentor”** means a credit of a specified maximum number of hours of continuing education for participation in a mentoring relationship under Rule 3-30 *[Mentoring]*;
- “required professional development”** means a minimum number of hours of continuing education determined by the Benchers under Rule 3-29 (1) *[Professional development]*;

“monetary judgment” includes

- (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.

Application

3-48 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 articulated student;
- (d) a practitioner of foreign law;
- (e) a visiting lawyer permitted to practise law in British Columbia under Rules 2-16 to 2-20;
- (f) a law corporation.

Standards of financial responsibility

3-49 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 monetary judgment is entered against a lawyer who does not satisfy the judgment within 7 days after the date of entry;
- (b) a lawyer is an insolvent lawyer;
- (c) a lawyer does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-85 (2) (b) [*Compliance audit of books, records and accounts*];
- (d) a lawyer does not deliver a trust report as required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant’s report*];
- (e) a lawyer does not report and pay the trust administration fee to the Society as required under Rule 2-110 [*Trust administration fee*];
- (f) a lawyer does not produce electronic accounting records when required under the Act or these rules in a form required under Rule 10-3 (2) [*Records*].

Failure to satisfy judgment

- 3-50** (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) Subrule (1) applies whether or not any party has commenced an appeal from the judgment.
- (3) 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.

Insolvent lawyer

- 3-51** (1) 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.
- (2) An insolvent lawyer who becomes bankrupt has conducted himself or herself in a manner unbecoming the profession 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.
- (3) 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.

- (4) Any lawyer who becomes an undischarged bankrupt must resign any directorships in corporations, including law corporations.

Consideration by Discipline Committee

- 3-52** (1) After receiving the information and material required under Rule 3-51 (1) [*Insolvent lawyer*], the Executive Director may refer an insolvent lawyer to the Discipline Committee.
- (2) The Executive Director may refer any matter for decision under this Division to the Discipline Committee.
 - (3) When the Executive Director refers a matter to the Discipline Committee under this Division, the Committee may make or authorize any investigations it considers desirable.
 - (4) The Discipline Committee may suspend or impose conditions and limitations on the practice of a lawyer that it considers does not meet the standards of financial responsibility established under section 32 [*Financial responsibility*].
 - (5) The Discipline Committee must not suspend a lawyer or impose conditions and limitations on the practice of a lawyer under subrule (4) until it has notified the lawyer of the reasons for the proposed action and given the lawyer a reasonable opportunity to make representations about those reasons.
 - (6) The Discipline Committee may rescind the suspension or vary or remove conditions and limitations imposed under subrule (4).
 - (7) When the Discipline Committee imposes conditions or limitations on the practice of a lawyer under subrule (4), the Executive Director may disclose the fact that the conditions or limitations apply and the nature of the conditions or limitations.
 - (8) If the Executive Director discloses the existence of conditions or limitations under subrule (7) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the conditions or limitations cease to be in force.

Division 7 – Trust Accounts and Other Client Property

Definitions

3-53 In this division,

“cash” means

- (a) coins referred to in section 7 of the *Currency Act* (Canada),
- (b) notes intended for circulation in Canada issued by the Bank of Canada under the *Bank of Canada Act*, and
- (c) coins or bank notes of countries other than Canada;

“**cash receipt book**” means the book of duplicate receipts referred to in Rule 3-70 (1) [*Records of cash transactions*];

“**client**” includes any beneficial owner of funds or valuables received by a lawyer in connection with the lawyer’s practice;

“**compliance audit**” means an examination of a lawyer’s books, records and accounts and the answering of questions by lawyers ordered under Rule 3-85 [*Compliance audit of books, records and accounts*];

“**lawyer**” includes a law firm;

“**public body**” means

- (a) a ministry or department of the government of Canada or of a province or territory, or
- (b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*.

Personal responsibility

- 3-54** (1) A lawyer must account in writing to a client for all funds and valuables received on behalf of the client.
- (2) In this division, the responsibilities of a lawyer may be fulfilled by the lawyer’s firm.
- (3) A lawyer is personally responsible to ensure that the duties and responsibilities under this division are carried out, including when the lawyer
- (a) is authorized by the firm or lawyer through which the lawyer practises law to open, maintain, or deal with funds in a trust or general account, or
 - (b) delegates to another person any of the duties or responsibilities assigned to a lawyer under this division.

Fiduciary property

- 3-55** (1) In addition to any other obligations required by law or equity, this rule applies to lawyers who are responsible for fiduciary property.
- (2) A lawyer must make all reasonable efforts to determine the extent of the fiduciary property for which the lawyer is responsible and must maintain a list of that fiduciary property.

- (2) The Executive Director may authorize a lawyer to withdraw trust funds for a purpose not specified in subrule (1).
- (3) No payment from trust funds may be made unless
 - (a) trust accounting records are current, and
 - (b) there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.
- (4) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except
 - (a) by cheque as permitted by subrule (5) or Rule 3-65 (1.1) (a) [*Payment of fees from trust*],
 - (b) by electronic transfer as permitted by Rule 3-64.1 [*Electronic transfers from trust*],
 - (c) by instruction to a savings institution as permitted by subrule (9), or
 - (d) in cash if required under Rule 3-59 (5) or (6) [*Cash transactions*].
- (5) A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must
 - (a) withdraw the funds with a cheque marked “Trust,”
 - (b) not make the cheque payable to “Cash” or “Bearer,” and
 - (c) ensure that the cheque is signed by a practising lawyer.
- (6) to (8) [rescinded]
- (9) A lawyer may instruct a savings institution to pay to the Foundation under Rule 3-60 [*Pooled trust account*] the net interest earned on a pooled trust account.
- (10) A transfer of funds from a pooled trust account to a separate trust account must be authorized by the client and approved in writing signed by a lawyer.

Electronic transfers from trust

- 3-64.1** (1) In this rule, “**requisition**” means an electronic transfer of trust funds requisition, in a form approved by the Discipline Committee.
- (2) A lawyer may withdraw funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:
- (a) the electronic funds transfer system used by the lawyer must not permit an electronic transfer of funds unless,
 - (i) a person other than the lawyer, using a password or access code, enters data into the electronic funds transfer system describing the details of the transfer, and
 - (ii) the lawyer, using another password or access code, enters data into the electronic funds transfer system authorizing the financial institution to carry out the transfer;

- (b) the lawyer using an electronic funds transfer system to withdraw trust funds must not
 - (i) disclose the lawyer's password or access code associated with the electronic funds transfer system to another person, or
 - (ii) permit another person, including a non-lawyer employee, to use the lawyer's password or access code to gain such access;
- (c) the electronic funds transfer system used by the lawyer must produce, no later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation in writing from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received;
- (d) the confirmation required in paragraph (c) must contain all of the following:
 - (i) the name of the person authorizing the transfer;
 - (ii) the amount of the transfer;
 - (iii) the trust account name, trust account number and name of the financial institution from which the money is drawn;
 - (iv) the name, branch name and address of the financial institution where the account to which money is transferred is kept;
 - (v) the name of the person or entity in whose name the account to which money is transferred is kept;
 - (vi) the number of the account to which money is transferred;
 - (vii) the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution;
 - (viii) the time and date that the confirmation in writing from the financial institution was sent to the lawyer authorizing the transfer;
- (e) before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic funds transfer system, the lawyer must complete and sign a requisition authorizing the transfer;
- (f) the data entered into the electronic funds transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the requisition;
- (g) the lawyer must retain in the lawyer's records a copy of
 - (i) the requisition
 - (ii) the confirmation required in paragraph (c).

