

LEGAL PROFESSION ACT

S.B.C. 1998, c. 9

REDLINED WITH AMENDMENTS CONTAINED IN

LEGAL PROFESSION AMENDMENT ACT, 2012

AMENDMENTS TO BE PROCLAIMED HIGHLIGHTED

[NUMBER IN BRACKETS REFERS TO SECTION OF AMENDING ACT]

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Definitions

1 (1) In this Act:

“**applicant**” means a person who has applied for

- (a) enrollment as an articulated student,
- (b) call and admission, or
- (c) reinstatement;

“**articled student**” means a person enrolled in the society’s admission program;

“**bencher**” means a person elected or appointed under Part 1 to serve as a member of the governing body of the society;

“**chair**” means a person appointed to preside at meetings of a committee or panel;

“**conduct unbecoming a lawyerthe profession**” includes a matter, conduct or thing that is considered, in the judgment of the benchers, ~~or a panel~~ or a review board, [1(a), 1(b)]

- (a) to be contrary to the best interest of the public or of the legal profession, or
- (b) to harm the standing of the legal profession;

“**disbar**” means to declare that a lawyer or former lawyer is unsuitable to practise law and to terminate the lawyer’s membership in the society;

“**executive committee**” means the committee established under section 10;

“**executive director**” means the executive director or acting executive director of the society;

“**foundation**” means the Law Foundation of British Columbia continued under section 58 (1);

“**law corporation**” means a corporation that holds a valid permit under Part 9;

“**law firm**” means a legal entity or combination of legal entities carrying on the practice of law; [1(c)]

“**lawyer**” means a member of the society, and

- (a) in Part 2, Division 1, includes a member of the governing body of the legal profession in another province or territory of Canada who is authorized to practise law in that province or territory,
- (b) in Parts 4 to 6 and 10 includes a former member of the society, and
- (c) in Part 10 includes an articulated student;

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“**member**” means a member of the society;

“**officer**” means the executive director, deputy executive director or other person appointed as an officer of the society by the benchers;

“**panel**” means a panel appointed in accordance with section 41;

“**practice of law**” includes

- (a) appearing as counsel or advocate,
- (b) drawing, revising or settling
 - (i) a petition, memorandum or articles under the *Business Corporations Act*, or an application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation, registration, organization, reorganization, dissolution or winding up of a corporate body,
 - (ii) a document for use in a proceeding, judicial or extrajudicial,
 - (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person,
 - (iv) a document relating in any way to a proceeding under a statute of Canada or British Columbia, or
 - (v) an instrument relating to real or personal estate that is intended, permitted or required to be registered, recorded or filed in a registry or other public office,
- (c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages,
- (d) agreeing to place at the disposal of another person the services of a lawyer,
- (e) giving legal advice,
- (f) making an offer to do anything referred to in paragraphs (a) to (e), and
- (g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (e),

but does not include

- (h) any of those acts if ~~not~~ performed by a person who is not a lawyer and not for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, [1(d)]
- (i) the drawing, revising or settling of an instrument by a public officer in the course of the officer’s duty,

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- (j) the lawful practice of a notary public,
- (k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the *Financial Institutions Act*, or
- (l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program;

“practising lawyer” means a member in good standing who holds or is entitled to hold a practising certificate;

“president” means the chief elected official of the society;

“resolution” means a motion passed by a majority of those voting at a meeting;

“respondent” means a person whose conduct or competence is the subject of a hearing or an appeal under this Act;

“review board” means a review board appointed in accordance with section 47: [1(e)]

“rules” means rules enacted by the benchers under this Act;

“society” means the Law Society of British Columbia continued under section 2;

“suspension” means temporary disqualification from the practice of law;

“written” or **“in writing”** includes written messages communicated electronically.

- (2) In Parts 1 to 5, **“costs”** means costs assessed under a rule made under section 27 (2) (e) or 46.

Application

- 1.1** This Act does not apply to a person who is both a lawyer and a part time judicial justice, as that term is defined in section 1 of the Provincial Court Act, in the person’s capacity as a part time judicial justice under that Act.

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PART 1 – ORGANIZATION

Division 1 – Law Society

Incorporation

- 2 (1) The Law Society of British Columbia is continued.
- (2) For the purposes of this Act, the society has all the powers and capacity of a natural person.

~~Public interest paramount~~ Object and duty of society

- 3 It is the object and duty of the society
 - ~~(a)~~ to uphold and protect the public interest in the administration of justice by
 - ~~(i)~~ preserving and protecting the rights and freedoms of all persons,
 - ~~(ii)~~ ensuring the independence, integrity, ~~and~~ honour and competence of ~~its members~~ lawyers, and
 - ~~(iii)~~ establishing standards and programs for the education, professional responsibility and competence of ~~its members~~ lawyers and of applicants for membership call and admission, and
 - ~~(b)~~ subject to paragraph (a),
 - ~~(d)~~ to regulate ing the practice of law, and
 - ~~(e)~~ supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law. [2]
- ~~(ii) to uphold and protect the interests of its members.~~

Benchers

- 4 (1) The following are benchers:
 - (a) the Attorney General;
 - (b) the persons appointed under section 5;
 - (c) the lawyers elected under section 7;
 - (d) the president, first vice-president and second vice-president.
- (2) The benchers govern and administer the affairs of the society and may take any action they consider necessary for the promotion, protection, interest or welfare of the society.

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- (3) The benchers may take any action consistent with this Act by resolution.
- (4) Subsections (2) and (3) are not limited by any specific power or responsibility given to the benchers by this Act.
- (5) The benchers may
 - (a) use the fees, assessments and other funds of the society, including funds previously collected or designated for a special purpose before this Act came into force, for the purposes of the society,
 - (b) raise funds by the issue of debentures, with or without a trust deed, for the purposes of the society,
 - (c) provide for a pension scheme for its officers and employees out of the funds of the society, and
 - (d) approve forms to be used for the purposes of this Act.

Appointed benchers

- 5 (1) The Lieutenant Governor in Council may appoint up to 6 persons to be benchers.
- (2) Members and former members of the society are not eligible to be appointed under this section.
- (3) A bencher appointed under this section has all the rights and duties of an elected bencher, unless otherwise stated in this Act.
- (4) If a bencher appointed under this section fails to complete a term of office, the Lieutenant Governor in Council may appoint a replacement to hold office for the balance of the term of the bencher who left office.
- (5) A bencher appointed under this section is not eligible to hold the position of president, first vice-president or second vice-president.

Meetings

- 6 (1) The benchers may make rules respecting meetings of the benchers, ~~including rules providing for the practice and procedure of proceedings before the benchers.~~ [3]
- (2) For a quorum at a meeting of the benchers, at least 7 benchers must be present and a majority of those present must be members of the society.
- (3) A motion assented to in writing by at least 75% of the benchers has the same effect as a resolution passed at a regularly convened meeting of the benchers.

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Elections

- 7 (1) The benchers may make rules respecting the election of benchers and of the second vice-president.
- (2) The rules made under subsection (1) must be consistent with the following:
- (a) voting is by secret ballot;
 - (b) the right of each member to vote for a bencher or the second vice-president carries the same weight as any other member who is entitled to vote for that bencher or the second vice-president;
 - (c) only members in good standing are entitled to vote.
- (3) Section 11 (4) applies to the rules made under subsection (1) of this section unless they deal directly with a matter referred to in section 12.
- (4) Section 12 applies to the rules made under subsection (1) of this section that deal directly with a matter referred to in that section.

Officers and employees

- 8 The benchers may make rules to do either or both of the following:
- (a) delegate to the executive director, or the executive director's delegate, any power or authority of the benchers under this Act except rule-making authority;
 - (b) authorize a committee established under this Act to delegate authority granted to it under this Act to the executive director or the executive director's delegate.

Division 2 – Committees

Law Society committees

- 9 (1) The benchers may establish committees in addition to those established by this Act.
- (2) The benchers may authorize a committee to do any act or to exercise any jurisdiction that, by this Act, the benchers are authorized to do or to exercise, except the exercise of ~~(a) rule-making authority, or (4)~~ ~~(b) jurisdiction under section 47 to review the decision of a panel.~~
- (3) The benchers may make rules providing for
- (a) the appointment and termination of appointments of persons to committees, and

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- (b) the practice and procedure for meetings of committees, including proceedings before committees.
- (4) For a quorum at a meeting of a committee, at least 1/2 of the members of the committee must be present.

Executive committee

- 10** (1) The benchers must establish an executive committee.
- (2) The benchers may delegate any of the powers and duties of the benchers to the executive committee, subject to any conditions they consider necessary.
- (3) A quorum of the executive committee is 4.
- (4) A motion assented to in writing by at least 75% of the executive committee's members has the same effect as a resolution passed at a regularly convened meeting of the executive committee.

Division 3 – Rules and Resolutions

Law Society rules

- 11** (1) The benchers may make rules for the governing of the society, lawyers, law firms, articulated students and applicants, and for the carrying out of this Act. [5(a)]
- (2) Subsection (1) is not limited by any specific power or requirement to make rules given to the benchers by this Act.
- (3) The rules are binding on the society, lawyers, law firms, the benchers, articulated students, applicants and persons referred to in section 16 (2) (a) or 17 (1) (a). [5(b)]
- (4) Enactment, amendment or rescission of a rule is not effective unless at least 2/3 of the benchers present at the meeting at which the rule, amendment or rescission is considered vote in favour of it.
- (5) Unless section 12 applies, no approval other than that required under subsection (4) of this section is necessary to enact, rescind or amend a rule.

Rules requiring membership approval

- 12** (1) The benchers must make rules respecting the following:
 - (a) the offices of president, first vice-president or second vice-president;
 - (b) the term of office of benchers;

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- (c) the removal of the president, first vice-president, second vice-president or a benchers;
 - (d) the electoral districts for the election of benchers;
 - (e) the eligibility to be elected and to serve as a benchers;
 - (f) the filling of vacancies among elected benchers;
 - (g) the general meetings of the society, including the annual general meeting;
 - (h) the appointment, duties and powers of the auditor of the society;
 - (i) life benchers;
 - ~~(j) the practising fee; [6(a)]~~
 - (k) the qualifications to act as auditor of the society when an audit is required under this Act.
- (2) The first rules made under subsection (1) after this Act comes into force must be consistent with the provisions of the *Legal Profession Act*, R.S.B.C. 1996, c. 255, relating to the same subject matter.
- (3) The benchers may amend or rescind rules made under subsection (1) or enact new rules respecting the matters referred to in subsection (1), in accordance with an affirmative vote of 2/3 of those members voting at a general meeting or in a referendum respecting the proposed rule, or the amendment or rescission of a rule. [6(b)]

Implementing resolutions of general meeting

- 13**
- (1) A resolution of a general meeting of the society is not binding on the benchers except as provided in this section.
 - (2) A referendum of all members must be conducted on a resolution if
 - (a) it has not been substantially implemented by the benchers within ~~6-12~~ months following the general meeting at which it was adopted, and [7(a)]
 - (b) the executive director receives a petition signed by at least ~~100-5%~~ of members in good standing of the society requesting a referendum on the resolution. [7(b)]
 - (3) Subject to subsection (4), the resolution is binding on the benchers if at least
 - (a) 1/3 of all members in good standing of the society vote in the referendum, and

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- (b) 2/3 of those voting vote in favour of the resolution.
- (4) The benchers must not implement a resolution if to do so would constitute a breach of their statutory duties.

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PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

- 14** (1) The benchers may make rules to do any of the following:
- (a) establish categories of members;
 - (b) determine the rights and privileges associated with categories of members;
 - (c) set the annual fee for categories of members other than practising lawyers;
 - (d) determine whether or not a person is a member in good standing of the society.
- (2) A member in good standing of the society is an officer of all courts of British Columbia.
- (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.

