

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2022: No. 4 July

Highlights

Law Society Rules 2015:* Amendments reflect the new reporting requirements for professional trust accounts in the *Canada Deposit Insurance Corporation Act* (Rule 3-77: p. 141); minor errors are corrected (definition of “professional corporation” and Rules 1-8(7) and 5-5.1(8): pp. 16, 22 and 183); gendered language is updated (Rules 1-10(7), 2-55(1) and 2-69(4): pp. 25, 66 and 74); a minor amendment clarifies that a provision applies to discipline as well as credentials hearings (Rule 5-4.3(2): p. 178); the provision for a party to apply to withdraw an admission before or during the hearing of a citation was inadvertently omitted when the Tribunal rules were updated and has been reinstated (Rule 5-4.8(9): p. 181).

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

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

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This amendment package updates the *Member's Manual* to **July 15, 2022**. The previous amendment package was 2022: No. 3 April.

To check that your copy of the *Manual* is up to date, consult the contents checklist on the next page. To print replacement pages, download the PDFs at [Member's Manual](#) on the Law Society website.

The 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. Refer to the website for the most current versions of the Rules and Code.

MEMBER'S MANUAL CONTENTS CHECKLIST

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“**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, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers and includes anyone employed to assist the Ombudsperson in that capacity;

“**panel**” means a panel established in accordance with Part 5 [*Tribunal, 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 articulated 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 articulated 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*];
- (d.2) an administrative penalty assessed under Rule 4-59 [*Administrative penalty*] unless cancelled under Rule 4-60 [*Review and order*];

- (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 admission*];
- (h) an admission accepted and disciplinary action imposed by a hearing panel under Rule 5-6.5 [*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 [*Tribunal, 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 11 [*Extraprovincial Companies*] 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;

- (8) The powers of the President may be exercised by a Vice-President or another member of the Executive Committee designated by the President
 - (a) if the President is absent or otherwise unable to act, or
 - (b) with the consent of the President.

Removal of the President or a Vice-President

- 1-6 (1) On a resolution of a majority of the Benchers to remove the President or a Vice-President from office, the Executive Director must conduct a referendum of all members of the Society to determine if the President or Vice-President, as the case may be, should be removed from office.
- (2) If a 2/3 majority of the members voting in a referendum under this rule vote to remove the President or a Vice-President from office, the President or Vice-President ceases to hold that office and ceases to be a Bencher.
- (3) Before conducting a referendum under subrule (1), the Executive Director must notify the President or Vice-President who is affected.
- (4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must make available to each member of the Society in good standing
 - (a) a notice stating
 - (i) that the Benchers have resolved to remove from office the President or a Vice-President, as the case may be,
 - (ii) the reasons for the Benchers' resolution,
 - (iii) that a referendum from among the membership is being conducted to determine if the President or Vice-President, as the case may be, should be removed from office, and
 - (iv) the date on which the referendum votes will be counted,
 - (b) a statement by the President or Vice-President, as the case may be, stating why the President or Vice-President should not be removed from office, if that person wishes to have such a statement provided to each member, and
 - (c) voting materials as required in Rule 1-27 [*Voting procedure*].
- (5) The President or Vice-President in respect of whom the referendum is conducted may attend personally or by agent during proceedings under this rule.
- (6) After the counting of the ballots is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

Bencher ceasing to hold office

- 1-7 (1) A Bencher, other than an appointed Bencher, must be a member of the Society in good standing to take or hold office as a Bencher.
- (2) A Bencher may resign by submitting a written resignation to the President stating the effective date of the resignation, and the resignation becomes effective on that date.