- (3) Despite subrule (2) (a), a lawyer who practises law as the only lawyer in a law firm and who has no non-lawyer staff may transfer funds electronically if the lawyer personally uses
 - (a) one password or access code to enter data into the electronic funds transfer system describing the details of the transfer, and
 - (b) a different password or access code to enter data into the electronic funds transfer system authorizing the financial institution to carry out the transfer.
- (4) No later than the close of the banking day immediately after the day on which the confirmation required in subsection (2) (c) is sent to a lawyer, the lawyer must
 - (a) produce a printed copy of the confirmation,
 - (b) compare the printed copy of the confirmation and the signed requisition relating to the transfer to verify that the money was drawn from the trust account as specified in the signed requisition,
 - (c) indicate on the printed copy of the confirmation
 - (i) the name of the client,
 - (ii) the subject matter of the file, and
 - (iii) any file numberin respect of which the money was drawn from the trust account, and
 - (d) after complying with paragraphs (a) to (c), sign, date and retain the printed copy of the confirmation.
- (5) A transaction in which a lawyer personally uses an electronic funds transfer system to authorize a financial institution to carry out a transfer of trust funds is not exempted under Rule 3-101 (c) (ii) [*Exemptions*] from the client identification and verification requirements under Rules 3-102 to 3-106.
- (6) Despite subrules (2) to (4), a lawyer may withdraw funds from a pooled or separate trust account by electronic transfer using the electronic filing system of the land title office for the purpose of the payment of property transfer tax on behalf of a client, provided that the lawyer
 - (a) retains in the lawyer's records a copy of
 - (i) all electronic payment authorization forms submitted to the electronic filing system,
 - (ii) the property transfer tax return, and
 - (iii) the transaction receipt provided by the electronic filing system,
 - (b) digitally signs the property transfer tax return in accordance with the requirements of the electronic filing system, and
 - (c) verifies that the money was drawn from the trust account as specified in the property transfer tax return.

Electronic deposits into trust

3-64.2 A lawyer must not receive money into a trust account by means of electronic transfer unless the following conditions are met:

- (a) the lawyer must obtain a confirmation in writing providing details of the transfer from the financial institution or the remitter of the funds within 2 banking days of the deposit;
- (b) the deposit must generate sufficient documentation to enable the lawyer to meet the record-keeping requirements under this division.

Payment of fees from trust

3-65 (1) In this rule, “fees” means fees for services performed by a lawyer or a non-lawyer member of the lawyer’s MDP, charges, disbursements and taxes on those fees, charges and disbursements.

(1.1) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of the lawyer’s fees must withdraw the funds

- (a) with a cheque payable to the lawyer’s general account, or
- (b) by electronic transfer in accordance with Rule 3-64.1 [*Electronic transfers from trust*] to the lawyer’s general account.

(2) A lawyer who withdraws or authorizes the withdrawal of trust funds under subrule (1.1) in payment for the lawyer’s fees must first prepare a bill for those fees and immediately deliver the bill to the client.

(3) A bill or letter is delivered within the meaning of this rule if it is

- (a) mailed to the client at the client’s last known address,
- (b) delivered personally to the client,
- (c) transmitted by electronic facsimile to the client at the client’s last known electronic facsimile number,
- (d) transmitted by electronic mail to the client at the client’s last known electronic mail address, or
- (e) made available to the client by other means agreed to in writing by the client.

(4) As an exception to subrule (2), a lawyer need not deliver a bill if the client instructs the lawyer otherwise in writing.

- (5) A lawyer must not take fees from trust funds when the lawyer knows that the client disputes the right of the lawyer to receive payment from trust funds, unless
 - (a) the client has agreed that the lawyer may take funds from trust to satisfy the lawyer's account and the client has acknowledged that agreement in writing or the lawyer has confirmed the client's agreement in a letter delivered to the client,
 - (b) a bill has been delivered under subrule (3), whether or not the client has directed otherwise under subrule (4),
 - (c) the lawyer has given the client written notice that the fees will be taken from trust unless, within one month, the client commences a fee review under section 70 [*Review of a lawyer's bill*] or an action disputing the lawyer's right to the funds, and
 - (d) the client has not commenced a fee review under section 70 or an action at least one month after written notice is given under paragraph (c).
- (6) Despite subrule (5), if a lawyer knows that the client disputes a part of the lawyer's account, the lawyer may take from trust funds fees that are not disputed.
- (7) A lawyer must not take fees from trust funds impressed with a specific purpose, if the object of the trust has not been fulfilled, without the express consent of the client or another person authorized to give direction on the application of the trust funds.

Withdrawal from separate trust account

- 3-66** (1) A lawyer who makes or authorizes the withdrawal of funds from a separate trust account in respect of which cancelled cheques and bank statements are not received from the savings institution monthly and kept in the lawyer's records must first transfer the funds into his or her pooled trust account.
- (2) Rules 3-64 to 3-65 apply to funds that have been transferred into a pooled trust account in accordance with subrule (1).
- (3) A lawyer who disburses trust funds received with instructions under Rule 3-58 (2) [*Deposit of trust funds*] must keep a written record of the transaction.

Accounting records

- 3-67** (1) In this rule, “**supporting document**” includes
- (a) validated deposit receipts,
 - (b) periodic bank statements,
 - (c) passbooks,
 - (d) cancelled and voided cheques,
 - (e) bank vouchers and similar documents,
 - (f) vendor invoices, and
 - (g) bills for fees, charges and disbursements.

- (2) A lawyer must record all funds received and disbursed in connection with his or her law practice by maintaining the records required under this division.
- (3) A lawyer must maintain accounting records, including supporting documents, in
 - (a) legibly handwritten form, in ink or other duplicated or permanent form,
 - (b) printed form, or
 - (c) an electronic form in compliance with subrule (4).
- (4) A lawyer who maintains accounting records, including supporting documents, in electronic form, must ensure that
 - (a) all records and documents are maintained in a way that will allow compliance with Rule 10-3 (2) [*Records*],
 - (b) copies of both sides of all paper records and documents, including any blank pages, are retained in a manner that indicates that they are two sides of the same document, and
 - (c) there is a clear indication, with respect to each financial transaction, of
 - (i) the date of the transaction,
 - (ii) the individual who performed the transaction, and
 - (iii) all additions, deletions or modifications to the accounting record and the individual who made each of them.
- (5) A lawyer must record transactions in accounting records in chronological order and in an easily traceable form.
- (6) A lawyer must retain all supporting documents for both trust and general accounts.