Authority to practise law

- 15** (1) No person, other than a practising lawyer, is permitted to engage in the practice of law, except
- (a) a person who is an individual party to a proceeding acting without counsel solely on his or her own behalf,
 - (b) as permitted by the *Court Agent Act*,
 - (c) an articulated student, to the extent permitted by the benchers,
 - (d) an individual or articulated student referred to in section 12 of the *Legal Services Society Act*, to the extent permitted under that Act,
 - (e) a lawyer of another jurisdiction permitted to practise law in British Columbia under section 16 (2) (a), to the extent permitted under that section, ~~and~~
 - (f) a practitioner of foreign law holding a permit under section 17 (1) (a), to the extent permitted under that section, and
 - (g) a lawyer who is not a practising lawyer to the extent permitted under the rules. [8(a)]

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- (2) A person who is employed by a practising lawyer, a law firm, a law corporation or the government and who acts under the supervision of a practising lawyer does not contravene subsection (1).
- (3) A person must not do any act described in paragraphs (a) to (g) of the definition of “practice of law” in section 1 (1), even though the act is not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed, if
 - (a) the person is a member or former member of the society who is suspended or has been disbarred, or who, as a result of disciplinary proceedings, has resigned from membership in the society or otherwise ceased to be a member as a result of disciplinary proceedings, or
 - (b) the person is suspended or prohibited for disciplinary reasons from practising law in another jurisdiction.
- (4) A person must not falsely represent himself, herself or any other person as being
 - (a) a lawyer,
 - (b) an articled student, a student-at-law or a law clerk, or
 - (c) a person referred to in subsection (1) (e) or (f).
- (5) Except as permitted in subsection (1), a person must not commence, prosecute or defend a proceeding in any court, ~~in the person’s own name or in the name of another person.~~ [8(b)]
- (6) The benchers may make rules prohibiting lawyers from facilitating or participating in the practice of law by persons who are not authorized to practise law.

Interprovincial practice

- 16**
- (1) In this section, “**governing body**” means the governing body of the legal profession in another province or a territory of Canada.
 - (2) The benchers may permit qualified lawyers of other Canadian jurisdictions to practise law in British Columbia and may promote cooperation with the governing bodies of the legal profession in other Canadian jurisdictions by doing one or more of the following:
 - (a) permitting a lawyer or class of lawyers of another province or a territory of Canada to practise law in British Columbia;
 - (b) attaching conditions or limitations to a permission granted under paragraph (a);

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- (c) submitting disputes concerning the interjurisdictional practice of law to an independent adjudicator under an arbitration program established by agreement with one or more governing bodies;
 - (d) participating with one or more governing bodies in establishing and operating a fund to compensate members of the public for misappropriation or wrongful conversion by lawyers practising outside their home jurisdictions;
 - (e) making rules
 - (i) establishing conditions under which permission may be granted under paragraph (a), including payment of a fee,
 - (ii) respecting the enforcement of a fine imposed by a governing body, and
 - (iii) allowing release of information about a lawyer to a governing body, including information about practice restrictions, complaints, competency and discipline.
- (3) Parts 3 to 8 and 10 apply to a lawyer or class of lawyers given permission under this section.

Practitioners of foreign law

- 17** (1) The benchers may do any or all of the following:
- (a) permit a person holding professional legal qualifications obtained in a country other than Canada to practise law in British Columbia; [9]
 - (b) attach conditions or limitations to a permission granted under paragraph (a);
 - (c) make rules establishing conditions or limitations under which permission may be granted under paragraph (a), including payment of a fee.
- (2) Parts 3 to 8 and 10 apply to a person given permission under this section.

~~Non-resident partners~~ Association with non-resident lawyers or law firms

- 18** The benchers may make rules concerning the ~~partnership~~ association of members of the society or law firms in British Columbia with lawyers or law firms in other jurisdictions. [10]

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Division 2 – Admission and Reinstatement

Applications for enrollment, call and admission, or reinstatement

- 19** (1) No person may be enrolled as an articulated student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.
- (2) On receiving an application for enrollment, call and admission or reinstatement, the benchers may
- (a) grant the application,
 - (b) grant the application subject to any conditions or limitations to which the applicant consents in writing, or
 - (c) order a hearing.
- (3) If an applicant for reinstatement is a person referred to in section 15 (3) (a) or (b), the benchers must order a hearing.
- (4) A hearing may be ordered, commenced or completed despite the applicant's withdrawal of the application.
- (5) The benchers may vary conditions or limitations made under subsection (2) (b) if the applicant consents in writing to the variation.

Articled students

- 20** (1) The benchers may make rules to do any of the following:
- (a) establish requirements, including academic requirements, and procedures for enrollment of articulated students;
 - (b) set fees for enrollment;
 - (c) establish requirements for lawyers to serve as principals to articulated students;
 - (d) limit the number of articulated students who may be articulated to a principal;
 - (e) stipulate the duties of principals and articulated students;
 - (f) permit the investigation and consideration of the fitness of a lawyer to act as a principal to an articulated student.
- (2) The benchers may establish and maintain an educational program for articulated students.

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Admission, reinstatement and requalification

- 21** (1) The benchers may make rules to do any of the following:
- (a) establish a credentials committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;
 - (b) establish requirements, including academic requirements, and procedures for call to the Bar of British Columbia and admission as a solicitor of the Supreme Court;
 - (c) set a fee for call and admission;
 - (d) establish requirements and procedures for the reinstatement of former members of the society;
 - (e) set a fee for reinstatement;
 - (f) establish conditions under which a member in good standing of the society who is not permitted to practise law, may apply to become a practising lawyer.
- (2) The fee set under subsection (1) (c) must not exceed 1/6 of the practice fee set under section 23 (1) (a).
- (3) The benchers may impose conditions or limitations on the practice of a lawyer who, for a cumulative period of 3 years of the 5 years preceding the imposition of the conditions, has not engaged in the practice of law. [11]

Prohibition on resignation from membership

- 21.1 (1) A lawyer may not resign from membership in the society without the consent of the benchers if the lawyer is the subject of
- (a) a citation or other discipline process under Part 4,
 - (b) an investigation under this Act, or
 - (c) a practice review under the rules.
- (2) In granting consent under subsection (1), the benchers may impose conditions. [12]

Credentials hearings

- 22** (1) This section applies to a hearing ordered under section 19 (2) (c).
- (2) A hearing must be conducted before a panel.
- (3) Following a hearing, the panel must do one of the following:
- (a) grant the application;

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- (b) grant the application subject to conditions or limitations that the panel considers appropriate;
 - (c) reject the application.
- (4) If an application is rejected,
- (a) the panel must, on the written request of the applicant, give written reasons for its decision, and
 - (b) the applicant must not be enrolled as an articled student, called and admitted or reinstated as a member.
- (5) On application, the benchers may vary or remove conditions or limitations imposed by a panel under this section.
- (6) The benchers may make rules requiring payment of security for costs of a hearing.

Division 3 – Fees and Assessments

Annual fees and practising certificate

- 23** (1) A practising lawyer must pay to the society an annual fee consisting of
- (a) a practice fee in an amount set by the benchers ~~a majority of the members voting on the resolution at a general meeting or in a referendum;~~
 - ~~(b) a sum, set by the benchers, to be placed in the special compensation fund continued under section 31 (2), and~~ [13]
 - (c) an insurance fee set under section 30 (3) (a), unless exempted from payment of the insurance fee under section 30 (4) (b).
- (2) The benchers may waive payment of all or part of the annual fee or a special assessment for a lawyer whom they wish to honour.
- (3) A lawyer who is suspended under section 38 (5) (d) or the rules made under section 25 (2), 32 (2) (b), 36 (h) or 39 (1) (a) must pay the annual fee or special assessment when it is due in order to remain a member of the society.
- (4) The executive director must issue to each practising lawyer a practising certificate on payment of the annual fee, if the lawyer is otherwise in good standing and has complied with this Act and the rules.

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- (5) A certificate purporting to contain the signature of the executive director stating that a person is, or was at the time specified in the certificate, a member in good standing of the society is proof of that fact, in the absence of evidence to the contrary.
- (6) A lawyer who is suspended or who, for any other reason, ceases to be a member in good standing of the society must immediately surrender to the executive director his or her practising certificate and any proof of professional liability insurance issued by the society.
- (7) The benchers may make rules to do any of the following:
 - (a) set the date by which the annual fee is payable, subject to rules made under section 30 (4) (a);
 - (b) permit late payment of the annual fee or a special assessment;
 - (c) set a fee for late payment of fees and assessments;
 - (d) determine the circumstances in which a full or partial refund of a fee or assessment may be made;
 - (e) deem a lawyer to have been a practising lawyer during a period in which the lawyer was in default of payment of fees or an assessment on conditions that the benchers consider appropriate.

Fees and assessments

- 24 (1) The benchers may
- (a) set fees, ~~other than the practice fee referred to in section 23 (1) (a), and~~ [14(a) and (b)]
 - (b) set special assessments to be paid by lawyers and applicants for the purposes of the society and set the date by which they must be paid, ~~and~~
 - ~~(c) authorize the society to act as agent of the Canadian Bar Association for the purpose of collecting fees of that association from lawyers who are members of it.~~
- ~~(2) Fees collected under subsection (1) (c) form part of the practice fee referred to in section 23 (1) (a). [14(c)]~~
- (3) If the benchers set a special assessment for a stated purpose and do not require all of the money collected for that stated purpose, they must return the excess to the members.

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- (4) On or before the date established by the benchers, each lawyer and applicant must pay to the society any special assessments set under subsection (1) (b), unless the benchers otherwise direct.

Failure to pay fee or penalty

- 25** (1) If a lawyer fails to pay the annual fee or a special assessment as required under this Act by the time that it is required to be paid, the lawyer ceases to be a member, unless the benchers otherwise direct, subject to rules made under section 23 (7).
- (2) The benchers may make rules providing for the suspension of a lawyer who fails to pay a fine, costs or a penalty by the time payment is required.

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PART 3 – PROTECTION OF THE PUBLIC

Complaints from the public

- 26 (1) A person who believes that
- (a) a lawyer, former lawyer or articled student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming a lawyer the profession or a breach of this Act or the rules, or
 - (b) a law firm has been guilty of professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules
- may make a complaint to the society. [15(a)]
- (2) The benchers may make rules authorizing an investigation into the conduct of a law firm or the conduct or competence of a lawyer, former lawyer or articled student, whether or not a complaint has been received under subsection (1). [15(b)]
- (3) For the purposes of subsection (4), the benchers may designate an employee of the society or appoint a practising lawyer or a person whose qualifications are satisfactory to the benchers.
- (4) For the purposes of an investigation authorized by rules made under subsection (2), an employee designated or person appointed under subsection (3) may make an order requiring a person to do either or both of the following:
- (a) attend, in person or by electronic means, before the designated employee or appointed person to answer questions on oath or affirmation, or in any other manner;
 - (b) produce for the designated employee or appointed person a record or thing in the person's possession or control.
- (5) The society may apply to the Supreme Court for an order
- (a) directing a person to comply with an order made under subsection (4), or
 - (b) directing an officer or governing member of a person to cause the person to comply with an order made under subsection (4).
- (6) The failure or refusal of a person subject to an order under subsection (4) to
- (a) attend before the designated employee or appointed person,

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- (b) take an oath or make an affirmation,
 - (c) answer questions, or
 - (d) produce records or things in the person's possession or control
- makes the person, on application to the Supreme Court by the society, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court. [15(c)]

Suspension during investigation

26.01 (1) The benchers may make rules permitting 3 or more benchers to make the following orders during an investigation, if those benchers are satisfied it is necessary to protect the public:

- (a) suspend a lawyer who is the subject of the investigation;
- (b) impose conditions or limitations on the practice of a lawyer who is the subject of the investigation;
- (c) suspend the enrollment of an articulated student who is the subject of the investigation;
- (d) impose conditions or limitations on the enrollment of an articulated student who is the subject of the investigation.

(2) Rules made under subsection (1) must

- (a) provide for a proceeding to take place before an order is made,
- (b) set out the term of a suspension, condition or limitation, and
- (c) provide for review of an order made under subsection (1) and for confirmation, variance or rescission of the order.

