Law Society
of British Columbia

AMENDMENT PAGES

2023: No. 2 May

Highlights

Law Society Rules 2015:* The Executive Director has more discretion over how and where to publish information about suspensions or disbarments, to better reflect current communication norms and adapt to the changing ways the public consumes information (Rule 4-47(1) and (2): p. 169); the Tribunal Chair may be a motions adjudicator, and may chair a hearing panel or a review board (definition of "motions adjudicator," and Rules 5-2(3) and 5-16(2): pp. 14, 177 and 192); several rule references are updated (Rules 4-15(4), 4-17(3), 5-6.4(2), 10-1(1) and Schedule 4 (3) and (5): pp. 165, 187, 213 and 222).

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

Code of Professional Conduct for British Columbia: The Benchers have adopted new provisions from the Federation of Law Societies' model code dealing with *ex parte* proceedings (rules 5.1-2.2 and 5.1-2.3: pp. 64.2-64.3).

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.

This amendment package updates the *Member's Manual* to **May 4, 2023**. The previous amendment package was 2023: No. 1 January.

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.

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

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

"Executive Director" [rescinded]

"fiduciary property" means

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

but does not include

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

"firm" [rescinded – see **"law firm"** or **"firm"**]

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

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

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

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

"general funds" means funds received by a lawyer in relation to the practice of law, but does not include

(a) trust funds, or

(b) fiduciary property;

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

"interim action board" means a board appointed under Rule 3-10 *[Interim suspension or practice conditions]*;

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

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

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

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

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

"lawyer" means a member of the Society;

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

"metadata" includes the following information generated in respect of an electronic record:

(a) creation date;

(b) modification dates;

(c) printing information;

(d) pre-edit data from earlier drafts;

(e) identity of an individual responsible for creating, modifying or printing the record;

"motions adjudicator" means the Tribunal Chair or a lawyer Bencher designated by the Tribunal Chair to decide a matter or conduct a pre-hearing or pre-review conference under these rules;

"multi-disciplinary practice" or **"MDP"** means a partnership, including a limited liability partnership or a partnership of law corporations, that

(a) is owned by at least one lawyer or law corporation and at least one individual non-lawyer or professional corporation that is not a law corporation, and

(b) provides to the public legal services supported or supplemented by the services of another profession, trade or occupation;

"National Mobility Agreement" means the National Mobility Agreement, 2013, of the Federation of Law Societies of Canada, as amended from time to time;

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

(4) Subject to subrule (5), the Executive Director may disclose the report of a Conduct Review Subcommittee that has been considered by a hearing panel as part of a lawyer's professional conduct record under Rule 5-6.4 (5) *[Disciplinary action]*.

(5) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

Evidence of conduct review at the hearing of a citation

4-16 If a hearing is held on a citation issued following a conduct review concerning the same conduct referred to in the citation,

(a) the Conduct Review Subcommittee's written report is not admissible at the hearing, and

(b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the respondent during the conduct review, unless the respondent puts the matter in issue.

Direction to issue, expand or rescind citation

4-17 (1) The Discipline Committee or the chair of the Committee may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.

(2) After a hearing has been ordered under subrule (1), the Discipline Committee may direct the Executive Director to add an allegation to a citation.

(3) At any time before a panel makes a determination under Rule 5-6.4 *[Disciplinary action]*, the Discipline Committee may rescind a citation or an allegation in a citation and substitute another decision under Rule 4-4 (1) *[Action on complaints]*.

Contents of citation

4-18 (1) A citation may contain one or more allegations.

(2) Each allegation in a citation must

(a) be clear and specific enough to give the respondent notice of the misconduct alleged, and

(b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proven against the respondent and to identify the transaction referred to.

Notice of citation

4-19 The Executive Director must serve a citation on the respondent

(a) in accordance with Rule 10-1 *[Service and notice]*, and

(b) not more than 45 days after the direction that it be issued, unless the Discipline Committee or the chair of the Committee otherwise directs.

Publication of citation

4-20 (1) When there has been a direction to issue a citation, the Executive Director must publish on the Society's website the fact of the direction to issue the citation, the content of the citation and the status of the citation.

(1.1) Publication under subrule (1) must not occur earlier than 7 clear days after the respondent has been notified of the direction to issue the citation.

(2) The Executive Director may publish the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.

(3) Publication under this rule may be made by means of the Society's website and any other means.