Executive Director's modification

- 3-76** (1) Having regard to the accounting and storage systems employed by a specific lawyer, the Executive Director may modify the requirements of that lawyer under Rules 3-68 to 3-71 or 3-75 [*Retention of records*].
- (2) The Executive Director may, at any time, cancel or amend a modification under subrule (1).
- (3) The Executive Director must make a modification under subrule (1) or a cancellation or amendment of a modification under subrule (2) in writing.
- (4) A lawyer who receives a written modification from the Executive Director under subrule (1) must retain it and any amendment under subrule (2) for as long as
- (a) the books, records and accounts to which it relates are retained, or
 - (b) the lawyer would have been required to retain the books, records and accounts to which it relates, but for the modification and any amendment.

Annual CDIC report

- 3-77** A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must file an annual report for each account maintained by the lawyer with that institution in accordance with section 3 (3) of the Schedule to the *Canada Deposit Insurance Corporation Act*, so that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.

Lawyer's right to claim funds

- 3-78** Nothing in this division deprives a lawyer of any recourse or right, whether by way of lien, set-off, counterclaim, charge or otherwise, against
- (a) funds standing to the credit of a client in a trust account, or
 - (b) valuables held for a client.

Trust report

- 3-79** (1) Subject to subrules (4) and (6), a lawyer must deliver to the Executive Director completed trust reports for reporting periods of 12 months covering all the time that the lawyer is a member of the Society.
- (2) The date on which a firm ceases to practise law is the end of a reporting period.
- (3) A lawyer must deliver a completed trust report to the Executive Director within 3 months of the end of each reporting period.
- (4) On a written request made before the due date of a trust report, the Executive Director may allow a lawyer to submit a trust report covering a time period other than 12 months.

- (5) A trust report delivered to the Executive Director under this rule must
 - (a) be in a form approved by the Discipline Committee,
 - (b) be complete to the satisfaction of the Executive Director, and
 - (c) include all signatures required in the form.
- (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-43 [*Exemption from professional liability insurance*] from the requirement to maintain professional liability insurance and pay the insurance fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has
 - (a) not received any funds in trust,
 - (b) not withdrawn any funds held in trust, and
 - (c) complied with this division.

Late filing of trust report

- 3-80** (1) A lawyer who does not deliver a trust report as required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] is in breach of these rules.
- (2) A lawyer who fails to deliver a trust report by the date required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] is deemed to have been in compliance with the rules during the period of time that the lawyer was late in delivering the report if the lawyer delivers the following to the Executive Director within 30 days of the due date:
- (a) the required report;
 - (b) the late fee specified in Schedule 1.
- (3) A lawyer who does not deliver a trust report for 30 days after it is required under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] is liable to an assessment of \$400 per month or part of a month until the report is delivered.
- (4) When there are special circumstances, the Executive Director may, on application and in his or her discretion, waive payment of all or part of an assessment made under this rule unconditionally or on any conditions that the Executive Director considers appropriate.

Failure to file trust report

- 3-81** (1) Subject to subrules (3) and (4), a lawyer who does not deliver a trust report under Rule 3-79 [*Trust report*] or 3-82 (5) [*Accountant's report*] for 60 days after it is required, is suspended until the report is completed to the satisfaction of the Executive Director and delivered as required.
- (2) A trust report is not delivered for the purposes of subrules (1) unless all explanations of exceptions required by the Executive Director are delivered to the Executive Director.

Division 8 – Unclaimed Trust Money

Definition

3-88 In this division:

“**efforts to locate**” means steps that are reasonable and adequate in all the circumstances, including the amount of money involved;

“**lawyer**” includes a law firm.

Payment of unclaimed trust money to the Society

- 3-89** (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 apply to the Executive Director to pay those funds to the Society under section 34 [*Unclaimed trust money*].
- (2) A lawyer must make the application referred to in subrule (1) in writing containing all of the following information that is available to the lawyer:
- (a) the full name and last known mailing address of each person on whose behalf the lawyer held the money;
 - (b) the exact amount to be paid to the Society in respect of each such person;
 - (c) the efforts made by the lawyer to locate each such person;
 - (d) any unfulfilled undertakings given by the lawyer in relation to the money;
 - (e) the details of the transaction in respect of which the money was deposited with the lawyer.
- (3) A lawyer who cannot provide all the information described in subrule (2) must advise the Executive Director of the reasons why the lawyer does not have that information and deliver to the Executive Director copies of all records in the lawyer’s power or possession that relate to the ownership and source of the money.
- (4) If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the money, the Executive Director may accept the money under section 34 [*Unclaimed trust money*].
- (5) The Executive Director must account for money received by the Society under subrule (4) separately from the other funds of the Society.

Investigation of claims

- 3-90** (1) A person may make a claim under section 34 [*Unclaimed trust money*] in writing, in the form approved by the Executive Committee by delivering it to the Executive Director.
- (2) A claimant must provide the Executive Director with information and documents that the Executive Director reasonably requires.
- (3) In order to determine the validity of a claim, the Executive Director may make or authorize inquiries or further investigations that he or she considers desirable.

Adjudication of claims

- 3-91** (1) The Executive Director may
- (a) approve a claim if satisfied that the claim is valid, or
 - (b) refer the claim to the Executive Committee.
- (2) When the Executive Director refers a claim to the Executive Committee, the Committee may, in its discretion
- (a) approve or reject a claim based on the information received under Rule 3-90 [*Investigation of claims*], or
 - (b) order a hearing to determine the validity of a claim.
- (3) If a hearing is ordered, the Executive Director must give the claimant reasonable notice in writing of the date, time and place of the hearing.
- (4) The Executive Director must serve the notice referred to in subrule (3) in accordance with Rule 10-1 [*Service and notice*].
- (5) The Executive Committee must conduct every hearing under this rule in private unless the Committee determines, in the public interest, that a specific individual or the public generally may be present at part or all of the hearing.
- (6) Subject to the Act and these rules, the Executive Committee may determine the practice and procedure to be followed at a hearing.
- (7) The claimant or the Society may call a witness to testify, who
- (a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and
 - (b) is subject to cross-examination.
- (8) Following completion of the evidence, the Executive Committee must invite the claimant and the Society to make submissions on the issues to be decided by the Committee.
- (9) Following the hearing of the evidence and submissions, the Executive Committee must determine whether the claimant is entitled to the money held in trust by the Society.
- (10) If the claim is approved under subrule (1) (a) or (9), the Executive Director must
- (a) calculate the exact amount owing to the claimant,
 - (b) calculate, in accordance with Rule 3-92 [*Calculation of interest*], the interest owing to the claimant on that amount, and
 - (c) pay to the claimant the total of the amounts calculated under paragraphs (a) and (b).