(3) Rules made under this section and section 26.02 may provide for practice and procedure for a matter referred to in subsection (2)(a) and (c) or section 26.02(3) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding. [16]

Medical examination

26.02 (1) The benchers may make rules permitting 3 or more benchers to make an order requiring a lawyer or an articulated student to

- (a) submit to an examination by a medical practitioner specified by the benchers, and

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- (b) instruct the medical practitioner to report to the benchers on the ability of the lawyer to practise law or, in the case of an articulated student, the ability of the student to complete his or her articles.
- (2) Before making an order under subsection (1), the benchers making the order must be of the opinion that the order is likely necessary to protect the public.
- (3) Rules made under subsection (1) must
 - (a) provide for a proceeding to take place before an order is made, and
 - (b) provide for review of an order under subsection (1) and for confirmation, variation or rescission of the order. [16]

Written notification to chief judge

- 26.1** If an investigation is conducted in accordance with the rules established under section 26 (2) of this Act respecting a lawyer or former lawyer who is also a “part time judicial justice”, as that term is defined in section 1 of the *Provincial Court Act*, the society must, as soon as practicable, provide a written notification to the chief judge designated under section 10 of the *Provincial Court Act* that includes the following information:
- (a) the name of the lawyer or former lawyer;
 - (b) confirmation that an investigation is being conducted with respect to that lawyer or former lawyer.

Practice standards

- 27** (1) The benchers may
- (a) set standards of practice for lawyers,
 - (b) establish and maintain a program to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems, and
 - (c) establish and maintain a program to assist lawyers on issues arising from the practice of law.
- (2) The benchers may make rules to do any of the following:
- (a) establish a practice standards committee and delegate any or all authority and responsibility under this section, other than rule-making authority, to that committee;

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- (b) permit an investigation into a lawyer's competence to practise law if
 - (i) there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner, or
 - (ii) the lawyer consents;
 - (c) require a lawyer whose competence to practise law is under investigation to answer questions and provide access to information, files or records in the lawyer's possession or control;
 - (d) provide for a report to the benchers of the findings of an investigation into the competence of a lawyer to practise law;
 - (d.1) permit the practice standards committee established under paragraph (a) to make orders imposing conditions and limitations on lawyers' practices, and to require lawyers whose competence to practise law has been investigated to comply with those orders;
 - (e) permit the benchers to order that a lawyer, a former lawyer, an articulated student or a law firm pay to the society the costs of an investigation or remedial program under this Part and set and extend the time for payment; [17(a)]
 - (f) permit the discipline committee established under section 36 (a) to consider
 - (i) the findings of an investigation into a lawyer's competence to practise law,
 - (ii) any remedial program undertaken or recommended
 - (iii) any order that imposes conditions or limitations on the practice of a lawyer, and
 - (iv) any failure to comply with an order that imposes conditions or limitations on the practice of a lawyer.
 - (3) The amount of costs ordered to be paid by a lawyer-person under the rules made under subsection (2) (e) may be recovered as a debt owing to the society and, when collected, the amount is the property of the society. [17(b)]
- (3.1) For the purpose of recovering a debt under subsection (3), the executive director may
- (a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and
 - (b) file the certificate with the Supreme Court.

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(3.2) A certificate filed under subsection (3.1) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it. [17 (c)]

- (4) Rules made under subsection (2) (d.1)
- (a) may include rules respecting
 - (i) the making of orders by the practice standards committee, and
 - (ii) the conditions and limitations that may be imposed on the practice of a lawyer, and
 - (b) must not permit the imposition of conditions or limitations on the practice of a lawyer before the lawyer has been notified of the reasons for the proposed order and given a reasonable opportunity to make representations respecting those reasons.

Education

28 The benchers may take any steps they consider advisable to promote and improve the standard of practice by lawyers, including but not limited to the following:

- (a) establishing and maintaining or otherwise supporting a system of legal education, including but not limited to the following programs:
 - (i) professional legal training;
 - (ii) continuing legal education;
 - (iii) remedial legal education;
 - (iv) loss prevention;
- (b) granting scholarships, bursaries and loans to persons engaged in a program of legal education;
- (c) providing funds of the society and other assistance to establish or maintain law libraries in British Columbia;
- (d) providing for publication of court and other legal decisions and legal resource materials.

Specialization and restricted practice

29 The benchers may make rules to do any of the following:

- (a) provide for the manner and extent to which lawyers or law firms may hold themselves out as engaging in restricted or preferred areas of practice; [18]

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- (b) provide for the qualification and certification of lawyers as specialists in areas of practice designated under paragraph (c);
- (c) designate specialized areas of practice and provide that lawyers must not hold themselves out as restricting their practices to, preferring or specializing in a designated area of practice unless the lawyer has met the qualifications required for certification under a rule made under paragraph (b);
- (d) establish qualifications for and conditions under which practising lawyers may practise as mediators.

Professional liability insurance

- 30** (1) In this section, “trust protection insurance” means insurance for lawyers to compensate persons who suffer pecuniary loss as a result of dishonest appropriation of money or other property entrusted to and received by a lawyer in his or her capacity as a barrister and solicitor. [19(a)]

(1.1) The benchers must make rules requiring lawyers to maintain professional liability and trust protection insurance. [19(a)]

- (2) The benchers may establish, administer, maintain and operate a professional liability insurance program and may use for that purpose fees set under this section.

(2.1) The benchers

(a) must establish, administer, maintain and operate a trust protection insurance program and may use for that purpose fees set under this section,

(b) may establish conditions and qualifications for a claim against a lawyer under the trust protection insurance program, including time limitations for making a claim, and

(c) may place limitations on the amounts that may be paid out of the insurance fund established under subsection (6) in respect of a claim against a lawyer under the trust protection insurance program. [19(b)]

- (3) The benchers may, by resolution, set

- (a) the insurance fee, and
- (b) the amount to be paid for each class of transaction under subsection (4)
- (c).

- (4) The benchers may make rules to do any of the following:

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- (b) establish classes of membership for insurance purposes and exempt a ~~lawyer or~~ class of lawyers from the requirement to maintain professional liability insurance or trust protection insurance or from payment of all or part of the insurance fee;
- (c) designate classes of transactions for which the lawyer must pay a fee to fund the professional liability or trust protection insurance program. [19(c)]
- (5) The benchers may use fees set under this section to act as the agent for the members in obtaining professional liability or trust protection insurance. [19(d)]
- (6) The benchers must establish an insurance fund, ~~comprised of the insurance~~ comprising fees set under this section and other income of the professional liability and trust protection insurance programs, and the fund [19(e)]
 - (a) must be accounted for separately from other funds, ~~and~~
 - (b) is not subject to any process of seizure or attachment by a creditor of the society, and
 - (c) is not subject to a trust in favour of a person who has sustained a loss. [19(f)]
- (7) Subject to rules made under section 23 (7), a lawyer must not practise law unless the lawyer has paid the insurance fee when it is due, or is exempted from payment of the fee.
- (8) A lawyer must immediately surrender to the executive director his or her practising certificate and any proof of professional liability or trust protection insurance issued by the society, if
 - (a) the society has, ~~paid a deductible amount~~ on behalf of the lawyer,
 - (i) paid a deductible amount under the professional liability insurance program in respect of a claim or potential claim against the lawyer, under ~~a professional liability insurance that~~ program, ~~and~~ or
 - (ii) made an indemnity payment under the trust protection insurance program in respect of a claim under that program, and
 - (b) the lawyer has not reimbursed the society, at the date that the insurance fee or an installment of that fee is due. [19(g)]
- (9) The benchers may waive or extend the time
 - (a) to pay all or part of the insurance fee, or

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- (b) to repay all or part of a deductible amount paid under the professional liability insurance program or an indemnity payment made under the trust protection program on behalf of a lawyer. [19(h)]
- (10) If the benchers extend the time for a payment under subsection (9), the later date for payment is the date when payment is due for the purposes of subsections (7) and (8).
- (11) A payment made from the insurance fund established under subsection (6) in respect of a claim against a lawyer under the trust protection insurance program
 - (a) may be recovered from the lawyer or former lawyer on whose account it was paid, or from the estate of that person, as a debt owing to the society, and
 - (b) if collected, is the property of the society and must be accounted for as part of the fund. [19(i)]

Special compensation fund

- ~~31~~ (1) ~~In this section, "fund" means the special compensation fund referred to in subsection (2). [repealed] [20]~~
- ~~(2) The benchers must continue the special compensation fund.~~
- ~~(3) The fund~~
 - ~~(a) is the property of the society;~~
 - ~~(b) must be accounted for separately from other funds of the society;~~
 - ~~(c) is not subject to any process of seizure or attachment by a creditor of the society, and~~
 - ~~(d) is not subject to a trust in favour of a person who claims to have sustained a loss.~~
- ~~(4) The benchers may pay compensation out of the fund only if they are satisfied that~~
 - ~~(a) money or other property was entrusted to or was otherwise received by a lawyer in the lawyer's capacity as a barrister and solicitor;~~
 - ~~(b) the lawyer misappropriated or wrongfully converted the money or other property, and~~
 - ~~(c) a person sustained a pecuniary loss as a result of that misappropriation or wrongful conversion.~~

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- ~~(5) The benchers must not make a payment out of the fund in any of the following circumstances:~~
 - ~~(a) the misappropriation or wrongful conversion occurred before the fund was created;~~
 - ~~(b) the claim for payment was made more than 2 years after the facts that gave rise to the claim were known to the person making it;~~
 - ~~(c) the misappropriation or wrongful conversion was made by a person acting in the capacity of a member of the governing body of the legal profession of another province or a territory of Canada or a foreign jurisdiction.~~
- ~~(6) Subject to subsections (4) and (5), the benchers have a complete discretion in each case to~~
 - ~~(a) make full or partial compensation out of the fund, subject to the terms they consider appropriate, or~~
 - ~~(b) make no payment.~~
- ~~(7) The benchers may make rules to do any of the following:~~
 - ~~(a) establish a special compensation fund committee and delegate any or all authority and responsibility under this section, other than rule-making authority, to that committee;~~
 - ~~(b) permit the benchers to review any decision of the special compensation fund committee;~~
 - ~~(c) establish conditions and qualifications for the payment of compensation from the fund;~~
 - ~~(d) provide for the administration of the fund;~~
 - ~~(e) establish procedures for investigation and consideration of claims on the fund, including rules permitting a hearing;~~
 - ~~(f) place general limitations on the amounts that may be paid out of the fund.~~
- ~~(8) A payment made from the fund~~
 - ~~(a) may be recovered from the lawyer or former lawyer on whose account it was paid, or from the estate of that person, as a debt owing to the society, and~~
 - ~~(b) if collected, is the property of the society and must be accounted for as part of the fund.~~

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~~(9) In an action to recover money under subsection (8), the lawyer, former lawyer or the estate may raise any defence against the society that could have been raised against the person to whom payment was made in respect of any action that could have been brought by that person for conduct that gave rise to that person's claim under this section, other than a defence under the *Limitation Act*.~~

~~(10) Despite section 17, a payment out of the fund may not be made in respect of a misappropriation or wrongful conversion by a person given permission under that section.~~

Financial responsibility

- 32 (1) The benchers may establish standards of financial responsibility relating to the integrity and financial viability of ~~a lawyer's~~ the professional practice of a lawyer or law firm. [21(a)]
- (2) The benchers may make rules to do any of the following:
- (a) provide for the examination of lawyers' books, records and accounts of lawyers and law firms and the answering of questions by lawyers and representatives of law firms to determine whether standards established under this section are being met; [21(b)]
 - (b) permit the suspension of a lawyer who does not meet the standards established under subsection (1);
 - (c) permit the imposition of conditions and limitations on a law firm that, or the practice of a lawyer who, does not meet the standards established under subsection (1). [21(c)]
- (3) Rules made under subsection (2) (b) and (c) must not permit the suspension of a lawyer or imposition of conditions and limitations on the practice of a lawyer or the imposition of conditions and limitations on a law firm before the lawyer or law firm, as the case may be, has been notified of the reasons for the proposed action and given a reasonable opportunity to make representations respecting those reasons. [21(d)]

Trust accounts

- 33 (1) The benchers may require a lawyer or law firm to do any of the following: [22(a)]
- (a) provide information or an annual report concerning the lawyer's or law firm's books and accounts;

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- (b) have all or part of the lawyer's or law firm's books and accounts audited or reviewed annually;
 - (c) provide the executive director with an accountant's report on the lawyer's or law firm's books and accounts. [22(b)]
- (2) The benchers may
- (a) exempt ~~all or part of~~ classes of lawyers or law firms from some or all of the requirements of subsection (1), and [22(c)]
 - (b) determine the qualifications required of a person performing an audit or review referred to in subsection (1).
- (3) The benchers may make rules to do any of the following:
- (a) establish standards of accounting for and management of funds held in trust by lawyers or law firms;
 - (b) designate savings institutions and classes of savings institutions in which lawyers or law firms may deposit money that they hold in trust; [22(d)]
 - (c) provide for precautions to be taken by lawyers and law firms for the care of funds or property held in trust by ~~lawyers~~them. [22(e)]
- (4) The rules referred to in subsection (3) apply despite section 19 of the *Trustee Act*.
- (5) The rules made under subsection (3) may be different for
- (a) lawyers and law firms, or
 - (b) different classes of lawyers and law firms. [22(f)]

Unclaimed trust money

- 34** (1) A lawyer who or a law firm that has held money in trust on behalf of a person whom the lawyer or law firm has been unable to locate for 2 years may pay the money to the society. [23(a) and (b)]
- (2) On paying money to the society under subsection (1), the liability of the lawyer or law firm to pay that money to the person on whose behalf it was held or to that person's legal representative is extinguished. [23(b)]
- (3) The society must hold in trust any money paid to it under subsection (1).
- (4) The society is entitled to retain, for its purposes, interest on any money held by it under subsection (3).