Meetings

Annual general meeting

- 1-8** (1) The Benchers must hold an annual general meeting of the members of the Society each year.
- (2) Subject to subrule (3) and Rule 1-9 [*Telephone and internet connections*], the Executive Committee may determine the place and time of the annual general meeting.
- (3) Unless the Benchers direct otherwise, the President must preside at the annual general meeting from a location in the City of Vancouver.
- (4) At the annual general meeting, the Benchers must present a report of their proceedings since the last annual general meeting.
- (5) At least 60 days before an annual general meeting, the Executive Director must issue a notice of the date and time of the annual general meeting.
- (6) In order to be considered at the annual general meeting, a resolution must be
- (a) signed by at least 2 members of the Society in good standing, and
 - (b) received by the Executive Director at least 35 days before the annual general meeting.
- (6.1) On receipt of a resolution under subrule (6), the Executive Director must promptly issue a notice of the resolution, including the text of the resolution and the names of the 2 members who signed it.
- (6.2) Not later than 21 days before the annual general meeting, the 2 members who signed a resolution submitted under subrule (6) may, by notifying the Executive Director in writing,
- (a) withdraw the resolution, or
 - (b) make changes to the resolution.
- (7) Before advance voting is permitted under Rule 1-13.1 [*Voting in advance of general meeting*] and at least 16 days before an annual general meeting, the Executive Director must issue
- (a) a notice containing the following information:
 - (i) the locations at which the meeting is to be held;
 - (ii) each resolution received in accordance with subrule (6), with any changes submitted under subrule (6.2), unless the resolution has been withdrawn under that subrule;
 - (iii) notice of advance voting if it is to be permitted under Rule 1-13.1, and
 - (b) the audited financial statement of the Society for the previous calendar year.

- (5) The auditor of the Society is entitled to
 - (a) attend any general meeting of the Society and to receive every notice and other communication relating to the meeting that a member of the Society is entitled to receive, and
 - (b) be heard at any general meeting that the auditor attends on any part of the business of the meeting that concerns the auditor or the financial statements of the Society.
- (6) At any general meeting, the auditor, if present, must answer enquiries directed to the auditor concerning the financial statements of the Society and the opinion on them stated in the auditor's report.
- (7) The auditor is entitled at all times to have access to every record of the Society and is entitled to require from the Benchers, officers and employees of the Society information and explanations that the auditor considers necessary to enable the auditor to prepare the auditor's report.

Special general meeting

- 1-11**
- (1) The Benchers may at any time convene a special general meeting of the Society.
 - (2) The Benchers must convene a special general meeting of the Society on a written request
 - (a) delivered to the Executive Director,
 - (b) stating the nature of the business that is proposed to be considered for the meeting, and
 - (c) signed by 5 per cent of the members of the Society in good standing at the time the request is received by the Executive Director.
 - (3) The Benchers must convene a special general meeting within 60 days of the receipt of a request under subrule (2).
 - (4) Subject to subrule (3), a special general meeting must be held at a time and place that the Benchers may determine.
 - (5) At least 21 days before a special general meeting, the Executive Director must, by electronic or other means, distribute to Benchers and members of the Society in good standing
 - (a) a notice of the meeting stating the business that will be considered at the meeting, and
 - (b) any resolution to be voted on under Rule 1-13.1 [*Voting in advance of general meeting*].
 - (6) The accidental omission to give notice of a special general meeting to any Bencher or member of the Society, or the non-receipt of that notice, does not invalidate anything done at the meeting.

- (7) No business other than the business stated in the notice under subrule (5) may be considered at a special general meeting.

Quorum

- 1-12** At a general meeting of the Society, 50 members of the Society in good standing constitute a quorum.