PART 4 – DISCIPLINE

Interpretation and application

- 4-1** (1) In this part,
- “**conduct meeting**” means a meeting that a lawyer or a law firm is required to attend under Rule 4-4 (1) (c) [*Action on complaints*];
- “**conduct review**” means a meeting with a conduct review subcommittee that a lawyer or a law firm is required to attend under Rule 4-4 (1) (d).
- (2) This part applies to a former lawyer, an articulated student, a law firm, a visiting lawyer permitted to practise law under Rules 2-16 to 2-20 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable.
- (3) This part must be interpreted in a manner consistent with standards of simplicity, fairness and expediency, and so as to provide maximum protection to the public and to lawyers.
- (4) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

Discipline Committee

- 4-2** (1) For each calendar year, the President must appoint a Discipline 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 Discipline 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.
- (4) Any function of the chair of the Discipline Committee under this part may be performed by the vice chair if the chair is not available for any reason, or by another Benchers member of the Committee designated by the President if neither the chair nor the vice-chair is available for any reason.

Consideration of complaints by Committee

- 4-3** (1) The Discipline Committee must consider any complaint referred to it under these rules and may instruct the Executive Director to make or authorize further investigation that the Discipline Committee considers desirable.
- (2) If, in the view of the Executive Director and the chair of the Discipline Committee, there is a need to act before a meeting of the Committee can be arranged, the Executive Director may refer a complaint to the chair for consideration under Rule 4-5 [*Consideration of complaints by chair*].

Action on complaints

- 4-4** (1) After its consideration under Rule 4-3 [*Consideration of complaints by Committee*], the Discipline Committee must
- (a) decide that no further action be taken on the complaint,
 - (b) authorize the chair or other Bench member of the Discipline Committee to send a letter to the lawyer concerning the lawyer's conduct,
 - (c) require the lawyer or law firm to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,
 - (d) require the lawyer or law firm to appear before a Conduct Review Subcommittee, or
 - (e) direct that the Executive Director issue a citation against the lawyer under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*].
- (2) In addition to the determination made under subrule (1), the Discipline Committee may refer any matter or any lawyer to the Practice Standards Committee.
- (3) In addition to any action taken under subrules (1) and (2), if a complaint discloses that there may be grounds for revoking a law corporation's permit under Rule 9-11 [*Revocation of permits*], the Discipline Committee may order a hearing on the revocation of the law corporation's permit.
- (4) At any time before the Discipline Committee makes a decision under Rule 4-13 (6) (a) to (c) [*Conduct Review Subcommittee report*], the Committee may resolve to rescind a decision made under subrule (1) (d) to require a lawyer to appear before a Conduct Review Subcommittee and substitute another decision under subrule (1).

Consideration of complaints by chair

- 4-5** (1) The chair of the Discipline Committee must consider any complaint referred to him or her under these rules and may instruct the Executive Director to make or authorize further investigation that the chair considers desirable.
- (2) After considering a complaint under subrule (1), the chair of the Discipline Committee must
- (a) direct that the Executive Director issue a citation against the lawyer under Rule 4-17(1) [*Direction to issue, expand or rescind citation*], or
 - (b) refer the complaint to the Discipline Committee.

Continuation of membership during investigation or disciplinary proceedings

- 4-6** (1) In this rule, "**lawyer under investigation**" means a lawyer who is the subject of
- (a) an investigation under Part 3, Division 1, [*Complaints*] or
 - (b) a decision of the Discipline Committee under Rule 4-4 (1) (c) or (d) [*Action on complaints*].

- (2) A lawyer under investigation may not resign from membership in the Society without the consent of the Executive Director.
- (3) A respondent may not resign from membership in the Society without the consent of the Discipline Committee.
- (4) The Executive Director may direct that a lawyer under investigation who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.
- (5) The Discipline Committee may, by resolution, direct that a respondent who would otherwise have ceased to be a member of the Society for failure to pay the annual fee or a special assessment continue as a member not in good standing and not permitted to engage in the practice of law.
- (6) A direction under subrule (4) or (5) may be made to continue in effect until stated conditions are fulfilled.
- (7) When a direction under subrule (4) or (5) expires on the fulfillment of all stated conditions or is rescinded by the Executive Director or Discipline Committee,
 - (a) the lawyer concerned ceases to be a member of the Society,
 - (b) if the rescission is in response to a request of the lawyer concerned, the Committee may impose conditions on the rescission.

Notification

- 4-7** The Executive Director must notify the complainant and the lawyer or law firm in writing of the determination of the Discipline Committee under Rule 4-4 [*Action on complaints*] or the chair under Rule 4-5 [*Consideration of complaints by the chair*].

Confidentiality of Discipline Committee deliberations

- 4-8** (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these rules:
- (a) information and documents that form part of the consideration of a complaint under Rule 4-4 [*Action on complaints*] or 4-5 [*Consideration of complaints by chair*];
 - (b) the result of a consideration under Rule 4-4.
- (2) As an exception to subrule (1), the Executive Director may disclose information referred to in that subrule, with the consent of the lawyer, in responding to an enquiry made for the purpose of a potential judicial appointment.
- (3) No one is permitted to disclose a direction to issue a citation until the respondent is notified.

- (4) Despite subrule (3), the Executive Director may disclose to the public a direction to issue a citation, its subject matter and its status before the respondent is notified if
 - (a) the identity of the respondent has already been disclosed to the public,
 - (b) the citation is in respect of an offence to which the respondent has pleaded guilty or of which the respondent has been found guilty, or
 - (c) the citation is based on a complaint that has become known to the public.
- (4.1) Despite subrule (1), the Executive Director may disclose information about Discipline Committee deliberations to a designated representative of a law firm in which the lawyer who is the subject of the deliberations engages in the practice of law.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may 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.

Conduct letter from the chair

- 4-9** (1) When a letter authorized under Rule 4-4 (1) (b) [*Action on complaints*] is sent to the lawyer, the Executive Director must provide the complainant with
 - (a) a copy of the letter, or
 - (b) if directed by the Discipline Committee, a summary of the letter.
- (2) A letter authorized under Rule 4-4 (1) (b) [*Action on complaints*]
 - (a) does not form part of the lawyer's professional conduct record, and
 - (b) is not admissible in the hearing of a citation under this part.

Conduct meeting

- 4-10** (1) A conduct meeting must be held in private.
- (2) The Discipline Committee or the chair of the Discipline Committee may appoint one or more individuals who are Benchers, Life Benchers or lawyers to meet with a lawyer or a law firm required to attend a conduct meeting under Rule 4-4 (1) (c) [*Action on complaints*].
- (3) No record of an order under Rule 4-4 (1) (c) [*Action on complaints*] or of the conduct meeting forms part of the lawyer's professional conduct record.
- (4) A Bencher or other lawyer who has participated in a conduct meeting is not permitted to testify in the hearing of a citation as to any statement made by the respondent during the conduct meeting, unless the respondent puts the matter in issue.