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- (5) A person or the person's legal representative who, but for subsections (1) and (2), could have claimed money held by a lawyer or law firm may claim the money from the society. [23(c)]
- (6) On being satisfied that the person claiming money under subsection (5) is entitled to it, the society must pay the money to that person together with interest on it at a rate that the benchers consider reflects market rates during the time the society held the money.
- (7) If the money is not paid out under subsection (6) within 5 years after its receipt by the society under subsection (1), the society must pay the money, excluding any interest retained under subsection (4), to the foundation for its purposes, but subsections (5) and (6) continue to apply as though the money had not been paid to the foundation.
- (8) The foundation must indemnify the society for any claims paid under subsection (6) in respect of money received from the society under subsection (7), including interest paid by the society under subsection (6) for the period when the money was held by the foundation.
- (9) A person whose claim against the society under subsection (5) has been refused may apply to the Supreme Court for a review of the decision of the society.
- (10) On a claim under subsection (9), the court may allow the claim plus interest in an amount determined by it.
- (11) The benchers may make rules to do any of the following:
- (a) create and maintain a fund consisting of money paid to the society under subsection (1);
 - (b) establish procedures for investigating and adjudicating claims made under subsection (5).
- (12) [Repealed]

Restriction on suspended and disbarred lawyers

- 35** On application of the society, the Supreme Court may order that a person referred to in section 15 (3) (a) or (b) be prohibited from acting as any or all of the following until the person is a member in good standing of the society or until the court orders otherwise:
- (a) a personal representative of a deceased person;
 - (b) a trustee of the estate of a deceased person;

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(c) [a decision maker] [*statutory property guardian*] or guardian under the *Adult Guardianship Act*;

[(c.1) *an attorney under Part 2 of the Power of Attorney Act*];

(d) a representative under the *Representation Agreement Act*.

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PART 4 – DISCIPLINE

Discipline rules

- 36 The benchers may make rules to do any of the following:
- (a) establish a discipline committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;
 - (b) authorize an investigation of the books, records and accounts of a lawyer or law firm if there is reason to believe that the lawyer or law firm may have committed any misconduct, conduct unbecoming a lawyer the profession, or a breach of this Act or the rules; [24(a)]
 - (c) authorize an examination of the books, records and accounts of a lawyer or law firm;
 - (d) require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request; [24(b)]
 - (e) require a lawyer or articled student to appear before the benchers, a committee or other body to discuss the conduct or competence of the lawyer or articled student;
 - (e.1) require a representative of a law firm to appear before the benchers, a committee or other body to discuss the conduct of the firm; [24(c)]
 - (f) authorize the ordering of a hearing into the conduct or competence of a lawyer or an articled student, or the conduct of a law firm, by issuing a citation; [24(d)]
 - (g) authorize the rescission of a citation;
 - (h) permit the benchers to summarily suspend or disbar a lawyer convicted of an offence that was proceeded with by way of ~~may only be prosecuted on~~ indictment or convicted in another jurisdiction of an offence that, in the opinion of the benchers, is equivalent to an offence that may be proceeded with by way of indictment. [24(e)]

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(i) establish a process for the protection of the privacy and the severing, destruction or return of personal, business or other records that are unrelated to an investigation or examination and that, in error or incidentally, form part of

(i) the books, records or accounts of a lawyer, an articled student or a law firm authorized to be investigated or examined under a rule made under paragraph (b) or section 26, or

(ii) files or other records that are seized in accordance with an order of the Supreme Court under section 37. [24(f)]

Search and seizure

- 37 (1) The society may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer, ~~or an~~ articled student ~~or a law firm~~ be seized from the person named in the order, if there are reasonable grounds to believe that a lawyer, ~~or~~ articled student ~~or law firm~~ may have committed or will commit ~~any~~
- (a) ~~any~~ misconduct,
 - (b) conduct unbecoming ~~a lawyer~~the profession, or
 - (c) ~~a~~ breach of this Act or the rules. [25]
- (2) An application under subsection (1) may be made without notice to anyone or on such notice as the judge requires.
- (3) If the application under subsection (1) is in relation to the conduct of an articled student, the order may be made in respect of the books, accounts, files or other records of the student's principal or the principal's firm.
- (4) In an application under subsection (1), the person making the application must state on oath or affirmation the grounds for believing the matter referred to in subsection (1) and the grounds for believing that the seizure will produce evidence relevant to that matter.
- (5) In an order under subsection (1), the court may
- (a) designate the person who will conduct the seizure and authorize that person to conduct it,
 - (b) state the time and place where the seizure will take place, and
 - (c) give any other directions that are necessary to carry out the seizure.

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Personal records in investigation or seizure

37.1 In conducting an investigation or examination of books, records or accounts under section 26 or rules made under section 36 (b) or in the seizure of files or other records in accordance with an order of the Supreme Court under section 37, the society may collect personal information unrelated to the investigation or examination that, in error or incidentally, is contained in those books, accounts, files or records, but the society must, subject to rules made under section 36(i),

- (a) return that personal information if and as soon as practicable, or
- (b) destroy the personal information. [26]

Discipline hearings

- 38**
- (1) This section applies to the hearing of a citation.
 - (2) A hearing must be conducted before a panel.
 - (3) A panel must
 - (a) make a determination and take action according to this section,
 - (b) give written reasons for its determination about the conduct or competence of the respondent and any action taken against the respondent, and
 - (c) record in writing any order for costs.
 - (4) After a hearing, a panel must do one of the following:
 - (a) dismiss the citation;
 - (b) determine that the respondent has committed one or more of the following:
 - (i) professional misconduct;
 - (ii) conduct unbecoming a lawyer the profession; [27(a)]**
 - (iii) a breach of this Act or the rules;
 - (iv) incompetent performance of duties undertaken in the capacity of a lawyer;
 - (v) if the respondent is an individual who is not a member of the society, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming a lawyer the profession, or a breach of this Act or the rules. [27(b)]**
 - ~~(c) make any other disposition of the citation that it considers proper. [27(c)]~~

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- (5) If an adverse determination is made under subsection (4) against a respondent, other than an articulated student or a law firm, ~~under subsection (4)~~, the panel must do one or more of the following: [27(d)]
- (a) reprimand the respondent;
 - (b) fine the respondent an amount not exceeding \$~~20-50~~ 000; [27(e)]
 - (c) impose conditions or limitations on the respondent's practice;
 - (d) suspend the respondent from the practice of law or from practice in one or more fields of law
 - (i) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,
 - (ii) from a ~~specific~~ specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or
 - (iii) for a specific minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection; [27(f)]
 - (e) disbar the respondent;
 - (f) require the respondent to do one or more of the following:
 - (i) complete a remedial program to the satisfaction of the practice standards committee;
 - (ii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent is competent to practise law or to practise in one or more fields of law;
 - (iii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;
 - (iv) practise law only as a partner, employee or associate of one or more other lawyers;

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- (g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under section 16 (2) (a) or 17 (1) (a) from practising law in British Columbia indefinitely or for a specified period of time.
- (6) If an adverse determination is made under subsection (4) against an articulated student ~~under subsection (4)~~, the panel may do one or more of the following: [27(g)]
 - (a) reprimand the articulated student;
 - (b) fine the articulated student an amount not exceeding \$2-5 000; [27(h)]
 - (c) extend the period that the articulated student is required to serve under articles;
 - (d) set aside the enrollment of the articulated student.

(6.1) If an adverse determination is made under subsection (4) against a law firm, the panel may do one or both of the following:

(a) reprimand the law firm;

(b) fine the law firm an amount not exceeding \$50 000. [27(i)]

(7) In addition to its powers under subsections (5), ~~and (6)~~ and (6.1), a panel may make any other orders and declarations and impose any conditions or limitations it considers appropriate. [27(j)]

(8) A fine imposed under this Act may be recovered as a debt owing to the society and, when collected, it is the property of the society.

(9) For the purpose of recovering a debt under subsection (8), the executive director may

(a) issue a certificate stating that the fine is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(10) A certificate filed under subsection (9) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it. [27 (k)]

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Suspension

- 39 (1) The benchers may make rules permitting ~~the chair of the discipline committee or any 3 other or more~~ benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing: [28(a)]
- (a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients; [28(b)]
 - (b) impose conditions or limitations on the practice of a respondent who is an individual; [28(c)]
 - (c) suspend the enrollment of a respondent who is an articled student; [28(d)]
 - (d) impose conditions or limitations on the enrollment of a respondent who is an articled student. [28(d)]
- (2) Rules made under subsection (1) must
- (a) provide for a proceeding to take place before an order is made,
 - (b) set out the term of a suspension, condition or limitation, and
 - (c) provide a procedure for a panel to review of an order made under subsection (1) and for confirmation, variation or rescission of the order. the suspension or the conditions imposed under that subsection. [28(e)]
- (3) Rules made under this section may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

Medical examination

- 40 ~~The benchers may make rules permitting the chair of the discipline committee or any 3 other benchers to require a respondent to~~ [repealed]
- ~~(a) submit to an examination by a qualified medical practitioner specified by the benchers, and~~
 - ~~(b) instruct the qualified medical practitioner to report to the benchers on the respondent's ability to practise law or, in the case of an articled student, the ability of the respondent to complete his or her articles.~~ [29]

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PART 5 – HEARINGS AND APPEALS

Panels

- 41 (1) The benchers may make rules providing for any of the following:
- (a) the appointment and composition of panels;
 - (b) the practice and procedure for proceedings before panels.
- (2) A panel may order an applicant or respondent, or a ~~shareholder, director, officer or employee~~ representative of a respondent law ~~corporation~~ firm, to do either or both of the following: [30]
- (a) give evidence under oath or by affirmation;
 - (b) at any time before or during a hearing, produce all files and records that are in the possession of that person and that may be relevant to a matter under consideration.

Failure to attend

- 42 (1) This section applies if an applicant, ~~or a~~ respondent ~~or the representative of a respondent law firm~~ fails to attend or remain in attendance at [31(a)]
- (a) a hearing on an application for enrollment as an articled student, call and admission, or reinstatement,
 - (b) a hearing on a citation, or
 - (c) a review by ~~the benchers~~ a review board under section 47. [31(b)]
- (2) If satisfied that the applicant, ~~or~~ respondent ~~or representative of the respondent law firm~~ has been served with notice of the hearing or review, the panel or the ~~benchers~~ review board may proceed with the hearing or review in the absence of the applicant or respondent and make any order that the panel or the ~~review board~~ benchers could have made in the presence of the applicant or respondent. [31 (c) and (d)]

Right to counsel

- 43 (1) An applicant, ~~or a~~ respondent ~~or a person who is the subject of a proceeding~~ may appear at any hearing with counsel. [32]
- (2) The society may employ or retain legal or other assistance in conducting an investigation under Part 2, 3 or 4 or on the issue of a citation and may be represented by counsel at any hearing.

