The Law Society of British Columbia

AMENDMENT PAGES

2021: No. 1 March

Highlights

Law Society Rules 2015:*

- Discipline counsel and the respondent to a citation may now make a joint submission that includes the respondent's admission and a proposed penalty directly to the hearing panel without prior approval of the Discipline Committee (definition of "professional conduct record" and Rules 4-30, 4-31, 4-41(3), 4-44(1) and (2), 4-48(1) and (2), 5-2(2) and Schedule 4(25): pp. 16, 172, 178, 182, 187 and 223).
- The minimum practice experience required to act as a principal to an articled student is expanded from 5 out of the previous 6 years to 5 out of the previous 8 years (Rule 2-57(2) and (2.1): p. 67).
- An outdated reference to the Credentials Committee is removed (Rule 2-74(4): p. 78).
- Amendments require the Law Society to treat information about complaints as confidential, give Law Society investigators the discretion to require confidentiality of lawyers where circumstances call for it, and align the Rules more closely with the *Legal Profession Act* (Rule 3-3(1), (1.1), (6) and (7): p. 101).
- The table of contents is updated (pp. 1-10).

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

Code of Professional Conduct for British Columbia: Commentary is amended to clarify lawyers' professional responsibilities and to address concerns that lawyers' trust accounts not be used for the purpose of money laundering or other prohibited transactions (rule 3.2-7, commentary [3.1]: p. 17); an incorrect rule reference is updated (rule 3.4-4, commentary [4]: p. 31).

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

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

Updates: This amendment package updates the *Member's Manual* to **March 15, 2021**. The previous amendment package was 2020: 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 Rules and Code.

MEMBER'S MANUAL CONTENTS CHECKLIST

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PART 4 – DISCIPLINE

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

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

"panel" means a panel established in accordance with Part 5 *[Hearings and Appeals]*;

"practice management course" means a course of study designated as such and administered by the Society or its agents and includes any assignment, examination or remedial work taken during or after the course of study;

"practice review" means an investigation into a lawyer's competence to practise law ordered under Rule 3-17 (3) (d) *[Consideration of complaints]* or 3-18 (1) *[Practice review]*;

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

"practitioner of foreign law" means a person qualified to practise law in a foreign jurisdiction who provides foreign legal services in British Columbia respecting the laws of that foreign jurisdiction;

"prescribed form" means a form approved by the Executive Director;

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

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

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

(a) an order under Rule 2-57 (5) *[Principals]*, prohibiting the lawyer from acting as a principal for an articled student;

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

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

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

(d.1) a consent agreement to resolve a complaint under Rule 3-7.1 *[Resolution by consent agreement]*;

(e) any suspension or disbarment under the Act or these rules, including resignation requiring consent under Rule 4-6 *[Continuation of membership during investigation or disciplinary proceedings]*;

(f) recommendations made by the Practice Standards Committee under Rule 3-19 *[Action by Practice Standards Committee]*;

(g) an admission accepted by the Discipline Committee under Rule 4-29 *[Conditional admissions]*;

(h) an admission accepted and disciplinary action imposed by a hearing panel under Rule 4-30 *[Admission and consent to disciplinary action]*;

(i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 *[Conduct Review Subcommittee report]*, and any written dispute of that report considered by the Committee;

(j) a decision made under section 38 (4) (b) *[Discipline hearings]*;

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

(l) an action taken by a review board under section 47 *[Review on the record]*;

(m) a payment made from the former special compensation fund on account of misappropriation or wrongful conversion by the lawyer;

(n) an order for costs made against the lawyer under Part 5 *[Hearings and Appeals]*;

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

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

(q) the outcome of an appeal under section 48 *[Appeal]*;

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

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

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

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

"provide foreign legal services" means give legal advice in British Columbia respecting the laws of a foreign jurisdiction in which the person giving the advice is qualified;

"qualification examination" means an examination set by the Executive Director for the purposes of Rule 2-89 *[Returning to practice after an absence]*;

(a) enrol the applicant without conditions or limitations effective the enrolment start date proposed in the application, or

(b) refer the application to the Credentials Committee.