Procedure at general meeting

- 1-13** (1) Benchers, members of the Society in good standing and articulated students are entitled to be present and to speak at a general meeting.
- (1.1) Despite subrule (1), a person participating in a general meeting by way of internet connection is not entitled to speak at the meeting.
- (2) The Executive Director must register all persons attending a general meeting as follows:
- (a) members of the Society in good standing who have not previously voted on any resolution under Rule 1-13.1 [*Voting in advance of a general meeting*], who must be given a voting card;
 - (a.1) members of the Society in good standing who have previously voted on any resolution under Rule 1-13.1, who must be given a non-voting member card;
 - (b) articulated students, who must be given a student card;
 - (c) appointed Benchers and persons given permission to attend the meeting by the President, who may be given a card for identification only.
- (3) As an exception to subrule (2), the Executive Committee may authorize the Executive Director to dispense with registration or voting and student cards at a special general meeting.
- (4) At a general meeting, the President may allow a person who is not a Bencher, a member in good standing or a student to speak.
- (5) Subject to subrules (6) and (7), in the absence of the President, the First Vice-President or the Second Vice-President must preside at a general meeting and assume the duties of the President under Rules 1-8 to 1-13.
- (6) In the absence of the President and Vice-Presidents, one of the other Benchers present must preside at a general meeting and assume the duties of the President under Rules 1-8 to 1-13.
- (7) The members of the Society present at a general meeting must choose one of their number to preside at the meeting if
- (a) no Bencher is present 30 minutes after the time appointed for holding the meeting, or
 - (b) all Benchers present are unwilling to preside.

- (4) 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.
- (5) The Executive Director may disclose the existence and nature of a condition or limitation imposed or agreed to under this division if the condition or limitation
 - (a) is ordered as a result of a hearing under this division,
 - (b) restricts or prohibits a lawyer's practice in one or more areas of law, or
 - (c) is imposed by Rule 2-78 [*Law school faculty*], 2-80 [*In-house counsel*] or 2-87 [*Reinstatement of former judge or master*].
- (6) If the Executive Director discloses the existence of a condition or limitation under subrule (5) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or limitation ceases to be in force.
- (7) Subrule (6) does not apply to a decision of Benchers, a hearing panel or a review board.

Admission program

Enrolment in the admission program

- 2-54** (1) An applicant may apply for enrolment in the admission program at any time by delivering to the Executive Director the following:
- (a) a completed application for enrolment in the prescribed form, including a written consent for the release of relevant information to the Society;
 - (b) proof of academic qualification under subrule (2);
 - (c) an articling agreement stating a proposed enrolment start date not less than 30 days from the date that the application is received by the Executive Director;
 - (d) other documents or information that the Credentials Committee may reasonably require;
 - (e) the application fee specified in Schedule 1.
- (2) Each of the following constitutes academic qualification under this rule:
- (a) successful completion of the requirements for a bachelor of laws or the equivalent degree from an approved common law faculty of law in a Canadian university;
 - (b) a Certificate of Qualification issued under the authority of the Federation of Law Societies of Canada;
 - (c) approval by the Credentials Committee of the qualifications of a full-time lecturer at the faculty of law of a university in British Columbia.

- (3) For the purposes of this rule, a common law faculty of law is approved if it has been approved by the Federation of Law Societies of Canada unless the Benchers adopt a resolution declaring that it is not or has ceased to be an approved faculty of law.
- (4) An official transcript of the applicant's grades at each approved faculty of law at which the applicant studied is proof of academic qualification under subrule (2) (a).
- (5) The Credentials Committee may approve academic qualifications under subrule (2) (c) if the applicant
 - (a) has been a full-time lecturer at a common law faculty of law in a Canadian university for at least 5 of the last 8 years, and
 - (b) has been found by the Credentials Committee to have an adequate knowledge of the common law.

Re-enrolment

- 2-55** (1) This rule applies to a person
- (a) whose application for enrolment has been rejected by a panel that is not satisfied that the person is of good character and repute and fit to become a barrister and solicitor of the Supreme Court,
 - (b) whose enrolment has been set aside by a panel under section 38 (6) (d) *[Discipline hearings]*, or
 - (c) who has failed to complete the training course satisfactorily.
- (2) A person referred to in subrule (1) (a) or (b) may not apply for enrolment until the earlier of
- (a) the date set by a panel acting under subrule (1) (a) or (b), or
 - (b) 2 years after the date of the event referred to in subrule (1) (a) or (b).
- (3) A person referred to in subrule (1) (c) may not apply for enrolment for 1 year after the later of
- (a) the date on which the Executive Director issued the transcript of failed standing, or
 - (b) the failed standing is confirmed under Rule 2-74 (7) (a) *[Review of failed standing]*.