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Witnesses

44 (1) In this section:

“party” means an applicant, a respondent or the society;

“tribunal” means the benchers, a review board or a panel, or a member of the benchers, a review board or a panel, as the context requires.

(2) For the purposes of a proceeding under Part 2, 3, ~~or 4~~ or 5 of this Act, sections 34(3), 48, 49 and 56 of the Administrative Tribunals Act apply to the benchers, a panel, the special compensation fund committee and a member of any of these a party may prepare and serve a summons, in a form established in the rules, requiring a person to attend an oral or electronic hearing to give evidence, on oath or affirmation or in any other manner, that is admissible and relevant to an issue in the proceeding.

(23) ~~The society, an applicant or a respondent~~ A party may apply to the Supreme Court, ~~without notice to anyone,~~ for an order directing that a subpoena in the form set out in the Supreme Court Civil Rules be issued to compel the attendance of a person as a witness at a hearing under Part 2, 3 or 4,

(a) a person to comply with a summons served by a party under subsection (2),

(b) any directors and officers of a person to cause the person to comply with a summons served by a party under subsection (2), or

(c) the custodian of a penal institution or another person who has custody of a person who is the subject of the summons to ensure the person in custody attends the hearing.

~~— (3) If the person who is required as a witness is in the custody of another person or the custodian of a penal institution, in addition to making an order under subsection (2), the court may make an order directing the person having custody to ensure the witness attends the hearing.~~

~~— (4) The Supreme Court Civil Rules respecting the following apply to a person who is the subject of an order under subsection (2) or (3):~~

~~— (a) the use of a subpoena to compel a person to attend at the trial of an action;~~

~~— (b) failure to obey a subpoena or order of the court.~~

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- (4) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, a tribunal may make an order requiring a person
- (a) to attend an oral or electronic hearing to give evidence, on oath or affirmation or in any other manner, that is admissible and relevant to an issue in the proceeding, or
 - (b) to produce for the tribunal or a party a document or other thing in the person's possession or control, as specified by the tribunal, that is admissible and relevant to an issue in the proceeding.
- (5) A tribunal may apply to the Supreme Court for an order directing
- (a) a person to comply with an order made by the tribunal under subsection (4),
 - (b) any directors and officers of a person to cause the person to comply with an order made by the tribunal under subsection (4), or
 - (c) the custodian of a penal institution or another person who has custody of a person who is the subject of an order made by the tribunal under subsection (4) to ensure the person in custody attends the hearing.
- (6) On an application under subsection (3) or (5), the Supreme Court may make the order requested or another order it considers appropriate. [33]

Application of Administrative Tribunals Act

- 44.1** (1) For the purposes of a proceeding under Part 2, 3, 4 or 5 of this Act, sections 48, 49 and 56 of the *Administrative Tribunals Act* apply, subject to the following:
- (a) “**decision maker**” in section 56 means a member of the benchers, of a review board or of a panel;
 - (b) “**tribunal**” in those sections has the same meaning as in section 44(1).
- (2) A tribunal may apply to the Supreme Court for an order directing a person to comply with an order referred to in section 48 of the *Administrative Tribunals Act*, and the court may make the order requested or another order it considers appropriate. [33]

Order for compliance

- 45** (1) ~~If it appears that a person has failed to comply with an order, summons or subpoena of a person or body referred to in section 44(1), a person or body referred to in section 44(1) may apply to the Supreme Court for an order directing the person to comply with the order, summons or subpoena.~~[repealed] [34]

~~(2) On an application under subsection (1), the court may make the order requested or another order it considers appropriate.~~

Society request for evidence

- 45.1** (1) On application by the society, if it appears to the Supreme Court that a person outside British Columbia may have evidence that may be relevant to an investigation or a hearing under this Act, the Supreme Court may issue a letter of request directed to the judicial authority of the jurisdiction in which the person who may have evidence is believed to be located.
- (2) A letter of request issued under subsection (1) must be
- (a) signed by a judge of the Supreme Court, and
 - (b) provided to the society for use under subsection (5).
- (3) A letter of request issued under subsection (1) may request the judicial authority to which it is directed to do one or more of the following:
- (a) order the person referred to in the letter of request to be examined under oath in the manner, at the place and by the date referred to in the letter of request;
 - (b) in the case of an examination for the purposes of a hearing, order that a person who is a party to the hearing is entitled to
 - (i) be present or represented by counsel during the examination, and
 - (ii) examine the person referred to in paragraph (a);
 - (c) appoint a person as the examiner to conduct the examination;
 - (d) order the person to be examined to produce at the examination a record or thing specified in the letter of request;
 - (e) direct that the evidence obtained by the examination be recorded and certified in the manner specified in the letter of request;
 - (f) take any other action that the Supreme Court considers appropriate.
- (4) The failure of a person entitled under subsection (3) (b) to be present or represented by counsel during an examination or to examine the person referred to in subsection (3) (a) does not prevent the society from reading in the evidence from the examination at a hearing, if the examination has otherwise been conducted in accordance with the letter of request.
- (5) The society must send a letter of request issued under subsection (1),
- (a) if an examination is to be held in Canada, to the Deputy Attorney General for the Province of British Columbia, or

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- (b) if an examination is to be held outside Canada, to the Under Secretary of State for Foreign Affairs of Canada.
- (6) A letter of request must have attached to it all of the following:
- (a) any questions to be put to the person to be examined;
 - (b) if known, the name, address and telephone number of
 - (i) the solicitor or agent of the society,
 - (ii) the person to be examined, and
 - (iii) if applicable, the person entitled under subsection (3) (b) to be present or represented by counsel during the examination and to examine the person referred to in subsection (3) (a);
 - (c) a translation of the letter of request and any questions into the official language of the jurisdiction where the examination is to take place, if necessary, along with a certificate of the translator, bearing the full name and address of the translator, and certifying that the translation is a true and complete translation.
- (7) The society must file with the Deputy Attorney General for the Province of British Columbia or with the Under Secretary of State for Foreign Affairs of Canada, as the case may be, an undertaking to be responsible for any charge and expense incurred by either of them in relation to the letter of request and to pay them on receiving notification from them of the amount.
- (8) This section does not limit any power the society may have to obtain evidence outside British Columbia by any other means.
- (9) The making of an order by a judicial authority in accordance with a letter of request issued under subsection (1) does not determine whether evidence obtained under the order is admissible in evidence in a hearing.
- (10) Unless otherwise provided by this section, the practice and procedure for appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, is the same as the practice and procedure that govern similar matters in civil proceedings in the Supreme Court.

Costs

- 46** (1) The benchers may make rules governing the assessment of costs by a panel, ~~the benchers a review board~~ or a committee under this Act including [\[35\(a\)\]](#)
- (a) the time allowed for payment of costs, and
 - (b) the extension of time for payment of costs.

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- (2) If legal assistance employed by the benchers is provided by an employee of the society, the amount of costs that may be awarded under the rules in respect of that legal assistance may be the same as though the society had retained outside counsel.
- (3) The amount of costs ordered to be paid by a respondent or applicant under the rules may be recovered as a debt owing to the society and, when collected, the amount is the property of the society.
- (4) For the purpose of recovering a debt under subsection (3), the executive director may
 - (a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and
 - (b) file the certificate with the Supreme Court.
- (5) A certificate filed under subsection (4) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it. [35 (b)]

Review on the record

- 47**
- (1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6), (6.1) or (7), the applicant or respondent may apply in writing ~~to the benchers~~ for a review on the record by a review board. [36(a) and (b)]
 - (2) Within 30 days after the decision of a panel under section 22 (3), the credentials committee may refer the matter ~~to the benchers~~ for a review on the record by a review board. [36(a)]
 - (3) Within 30 days after the decision of a panel under section 38 (4), (5), (6), (6.1) or (7), the discipline committee may refer the matter ~~to the benchers~~ for a review on the record by a review board. [36(a) and (b)]
- (3.1) Within 30 days after an order for costs assessed under a rule made under section 27 (2) (e) or 46, an applicant, a respondent or a lawyer who is the subject of the order may apply in writing for a review on the record by a review board. [36(c)]

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(3.2) Within 30 days after an order for costs assessed by a panel under a rule made under section 46, the credentials or discipline committee may refer the matter for a review on the record by a review board. [36(c)]

(4) If, in the opinion of ~~the benchers~~ a review board, there are special circumstances, the ~~benchers~~ review board may hear evidence that is not part of the record. [36(d)]

~~(4.1) Despite the requirement of section 6 (2) that at least 7 benchers be present at a meeting of the benchers, if~~

~~(a) a bencher who is hearing a review under this section is unable for any reason to complete the bencher's duties in respect of the review, and~~

~~(b) at least 5 benchers remain to hear the review,~~

~~the remaining benchers may continue to hear the review and make a final decision, and the vacancy does not invalidate the review. [36(e)]~~

(5) After a hearing under this section, the ~~benchers~~ review board may [36(f)]

(a) confirm the decision of the panel, or

(b) substitute a decision the panel could have made under this Act.

(6) The benchers may make rules providing for one or more of the following:

(a) the appointment and composition of review boards;

(b) establishing procedures for an application for a review under this section;

(c) the practice and procedure for proceedings before review boards.

[36(g)]

Appeal

48 (1) ~~Any~~ Subject to subsection (2), any of the following persons who ~~is~~ are affected by a decision, determination or order of a panel or of ~~the benchers~~ a review board may appeal the decision, determination or order to the Court of Appeal:

(a) an applicant;

(b) a respondent;

(c) a lawyer who is suspended or disbarred under this Act;

(d) the society.

(2) An appeal by the society under subsection (1) is limited to an appeal on a question of law. [37]

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PART 6 – CUSTODIANSHIPS

Definitions

49 In this Part:

“**court**” means the Supreme Court;

“**custodian**” means a person appointed by an order under section 50 (2) or 54 (2) (b);

“**practice**” includes a law practice carried on by a lawyer on behalf of a law corporation whether as an employee of the law corporation or otherwise;

“**property**” includes books, records, accounts, funds, securities and any other real or personal property, wherever located,

(a) within a lawyer’s possession or control, if held or used by the lawyer for the benefit of a client or other person, or otherwise held or used in the lawyer’s capacity as a barrister and solicitor,

(b) in the possession or control of a person other than a lawyer if the lawyer has a duty to account to a client or other person for the property, or

(c) referred to in paragraph (a) or (b), if held or used by a corporation, including a law corporation.

Appointment of custodian

50 (1) The society may apply to the court, with or without notice to anyone, for an order appointing a practising lawyer or the society as a custodian of the practice of another lawyer to

(a) take possession of or control over all or part of the property of the lawyer, and

(b) determine the status of, manage, arrange for the conduct of and, if appropriate, terminate the practice of the lawyer.

(2) The court may grant a custodianship order applied for under subsection (1) if, in the opinion of the court, sufficient grounds exist.

(3) Without limiting the discretion of the court to grant an order under subsection (2), sufficient grounds for the appointment of a custodian of a lawyer’s practice exist if the lawyer

(a) consents to the appointment of a custodian,

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- (b) dies, resigns or otherwise terminates membership in the society,
 - (c) is unable to practise as a lawyer because of physical or mental illness or for any other reason,
 - (d) disappears or neglects or abandons the practice of law, or
 - (e) is disbarred or suspended from the practice of law in British Columbia or any other jurisdiction.
- (4) When a law corporation carries on the business of providing legal services to the public through a lawyer who is the subject of an application under this section, the court may order the custodian appointed under subsection (2) to
- (a) take possession of or control over all or part of the law corporation's property, and
 - (b) determine the status of, manage, arrange for the conduct of and, if appropriate, terminate the practice of the law corporation.
- (5) An order under this section must direct that any person receiving notice of the order must retain all the lawyer's property that is within or comes into that person's possession or control, until directed otherwise by the custodian or by an order of the court.
- (6) An order under this section may
- (a) direct the sheriff to search for, seize, remove and place into the possession or control of the custodian all or part of the lawyer's property,
 - (b) authorize the sheriff, for the purpose of paragraph (a), to enter
 - (i) any building or place other than the lawyer's dwelling house and open any safety deposit box or other receptacle, and
 - (ii) the lawyer's dwelling house and open any safe or other receptacle, if there are grounds to believe that the lawyer's property may be found there,
 - (c) direct any savings institution or other person to deal with, hold or dispose of the lawyer's property as the court directs, and to deliver to the custodian or otherwise, as the court directs, one or more of the following:
 - (i) the lawyer's property;
 - (ii) a copy of records relating to the lawyer's practice;
 - (iii) a copy of other records, when it is necessary for the effective conduct of the custodianship to do so,

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- (d) give directions to the custodian respecting the disposition of the lawyer's property and the manner in which the custodianship should be conducted,
- (e) give directions as to the service of an order made or notice required under this Part,
- (f) include other orders or give other directions to facilitate the conduct of the custodianship, and
- (g) if the lawyer is a person referred to in section 15 (3) (a) or (b), prohibit the lawyer from acting as any or all of the following until the lawyer is a member in good standing of the society or until the court orders otherwise:
 - (i) a personal representative of a deceased person;
 - (ii) a trustee of the estate of a deceased person;
 - (iii) a [decision maker] [*statutory property guardian*] or guardian under the *Adult Guardianship Act*;
[(iii.1) *an attorney under Part 2 of the Power of Attorney Act*];
 - (iv) a representative under the *Representation Agreement Act*.
- (7) Unless otherwise directed by the court, the custodian must cause an order made under this Part to be served promptly on the lawyer.
- (8) A sheriff, deputy sheriff or court bailiff executing an order under this Part has the same powers as that person has in the execution of a writ of seizure and sale.