(4) This rule must not be interpreted to permit the disclosure of any information that is subject to solicitor and client privilege or confidentiality.

(5) Except as allowed under Rule 4-20.1 *[Anonymous publication of citation]*, a publication under this rule must identify the respondent.

Anonymous publication of citation

4-20.1 (1) A party or an individual affected may apply to the Tribunal for an order that publication under Rule 4-20 *[Publication of citation]* not identify the respondent.

(2) When an application is made under this rule before publication under Rule 4-20, the publication must not identify the respondent until a decision on the application is issued.

(3) On an application under this rule, where, in the judgment of a motions adjudicator, there are extraordinary circumstances that outweigh the public interest in the publication of the citation, the motions adjudicator may

(a) grant the order, or

(b) order limitations on the content, means or timing of the publication.

(4) [rescinded]

(5) The motions adjudicator making a determination on an application under this rule must state in writing the specific reasons for that decision.

4-21 to 4-26 [rescinded]

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.

Division 2 – Disclosure and publication

Public notice of suspension or disbarment

4-47 (1) When a person is suspended under this part or Part 5 *[Tribunal, 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.

(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 give public notice of the suspension.

(3) A lawyer who is suspended under this part or Part 5 *[Tribunal, 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 discipline decisions

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 by a hearing panel, a motions adjudicator or a review board.

(1.1) The Executive Director must publish and circulate to the profession a summary of the circumstances and of an admission of a discipline violation accepted by the Discipline Committee under Rule 4-29 *[Conditional admission]*.

(1.2) The Executive Director must publish and circulate to the profession a summary of the circumstances of the rule breach deemed admitted under Rule 4-59 *[Administrative penalty]* and the administrative penalty imposed.

(2) Despite subrules (1) and (3), but subject to Rule 4-47 *[Public notice of suspension or disbarment]*, the Executive Director must not make public any decision, reasons or action taken as follows:

(a) a decision not to accept an admission under Rule 5-6.5 *[Admission and consent to disciplinary action]*;

(3) A panel must

(a) be chaired by the Tribunal Chair or by another lawyer, and

(b) include at least

(i) one Bencher or Life Bencher 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 Bencher and does not become a Life Bencher, 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 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.

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.

(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 5-6.3 (4) *[Submissions and determination]*

(a) if the panel gives reasons orally for its decision under Rule 5-6.3 (2) (a), or

(b) when the panel accepts an admission jointly submitted by the parties under Rule 5-6.5 *[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).

Admission and consent to disciplinary action

5-6.5 (1) The parties 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) 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.

(3) The panel must not impose disciplinary action under subrule (2) (b) that is different from the specified disciplinary action consented to by the respondent unless

(a) each party has 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.

(4) 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 admission

5-6.6 (1) A conditional admission tendered under Rule 4-29 *[Conditional admission]* must not be used against the respondent in any proceeding unless the admission is accepted by the Discipline Committee.

(2) An admission tendered under Rule 5-6.5 *[Admission and consent to disciplinary action]* must not be used against the respondent in any proceeding unless the hearing panel accepts the admission and imposes disciplinary action.

5-7 [rescinded]

Public hearing

5-8 (1) Every hearing is open to the public, but the panel or review board may exclude some or all members of the public.

(1.1) The panel or review board must not make an order under subrule (1) unless, in the judgment of the panel or review board

(a) the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the present case, or

(b) the order is required to protect the safety of an individual.

(c) a change in the start date for a suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*, or

(d) a variation or rescission of another order that has not been fully executed or fulfilled.

(2) An application under subrule (1) (c) must be made at least 7 days before the start date set for the suspension.

(2.1) A party or anyone with an interest in information subject to an order made under Rule 5-8 (2) (a) *[Public hearing]* may make an application in writing to the Tribunal for rescission or variation of the order.

(3) [rescinded]

(4) The Tribunal Chair must refer an application under subrule (1) or (2.1) to one of the following, as may in the Tribunal Chair's discretion appear appropriate:

(a) the same panel or review board that made the order;

(b) a new panel;

(c) a motions adjudicator.

(5) The panel, review board or motions adjudicator that decides an application under subrule (1) must

(a) dismiss the application,

(b) extend to a specified date the time for payment,

(c) vary the conditions imposed, or extend to a specified date the fulfillment of the conditions,

(d) specify a new date for the start of a period of suspension imposed under section 38 *[Discipline hearings]* or 47 *[Review on the record]*, or

(e) grant the variation or rescission applied for or as otherwise appears appropriate to the panel, review board or motions adjudicator.