Conduct Review Subcommittee

- 4-11** (1) The Discipline Committee or the chair of the Discipline Committee must appoint a Conduct Review Subcommittee to consider the conduct of a lawyer referred to the Subcommittee under Rule 4-4 (1) (d) [*Action on complaints*].
- (2) A Conduct Review Subcommittee
- (a) must include at least one lawyer,
 - (b) may include one or more appointed Benchers, and
 - (c) must be chaired by a Bencher or a Life Bencher.

Conduct review

- 4-12** (1) A conduct review is an informal proceeding at which the lawyer or law firm
- (a) must appear personally, and
 - (b) may be represented by counsel.
- (2) Subject to subrule (3), a conduct review must be conducted in private.
- (3) The Conduct Review Subcommittee may, in its discretion, permit the complainant to be present at all or part of the meeting, with or without the right to speak at the meeting.

Conduct Review Subcommittee report

- 4-13** (1) The Conduct Review Subcommittee must
- (a) prepare a written report of the factual background, the Subcommittee's conclusions and any recommendations, and
 - (b) deliver a copy of that report to the lawyer, together with written notice that the lawyer has 30 days from the date of the notice to notify the chair of the Subcommittee in writing of any dispute as to the contents of the report and the reasons he or she disputes the contents of the report.
- (2) If the Subcommittee considers it necessary for the effective consideration of the lawyer's dispute, it may order a further meeting.
- (3) If a further meeting is ordered under subrule (2), Rule 4-12 [*Conduct review*] applies.
- (4) The Subcommittee must consider the lawyer's dispute and
- (a) amend its report as it considers appropriate, or
 - (b) forward its report to the Discipline Committee without amendment.
- (5) The Subcommittee must notify the lawyer in writing of its decision under subrule (4) and, if the report is amended, provide a copy of the amended report to
- (a) the lawyer, and
 - (b) the Discipline Committee.

- (6) After considering the Conduct Review Subcommittee's report, the Discipline Committee must do one or more of the following:
 - (a) decide to take no further action on the complaint;
 - (b) refer the lawyer to the Practice Standards Committee;
 - (c) direct that a citation be issued against the lawyer under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*];
 - (d) rescind the decision under Rule 4-4 (1) (d) [*Action on complaints*] to require the lawyer or law firm to appear before the Conduct Review Subcommittee, and substitute another decision under Rule 4-4 (1).
- (7) A member of the Discipline Committee who has participated in the Conduct Review Subcommittee is not, for that reason, precluded from participating in and voting on a decision under subrule (6).
- (8) After making its decision under subrule (6), the Discipline Committee must
 - (a) notify the lawyer and the complainant of its decision, and
 - (b) subject to Rule 4-14 [*Privilege and confidentiality*], deliver a copy or summary of the report to the complainant.

Privilege and confidentiality

4-14 In complying with Rule 4-13 [*Conduct Review Subcommittee report*], the Discipline Committee and the Conduct Review Subcommittee must not disclose to the complainant information subject to the solicitor and client privilege of a client, other than the complainant, or other confidential information that the complainant is not entitled to receive.

Publication and disclosure

- 4-15** (1) The Executive Director may publish and circulate to the profession a summary of the circumstances of a matter that has been the subject of a conduct review.
- (2) A summary published under subrule (1) must not identify the lawyer or complainant unless that person consents in writing to being identified.
 - (3) If a complaint giving rise to a conduct review is known to the public or if a conduct review is ordered in a matter that was the subject of a citation that has been rescinded, the Executive Director may disclose
 - (a) the fact that the lawyer or law firm is or has been required to appear before a Conduct Review Subcommittee, and
 - (b) the decision of the Discipline Committee under Rule 4-13 (6) [*Conduct Review Subcommittee report*].

- (4) Subject to subrule (5), the Executive Director may disclose the report of a Conduct Review Subcommittee that has been considered by a hearing panel as part of a lawyer’s professional conduct record under Rule 4-44 (5) [*Disciplinary action*].
- (5) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Evidence of conduct review at the hearing of a citation

- 4-16** If a hearing is held on a citation issued following a conduct review concerning the same conduct referred to in the citation,
- (a) the Conduct Review Subcommittee’s written report is not admissible at the hearing, and
 - (b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the respondent during the conduct review, unless the respondent puts the matter in issue.

Direction to issue, expand or rescind citation

- 4-17** (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.
- (2) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.
- (3) At any time before a panel makes a determination under Rule 4-44 [*Disciplinary action*], the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4(1) [*Action on complaints*].

Contents of citation

- 4-18** (1) A citation may contain one or more allegations.
- (2) Each allegation in a citation must
- (a) be clear and specific enough to give the respondent notice of the misconduct alleged, and
 - (b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven against the respondent and to identify the transaction referred to.

Notice of citation

- 4-19** The Executive Director must serve a citation on the respondent
- (a) in accordance with Rule 10-1 [*Service and notice*], and
 - (b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

Disclosure of citation

- 4-20** (1) Once the respondent has been notified of a direction to issue a citation, the Executive Director may disclose to the public the citation and its status.
- (2) The Executive Director may disclose the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.
- (3) Disclosure under this rule may be made by means of the Society's website.
- (4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Amending an allegation in a citation

- 4-21** (1) Discipline counsel may amend an allegation contained in a citation
- (a) before the hearing begins, by giving written notice to the respondent and the President, and
 - (b) after the hearing has begun, with the consent of the respondent.
- (2) The panel may amend a citation after the hearing has begun
- (a) on the application of a party, or
 - (b) on its own motion.
- (3) The panel must not amend a citation under subrule (2) unless the respondent and discipline counsel have been given the opportunity to make submissions respecting the proposed amendment.

Severance and joinder

- 4-22** (1) Before a hearing begins, the respondent or discipline counsel may apply in writing to the President for an order that
- (a) one or more allegations in a citation be determined in a separate hearing from other allegations in the same citation, or
 - (b) two or more citations be determined in one hearing.
- (2) An application under subrule (1) must
- (a) be copied to the party not making the application, and
 - (b) state the grounds for the order sought.
- (3) [rescinded]
- (4) The President may
- (a) allow the application with or without conditions,
 - (b) designate another Benchler to make a determination, or
 - (c) refer the application to a pre-hearing conference.

- (4) Details of the circumstances disclosed under subrule (3) must be
 - (a) in writing, and
 - (b) delivered to the respondent or respondent’s counsel.
- (5) The President may
 - (a) designate another Bencher to make a determination under subrule (3), or
 - (b) refer the application to a pre-hearing conference.