(3) When the Executive Director refers an application to the Credentials Committee under subrule (2), the Committee may

(a) enrol the applicant effective on or after the proposed enrolment start date without conditions or limitations,

(b) enrol the applicant effective on or after the proposed enrolment start date with conditions or limitations on the activities of the applicant as an articled student, if the applicant consents in writing to those conditions or limitations, or

(c) order a hearing.

Principals

2-57 (1) A lawyer engaged in full-time practice may act as principal to no more than 2 articled students at one time.

(1.1) In this rule

"associated activities" includes practice management, administration and promotion and voluntary activities associated with the practice of law;

"full-time practice" means the practice of law and associated activities for an average of more than 25 hours per week;

"part-time practice" means the practice of law and associated activities for an average of not more than 25 hours per week.

(2) Subject to subrules (2.1) and (3), to qualify to act as a principal, a lawyer must

(a) have engaged in full-time practice in Canada for 5 of the 8 years immediately preceding the articling start date,

(b) have spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in

(i) British Columbia, or

(ii) Yukon while the lawyer was a member of the Society, and

(c) not be prohibited from practising law under Rule 2-89 *[Returning to practice after an absence]*.

(2.1) When a lawyer engages in part-time practice

(a) any period in which the lawyer engages in part-time practice is counted at a rate of 50 per cent for the purposes of the full-time practice requirement in subrule (2), and

(b) the 8-year period in subrule (2) (a) is extended by the length of the period in which the lawyer engages in part-time practice, provided that the aggregate time in which the lawyer was not engaged in the practice of law does not exceed 3 years in the 5 years immediately preceding the articling start date.

(3) In exceptional circumstances, the Credentials Committee may allow a lawyer

(a) who does not qualify under subrule (2) to act as principal to an articled student, or

(b) to act as principal to more than 2 articled students at one time, despite subrule (1).

(4) On the recommendation of the Discipline Committee or Practice Standards Committee, or on its own motion, the Credentials Committee may inquire into a lawyer's suitability to act or to continue to act as principal to an articled student and may do any of the following:

(a) conduct or authorize any person to conduct an investigation concerning the fitness of the lawyer to act as a principal;

(b) require the lawyer to appear before the Credentials Committee and to respond to questions of the Committee;

(c) order the lawyer to produce any documents, records or files that the Credentials Committee may reasonably require.

(5) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:

(a) permit the lawyer to act as a principal to an articled student;

(b) permit the lawyer to act as a principal to an articled student subject to conditions or limitations;

(c) order that the lawyer not act as a principal to an articled student.

(6) The onus is on the lawyer to show cause why an order should not be made under subrule (5) (b) or (c).

Hiring articled students

2-58 (1) This rule does not apply to temporary articles under Rule 2-70 *[Temporary articles]*.

(2) This rule applies to all lawyers practising in a firm that maintains an office in the city of Vancouver north of False Creek and west of Carrall Street.

(3) The Credentials Committee may designate an offer date in each calendar year.

(4) A lawyer must not offer articles to a student of any law school unless the offer is to remain open at least until the offer date designated under subrule (3).

(5) As an exception to subrule (4), the Credentials Committee may allow a lawyer to withdraw an offer of articles before the offer date designated under subrule (3).

(6) If the Credentials Committee designates an offer date that is before September 1, subrule (4) does not apply to a student who has begun the third year of studies at any law school.

(6) [rescinded]

(7) An articled student may apply in writing to the Credentials Committee for exemption from all or a portion of the training course, and the Committee may, in its discretion, grant all or part of the exemption applied for with or without conditions, if the student has

(a) successfully completed a bar admission course in another Canadian jurisdiction, or

(b) engaged in the active practice of law in a common law jurisdiction outside Canada for at least 5 full years.

Tutorial program

2-73 (1) The Executive Director may establish a tutorial program to assist students participating in the training course.

(2) Priority for access to tutorial assistance must be as follows:

(a) first priority to students of aboriginal heritage;

(b) second priority to all other students.