(5.1) The panel, review board or motions adjudicator that decides an application under subrule (2.1) must

(a) dismiss the application,

(b) rescind the order, or

(c) vary the order to one that the original panel or review board was permitted to make under Rule 5-8 (2) (a) *[Public hearing]*.

(6) [rescinded]

(7) An application under this rule does not stay the order that the applicant seeks to vary.

5-13 and 5-14 [rescinded]

The review board

Review by review board

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

(2) [rescinded]

(2.1) Rule 5-4.3 *[Preliminary questions]* applies, with any necessary changes, to an application by a party to a review for the determination of a question relevant to the review.

(3) Delivery of documents to a respondent or applicant under Rules 5-15 to 5-28 may be effected by delivery to counsel representing the respondent or the applicant.

(4) If the review board finds that there are special circumstances and hears evidence under section 47 (4) *[Review on the record]*, the Rules that apply to the hearing of evidence before a hearing panel apply.

Review boards

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

(a) an odd number of persons, and

(b) more persons than the hearing panel that made the decision under review.

(2) A review board must be chaired by a Bencher who is a lawyer or by the Tribunal Chair.

(3) Review board members must be permanent residents of British Columbia over the age of majority.

(4) The chair of a review board who ceases to be a lawyer may, with the consent of the Tribunal Chair, continue to chair the review board, and the review board may complete any hearing or hearings already scheduled or begun.

(5) Two or more review boards may proceed with separate matters at the same time.

(6) The Tribunal Chair may refer a matter that is before a review board to another review board, fill a vacancy on a review board or terminate an appointment to a review board.

(7) Unless otherwise provided in the Act and these Rules, a review board must decide any matter by a majority, and the decision of the majority is the decision of the review board.

PART 10 – GENERAL

Service and notice

10-1 (0.1) In this rule, **"recipient"** means a lawyer, former lawyer, law firm, articled student or applicant.

(1) A recipient may be served with a notice or other document by

(a) leaving it at the place of business of the recipient,

(b) sending it by

(i) registered mail, ordinary mail or courier to the last known business or residential address of the recipient,

(ii) electronic facsimile to the last known electronic facsimile number of the recipient,

(iii) electronic mail to the last known electronic mail address of the recipient, or

(iv) any of the means referred to in subparagraphs (i) to (iii) to the place of business of the counsel or personal representative of the recipient or to an address given to Law Society counsel by a respondent for delivery of documents relating to a citation, or

(c) posting it to an electronic portal operated by the Society to which the recipient has been given access and notifying the recipient of the posting by a method enumerated in paragraph (b) (ii) or (iii).

(2) If it is impractical for any reason to serve a notice or other document as set out in subrule (1), a motions adjudicator may order substituted service, whether or not there is evidence that

(a) the notice or other document will probably

(i) reach the intended recipient, or

(ii) come to the intended recipient's attention, or

(b) the intended recipient is evading service.

(3) [rescinded]

(4) A document may be served on the Society or on the Benchers by

(a) leaving it at or sending it by registered mail or courier to the principal offices of the Society, or

(b) personally serving it on an officer of the Society.

(4.1) A document required under the Act or these rules to be delivered to the President or the Executive Director must be left at or sent by registered mail or courier to the principal offices of the Society.

(5) A document sent by ordinary mail is deemed to be served 7 days after it is sent.

(6) A document that is left at a place of business or sent by registered mail or courier is deemed to be served on the next business day after it is left or delivered.

(7) A document sent by electronic facsimile or electronic mail is deemed to be served on the next business day after it is sent.

(7.1) A document that is posted to an electronic portal operated by the Society is deemed to be served the next business day after the document is posted and notice is sent to the recipient.

(8) Any person may be notified of any matter by ordinary mail, registered mail, courier, electronic facsimile or electronic mail to the person's last known address.

Duty not to disclose

10-2 A person performing any duty or fulfilling any function under the Act or these rules who receives or becomes privy to any confidential information, including privileged information,

(a) has the same duty that a lawyer has to a client not to disclose that information, and

(b) must not disclose and cannot be required to disclose that information except as authorized by the Act, these rules or an order of a court.

Communication with Ombudsperson confidential

10-2.1 (1) This rule must be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.

(2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.

(3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.