Consideration of application for enrolment

- 2-56** (1) The Executive Director must consider an application for enrolment by a person meeting the academic qualifications established under Rule 2-54 *[Enrolment in the admission program]*, and may conduct or authorize any person to conduct an investigation concerning the application.
- (2) On an application for enrolment as an articled student, the Executive Director may

- (2) If the articulated student does not apply to the Executive Director within the time specified in subrule (1), the time between the date the student left the previous principal's office and the date the student filed the application for assignment is not part of the articling period, unless the Credentials Committee directs otherwise.
- (3) If the previous principal does not execute one or more of the documents referred to in subrule (1), the Executive Director may dispense with the filing of those documents.
- (4) If the proposed principal is qualified to act as principal to an articulated student, the Executive Director may approve an application under this rule.
- (5) If the Executive Director refers an application under this rule to the Credentials Committee, the Committee must consider the student's submissions, and may
 - (a) approve the application without conditions or limitations,
 - (b) approve the application, subject to any conditions or limitations it considers appropriate, or
 - (c) reject the application.
- (6) An application under this rule must be approved effective on or after the date on which the articulated student began employment at the office of a new principal.

Other employment

- 2-68** During the articling period and the training course, an articulated student is not permitted to accept employment from any person other than the student's principal or the person to whom the student's articles are seconded under Rule 2-66 [*Secondment of articles*], except with the approval of the Executive Director.

Leave during articles

- 2-69** (1) In the period from an articulated student's enrolment start date until call and admission, the student may take a leave of absence from articles, provided
- (a) the total time of leaves of absence, other than maternity and parental leaves, during the period does not exceed 22 working days,
 - (b) the leave of absence does not affect the student's attendance at the training course as required, and
 - (c) if any part of the leave is to take place when the student is required to work in the office of a principal, the principal consents to the leave in advance.
- (2) Any time taken for a leave of absence under this rule is not part of the articling period.
- (3) An articulated student who becomes a natural or adoptive parent during or within 12 weeks before the articling period is entitled to 12 weeks or, if the student is the primary caregiver of the child, 16 weeks parental leave.

- (4) An articulated student is entitled to 18 weeks maternity leave during the period from 11 weeks before to 17 weeks after giving birth, in addition to the student's entitlement under subrule (3).
- (5) If maternity or parental leave causes an articulated student to fail to attend any part of the training course, the Credentials Committee may require the student to attend all or part of the course at a session held after the completion of the student's maternity or parental leave.
- (6) An articulated student who takes a leave of absence under subrule (1) must notify the Executive Director in writing in advance.
- (7) An articulated student who takes a leave of absence under subrule (3) or (4) must notify the Executive Director in writing as soon as possible.
- (8) On the written application of an articulated student, the Executive Director may allow the student to take a leave of absence that is not otherwise authorized by this rule, provided that the articulated student will be eligible for call and admission within 2 years of enrolment in the admission program.
- (9) On the written application of an articulated student, the Credentials Committee may allow the student to take a leave of absence that the Executive Director has not approved, including a leave that will result in the student not being eligible for call and admission within 2 years of enrolment in the admission program.

Temporary articles

- 2-70** (1) A person may apply for enrolment in temporary articles by filing the following with the Executive Director, not less than 30 days before the enrolment start date:
- (a) an application for enrolment in the prescribed form, including a written consent for the release of relevant information to the Society;
 - (b) an articling agreement in the prescribed form;
 - (c) the application fee for temporary articles specified in Schedule 1.
- (2) The Executive Director may enrol the following in temporary articles:
- (a) a student at a common law faculty of law in a Canadian university;
 - (b) a person whose application for enrolment as an articulated student has been approved, but whose articling term has not yet begun;
 - (c) a person who is qualified to practise law in a Commonwealth country and has actually practised law in that country for 2 years or more.
- (3) Temporary articles granted under subrule (2) (a) are void if the student ceases to be a student at a common law faculty of law in Canada.