If society appointed as custodian

50.1 If the society is appointed as a custodian, the executive director must

- (a) designate a person who is
 - (i) an employee of the society, and
 - (ii) a practising lawyer, or
 - (b) retain the services of a practising lawyer
- to perform the duties and functions and exercise the powers of a custodian on behalf of the society.

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Powers of custodian

- 51** A custodian may do any or all of the following:
- (a) notify a client of the lawyer, or any other person, of the custodian's appointment, and may communicate with that client or person respecting the conduct of the custodianship;
 - (b) represent a client of the lawyer, in place of that lawyer, in any cause or matter in respect of which that lawyer was acting at the time a custodian was appointed, to the extent necessary to preserve the interests of the client;
 - (c) conduct or authorize an investigation of the property of the lawyer;
 - (d) require from the lawyer or any other person records and information that may be reasonably necessary to facilitate the conduct of the custodianship and, if necessary, apply to the court for an order to enforce the requirement;
 - (e) report to an insurer any facts of which the custodian becomes aware that indicate that the lawyer in that lawyer's professional capacity may be liable to a client or other person;
 - (f) cooperate with an insurer respecting any claim arising out of the lawyer's practice, to the extent required by the policy;
 - (g) advise a client or other person of any facts of which the custodian becomes aware that may give rise to a claim for payment under section 31;
 - (h) deal with the assets and liabilities of the lawyer's practice to the extent necessary to protect the interests of clients and, subject to the interests of clients,
 - (i) pay all or part of the expenses and disbursements of and incidental to any acts done or proceedings taken under this Part, and
 - (ii) preserve the value of the practice;
 - (i) employ or retain assistance in the conduct of the custodianship.

Society access to property

- 52** (1) The executive director may at any time examine and make copies of any of the lawyer's property in the possession or control of the custodian.
- (2) Copies made under subsection (1) must be made at the society's expense and only for its own use.

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Property in the custody of a custodian

- 53** (1) A custodian may deliver property in the custodian's possession or control to a person claiming it if the custodian is satisfied that
- (a) the person is entitled to the property,
 - (b) no solicitor's lien exists or appears to exist in relation to it, and
 - (c) the executive director has been given a reasonable opportunity to examine the property under section 52.
- (2) A lawyer whose property is in the custody of a custodian under this Part may make a claim for a solicitor's lien in relation to any part of the property by filing notice of a claim for lien with the custodian.
- (3) A notice under subsection (2) must
- (a) be in writing,
 - (b) be filed within 30 days after service on the lawyer of the order under section 50 (2), and
 - (c) give full particulars of the claim.
- (4) On receiving a notice under subsection (2), the custodian must promptly give written notice of the claim for lien to the apparent owner of the property on which the lien is claimed, and the rights of the parties must then be determined according to law.
- (5) If a lawyer fails to file a claim of lien under this section within the period referred to in subsection (3), the custodian may deliver the property to the person entitled to it if the custodian is otherwise satisfied that it is proper to do so.

Applications to the court

- 54** (1) A custodian, the society, the lawyer concerned or any other interested person may apply to the court for an order under this section, with or without notice to anyone.
- (2) On an application under subsection (1), the court may do one or more of the following:
- (a) discharge the custodian, unless the society shows cause why the custodianship should be continued;
 - (b) appoint another practising lawyer or the society as a custodian;
 - (c) make any other order provided for in section 50 (4), in which case section 50 (5) and (6) applies;

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- (d) summarily determine the validity of a claim to a solicitor's lien;
 - (e) make no order.
- (3) Despite anything in this Part, the court may at any time extend or shorten the time within which anything is required to be done or dispense with any of the requirements of this Part.

Custodianship rules

- 55** The benchers may make rules regarding custodianships, including rules imposing duties on a lawyer whose practice is the subject of a custodianship authorized under this Part.

Liability and costs

- 56** (1) Section 86 applies to protect a custodian, the society and a person acting for either of them, for anything done or not done by one of them in good faith while acting or purporting to act under this Part.
- (2) No costs may be awarded against a custodian, the society or a person acting for either of them, for anything done or not done by any of them in good faith while acting or purporting to act under this Part.
- (3) Unless the court otherwise orders, the lawyer or the estate of a deceased lawyer must pay to the society the fees, expenses and disbursements of and incidental to any acts done or proceedings taken under this Part, including the fees, expenses and disbursements of a custodian.
- (4) Part 8 applies to payment for fees, expenses and disbursements under subsection (3) of this section.

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PART 7 – LAW FOUNDATION

Definitions

57 In this Part:

“**board**” means the board of governors of the foundation;

“**governor**” means a member of the board.

Law Foundation of British Columbia

- 58 (1) The Law Foundation is continued as a corporation with the name “Law Foundation of British Columbia” consisting of the members of the board appointed under section 59 (1).
- (2) The foundation may acquire, dispose of and otherwise deal with its property for the purposes of the foundation.

Board of governors

- 59 (1) The foundation is administered by a board of governors consisting of 18 governors as follows:
- (a) the Attorney General or his or her appointee;
 - (b) 3 persons, not lawyers, appointed to the board by the Attorney General;
 - (c) 12 lawyers or judges appointed by the executive committee, of whom at least one must be from each county referred to in the *County Boundary Act*;
 - (d) 2 lawyers appointed by the executive committee of the British Columbia Branch of the Canadian Bar Association.
- (2) Governors, other than the Attorney General, hold office for a term of 3 years or until their successors are appointed, and they may be re-appointed.
- (3) The Attorney General may revoke the appointment of a governor appointed by the Attorney General, during that governor’s term of office.
- (4) The benchers may revoke the appointment of a governor appointed by the executive committee, during that governor’s term of office.
- (5) The Provincial Council of the British Columbia Branch of the Canadian Bar Association may revoke the appointment of a governor appointed by the executive committee of the branch, during that governor’s term of office.

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- (6) The board must elect one governor to be chair of the board.
- (7) If a vacancy occurs in the office of a governor, the person or body by whom the governor was appointed may appoint to the vacant office a person eligible to be appointed to that office by that person or body under subsection (1), and the person so appointed holds office for the balance of the term for which the governor was appointed, or until a successor is appointed.
- (8) The continuing governors may act despite a vacancy in the board.
- (9) An act of the board is not invalid because of a defect that is afterwards discovered in the appointment of one or more governors.
- (10) An appointed governor may resign from office on giving one month's notice in writing to the board of an intention to do so, and the resignation takes effect on the expiration of the notice or on its earlier acceptance by the board.
- (11) A governor ceases to hold office if the governor
 - (a) ceases to hold the qualifications necessary for appointment,
 - (b) becomes a mentally disordered person,
 - (c) becomes bankrupt, or
 - (d) contravenes a provision of this Act or the rules, and a majority of the other governors considers that the contravention is sufficiently serious to justify the governor's removal from the board.
- (12) A quorum of the board is 8 governors.

Bylaws

- 60** The board may make bylaws for purposes relating to the affairs, business, property and objects of the foundation including bylaws respecting the
 - (a) number and designation of officers of the foundation,
 - (b) appointment and terms of office of officers of the foundation and all matters relating to their offices,
 - (c) establishment of an executive committee and the delegation of powers to it,
 - (d) resignation or removal from office of officers of the foundation,
 - (e) number, designations and conditions of employment of employees of the foundation, other than officers,
 - (f) remuneration, if any, of officers of the foundation, and

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(g) operation of the foundation's account.

Application of fund

- 61**
- (1) The purpose of the foundation is to establish and maintain a fund to be used for the following purposes:
 - (a) legal education;
 - (b) legal research;
 - (c) legal aid;
 - (d) law reform;
 - (e) establishing, operating and maintaining law libraries in British Columbia.
 - (2) The board may apply the funds of the foundation for the purposes of the foundation in the manner that the board may decide and may grant loans of the funds on terms and conditions the board determines.
 - (3) The foundation may employ or retain lawyers to advance the purposes of the foundation. [\[38\(a\)\]](#)
 - (4) The funds of the foundation consist of the following:
 - (a) all money remitted to the foundation by or on behalf of lawyers and law firms under section 62 (2) or held in trust under section 63 (12); [\[38\(b\)\]](#)
 - (b) interest accruing from investment of the funds of the foundation;
 - (c) other money received by the foundation.
 - (5) The board may pay out of the funds of the foundation the costs, charges and expenses
 - (a) involved in the administration of the foundation, and
 - (b) incurred by the board in carrying out the purposes of the foundation.
 - (6) All money of the foundation must be paid into a savings institution designated under section 33 (3) (b) until invested or applied in accordance with this section, and that money must be used for the purposes of the foundation.
 - (7) Money that is not immediately required for the purposes of the foundation may be invested in the name of the foundation by the board in any manner in which trustees are authorized to invest trust funds.

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- (8) The accounts of the foundation must be audited annually by a chartered accountant or certified general accountant appointed for that purpose by the board.

Interest on trust accounts

- 62** (1) A lawyer or law firm must deposit money received or held in trust in an interest bearing trust account at a savings institution designated under section 33 (3) (b). [39(a)]
- (2) Subject to subsection (5), a lawyer or law firm who is credited by a savings institution with interest on money received or held in trust, [39(a)]
- (a) holds the interest in trust for the foundation, and
 - (b) must remit the interest to the foundation in accordance with the rules.
- (3) The benchers may make rules
- (a) permitting a lawyer or law firm to hold money in trust for more than one beneficiary in the same trust account, and [39(a)]
 - (b) respecting payment to the foundation of interest on trust accounts.
- (4) A relationship between a lawyer or law firm and client or a trust relationship between a lawyer or law firm, as trustee, and the beneficiary of the trust does not make the lawyer or law firm liable to account to the client or beneficiary for interest received by the lawyer or law firm on money received or held in an account established under subsection (1). [39(a)]
- (5) On instruction from ~~his or her a~~ client, a lawyer or law firm may place money held on behalf of the client in a separate trust account, in which case [39(a) and (b)]
- (a) this section and the rules made under it do not apply, and
 - (b) interest paid on money in the account is the property of the client.

Security and investment of trust funds

- 63** (1) In this section:
- “pooled trust funds”** means money that has been received by a lawyer or law firm in trust and that is not the subject of instructions under section 62 (5); [40(a)]
- “society trust account”** means a Law Society Pooled Trust Account established under subsection (5).

