

Non-Practising Membership

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What is non-practising membership?

Non-practising members retain the same rights as practising members, except the right to practise law or to act as notaries public or commissioners for taking affidavits. Non-practising members are entitled to:

- run for election as Benchers;
- vote in Bencher elections and general meetings of the Law Society; and
- receive Law Society publications.

Who may apply for non-practising membership?

Any member in good standing may become a non-practising member by submitting an undertaking not to engage in the practice of law until released from that undertaking and by paying the application fee and annual non-practising fee: see Law Society Rule 2-3.

A former member must first apply for reinstatement in order to become a non-practising member. If your reinstatement application is satisfactory, you will not be required to meet any conditions of reinstatement other than provision of the non-practising undertaking. If at some point you wish to return to active practice, you will be subject to the Law Society's returning to practice rules. For more information, see the information sheets *Reinstatement of Membership* and *Returning to Practice*.

How do I apply for non-practising membership?

To apply for non-practising membership, you should submit the following:

- *Application for Non-Practising Membership* or the *Application for Non-Practising Membership for Reinstating Members*; and
- a non-refundable application fee of \$73.50 (\$70 plus GST) and the annual non-practising fee of \$341.25 (\$325 plus GST), which is prorated on a monthly basis.

If you are a practising member, do not enclose these fees with your application. They will be deducted from the practising fee you have paid for the year. If the total of the application and

non-practising fees is less than the practising fee you have already paid, you will receive a refund for the balance.

Can I be a non-practising member if I engage in legal research?

In February 1994, the Credentials Committee resolved that persons who have been called to the BC bar must maintain their practising status if they wish to engage in legal research or prepare legal documents. The Committee determined that providing opinions is akin to providing legal advice, which constitutes the practice of law under Section 1 of the *Legal Profession Act*. The definition of the "practice of law" in the Act also includes drawing, revising, or settling a document for use in a proceeding, judicial or extra-judicial, or a document relating in any way to a proceeding under a statute of Canada or British Columbia. Lawyers who provide research and opinion services to insured members and have no client contact whatsoever are exempt from professional liability insurance.

Can I be a non-practising member if the practice of law is incidental to my employment?

Lawyers employed by government, a corporation or other institution should maintain practising status if, in the course of their employment, they engage in activities that fall within the definition of the "practice of law:" see Section 1, *Legal Profession Act*. These lawyers are not eligible for non-practising membership since they cannot comply with an undertaking not to practise.

There may be situations, however, in which an employed lawyer technically engages in the practice of law, but the activity is incidental to his or her employment. In that case, the lawyer may be eligible for non-practising membership and may be permitted to provide an alternative form of undertaking. If you would like the Credentials Committee to assess your eligibility for non-practising membership, please contact Registration & Licensee Services at the Law Society.

What steps do I need to take to withdraw from practice?

Becoming a non-practising member may trigger Law Society Rules 3-79 and 3-87 with regard to trust reports, disposition of files, trust monies and other documents and valuables. Please read these rules to determine whether you will be required to take any steps prior to becoming a non-practising member.

The Practice Support section of the Law Society website at www.lawsociety.bc.ca includes resources to assist in the process of withdrawing from practice, including:

- *Winding up a Firm: A Checklist;*
- *Winding up a Sole Practice: A Checklist;* and
- *Withdrawal from the Practice of Law: sample newspaper notice and letter to clients.*

Will I need to requalify on returning to practice?

If you apply to be released from your non-practising undertaking, you will be subject to the Law Society's returning to practice rules. The conditions of returning to practice vary depending on the length of time you have been engaged in the practice of law and the period of time you have been absent from practice. Please see the information sheet *Returning to Practice* for more information on conditions upon return to practice.

Is membership with the Canadian Bar Association optional?

Membership in the Canadian Bar Association (CBA) is optional for all Law Society members, including non-practising members. If you would like to change your membership status with the CBA, contact the BC Branch office at 604.687.3404.

How can I obtain more information?

If you have any questions about non-practising membership, please contact:

Registration & Licensee Services
Law Society of British Columbia
8th Floor, 845 Cambie Street
Vancouver, BC V6B 4Z9

Tel.: 604.605.5311
BC Toll-free: 1.800.903.5300
Fax: 604.687.0135
Email: registration@lsbc.org

The information in this package is based on the Law Society Rules as they exist at this time. You must comply with the Rules that are in effect at the time you apply and with any changes in the Rules that may occur while you are in the process of becoming a non-practising member. If you have any questions about non-practising membership, contact Registration & Licensee Services at the Law Society of British Columbia.

