

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2019: No. 1 March

Highlights

Law Society Rules 2015:* The rules governing discipline pre-hearing conferences are expanded to facilitate more effective and efficient case management (Rule 4-38 (8) to (11): pp. 176-177); the table of contents is updated (pp. 1-10).

**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	1 – 10 175 – 178	1 – 10 175 – 178, 178.1 – 178.2

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

Updates: This amendment package updates the *Member's Manual* to **March 7, 2019**. The previous amendment package was 2018: No. 3 December.

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

2019: No. 1 March

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

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- (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- (2) [rescinded]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 any matters that may aid in the fair and expeditious disposition of the citation, including but not limited to
 - (a) simplification of the issues,
 - (b) amendments to the citation,
 - (b.1) any matter for which the Benchler may make an order under subrule (10),
 - (b.2) conducting all or part of the hearing in written form,
 - (c) admissions or an agreed statement of facts,
 - (d) disclosure and production of documents,
 - (d.1) agreement for the hearing panel to receive and consider documents or evidence under Rule 4-41 (3) (e) [*Preliminary matters*], and
 - (e) the possibility that privilege or confidentiality might require closure of all or part of the hearing to the public, or exclusion of exhibits and other evidence from public access.
 - (f) and (g) [rescinded]

- (9) The respondent or discipline counsel may apply to the Benchers presiding at the conference for an order
- (a) [rescinded]
 - (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*],
- (e.1) that the Benchers may make under subrule (10), or
- (f) concerning any other matters that may aid in the fair and expeditious disposition of the citation.
- (10) The Benchers presiding at a pre-hearing conference may, on the application of a party or on the Benchers' own motion, make an order that, in the judgment of the Benchers, will aid in the fair and expeditious disposition of the citation, including but not limited to orders
- (a) adjourning the conference generally or to a specified date, time and place,
 - (b) setting a date for the hearing to begin,
 - (c) allowing or dismissing an application made under subrule (9) or referred to the conference under this part,
 - (d) specifying the number of days to be scheduled for the hearing,
 - (e) establishing a timeline for the proceeding including, but not limited to, setting deadlines for the completion of procedures and a plan for the conduct of the hearing,
 - (f) directing a party to provide a witness list and a summary of evidence that the party expects that any or all of the witnesses will give at the hearing,
 - (g) respecting expert witnesses, including but not limited to orders
 - (i) limiting the issues on which expert evidence may be admitted or the number of experts that may give evidence,
 - (ii) requiring the parties' experts to confer before service of their reports, or
 - (iii) setting a date by which an expert's report must be served on a party, or
 - (h) respecting the conduct of any application, including but not limited to allowing submissions in writing.
- (11) If an order made under this rule affects the conduct of the hearing on the citation, the hearing panel may rescind or vary the order on the application of a party or on the hearing panel's own motion.

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*],

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