Preliminary questions

- 4-36** (1) Before a hearing begins, the respondent or discipline counsel may apply for the determination of a question relevant to the hearing by delivering to the President and to the other party written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]
- (3) When an application is made under subrule (1), the President must do one of the following as appears to the President to be appropriate:
 - (a) appoint a panel to determine the question;
 - (b) refer the question to a pre-hearing conference;
 - (c) refer the question to the panel at the hearing of the citation.
- (4) The President may designate another Bencher to exercise the discretion under subrule (3).
- (5) A panel appointed under subrule (3) (a) is not seized of the citation or any question pertaining to the citation other than that referred under that provision.

Compelling witnesses and production of documents

- 4-37** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order under section 44 (4) [*Witnesses*] by delivering to the President and to the other party written notice setting out the substance of the application and the grounds for it.
- (2) [rescinded]
- (3) When an application is made under subrule (1), after considering any submissions, the President must
 - (a) make the order requested or another order consistent with section 44 (4) [*Witnesses*], or
 - (b) refuse the application.

- (4) The President may designate another Benchler to make a decision under subrule (3).
- (5) On the motion of the respondent or discipline counsel, the President or another Benchler designated by the President may apply to the Supreme Court under section 44 (5) [*Witnesses*] to enforce an order made under subrule (3).

Pre-hearing conference

- 4-38**
- (1) The President may order a pre-hearing conference at any time before the hearing of a citation begins, at the request of the respondent or discipline counsel, or on the President's own initiative.
 - (2) When the President orders a conference under subrule (1), the President must
 - (a) set the date, time and place of the conference, and notify the parties, and
 - (b) designate a Benchler to preside at the conference.
 - (3) [rescinded]
 - (4) Discipline counsel must be present at the conference.
 - (5) The respondent may attend the conference in person, through counsel or both.
 - (6) If the respondent fails to attend the conference, the Benchler presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the Benchler is satisfied that the respondent had notice of the conference.
 - (7) If the Benchler presiding at a pre-hearing conference considers it appropriate, he or she may allow any person to 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 for the purpose of this rule.
 - (8) The conference may consider
 - (a) the simplification of the issues,
 - (b) the necessity or desirability of amendments to the citation,
 - (c) the possibility of obtaining admissions that might facilitate the hearing,
 - (d) the discovery and production of documents,
 - (e) 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,
 - (f) setting a date for the hearing to begin, and
 - (g) any other matters that may aid in the disposition of the citation.

- (9) The respondent or discipline counsel may apply to the Bencher presiding at the conference for an order
 - (a) for discovery and production of documents,
 - (b) to withhold the identity or contact information of a witness,
 - (c) to adjourn the hearing of the citation,
 - (d) for severance of allegations or joinder of citations under Rule 4-22 [*Severance and joinder*],
 - (e) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 4-35 [*Application for details of the circumstances*], or
 - (f) concerning any other matters that may aid in the disposition of the citation.
- (10) The Bencher presiding at a pre-hearing conference may
 - (a) adjourn the conference generally or to a specified date, time and place,
 - (b) set a date for the hearing to begin, and
 - (c) allow or dismiss an application made under subrule (9) or referred to the conference under this part.

Appointment of panel

4-39 When a citation is issued under Rule 4-17 (1) [*Direction to issue, expand or rescind citation*], the President must establish a panel to conduct a hearing, make a determination under Rule 4-43 [*Submissions and determination*] and take action, if appropriate, under Rule 4-44 [*Disciplinary action*].

Adjournment

- 4-40** (1) Before a hearing begins, the respondent or discipline counsel may apply for an order that the hearing be adjourned by delivering to the President and the other party written notice setting out the grounds for the application.
- (2) [rescinded]
- (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-hearing conference.
- (5) After a hearing has begun, the chair of the panel may adjourn the hearing, with or without conditions, generally or to a specified date, time and place.
- (6) [rescinded]
- (7) Rule 4-32 [*Notice of hearing*] does not apply when a hearing is adjourned and re-set for another date.

Preliminary matters

- 4-41** (1) Before hearing any evidence on the allegations set out in the citation, the panel must determine whether
- (a) the citation was served in accordance with Rule 4-19 [*Notice of citation*], or
 - (b) the respondent waives any of the requirements of Rule 4-19.
- (2) If the requirements of Rule 4-19 [*Notice of citation*] have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.
- (3) Despite subrule (1), before the hearing begins, the panel may receive and consider.
- (a) the citation,
 - (b) an agreed statement of facts,
 - (c) an admission made or deemed to be made under Rule 4-28 [*Notice to admit*],
 - (d) a conditional admission and consent to a specified disciplinary action tendered by the respondent and accepted by the Discipline Committee under Rule 4-30 [*Consent to disciplinary action*], and
 - (e) any other document or evidence by agreement of the parties.

Evidence of respondent

- 4-42** Discipline counsel must notify the respondent of an application for an order that the respondent give evidence at the hearing.

Submissions and determination

- 4-43** (1) Following completion of the evidence, the panel must invite submissions from discipline counsel and the respondent on each allegation in the citation.
- (2) After submissions under subrule (1), the panel must
- (a) find the facts and make a determination on each allegation, and
 - (b) prepare written reasons for its findings on each allegation.
- (3) A copy of the panel's reasons prepared under subrule (2) (b) must be delivered promptly to each party.

Disciplinary action

- 4-44** (1) Following a determination under Rule 4-43 [*Submissions and determination*] adverse to the respondent, the panel must
- (a) invite the respondent and discipline counsel to make submissions as to disciplinary action,
 - (b) take one or more of the actions referred to in section 38 (5) to (7) [*Discipline hearings*],

PART 5 – HEARINGS AND APPEALS

Application

- 5-1** (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.
- (2) In this part, a law firm may act through its designated representative or another lawyer engaged in the practice of law as a member of the law firm.

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 if
- (a) no facts are in dispute,
 - (b) the hearing is to consider a conditional admission under Rule 4-30 [*Conditional admission and consent to disciplinary action*],
 - (c) the hearing proceeds under Rule 4-33 [*Summary hearing*],
 - (d) the hearing is to consider a preliminary question under Rule 4-36 [*Preliminary questions*], or
 - (e) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time.
- (3) A panel must
- (a) be chaired by a lawyer, and
 - (b) include at least one Bencher or Life 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 lawyer may, with the consent of the President, continue to chair the panel, and the panel may complete a hearing already scheduled or begun.
- (5.1) If a member of a panel ceases to be a Bencher and does not become a Life Bencher, the panel may, with the consent of the President, complete a hearing already scheduled or begun.
- (6) Two or more panels may proceed with separate matters at the same time.
- (7) 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.
- (8) 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.

Panel member unable to continue

- 5-3** (1) Despite Rule 5-2 [*Hearing panels*], if a member of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may order that the panel continue with the remaining members.
- (2) If the chair of a hearing panel cannot, for any reason, complete a hearing that has begun, the President may appoint another member of the hearing panel who is a lawyer as chair of the hearing panel.