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.

Canada Deposit Insurance Corporation

- 3-77** (1) A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must meet the conditions required under the Schedule to the *Canada Deposit Insurance Corporation Act* to ensure that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.
- (2) The lawyer must not disclose information that is subject to solicitor and client privilege or confidentiality without the consent of the client.

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 the prescribed form,
 - (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 indemnification*] from the requirement to maintain professional liability indemnity coverage and pay the indemnity 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 the Executive Director's 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.

- (3) A panel must
 - (a) be chaired by a lawyer, and
 - (b) include at least
 - (i) one Benchers or Life Benchers who is a lawyer, and
 - (ii) one person who is not 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 Tribunal Chair, 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 Benchers and does not become a Life Benchers, the panel may, with the consent of the Tribunal Chair, complete a hearing already scheduled or begun.
- (6) Two or more panels may proceed with separate matters at the same time.
- (7) The Tribunal Chair 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 Tribunal Chair 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 Tribunal Chair 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 member of an interim action board that made an order under Rule 3-10 [*Interim suspension or practice conditions*] or 3-11 [*Medical examination*] regarding a matter forming the basis of the citation;
 - (c) a member of a panel that heard an application under Rule 3-12.3 [*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 of an application for enrolment as an articulated 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.

Practice and procedure before a hearing panel

Hearing date and notice

- 5-4.1** (1) The date, time and place for the hearing to begin must be set
- (a) by agreement between the parties, or
 - (b) on the application of a party, by the Tribunal Chair or by the motions adjudicator presiding at a pre-hearing conference.
- (2) When a date is set under subrule (1) (b), the Tribunal 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 applicant or respondent consents to a shorter notice period.
- (3) Written notice 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.

Amending an allegation in a citation

- 5-4.2** (1) Law Society counsel may amend an allegation contained in a citation
- (a) before the hearing begins, by giving written notice to the respondent and the Tribunal, 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 each party has been given the opportunity to make submissions respecting the proposed amendment.

Preliminary questions

- 5-4.3** (1) Before a hearing begins, any party may apply for the determination of a question relevant to the hearing by filing with the Tribunal and delivering to the other party, written notice setting out the substance of the application and the grounds for it.
- (2) When an application is made under subrule (1), the Tribunal Chair must do one of the following as appears to the Tribunal Chair to be appropriate:
- (a) appoint a panel to determine the question;
 - (b) refer the question to a motions adjudicator;
 - (c) refer the question to the panel at the hearing of the citation or credentials application.

- (4) A party that receives a request made under subrule (1) must respond within 21 days by serving a response on the other party in accordance with Rule 10-1 [*Service and notice*].
- (5) The time for response under subrule (4) may be extended by agreement of the parties or by an order under Rule 5-4.3 [*Preliminary questions*] or 5-5.1 [*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 5-4.3 [*Preliminary questions*] or 5-5.1 [*Pre-hearing conference*], or
 - (b) after the hearing has begun, to the hearing 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.
 - (2.1) A party applying for an order under subrule (2) (a) must give reasonable notice to the applicant or respondent.
 - (3) A person who is the subject of an order under subrule (2) (a) may be cross-examined by Law Society counsel.

- (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*].
- (5) Before a hearing begins, any party may apply for an order under section 44 (4) [*Witnesses*] by filing with the Tribunal and delivering to the other party written notice setting out the substance of the application and the grounds for it.
- (6) After considering any submissions of the parties, a motions adjudicator must
 - (a) make the order requested or another order consistent with section 44 (4) [*Witnesses*], or
 - (b) refuse the application.
- (7) On the motion of any party, the motions adjudicator may apply to the Supreme Court under section 44 (5) [*Witnesses*] to enforce an order made under subrule (6).