LAW SOCIETY RULES

Non-practising members

- 2-3 (1) Any member of the Society in good standing may become a non-practising member by
- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
 - (b) paying the application fee specified in Schedule 1 and a prorated annual fee for non-practising members as provided in Schedule 3.
- (2) Non-practising members must pay the annual fee specified in Schedule 1 by the preceding November 30.

[(2) amended 07/04]

Trust report

- 3-79 (1) Subject to subrules (4) and (6), a lawyer must deliver to the Executive Director completed trust reports for reporting periods of 12 months covering all the time that the lawyer is a member of the Society.
- (2) The date on which a firm ceases to practise law is the end of a reporting period.
- (3) A lawyer must deliver a completed trust report to the Executive Director within 3 months of the end of each reporting period.
- (4) On a written request made before the due date of a trust report, the Executive Director may allow a lawyer to submit a trust report covering a time period other than 12 months.
- (5) A trust report delivered to the Executive Director under this Rule must
- (a) be in a form approved by the Discipline Committee,
 - (b) be complete to the satisfaction of the Executive Director, and
 - (c) include all signatures required in the form.
- (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-43 from the requirement to maintain professional liability insurance and pay the insurance fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has
- (a) not received any funds in trust,
 - (b) not withdrawn any funds held in trust, and

- (c) complied with this division.

[(1), (3) and (5) amended effective 08/03; heading, (1) and (3) to (5) amended 12/03; (1) and (4) amended, (6) added 02/06]

Disposition of files, trust money and other documents and valuables

3-87 (1) Before leaving a firm in British Columbia, a lawyer must advise the Executive Director in writing of his or her intended disposition of all of the following that relate to the lawyer's practice in British Columbia and are in the lawyer's possession or power:

- (a) open and closed files;
 - (b) wills and wills indices;
 - (c) titles and other important documents and records; (d) other valuables;
 - (e) trust accounts and trust funds;
 - (f) fiduciary property.
- (2) Within 30 days after withdrawing from the practice of law in British Columbia, a lawyer or former lawyer must confirm to the Executive Director in writing that
- (a) the documents and property referred to in subrule (1) (a) to (d) have been disposed of, and any way in which the disposition differs from that reported under subrule (1),
 - (b) all trust accounts referred to in subrule (1) (e) have been closed and that
 - (i) all the balances have been
 - (A) remitted to the clients or other persons on whose behalf they were held,
 - (B) transferred to another lawyer with written instructions concerning the conditions attaching to them, or
 - (C) paid to the Society under Rule 3-89 [*Payment of unclaimed trust money to the Society*], and
 - (ii) any net interest earned on a pooled trust account has been remitted to the Foundation in accordance with this division, and
 - (c) the lawyer or former lawyer has notified all clients and other persons for whom the lawyer is or potentially may become a personal representative, executor or trustee regarding the lawyer or former lawyer's withdrawal from practice and any change in his or her membership status.

- (3) A law corporation must confirm to the Executive Director as required under subrule (2) within 30 days of
 - (a) cancellation of its permit under Part 9 [*Incorporation and Limited Liability Partnerships*], and
 - (b) ceasing to provide legal services.
- (4) The Executive Director may, on application in writing by the lawyer, former lawyer or law corporation, extend the time limit referred to in subrule (1), (2) or (3) or, if in the opinion of the Executive Director it is in the public interest, relieve the lawyer, former lawyer or law corporation of any of the requirements of those subrules.
- (5) On an enquiry, the Executive Director may disclose information collected under this Rule if satisfied that
 - (a) the person enquiring has a bona fide reason to obtain the information, and
 - (b) disclosure of the information would not be an unreasonable invasion of anyone's privacy.

[(2) and (3) amended, (2.1) added, (4) rescinded 12/03; (2) amended 02/06]

LEGAL PROFESSION ACT, S.B.C. 1998, C. 9

Members

- 14 (3) A practising lawyer is entitled to use the style and title of "Notary Public in and for the Province of British Columbia," and has and may exercise all the powers, rights, duties and privileges of the office of notary public.