Review of failed standing

2-74 (1) Subject to subrule (2), an articled student who has failed the training course may apply in writing to the Executive Director for a review of the student's failed standing, not more than 21 days after the date on which the Executive Director issued the transcript under Rule 2-72 (5) *[Training course]*.

(2) An articled student may not apply under subrule (1) if the student has failed in 3 attempts to pass the training course, including any of the following:

(a) the original attempt;

(b) a further attempt to pass examinations, assignments or assessments;

(c) any attempt to meet a requirement under subrule (7).

(3) The Executive Director may consider an application for review received after the period specified in subrule (1).

(4) An articled student applying for a review under this rule must state the following in the application:

(a) any compassionate grounds, supported by medical or other evidence, that relate to the student's performance in the training course;

(b) any grounds, based on the student's past performance, that would justify opportunities for further remedial work;

(c) the relief that the student seeks under subrule (7).

(5) and (6) [rescinded]

(7) After considering the submissions made under subrule (4), the Executive Director may do one or more of the following:

(a) confirm the standing, including any failed standing;

(b) grant the student an adjudicated pass in a training course examination, assignment or assessment, with or without conditions;

(c) require the student to complete further examinations, assignments or assessments, and to pass them at a standard set by the Executive Director;

(d) require the student to complete or repeat and pass all, or a portion of, the training course;

(e) require the student to complete a specified program of training at an educational institution or under the supervision of a practising lawyer, or both.

(8) A student who is required to do anything under subrule (7) must pay the fee for the training course, or for each examination, assignment or assessment as specified in Schedule 1.

(9) The Executive Director must deliver a transcript stating the student's standing and the extent to which any standards or conditions have been met to

(a) each student whom the Executive Director has required to do anything under subrule (7), and

(b) each such student's principal.

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) The Society must treat as confidential all information and 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.

(1.1) The Executive Director may require a lawyer, including the lawyer who is the subject of the investigation of a complaint, to treat as confidential any or all information and records that form part of the investigation or the review of the complaint by the Complainants' Review Committee.

(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;

(d) provide information to a governing body under Rule 2-27.1 *[Sharing information with a governing body]*.

(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 obtained under this division that may be evidence of an offence.

(6) This division must not be interpreted to permit the disclosure of any information or records subject to solicitor and client privilege or confidentiality.

(7) This rule is subject to the rights and obligations of individuals under sections 87 *[Certain matters privileged]* and 88 *[Non-disclosure of privileged and confidential information]*.

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) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 4-36 *[Preliminary questions]* or 4-38 *[Pre-hearing conference]*.

(6) A response under subrule (4) must contain one of the following in respect of each fact described in the request and each document attached to the request:

(a) an admission of the truth of the fact or the authenticity of the document attached to the request;

(b) a statement that the party making the response does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this rule, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

(8) If a party does not admit the truth of a fact or the authenticity of a document under this rule, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs under Rule 5-11 *[Costs of hearings]*.

(9) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this rule may withdraw the admission with the consent of the other party or with leave granted on an application

(a) before the hearing has begun, under Rule 4-36 *[Preliminary questions]* or 4-38 *[Pre-hearing conference]*, or

(b) after the hearing has begun, to the hearing panel.

Conditional admissions

4-29 (1) A respondent may, at least 14 days before the date set for a hearing under this part, tender to the Discipline Committee a conditional admission of a discipline violation.

(2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).

(3) The Discipline Committee may, in its discretion,

(a) accept the conditional admission,

(b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or

(c) reject the conditional admission.

(4) If the Discipline Committee accepts a conditional admission tendered under this rule,

(a) those parts of the citation to which the conditional admission applies are resolved,

(b) the Executive Director must

(i) record the respondent's admission on the respondent's professional conduct record, and

(ii) notify the respondent and the complainant of the disposition, and

(c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.

(5) A respondent who undertakes under this rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15 (3) *[Authority to practise law]*.

Admission and consent to disciplinary action

4-30 (1) Discipline counsel and the respondent may jointly submit to the hearing panel an agreed statement of facts and the respondent's admission of a discipline violation and consent to a specified disciplinary action.