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- (2) The benchers may make rules requiring that a lawyer or law firm do any or all of the following:
- (a) use an approved form of agreement respecting the terms and conditions under which pooled trust funds will be held at designated savings institutions;
 - (b) tender the agreement, prepared and approved under paragraph (a), at a designated savings institution before the lawyer or law firm deposits pooled trust funds at that savings institution;
 - (c) report annually to any savings institution into which the lawyer or law firm has deposited pooled trust funds the information required under the *Canada Deposit Insurance Corporation Act*. [40(b)]
- (3) The society may enter into an agreement with a savings institution with whom lawyers or law firms have deposited pooled trust funds, respecting the investment and security of pooled trust funds on deposit at all branches of that savings institution. [40(c)]
- (4) Without limiting subsection (3), an agreement under that subsection may provide that
- (a) pooled trust funds be transferred to the society, in trust, to be held in the account referred to in subsection (5) and to be invested in the manner permitted by subsection (6), and
 - (b) the society obtain a line of credit, either secured or unsecured, from the savings institution for the purpose of ensuring that there is always sufficient money on deposit to guarantee that lawyers' and law firms' trust cheques on their pooled trust fund accounts will be honoured. [40(d)]
- (5) The society may establish and operate an account, to be known as a Law Society Pooled Trust Account, at any branch of the savings institution into which pooled trust funds may be deposited in accordance with an agreement under subsection (3).
- (6) Money in a society trust account may be invested in
- (a) securities of Canada or a province,
 - (b) securities, the payment of the principal and interest of which is guaranteed by Canada or a province, or
 - (c) guaranteed trust or investment certificates of the savings institution that has the pooled trust account.

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- (7) Money earned on investments under subsection (6) may be used to
- (a) purchase insurance in an amount that the society considers necessary to ensure that all lawyers' and law firms' trust cheques drawn on their pooled trust fund accounts will be honoured, and [40(d)]
 - (b) pay service and other similar charges in respect of services provided by the savings institution at which the society operates an account under subsection (5).
- (8) The society may pay money out of a society trust account to a person who has suffered a loss directly resulting from the inability or refusal of the savings institution to honour a lawyer's or law firm's trust cheque drawn on a pooled trust fund account, up to a maximum, in any year, set by the benchers. [40(e)]
- (9) The benchers must not pay out any money under subsection (8) unless they are satisfied that they will be reimbursed or indemnified, through agreements referred to in subsection (10) or the insurance purchased under subsection (7), for any money that has been paid out.
- (10) The society may enter into agreements with the Canada Deposit Insurance Corporation and the Credit Union Deposit Insurance Corporation of British Columbia respecting reimbursement or indemnity by those corporations of money that has been paid out under subsection (8).
- (11) The society may retain or employ a person to manage society trust accounts and may pay that person fees or remuneration out of interest earned on money in society trust accounts.
- (12) Subject to subsections (7), (8) and (11), all interest earned on money deposited into a society trust account is held in trust by the society for the benefit of the foundation, and the society is not liable to account to any client of any lawyer or law firm in respect of that interest. [40(b)]
- (13) Despite any agreement between a lawyer or law firm and a savings institution, if the lawyer's pooled trust fund account of the lawyer or law firm is overdrawn by an amount exceeding \$1 000, the savings institution must, as soon as practicable, inform the society of the particulars. [40(f)]
- (14) Subsection (13) and the failure of a savings institution to comply with it has no effect on the civil liability of that savings institution to any person, and that liability, if any, must be determined as though that subsection were not in force.

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PART 8 – LAWYERS’ FEES

Definitions and interpretation

64 (1) In this Part:

“**agreement**” means a written contract respecting the fees, charges and disbursements to be paid to a lawyer or law firm for services provided or to be provided and includes a contingent fee agreement; [41(a)]

“**bill**” means a lawyer’s written statement of fees, charges and disbursements;

“**charges**” includes taxes on fees and disbursements and interest on fees and disbursements;

“**contingent fee agreement**” means an agreement that provides that payment to the lawyer for services provided depends, at least in part, on the happening of an event;

“**court**” means the Supreme Court;

~~“**law firm**” means a law corporation or a number of lawyers or a number of law corporations or any combination of lawyers and law corporations in a partnership or association for the practice of law; [41(b)]~~

“**person charged**” includes a person who has agreed to pay for legal services, whether or not the services were provided on the person’s behalf;

“**registrar**” means the registrar of the court.

(2) Unless otherwise ordered by the court, this Part, except sections 65, 66 (1), 68, 77, 78 and 79 (1), (2), (3), (6) and (7), does not apply to a class proceeding within the meaning of the *Class Proceedings Act*.

(3) This Part applies to a lawyer’s bill or agreement even though the lawyer has ceased to be a member of the society, if the lawyer was a member when the legal services were provided.

Agreement for legal services

65 (1) A lawyer or law firm may enter into an agreement with any other person, requiring payment for services provided or to be provided by the lawyer or law firm.

(2) Subsection (1) applies despite any law or usage to the contrary.

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- (3) A provision in an agreement that the lawyer is not liable for negligence, or that the lawyer is relieved from responsibility to which the lawyer would otherwise be subject as a lawyer, is void.
- (4) An agreement under this section may be signed on behalf of a lawyer or law firm by an authorized agent who is a practising lawyer.

Contingent fee agreement

- 66**
- (1) Section 65 applies to contingent fee agreements.
 - (2) The benchers may make rules respecting contingent fee agreements, including, but not limited to, rules that do any of the following:
 - (a) limit the amount that lawyers or law firms may charge for services provided under contingent fee agreements; [42]
 - (b) regulate the form and content of contingent fee agreements;
 - (c) set conditions to be met by lawyers and law firms making contingent fee agreements.
 - (3) Rules under subsection (2) apply only to contingent fee agreements made after the rules come into force and, if those rules are amended, the amendments apply only to contingent fee agreements made after the amendments come into force.
 - (4) A contingent fee agreement that exceeds the limits established by the rules is void unless approved by the court under subsection (6).
 - (5) If a contingent fee agreement is void under subsection (4), the lawyer may charge the fees that could have been charged had there been no contingent fee agreement, but only if the event that would have allowed payment under the void agreement occurs.
 - (6) A lawyer may apply to the court for approval of a fee higher than the rule permits, only
 - (a) before entering into a contingent fee agreement, and
 - (b) after serving the client with at least 5 days' written notice.
 - (7) The court may approve an application under subsection (6) if
 - (a) the lawyer and the client agree on the amount of the lawyer's proposed fee, and
 - (b) the court is satisfied that the proposed fee is reasonable.

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- (8) The following rules apply to an application under subsection (6) to preserve solicitor client privilege:
 - (a) the hearing must be held in private;
 - (b) the style of proceeding must not disclose the identity of the lawyer or the client;
 - (c) if the lawyer or the client requests that the court records relating to the application be kept confidential,
 - (i) the records must be kept confidential, and
 - (ii) no person other than the lawyer or the client or a person authorized by either of them may search the records unless the court otherwise orders.
- (9) Despite subsection (8), reasons for judgment relating to an application under subsection (6) may be published if the names of the lawyer and client are not disclosed and any information that may identify the lawyer or the client is not disclosed.

Restrictions on contingent fee agreements

- 67**
- (1) This section does not apply to contingent fee agreements entered into before June 1, 1988.
 - (2) A contingent fee agreement must not provide that a lawyer is entitled to receive both a fee based on a proportion of the amount recovered and any portion of an amount awarded as costs in a proceeding or paid as costs in the settlement of a proceeding or an anticipated proceeding.
 - (3) A contingent fee agreement for services relating to a child custody or access matter is void.
 - (4) A contingent fee agreement for services relating to a matrimonial dispute is void unless approved by the court.
 - (5) A lawyer may apply to the court for approval of a contingent fee agreement for services relating to a matrimonial dispute and section 66 (7) to (9) applies.

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Examination of an agreement

- 68**
- (1) This section does not apply to agreements entered into before June 1, 1988.
 - (2) A person who has entered into an agreement with a lawyer or law firm may apply to the registrar to have the agreement examined. [43]
 - (3) An application under subsection (2) may only be made within 3 months after
 - (a) the agreement was made, or
 - (b) the termination of the solicitor client relationship.
 - (4) Subject to subsection (3), a person may make an application under subsection (2) even if the person has made payment under the agreement.
 - (5) On an application under subsection (2), the registrar must confirm the agreement unless the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into.
 - (6) If the registrar considers that the agreement is unfair or unreasonable under the circumstances existing at the time the agreement was entered into, the registrar may modify or cancel the agreement.
 - (7) If an agreement is cancelled under subsection (6), a registrar
 - (a) may require the lawyer to prepare a bill for review, and
 - (b) must review the fees, charges and disbursements for the services provided as though there were no agreement.
 - (8) A party may appeal a decision of the registrar under subsection (5) or (6) to the court.
 - (9) The procedure under the Supreme Court Civil Rules for the assessment of costs, review of bills and examination of agreements applies to the examination of an agreement.

Lawyer's bill

- 69**
- (1) A lawyer must deliver a bill to the person charged.
 - (2) A bill may be delivered under subsection (1) by mailing the bill to the last known business or residential address of the person charged.
 - (3) The bill must be signed by or on behalf of the lawyer or accompanied by a letter, signed by or on behalf of the lawyer, that refers to the bill.

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- (4) A bill under subsection (1) is sufficient in form if it contains a reasonably descriptive statement of the services with a lump sum charge and a detailed statement of disbursements.
- (5) A lawyer must not sue to collect money owed on a bill until 30 days after the bill was delivered to the person charged.
- (6) The court may permit a lawyer to sue to collect money owed on a bill before the end of the 30 day period if the court finds that
 - (a) the bill has been delivered as provided in subsection (1), and
 - (b) there is probable cause to believe that the person charged is about to leave British Columbia other than temporarily.

Review of a lawyer's bill

- 70**
- (1) Subject to subsection (11), the person charged or a person who has agreed to indemnify that person may obtain an appointment to have a bill reviewed before
 - (a) 12 months after the bill was delivered under section 69, or
 - (b) 3 months after the bill was paid,whichever occurs first.
 - (2) The person who obtained an appointment under subsection (1) for a review of the bill must deliver a copy of the appointment to the lawyer at the address shown on the bill, at least 5 days before the date set for the review.
 - (3) Subject to subsection (11), a lawyer may obtain an appointment to have a bill reviewed 30 days or more after the bill was delivered under section 69.
 - (4) The lawyer must serve a copy of the appointment on the person charged at least 5 days before the date set for the review.
 - (5) The following people may obtain an appointment on behalf of a lawyer to have a bill reviewed:
 - (a) the lawyer's agent;
 - (b) a deceased lawyer's personal representative;
 - (c) the lawyer's assignee;
 - (d) in the case of a partnership, one of the partners or a partner's agent;
 - (e) the custodian of the lawyer's practice appointed under section 50.
 - (6) If a lawyer has sued to collect on a bill, the court in which the action was commenced may order that the bill be referred to the registrar.

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- (7) The court may make an order under subsection (6) whether or not any party has applied for an order.
- (8) On a referral under subsection (6), the registrar may
 - (a) review the bill and issue a certificate, or
 - (b) make a report and recommendation to the court.
- (9) When making an order under subsection (6), the court may direct that the registrar take action under subsection (8) (a) or (b).
- (10) Section 73 applies to a certificate issued under subsection (8) (a).
- (11) In either of the following circumstances, the lawyer's bill must not be reviewed unless the court finds that special circumstances justify a review of the bill and orders that the bill be reviewed by the registrar:
 - (a) the lawyer has sued and obtained judgment for the amount of the bill;
 - (b) application for the review was not made within the time allowed in subsection (1).
- (12) If a lawyer sues to collect money owed on a bill, the lawsuit must not proceed if an application for review is made before or after the lawsuit was commenced, until
 - (a) the registrar has issued a certificate, or
 - (b) the application for review is withdrawn.
- (13) The procedure under the Supreme Court Civil Rules for the assessment of costs, review of bills and examination of agreements applies to the review of bills under this section.
- (14) The registrar may refer any question arising under this Part to the court for directions or a determination.

Matters to be considered by the registrar on a review

- 71**
- (1) This section applies to a review or examination under section 68 (7), 70, 77 (3), 78 (2) or 79 (3).
 - (2) Subject to subsections (4) and (5), the registrar must allow fees, charges and disbursements for the following services:
 - (a) those reasonably necessary and proper to conduct the proceeding or business to which they relate;
 - (b) those authorized by the client or subsequently approved by the client, whether or not the services were reasonably necessary and proper to conduct the proceeding or business to which they relate.