Records

10-3 (1) In this rule, **"storage provider"** means any entity storing or processing records outside of a lawyer's office, whether or not for payment.

(2) When required under the Act or these rules, a lawyer must, on demand, promptly produce records in any or all of the following forms:

(a) printed in a comprehensible format;

(b) accessed on a read-only basis;

(c) exported to an electronic format that allows access to the records in a comprehensible format.

SCHEDULE 3 – 2023 PRORATED FEES FOR NON-PRACTISING AND RETIRED MEMBERS

[Rules 2-3 (1) *[Non-practising members]*, 2-4 (2) *[Retired members]* and 2-85 (5) *[Reinstatement of former lawyer]*]

	Non-practising members fee	**Retired members fee**
January	325.00	125.00
February	297.92	114.59
March	270.83	104.16
April	243.75	93.75
May	216.67	83.34
June	189.58	72.91
July	162.50	62.50
August	135.42	52.09
September	108.33	41.66
October	81.25	31.25
November	54.17	20.84
December	27.08	10.41

Note: The federal goods and services tax applies to Law Society fees and assessments.

SCHEDULE 4 – TARIFF FOR HEARING AND REVIEW COSTS

[Rule 5-11 *[Costs of hearings]*]

Item no.	Description	Number of units
Citation hearing		
1.	Preparation/amendment of citation, correspondence, conferences, instructions, investigations or negotiations after the authorization of the citation to the completion of the discipline hearing, for which provision is not made elsewhere	Minimum 1 Maximum 10
2.	Proceeding under s. 26.01 *[Suspension during investigation]*, 26.02 *[Medical examination]* or 39 *[Suspension]* and any application to rescind or vary an order under the Rules, for each day of hearing	30
3.	Disclosure under Rule 5-4.6 *[Demand for disclosure of evidence]*	Minimum 5 Maximum 20
4.	Application for particulars/preparation of particulars under Rule 5-4.7 *[Application for details of the circumstances]*	Minimum 1 Maximum 5
5.	Application to adjourn under Rule 5-5.2 *[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
6.	Pre-hearing conference	Minimum 1 Maximum 5
7.	Preparation of agreed statement of facts • if signed more than 21 days prior to hearing date • if signed less than 21 days prior to hearing date • delivered to Respondent and not signed	 Min. 5 to max. 15 Min. 10 to max. 20 Min. 10 to max. 20
8.	Preparation of affidavits	Minimum 5 Maximum 20
9.	Preparation of Notice to Admit	Minimum 5 Maximum 20
10.	Preparation of response to Notice to Admit	Minimum 5 Maximum 20
11.	All process and correspondence associated with retaining and consulting an expert for the purpose of obtaining opinion(s) for use in the proceeding	Minimum 2 Maximum 10
12.	All process and communication associated with contacting, interviewing and issuing summons to all witnesses	Minimum 2 Maximum 10
13.	Interlocutory or preliminary motion for which provision is not made elsewhere, for each day of hearing	10
14.	Preparation for interlocutory or preliminary motion, per day of hearing	20

[3] A lawyer is never required to take or keep possession of incriminating physical evidence or to disclose its mere existence. A lawyer's possession of illegal things could constitute an offence and may require that the client obtain new counsel or disadvantage the client in other ways. It is imperative that a lawyer consider carefully the implications of accepting incriminating physical evidence. A lawyer should obtain the advice of senior criminal counsel or a Law Society practice advisor before agreeing to take possession. Where a lawyer already has possession this advice should be promptly obtained with respect to how the evidence should be handled.

[3.1] Unless a lawyer's handling of incriminating physical evidence is otherwise prescribed by law, the options available to a lawyer who has taken possession of such evidence include, as soon as reasonably possible:

(a) delivering the evidence to law enforcement authorities or the prosecution, either directly or anonymously;

(b) delivering the evidence to the tribunal in the relevant proceeding, which may also include seeking the direction of the tribunal to facilitate access by the prosecution or defence for testing or examination;

(c) disclosing the existence of the evidence to the prosecution and, if necessary, preparing to argue before a tribunal the appropriate uses, disposition or admissibility of it; or

(d) returning the evidence to its source, provided doing so will not cause the evidence to be concealed, destroyed or altered.