(2) to (4) [rescinded]

(5) If the panel accepts the agreed statement of facts and the respondent's admission of a discipline violation

(a) the admission forms part of the respondent's professional conduct record,

(b) the panel must find that the respondent has committed the discipline violation and impose disciplinary action, and

(c) the Executive Director must notify the respondent and the complainant of the disposition.

(6) The panel must not impose disciplinary action under subrule (5) (b) that is different from the specified disciplinary action consented to by the respondent unless

(a) the respondent and discipline counsel have been given the opportunity to make submissions respecting the disciplinary action to be substituted, and

(b) imposing the specified disciplinary action consented to by the respondent would be contrary to the public interest in the administration of justice.

(7) An admission of conduct tendered in good faith by a lawyer during negotiation that does not result in a joint submission under subrule (1) is not admissible in a hearing of the citation.

Rejection of admissions

4-31 (1) A conditional admission tendered under Rule 4-29 *[Conditional admissions]* must not be used against the respondent in any proceeding under this part or Part 5 *[Hearings and Appeals]* unless the admission is accepted by the Discipline Committee.

(2) An admission tendered under Rule 4-30 *[Admission and consent to disciplinary action]* must not be used against the respondent in any proceeding under this part or Part 5 unless the hearing panel accepts the admission and imposes disciplinary action.

(3) to (5) [rescinded]

Notice of hearing

4-32 (1) The date, time and place for the hearing to begin must be set

(a) by agreement between discipline counsel and the respondent, or

(b) on the application of a party, by the President or by the Bencher presiding at a pre-hearing conference.

(2) When a date is set under subrule (1), the President must notify the parties in writing of the date, time and place of the hearing at least 30 days before the date set for the hearing to begin, unless the respondent consents to a shorter notice period.

(3) Written notification under subrule (2) may be made at the same time that the citation is served under Rule 4-19 *[Notice of citation]*, or at a later time.

Summary hearing

4-33 (1) This rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent 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.

(2) Unless the panel orders otherwise, the respondent and discipline counsel may adduce evidence by

(a) affidavit,

(b) an agreed statement of facts, or

(c) an admission made or deemed to be made under Rule 4-28 *[Notice to admit]*.

(3) Despite Rules 4-43 *[Submissions and determination]* and 4-44 *[Disciplinary action]*, the panel may consider facts, determination, disciplinary action and costs and issue a decision respecting all aspects of the proceeding.

Demand for disclosure of evidence

4-34 (1) At any time after a citation has been issued and before the hearing begins, a respondent may demand in writing that discipline counsel disclose the evidence that the Society intends to introduce at the hearing.

(2) On receipt of a demand for disclosure under subrule (1), discipline counsel must provide the following to the respondent by a reasonable time before the beginning of the hearing:

(a) a copy of every document that the Society intends to tender in evidence;

(b) a copy of any statement made by a person whom the Society intends to call as a witness;

(c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;

(d) a summary of any other relevant evidence in discipline counsel's possession or in a Society file available to discipline counsel, whether or not counsel intends to introduce that evidence at the hearing.

(3) Despite subrule (2), discipline counsel must not provide any information or documents about any discussion or other communication with the Ombudsperson in that capacity.

Application for details of the circumstances

4-35 (1) Before a hearing begins, the respondent may apply for disclosure of the details of the circumstances of misconduct alleged in a citation by delivering to the President and discipline counsel written notice setting out the substance of the application and the grounds for it.

(2) [rescinded]

(3) If the President is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven and to identify the transaction referred to, the President must order discipline counsel to disclose further details of the circumstances.

(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 Bencher to make a decision under subrule (3).

(5) On the motion of the respondent or discipline counsel, the President or another Bencher 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 Bencher 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 Bencher presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the Bencher is satisfied that the respondent had notice of the conference.