Disqualification

- 5-4** (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) a Bencher who made an order under Rule 3-10 [*Extraordinary action to protect public*], 3-11 [*Medical examination*] or 4-23 [*Interim suspension or practice conditions*] regarding a matter forming the basis of the citation;
 - (c) a member of a panel that heard an application under Rule 4-26 [*Review of interim suspension or practice conditions*] to rescind or vary an interim suspension or practice condition or limitation in respect of a matter forming the basis of the citation.
- (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) 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.

Compelling witnesses and production of documents

- 5-5** (1) In this rule “**respondent**” includes a shareholder, director, officer or representative of a respondent law firm.
- (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 [*Form of Summons*].

Decision

- 5-10** (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.

Costs of hearings

- 5-11** (1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1 [*Application*], and may set a time for payment.
- (2) A review board may order that an applicant or respondent pay the costs of a review under section 47, and may set a time for payment.
- (3) Subject to subrule (4), the panel or review board must have regard to the tariff of costs in Schedule 4 [*Tariff for hearing and review costs*] to these Rules in calculating the costs payable by an applicant, a respondent or the Society.
- (4) A panel or review board may order that the Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 [*Tariff for hearing and review costs*] if, in the judgment of the panel or review board, it is reasonable and appropriate to so order.
- (5) The cost of disbursements that are reasonably incurred may be added to costs payable under this Rule.
- (6) In the tariff in Schedule 4 [*Tariff for hearing and review costs*],
- (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 or amount payable applies.
- (7) 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.
- (8) 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 (3) to (6).
- (9) Costs deposited under Rule 2-92 [*Security for costs*] must be applied to costs ordered under this Rule.
- (10) 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.

- (11) As an exception to subrule (10), 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.

Application to vary certain orders

- 5-12** (1) An applicant or respondent may apply in writing to the President for
- (a) an extension of time
 - (i) to pay a fine or the amount owing under Rule 5-11 [*Costs of hearings*],
or
 - (ii) to fulfill a condition imposed under section 22 [*Credentials hearings*],
38 [*Discipline hearings*], or 47 [*Review on the record*],
 - (b) a variation of a condition referred to in paragraph (a) (ii), or
 - (c) a change in the start date for a suspension imposed under section 38
[*Discipline hearings*] or 47 [*Review on the record*].
- (2) An application under subrule (1) (c) must be made at least 7 days before the start date set for the suspension.
- (3) [rescinded]
- (4) The President must refer an application under subrule (1) to one of the following, as may in the President's discretion appear appropriate:
- (a) the same panel or review board that made the order;
 - (b) a new panel;
 - (c) the Discipline Committee;
 - (d) the Credentials Committee.
- (5) The panel, review board or Committee that hears an application under subrule (1) must
- (a) dismiss it,
 - (b) extend to a specified date the time for payment,
 - (c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions, or
 - (d) specify a new date for the start of a period of suspension imposed under section 38 [*Discipline hearings*] or 47 [*Review on the record*].
- (6) If, in the view of the President and the chair of the Committee to which an application is referred under subrule (4) (c) or (d), there is a need to act on the application before a meeting of the Committee can be arranged, the chair of the Committee may hear the application and make the determination under subrule (5).
- (7) An application under this rule does not stay the order that the applicant seeks to vary.

Failure to pay costs or fulfill practice condition

- 5-13** (1) An applicant or respondent must do the following by the date set by a hearing panel, review board or Committee or extended under Rule 5-12 [*Application to vary certain orders*]:
- (a) pay in full a fine or the amount owing under Rule 5-11 [*Costs of hearings*];
 - (b) fulfill a practice condition as imposed under section 21 [*Admission, reinstatement and requalification*], 22 [*Credentials hearings*], 27 [*Practice standards*], 32 [*Financial responsibility*], 38 [*Discipline hearings*] or 47 [*Review on the record*], as accepted under section 19 [*Applications for enrolment, call and admission, or reinstatement*], or as varied under these Rules.
- (2) If, on December 31, an applicant or respondent is in breach of subrule (1), 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.

Recovery of money owed to the Society

- 5-14** (1) A lawyer or former lawyer who is liable to pay the costs of an audit or investigation must pay to the Society the full amount owing by the date set by the Discipline Committee.
- (1.1) A lawyer who is liable to pay an assessment under Rule 3-80 [*Late filing of trust report*] must pay to the Society the full amount owing by the date specified in that Rule or as set or extended by the Executive Director.
- (2) A lawyer who has not paid the full amount owing under subrule (1) or (1.1) by the date set or extended 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.

Reviews and appeals

Review by review board

- 5-15** (1) In Rules 5-15 to 5-28, “**review**” means a review of a hearing panel decision by a review board under section 47 [*Review on the record*].
- (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 5-15 to 5-28 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) [*Review on the record*], the Rules that apply to the hearing of evidence before a hearing panel apply.

Review boards

- 5-16** (1) When a review is initiated under Rule 5-19 [*Initiating a review*], the President must establish a review board consisting 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 lawyer 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.

Disqualification

- 5-17** 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 5-4 [*Disqualification*] from participation in the hearing panel.

Review board member unable to continue

- 5-18** (1) Despite Rule 5-16 [*Review boards*], if a member of a review board cannot, for any reason, complete a review that has begun, the President may order that the review board continue with the remaining members, whether or not the board consists of an odd number of persons.
- (2) If the chair of a review board cannot, for any reason, complete a review that has begun, the President may appoint another member of the review board who is a lawyer as chair of the review board.

- (4) The Executive Director must issue a new permit to a law corporation that has
 - (a) obtained the certificate referred to in subrule (1),
 - (b) delivered to the Executive Director a true copy of the certificate of the Registrar of Companies showing the change of name and the date it is effective, and
 - (c) paid the fee specified in Schedule 1.
- (5) Subject to Rule 9-5 (3) [*Issuance of permit*], a law corporation permit issued under subrule (4) is valid until the date on which the permit that it replaces would have expired.

Public disclosure of corporate status

- 9-7** When a lawyer or law firm provides legal services to the public through a law corporation, all advertising for the lawyer or law firm must indicate that the law corporation provides the legal services.

Corporate information

- 9-8** A law corporation must deliver to the Executive Director copies of its Articles, Notice of Articles and amendments to its Articles or Notice of Articles
- (a) when applying for a permit, and
 - (b) immediately on adoption of new or amended Articles or Notice of Articles.

Disclosure of corporate information

- 9-9** (1) All information and documents received by the Society under this division are confidential, and no person is permitted to disclose them to any person.
- (2) As an exception to subrule (1), the Society may
- (a) use information and documents for a purpose consistent with the Act and these rules,
 - (b) disclose information and documents to a governing body, and
 - (c) disclose the following information, on request, to any person:
 - (i) the name of a corporation;
 - (ii) a corporation's place of business;
 - (iii) whether a company has a valid law corporation permit;
 - (iv) whether a specified lawyer is an employee or a voting shareholder of a corporation;
 - (v) whether a specified law corporation is a voting shareholder of a law corporation.