Pre-hearing conference

- 5-5.1**
- (1) With or without a request from any party, the Tribunal Chair may order a pre-hearing conference at any time before a hearing begins.
 - (2) When a conference has been ordered under subrule (1), the Tribunal Chair must
 - (a) set the date, time and place of the conference, and
 - (b) designate a motions adjudicator to preside at the conference.
 - (3) Law Society counsel and the applicant or applicant's counsel or both, must be present at the conference.
 - (4) A respondent may attend the conference in person, through counsel or both.
 - (5) If the respondent fails to attend the conference, the motions adjudicator presiding may proceed with the conference in the absence of the respondent and may make any order under this rule, if the motions adjudicator is satisfied that the respondent had notice of the conference.
 - (6) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present for the purpose of this rule.
 - (7) The conference may consider any matters that may aid in the fair and expeditious disposition of the matter, including but not limited to
 - (a) setting a date for the hearing,
 - (b) simplification of the issues,
 - (c) admissions or an agreed statement of facts,
 - (d) amendments to the citation,
 - (e) any matter for which the motions adjudicator may make an order under this rule,
 - (f) conducting all or part of the hearing in written form or by video conference or teleconference,

- (g) disclosure and production of documents,
 - (h) agreement for the hearing panel to receive and consider documents or evidence under Rule 5-6.1 (3) (e) [*Preliminary matters*],
 - (i) 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,
 - (j) any application to withhold the identity or locating particulars of a witness, and
 - (k) any other matters that may aid in the disposition of the matter.
- (8) The motions adjudicator may
- (a) adjourn a pre-hearing conference generally or to a specified date, time and place,
 - (b) order discovery and production of documents,
 - (c) set a date for the hearing, and
 - (d) allow or dismiss an application under subrule (7) (k).
- (9) A party may apply to the motions adjudicator for an order
- (a) to withhold the identity or contact information of a witness,
 - (b) to adjourn the hearing of the citation,
 - (c) for severance of allegations or joinder of citations under Rule 5-4.4 [*Severance and joinder*],
 - (d) for disclosure of the details of the circumstances of misconduct alleged in a citation under Rule 5-4.7 [*Application for details of the circumstances*],
 - (e) that the motions adjudicator 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 motions adjudicator may, on the application of a party or on the motions adjudicator's own motion, make an order that, in the judgment of the motions adjudicator, will aid in the fair and expeditious disposition of the matter, 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 by the Tribunal Chair,
 - (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, the hearing panel may rescind or vary the order on the application of a party or on the hearing panel's own motion.

Adjournment

- 5-5.2** (1) Before a hearing begins, a party may apply for an order that the hearing be adjourned by filing with the Tribunal and delivering to the other party written notice setting out the reasons for the application.
- (2) Before a hearing begins, a motions adjudicator must decide whether to grant the adjournment, with or without conditions, and advise the parties accordingly.
- (3) 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.
- (4) Rule 5-4.1 (2) [*Hearing date and notice*] does not apply when a hearing is adjourned and re-set for another date.
- (5) When a hearing is adjourned under Rule 2-92 (5) [*Security for costs*], Law Society Counsel must file a notice with the Tribunal and deliver a copy to the applicant.

Application moot

- 5-5.3** If the circumstances of the applicant have changed so as to make the outcome of the hearing moot, after hearing submissions on behalf of the parties, the panel may do one of the following:
- (a) adjourn the hearing generally;
 - (b) reject the application;
 - (c) begin or continue with the hearing.

Procedure

- 5-6** (1) [rescinded]
- (2) If a court reporter is employed to record the proceedings of a hearing, the chair of the panel must ensure that the reporter first takes an oath or makes a solemn affirmation to faithfully and accurately report and transcribe the proceedings.
- (2.1) Unless the chair of the panel otherwise orders, an applicant must personally attend the entire hearing.