(7) If the Bencher 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 Bencher 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 Bencher 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 Bencher 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 Bencher presiding at a pre-hearing conference may, on the application of a party or on the Bencher's own motion, make an order that, in the judgment of the Bencher, 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) the respondent's admission of a discipline violation and consent to a specified disciplinary action submitted jointly by discipline counsel and the respondent under Rule 4-30 *[Admission and 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]*,

(c) include in its decision under this rule

(i) any order, declaration or imposition of conditions under section 38(7), and

(ii) any order under Rule 5-11 *[Costs of hearings]* on the costs of the hearing, including any order respecting time to pay,

(d) prepare a written record, with reasons, of its action taken under paragraph (b) and any action taken under paragraph (c),

(e) if it imposes a fine, set the date by which payment to the Society must be completed, and

(f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.

(2) A panel may proceed under subrule (1) before written reasons are prepared under Rule 4-43 (2) (b) *[Submissions and determination]*

(a) if the panel gives reasons orally for its decision under Rule 4-43 (2) (a), or

(b) when the panel accepts an admission jointly submitted by discipline counsel and the respondent under Rule 4-30 *[Admission and consent to disciplinary action]*.

(3) Despite subrule (1) (b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:

(a) reprimand the respondent;

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

(c) prohibit the respondent from practising law in British Columbia permanently or for a specified period of time;

(d) declare that, had the respondent been a member of the Society, the panel would have

(i) disbarred the respondent,

(ii) suspended the respondent, or

(iii) imposed conditions or limitations on the practice of the respondent.

(4) A copy of the panel's reasons prepared under subrule (1) (d) must be delivered promptly to each party.

(5) The panel may consider the professional conduct record of the respondent in determining a disciplinary action under this rule.

(6) Regardless of the nature of the allegation in the citation, the panel may take disciplinary action based on the ungovernability of the respondent by the Society.

(7) The panel must not take disciplinary action under subrule (6) unless the respondent has been given at least 30 days notice that ungovernability may be raised as an issue at the hearing on disciplinary action.

(8) The panel may adjourn the hearing on disciplinary action to allow compliance with the notice period in subrule (7).

Discipline proceedings involving members of other governing bodies

4-45 (1) The Executive Director must send written notice of the action to every governing body of which the person concerned is known to be a member when

(a) a citation is authorized under Rule 4-17 *[Direction to issue, expand or rescind citation]*,

(b) a disciplinary action is imposed under Rule 4-44 *[Disciplinary action]*, or

(c) a conditional admission tendered under Rule 4-29 *[Conditional admissions]* is accepted by the Discipline Committee.

(2) When a citation is authorized against a lawyer who is a member of a governing body or when a governing body initiates disciplinary proceedings against a member of the Society, the Discipline Committee must consult with the governing body about the manner in which disciplinary proceedings are to be taken and the Society is bound by any agreement the Discipline Committee makes with the other governing body.

(3) The Discipline Committee may agree that the venue of disciplinary proceedings be changed to or from that of the Society, if it is in the public interest or if there is a substantial savings in cost or improvement in the convenience of any person without compromising the public interest.

(4) The Discipline Committee may take action under Rule 4-4 *[Action on complaints]* against a lawyer who

(a) has violated a prohibition against practice imposed by a governing body,

(b) is the subject of a declaration by a governing body under a provision similar to Rule 4-44 (3) (d) *[Disciplinary action]*, or

(c) has made an admission that is accepted under a provision similar to Rule 4-29 *[Conditional admission]*.

(5) The fact that a lawyer concerned is or has been the subject of disciplinary proceedings by a governing body does not preclude any disciplinary action for the same or related conduct under this part.

(6) In a proceeding under this part, the filing of a duly certified copy of the disciplinary decision of a governing body against a lawyer found guilty of misconduct is proof of the lawyer's guilt.

Discipline involving lawyers practising in other jurisdictions

4-46 (1) If it is alleged that a member of the Society has committed misconduct while practising temporarily in another Canadian jurisdiction under provisions equivalent to Rules 2-15 to 2-27 *[Inter-jurisdictional practice]*, the Discipline Committee will

(a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and

(b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings under this part.