Notice of change in corporate information

- 9-10** The president of a company or his or her designate must promptly advise the Executive Director in writing of any change to the information contained in the permit application or renewal permit application most recently delivered to the Society.

Revocation of permits

- 9-11** (1) After a hearing, a panel may revoke a law corporation's permit if
- (a) in the course of providing legal services the corporation does anything that, if done by a lawyer, would be professional misconduct or conduct unbecoming the profession,
 - (b) the corporation contravenes the Act or a rule, or
 - (c) the corporation ceases to comply with a condition of qualification referred to in section 81 [*Authorized and prohibited activities of law corporations*] or a condition under this division or section 82 [*Law corporation permit*].
- (2) Instead of revoking a law corporation permit under subrule (1), a panel may do one or more of the following:
- (a) reprimand one or more of the voting shareholders of a law corporation;
 - (b) impose a fine on the law corporation in an amount not exceeding \$50,000;
 - (c) impose conditions or limitations under which the law corporation may continue to provide legal services to the public.
- (3) Any shareholder, director, officer or employee of or contractor to a law corporation may be
- (a) compelled to give evidence at a proceeding under this division or under Part 5 [*Hearings and appeals*], or
 - (b) required to produce any file or record in that person's possession or control that is relevant to matters raised in the proceeding.
- (4) To the extent reasonably possible, Parts 4 [*Discipline*] and 5 [*Hearings and appeals*] apply to notice of a hearing on the revocation of a law corporation permit and to the hearing as they apply to a citation and the hearing of the citation.
- (5) If a hearing has been ordered on the revocation of a law corporation permit and a citation has been directed to be issued against a shareholder, director, officer or employee of the corporation holding the permit, the Discipline Committee may direct that the citation and the question of the revocation of the law corporation permit be heard together.
- (6) When the Discipline Committee has directed that a citation and the question of the revocation of a law corporation permit be heard together, the panel conducting the hearing may order that they be heard separately.

SCHEDULE 1 – 2018 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee	\$
1. Practice fee (Rule 2-105 [<i>Annual practising fees</i>])	2,139.72
2. Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-40 (1) [<i>Annual insurance fee</i>]):	
(a) full-time practice	1,800.00
(b) part-time practice	900.00
3. Liability insurance surcharge (Rule 3-44 (2) [<i>Deductible, surcharge and reimbursement</i>])	1,000.00
4. Late payment fee for practising lawyers (Rule 2-108 (3) [<i>Late payment</i>])	100.00
5. Retired member fee (Rule 2-4 (3) [<i>Retired members</i>])	75.00
6. Late payment fee for retired members (Rule 2-108 (4))	nil
7. Non-practising member fee (Rule 2-3 (2) [<i>Non-practising members</i>])	300.00
8. Late payment fee for non-practising members (Rule 2-108 (5))	25.00
9. Administration fee (R. 2-116 (3) [<i>Refund on exemption during practice year</i>])	50.00
 B. Trust administration fee	
1. Each client matter subject to fee (Rule 2-110 (1) [<i>Trust administration fee</i>]) ..	15.00
 C. Special assessments	
 D. Articled student fees	
1. Application fee for enrolment in admission program (Rules 2-54 (1) (e) [<i>Enrolment in the admission program</i>] and 2-62 (1) (b) [<i>Part-time articles</i>]) ..	250.00
2. Application fee for temporary articles (R. 2-70 (1) (c) [<i>Temporary articles</i>]) ..	125.00
3. Application fee for temporary articles (legal clinic) (Rule 2-70 (1) (c))	25.00
4. Training course registration (Rule 2-72 (4) (a) [<i>Training course</i>])	
until April 30, 2018	2,500.00
effective May 1, 2018	2,600.00
5. Remedial work (Rule 2-74 (8) [<i>Review by Credentials Committee</i>]):	
(a) for each piece of work	50.00
(b) for repeating the training course	
until April 30, 2018	3,900.00
effective May 1, 2018	4,000.00
 E. Transfer fees	
1. Application fee for transfer from another Canadian province or territory – investigation fee (Rule 2-79 (1) (f) [<i>Transfer from another Canadian jurisdiction</i>])	1,125.00
2. Transfer or qualification examination (Rules 2-79 (6) and 2-89 (6) [<i>Returning to practice after an absence</i>])	300.00

F. Call and admission fees	\$
1. After enrolment in admission program (Rule 2-77 (1) (c) [<i>First call and admission</i>])	200.00
2. After transfer from another Canadian province or territory (Rule 2-79 (1) (f) [<i>Transfer from another Canadian jurisdiction</i>])	200.00
 G. Reinstatement fees	
1. Application fee following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-85 (1)(b) [<i>Reinstatement of former lawyer</i>])	600.00
2. Application fee following 3 years or more as a former member (Rule 2-85 (1) (b))	500.00
3. Application fee in all other cases (Rule 2-85 (1) (b))	415.00
 H. Change of status fees	
1. Application fee to become retired member (Rule 2-4 (2) (b) [<i>Retired members</i>])	30.00
2. Application fee to become non-practising member (Rule 2-3 (1) (b) [<i>Non-practising members</i>])	60.00
3. Application fee for non-practising or retired member applying for practising certificate (Rule 2-5 (1) (b))	60.00
 I. Inter-jurisdictional practice fees	
1. Application fee (Rule 2-19 (3) (b) [<i>Inter-jurisdictional practice permit</i>])	500.00
2. Renewal of permit (Rule 2-19 (3) (b))	100.00
 J. Corporation and limited liability partnership fees	
1. Permit fee for law corporation (Rule 9-4 (c) [<i>Law corporation permit</i>])	300.00
2. New permit on change of name fee (Rule 9-6 (4) (c) [<i>Change of corporate name</i>])	75.00
3. LLP registration fee (Rule 9-15 (1) [<i>Notice of application for registration</i>])	300.00
 K. Practitioners of foreign law	
1. Application fee for practitioners of foreign law (Rule 2-29 (1) (b) [<i>Practitioners of foreign law</i>])	600.00
2. Permit renewal fee for practitioners of foreign law (Rules 2-29 (1) (b) and 2-34 (2) (c) [<i>Renewal of permit</i>])	125.00
3. Late payment fee (Rule 2-34 (6))	100.00
 L. Late fees	
1. Trust report late filing fee (Rule 3-80 (2) (b) [<i>Late filing of trust report</i>])	200.00
2. Professional development late completion fee (Rule 3-31 (1) (c) [<i>Late completion of professional development</i>])	500.00
3. Professional development late reporting fee (Rule 3-31 (3) (b))	200.00
4. Late registration delivery fee (Rule 2-12.4)	200.00
5. Late self-assessment delivery fee (Rule 2-12.4)	500.00