[4] A lawyer should balance the duty of loyalty and confidentiality owed to the client with the duties owed to the administration of justice. When a lawyer discloses or delivers incriminating physical evidence to law enforcement authorities or the prosecution, the lawyer has a duty to protect client confidentiality, including the client's identity, and to preserve solicitor-client privilege. This may be accomplished by the lawyer retaining independent counsel, who is not informed of the identity of the client and who is instructed not to disclose the identity of the instructing lawyer, to disclose or deliver the evidence.

[5] A lawyer has no obligation to assist the authorities in gathering physical evidence of crime but cannot act or advise anyone to hinder an investigation or a prosecution. The lawyer's advice to a client that the client has the right to refuse to divulge the location of physical evidence does not constitute hindering an investigation. A lawyer who becomes aware of the existence of incriminating physical evidence or declines to take possession of it must not counsel or participate in its concealment, destruction or alteration.

[6] A lawyer may determine that non-destructive testing, examination or copying of documentary, electronic or other evidence is needed. A lawyer should ensure that there is no concealment, destruction or any alteration of the evidence and should exercise caution in this area. For example, opening or copying an electronic document may alter it. A lawyer who has decided to copy, test or examine evidence before delivery or disclosure should do so without delay.

[7] A lawyer must never take possession of an item the mere possession of which is illegal, such as stolen property, unless specific dispensation is afforded by the law, such as under the "innocent possession" exception, which allows a person to take possession of such an item for the sole purpose of promptly turning it over to the police.

[rule and commentary added 12/2016]

Ex parte proceedings

5.1-2.2 In an *ex parte* proceeding, a lawyer must act with utmost good faith and inform a tribunal of all material facts, including adverse facts, known to the lawyer that will enable the tribunal to make an informed decision.

Commentary

[1] *Ex parte* proceedings are exceptional. The obligation to inform the tribunal of all material facts includes an obligation of full, fair and candid disclosure to the tribunal (see also rules 5.1-1 and 5.1-2).

[2] The obligation to disclose all relevant information and evidence is subject to a lawyer's duty to maintain confidentiality and privilege (see section 3.3).

[3] Before initiating *ex parte* proceedings, a lawyer should ensure that the proceedings are permitted by law and are justified in the circumstances. Where no prejudice would occur, a lawyer should consider giving notice to the opposing party or their lawyer (when they are represented), notwithstanding the ability to proceed *ex parte*.

[rule and commentary added 04/2023]

Single-party communications with a tribunal

5.1-2.3 Except where authorized by law, and subject to rule 5.1-2.2, a lawyer must not communicate with a tribunal in the absence of the opposing party or their lawyer (when they are represented) concerning any matter of substance, unless the opposing party or their lawyer has been made aware of the content of the communication or has appropriate notice of the communication.

Commentary

[1] It is improper for a lawyer to attempt to influence, discuss a matter with, or make submissions to, a tribunal without the knowledge of the other party or the lawyer for the other party (when they are represented). A lawyer should be particularly diligent to avoid improper single-party communications when engaging with a tribunal by electronic means, such as email correspondence.

[2] When a tribunal invites or requests a communication from a lawyer, the lawyer should inform the other party or their lawyer. As a general rule, the other party or their lawyer should be copied on communications to the tribunal or given advance notice of the communication.

[3] This rule does not prohibit single-party communication with a tribunal on routine administrative or procedural matters, such as scheduling hearing dates or appearances. A lawyer should consider notifying the other party or their lawyer of administrative communications with the tribunal. Routine administrative communications should not include any submissions dealing with the substance of the matter or its merits.

[4] When considering whether single-party communication with a tribunal is authorized by law, a lawyer should review local rules, practice directives, and other relevant authorities that may regulate such a communication.

[rule and commentary added 04/2023]

Duty as prosecutor

5.1-3 When acting as a prosecutor, a lawyer must act for the public and the administration of justice resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy and respect.

Commentary

[1] When engaged as a prosecutor, the lawyer's primary duty is not to seek to convict but to see that justice is done through a fair trial on the merits. The prosecutor exercises a public function involving much discretion and power and must act fairly and dispassionately. The prosecutor should not do anything that might prevent the accused from being represented by counsel or communicating with counsel and, to the extent required by law and accepted practice, should make timely disclosure to defence counsel or directly to an unrepresented accused of all relevant and known facts and witnesses, whether tending to show guilt or innocence.

Disclosure of error or omission

5.1-4 A lawyer who has unknowingly done or failed to do something that, if done or omitted knowingly, would have been in breach of this rule and who discovers it, must, subject to section 3.3 (Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.