(2) The Discipline Committee may agree to allow the governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including the expenses of the proceeding.

(3) In deciding whether to agree under subrule (2), the primary considerations will be the public interest, convenience and cost.

(4) To the extent that is reasonable in the circumstances, the Executive Director must do the following at the request of a governing body that is investigating the conduct of a member or former member of the Society or a visiting lawyer who has provided legal services:

(a) provide information to the governing body under Rule 2-27.1 *[Sharing information with a governing body]*;

(b) co-operate fully in the investigation and any citation and hearing.

(5) Subrule (4) applies when the Discipline Committee agrees with a governing body under subrule (2).

(6) When the Executive Director provides information or documentation to a governing body under subrule (4) or (5), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

Public notice of suspension or disbarment

4-47 (1) When a person is suspended under this part or Part 5 *[Hearings and Appeals],* is disbarred or, as a result of disciplinary proceedings, resigns from membership in the Society or otherwise ceases to be a member of the Society as a result of disciplinary proceedings, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

(a) publication of a notice in

(i) the British Columbia Gazette,

(ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-21 *[Regional election of Benchers]*, in which the person maintained a law office, and

(iii) the Society website, and

(b) notifying the following:

(i) the Registrar of the Supreme Court;

(ii) the Public Guardian and Trustee.

(2) When a person is suspended under Part 2 *[Membership and Authority to Practise Law]* or 3 *[Protection of the Public]*, the Executive Director may take any of the steps referred to in subrule (1).

(3) A lawyer who is suspended under this part or Part 5 *[Hearings and Appeals]* must inform all clients who reasonably expect the lawyer to attend to their affairs during the period of the suspension and clients or prospective clients who inquire about the availability of the lawyer's services during the suspension period of the following:

(a) the period during which the lawyer will not be practising;

(b) the arrangements the lawyer has put in place to protect the clients' interests while the lawyer will not be practising;

(c) the fact that the lawyer is not practising during the relevant period because of the suspension.

(4) A panel that suspends a lawyer may relieve the lawyer of any of the obligations set out in subrule (3) if the panel is satisfied that it is consistent with the public interest and that imposing the obligation would be unreasonable in the circumstances.

Publication of disciplinary action

4-48 (1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken

(a) at the conclusion of the facts and determination portion of a hearing of a citation,

(b) at the conclusion of the disciplinary action portion of a hearing of a citation,

(c) at the conclusion of a hearing of a citation under Rule 4-33 *[Summary hearing]*,

(d) at the conclusion of a hearing before a review board under section 47 *[Review on the record]*,

(e) at the conclusion of an appeal to the Court of Appeal under section 48 *[Appeal]*,

(f) when an order is made or refused under Rule 4-26 (13) or (14) *[Review of interim suspension or practice conditions]*,

(g) when a lawyer or former lawyer is suspended or disbarred under Rule 4-52 *[Conviction]*,

(h) when an admission is accepted under Rule 4-29 *[Conditional admissions]*, or

(i) when an admission is accepted and disciplinary action is imposed under Rule 4-30 *[Admission and consent to disciplinary action]*.

(2) The Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than

(a) a decision not to accept an admission under Rule 4-29 *[Conditional admissions]* or 4-30 *[Admission and consent to disciplinary action]*, or

(b) any decision under Rule 4-23 (2) *[Interim suspension or practice conditions]*.

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 an admission under Rule 4-30 *[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]*.

Item no.	Description	Number of units
15.	Attendance at hearing, for each day of hearing, including preparation not otherwise provided for in tariff	30
16.	Written submissions, where no oral hearing held	Minimum 5 Maximum 15
S. 47 review		
17.	Giving or receiving notice under Rule 5-21 *[Notice of review]*, correspondence, conferences, instructions, investigations or negotiations after review initiated, for which provision is not made elsewhere	Minimum 1 Maximum 3
18.	Preparation and settlement of hearing record under Rule 5-23 *[Record of discipline hearing]*	Minimum 5 Maximum 10
19.	Pre-review conference	Minimum 1 Maximum 5
20.	Application to adjourn under Rule 5-26 *[Adjournment]* • If made more than 14 days prior to the scheduled hearing date • If made less than 14 days prior to the scheduled hearing date	 1 3
21.	Procedural or preliminary issues, including an application to admit evidence under Rule 5-23 (2) *[Record of discipline hearing]*, per day of hearing	10
22.	Preparation and delivery of written submissions	Minimum 5 Maximum 15
23.	Attendance at hearing, per day of hearing, including preparation not otherwise provided for in the tariff	30
Summary hearings		
24.	Each day of hearing	$2,000
Hearings under Rule 4-30 *[Admission and consent to disciplinary action]*		
25.	Complete hearing, based on the following factors: (a) complexity of matter; (b) number and nature of allegations; and (c) the time at which respondent agreed to make an admission relative to scheduled hearing and amount of pre-hearing preparation required.	$1,000 to $3,500
Credentials hearings		
26.	Each day of hearing	$2,000

Value of units:

Scale A, for matters of ordinary difficulty:	$100 per unit
Scale B, for matters of more than ordinary difficulty:	$150 per unit

SCHEDULE 5 – FORM OF SUMMONS

[Rule 5-5 (4) *[Compelling witnesses and production of documents]*

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING CONCERNING

_____

(As the case may be: a member of the Law Society of British Columbia/ an articled student/an applicant for enrolment/call and admission/reinstatement)

SUMMONS

TO: _____

TAKE NOTICE that you are required to attend to testify as a witness at the time, date and place set out below.

Time: _____

Date: _____

Place: The Law Society of British Columbia
845 Cambie Street
Vancouver BC V6B 4Z9 (or other venue)

Dated at _,____ _____
Party/Counsel

this day of _____, 20___

Commentary

[1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

[2] A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

[3] Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.

[3.1] The lawyer should also make inquiries of a client who:

(a) may be seeking, contrary to the prohibition in Rule 3-58.1(1) of the Law Society Rules, the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter, or

(b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

[3.2] The lawyer should make a record of the results of these inquiries.

[4] A bona fide test case is not necessarily precluded by this rule and, so long as no injury to a person or violence is involved, a lawyer may properly advise and represent a client who, in good faith and on reasonable grounds, desires to challenge or test a law and the test can most effectively be made by means of a technical breach giving rise to a test case. In all situations, the lawyer should ensure that the client appreciates the consequences of bringing a test case.

[[3.1] amended 01/2021]

Dishonesty, fraud when client an organization

3.2-8 A lawyer who is employed or retained by an organization to act in a matter in which the lawyer knows or ought to know that the organization has acted, is acting or intends to act dishonestly, criminally or fraudulently, must do the following, in addition to his or her obligations under rule 3.2-7:

(a) advise the person from whom the lawyer takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the proposed conduct is, was or would be dishonest, criminal or fraudulent and should be stopped;

(b) if necessary because the person from whom the lawyer takes instructions, the chief legal officer or the chief executive officer refuses to cause the proposed conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct was, is or would be dishonest, criminal or fraudulent and should be stopped; and

(c) if the organization, despite the lawyer's advice, continues with or intends to pursue the proposed wrongful conduct, withdraw from acting in the matter in accordance with section 3.7.

Commentary

[1] The past, present, or proposed misconduct of an organization may have harmful and serious consequences, not only for the organization and its constituency, but also for the public who rely on organizations to provide a variety of goods and services. In particular, the misconduct of publicly traded commercial and financial corporations may have serious consequences for the public at large. This rule addresses some of the professional responsibilities of a lawyer acting for an organization, including a corporation, when he or she learns that the organization has acted, is acting, or proposes to act in a way that is dishonest, criminal or fraudulent. In addition to these rules, the lawyer may need to consider, for example, the rules and commentary about confidentiality (section 3.3).

[2] This rule speaks of conduct that is dishonest, criminal or fraudulent.

[3] Such conduct includes acts of omission. Indeed, often it is the omissions of an organization, such as failing to make required disclosure or to correct inaccurate disclosures that constitute the wrongful conduct to which these rules relate. Conduct likely to result in substantial harm to the organization, as opposed to genuinely trivial misconduct by an organization, invokes these rules.

[4] In considering his or her responsibilities under this section, a lawyer should consider whether it is feasible and appropriate to give any advice in writing.

[5] A lawyer acting for an organization who learns that the organization has acted, is acting, or intends to act in a wrongful manner, may advise the chief executive officer and must advise the chief legal officer of the misconduct. If the wrongful conduct is not abandoned or stopped, the lawyer must report the matter "up the ladder" of responsibility within the organization until the matter is dealt with appropriately. If the organization, despite the lawyer's advice, continues with the wrongful conduct, the lawyer must withdraw from acting in the particular matter in accordance with rule 3.7-1. In some but not all cases, withdrawal means resigning from his or her position or relationship with the organization and not simply withdrawing from acting in the particular matter.

[2] An example is a law firm acting for a number of sophisticated clients in a matter such as competing bids in a corporate acquisition in which, although the clients' interests are divergent and may conflict, the clients are not in a dispute. Provided that each client is represented by a different lawyer in the firm and there is no real risk that the firm will not be able to properly represent the legal interests of each client, the firm may represent both even though the subject matter of the retainers is the same. Whether or not a risk of impairment of representation exists is a question of fact.

[3] The basis for the advice described in the rule from both the lawyers involved in the concurrent representation and those giving the required independent legal advice is whether concurrent representation is in the best interests of the clients. Even where all clients consent, the lawyers should not accept a concurrent retainer if the matter is one in which one of the clients is less sophisticated or more vulnerable than the other.

[4] In cases of concurrent representation lawyers should employ, as applicable, the reasonable screening measures to ensure non-disclosure of confidential information within the firm set out in the commentary to the rule on law firm disqualification (see rule 3.4-20, commentary [3]).

[[4] amended 03/2021]

Joint retainers

3.4-5 Before a lawyer is retained by more than one client in a matter or transaction, the lawyer must advise each of the clients that:

(a) the lawyer has been asked to act for both or all of them;

(b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and

(c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

Commentary

[1] Although this rule does not require that a lawyer advise clients to obtain independent legal advice before the lawyer may accept a joint retainer, in some cases, the lawyer should recommend such advice to ensure that the clients' consent to the joint retainer is informed, genuine and uncoerced. This is especially so when one of the clients is less sophisticated or more vulnerable than the other. The Law Society website contains two precedent letters that lawyers may use as the basis for compliance with rule 3.4-5.

[2] A lawyer who receives instructions from spouses or partners to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint retainer and comply with rule 3.4-5. Further, at the outset of this joint retainer, the lawyer should advise the spouses or partners that, if subsequently only one of them were to communicate new instructions, such as instructions to change or revoke a will:

(a) the subsequent communication would be treated as a request for a new retainer and not as part of the joint retainer;

(b) in accordance with rule 3.3-1, the lawyer would be obliged to hold the subsequent communication in strict confidence and not disclose it to the other spouse or partner; and

(c) the lawyer would have a duty to decline the new retainer, unless:

(i) the spouses or partners had annulled their marriage, divorced, permanently ended their conjugal relationship or permanently ended their close personal relationship, as the case may be;

(ii) the other spouse or partner had died; or

(iii) the other spouse or partner was informed of the subsequent communication and agreed to the lawyer acting on the new instructions.

[3] After advising the spouses or partners in the manner described above, the lawyer should obtain their consent to act in accordance with rule 3.4-7.

3.4-6 If a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts a joint retainer from that client and another client, the lawyer must advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

3.4-7 When a lawyer has advised the clients as provided under rules 3.4-5 and 3.4-6 and the parties are content that the lawyer act, the lawyer must obtain their consent.

Commentary

[1] Consent in writing, or a record of the consent in a separate letter to each client is required. Even if all the parties concerned consent, a lawyer should avoid acting for more than one client when it is likely that an issue contentious between them will arise or their interests, rights or obligations will diverge as the matter progresses.