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- (3) Subject to subsections (4) and (5), the registrar may allow fees, charges and disbursements for the following services, even if unnecessary for the proper conduct of the proceeding or business to which they relate:
 - (a) those reasonably intended by the lawyer to advance the interests of the client at the time the services were provided;
 - (b) those requested by the client after being informed by the lawyer that they were unnecessary and not likely to advance the interests of the client.
- (4) At a review of a lawyer's bill, the registrar must consider all of the circumstances, including
 - (a) the complexity, difficulty or novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the lawyer,
 - (c) the lawyer's character and standing in the profession,
 - (d) the amount involved,
 - (e) the time reasonably spent,
 - (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
 - (g) the importance of the matter to the client whose bill is being reviewed, and
 - (h) the result obtained.
- (5) The discretion of the registrar under subsection (4) is not limited by the terms of an agreement between the lawyer and the lawyer's client.

Costs of a review of a lawyer's bill

- 72** (1) Costs of a review of a lawyer's bill must be paid by the following:
- (a) the lawyer whose bill is reviewed, if $\frac{1}{6}$ or more of the total amount of the bill is subtracted from it;
 - (b) the person charged, if less than $\frac{1}{6}$ of the total amount of the bill is subtracted from it;
 - (c) a person who applies for a review of a bill and then withdraws the application for a review.
- (2) Despite subsection (1), the registrar has the discretion, in special circumstances, to order the payment of costs other than as provided in that subsection.

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Remedies that may be ordered by the registrar

- 73
- (1) On the application of a party to a review under this Part, the registrar may order that a party
 - (a) be permitted to pay money in installments on the terms the registrar considers appropriate, or
 - (b) not be permitted to collect money on the certificate for a period the registrar specifies.
 - (2) On a review under this Part, the registrar may
 - (a) give a certificate for the amount the registrar has allowed the lawyer for fees, charges and disbursements, and
 - (b) summarily determine the amount of the costs of the review and add it to or subtract it from the amount shown on the certificate.
 - (3) If a registrar gives a certificate under subsection (2), the registrar must add to the amount certified an amount of interest calculated
 - (a) on the amount the registrar has allowed the lawyer for fees, charges and disbursements, exclusive of the costs of the review,
 - (b) from the date the lawyer delivered the bill to the date on which the certificate is given, and
 - (c) at the rate agreed to by the parties at the time the lawyer was retained or, if there was no agreement, at the same rate the registrar would allow under the *Court Order Interest Act* on an order obtained by default.
 - (4) If a registrar gives a certificate under subsection (2) that requires that the lawyer refund money to another person, the registrar must add to the amount to be refunded an amount of interest calculated
 - (a) on the amount the lawyer is required to refund to the other person,
 - (b) from the date the money to be refunded was paid to the lawyer to the date on which the certificate is given, and
 - (c) at the same rate the registrar would allow under the *Court Order Interest Act* on an order obtained by default.

Refund of fee overpayment

- 74 A lawyer must, on demand,
- (a) refund fees, charges and disbursements received or retained in excess of the amount allowed under this Part or the rules, and

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- (b) pay any interest added under section 73 (4).

Appeal

- 75** (1) A party to a review may appeal to the court, within
- (a) 14 days from the date the certificate of the registrar was entered,
 - (b) the period the court may permit, or
 - (c) the period the registrar specifies at the time of signing the certificate.
- (2) On the appeal, the court may make any order it considers appropriate.
- (3) If the terms of an order of the court require it, the registrar must amend the certificate.

Registrar's certificate

- 76** (1) If it appears to the registrar that there is money due from the lawyer to the person charged, the registrar may make an interim certificate as to the amount payable by the lawyer.
- (2) If an interim certificate is entered under subsection (1), the court may order the money certified to be paid immediately
- (a) to the person charged, or
 - (b) into court.
- (3) After a review under sections 70 and 71, the certificate of the registrar may be filed in a registry of the court and, on the expiry of the time specified or permitted under section 75, the certificate is deemed to be a judgment of the court.

Order to deliver bill or property

- 77** (1) The court may order, on terms it considers appropriate, delivery of a bill to the person charged, if
- (a) a bill has not been delivered, and
 - (b) the bill, if it had been delivered, could have been the subject of an application for a review under section 70.
- (2) A person charged may apply to the court for an order that the client's lawyer or former lawyer deliver to the court, to the client or to the client's agent
- (a) an accounting,
 - (b) property, or

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- (c) a list of any property of the client in the lawyer's control.
- (3) When an order under subsection (2) is made, the court may
 - (a) order the review of the lawyer's bill and require the person charged to pay or secure the lawyer's claim before delivery is made, and
 - (b) relieve the lawyer of any undertakings given or any other responsibilities in relation to the property.

Change of lawyer

- 78**
- (1) If a client changes lawyers or begins acting on his or her own behalf, the client or the new lawyer may apply to the court for an order directing that the client's former lawyer deliver the client's records to another lawyer nominated by the client or to the client, as the case may be.
 - (2) If the court makes an order under subsection (1), the court may
 - (a) make the direction conditional on the client
 - (i) paying all amounts due to the client's former lawyer from the client, or
 - (ii) giving security for the payment of the lawyer's claim in an amount and manner satisfactory to the court, and
 - (b) order a review by the registrar.

Lawyer's right to costs out of property recovered

- 79**
- (1) A lawyer who is retained to prosecute or defend a proceeding in a court or before a tribunal has a charge against any property that is recovered or preserved as a result of the proceeding for the proper fees, charges and disbursements of or in relation to the proceeding, including counsel fees.
 - (2) Subsection (1) applies whether or not the lawyer acted as counsel.
 - (3) The court that heard the proceeding or in which the proceeding is pending may order the review and payment of the fees, charges and disbursements out of the property as that court considers appropriate.
 - (4) Sections 70 to 73 apply to a review under subsection (3) of this section.
 - (5) If the proceeding referred to in subsection (1) was before a tribunal, the lawyer may apply to the court for an order under subsection (3).
 - (6) All acts done and conveyances made to defeat, or that operate or tend to defeat, the charge are void against the charge, unless made to a bona fide purchaser for value without notice.

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- (7) A proceeding for the purpose of realizing or enforcing a charge arising under this section may not be taken until after application has been made to the appropriate court for directions.

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PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Definition

80 In this Part:

“**limited liability partnership**” means a partnership registered as a limited liability partnership under Part 6 of the *Partnership Act*;

“**permit**” means a permit issued under section 82 and includes a permit and a renewal of a permit issued to a law corporation or personal law corporation under the *Legal Profession Act*, R.S.B.C. 1996, c. 255.

Authorized and prohibited activities of law corporations

- 81** (1) A law corporation is authorized to carry on the business of providing legal services to the public through one or more persons each of whom is
- (a) a practising lawyer, or
 - (b) subject to this Act and the rules, a person referred to in section 15 (1) (c), (e) or (f) or (2) who is an employee of the law corporation.
- (2) A partnership consisting of law corporations or of one or more lawyers and one or more law corporations is authorized to carry on the business of providing legal services to the public through one or more persons described in subsection (1).
- (3) A corporation that has the words “law corporation” as part of its name must not carry on any business unless it holds a valid permit.
- (4) A law corporation must not carry on any activities, other than the provision of legal services or services directly associated with the provision of legal services.
- (5) Subsection (4) does not prohibit a law corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance or any other type of investment.
- (6) A voting trust agreement, proxy or any other type of agreement vesting in a person who is not a practising lawyer or a law corporation the authority to exercise the voting rights attached to shares in a law corporation is prohibited.

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Law corporation permit

- 82 (1) The executive director must issue a permit to a corporation that is a company, as defined in the *Business Corporations Act*, and that is in good standing under that Act or that is registered under Part 10 of the *Business Corporations Act*, if the executive director is satisfied that
- (a) the corporation has complied with the rules made under this Part,
 - (b) the name of the corporation includes the words “law corporation,”
 - (c) each voting share is legally and beneficially owned by a practising lawyer or by a law corporation,
 - (d) each non-voting share is legally and beneficially owned by
 - (i) a practising lawyer,
 - (ii) a law corporation that is a voting shareholder,
 - (iii) a person who is a relative of or resides with a practising lawyer who is a shareholder or who is a shareholder in a law corporation that is a shareholder,
 - (iv) a corporation, all the shares of which are beneficially owned by one or more of the individuals referred to in subparagraph (i) or (iii), or
 - (v) a trust, all the beneficiaries of which are individuals referred to in subparagraph (i) or (iii),
 - (e) all of the directors and the president of the corporation are practising lawyers, and
 - (f) all of the persons who will be practising law on behalf of the corporation are persons described in section 81 (1).
- (2) The executive director may refuse to issue a permit under subsection (1) if
- (a) the law corporation has previously had its permit revoked, or
 - (b) a shareholder of the law corporation was a shareholder of a law corporation or personal law corporation that previously had its permit revoked.
- (3) The executive director must inform the Registrar of Companies of the revocation of any permit under this Part or the rules.
- (4) Unless the benchers otherwise direct and subject to rules made under this Part, if a law corporation fails to pay the renewal fee set by the benchers by the date it is due, its permit ceases to be valid and the corporation must
- (a) immediately surrender its permit to the executive director, and

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- (b) cease providing legal services to the public.

Law corporation rules

- 83** (1) The benchers may make rules as follows:
- (a) establishing procedures for the issue and renewal of permits;
 - (b) establishing procedures for revocation of permits, including
 - (i) the adaptation of rules respecting practice and procedure in hearings before a panel, and
 - (ii) rules to authorize a panel to consider action against a law corporation as part of a hearing on a citation issued against a respondent who is or was a shareholder, director, officer or employee of a law corporation;
 - (c) authorizing the executive director to attach conditions or limitations to permits issued or renewed under this Part; [\[44\(a\)\]](#)
 - (d) respecting names and the approval of names including the types of names by which the following may be known, be incorporated or practise law:
 - (i) a law corporation;
 - (ii) a partnership consisting of one or more law corporations and one or more lawyers;
 - (iii) a partnership consisting of law corporations;
 - (iv) a law corporation that has shareholders that consist of one or more law corporations or one or more practising lawyers, or both;
 - (e) setting fees for
 - (i) obtaining a permit, and
 - (ii) renewing a permit;
 - (f) respecting the disposition of shares of a shareholder of a law corporation who ceases to be a practising lawyer;
 - (g) setting an amount of insurance that the holder of the permit must carry or must provide to each of its employees or contractors for the purpose of providing indemnity against professional liability claims;
 - (h) any other rules the benchers consider necessary or advisable for the purposes of this Part.

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- (2) The amount set by a rule made under subsection (1) (g) is in addition to any amount that must be carried by a lawyer under a rule made under section 30 (1.1), and the amount that may be set under this subsection may be different for different permit holders, at the discretion of the benchers. [\[44\(b\)\]](#)
- (3) An act of a corporation, including a transfer of property to or by the corporation, is not invalid because it contravenes this Part or the rules made under this Act.
- (4) This Act and the rules apply, insofar as is possible, to law corporations in the same way that they do to individual lawyers.

Limited liability partnerships

83.1 The benchers may make rules

- (a) authorizing lawyers and law corporations to carry on the practice of law through limited liability partnerships, and
- (b) establishing prerequisites, conditions, limitations and requirements for lawyers and law corporations to carry on the practice of law through limited liability partnerships.

Responsibility of lawyers

- 84**
- (1) The liability of a lawyer, carrying on the practice of law, for his or her own professional negligence is not affected by the fact that the lawyer is carrying on that practice
 - (a) as an employee, shareholder, officer, director or contractor of a law corporation or on its behalf, or
 - (b) through a limited liability partnership.
 - (2) The application of the provisions of this Act and the rules to a lawyer is not affected by the lawyer's relationship to
 - (a) a law corporation as an employee, shareholder officer, director or contractor, or
 - (b) a limited liability partnership as a partner, employee or contractor.
 - (3) Nothing in this Part affects, modifies or limits any law applicable to the fiduciary, confidential or ethical relationships between a lawyer and a person receiving the professional services of the lawyer.

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- (4) The relationship between a law corporation carrying on business as authorized under this Part and the rules, and a person receiving legal services provided by the corporation is subject to all applicable law relating to the fiduciary, confidential and ethical relationships that exist between a lawyer and a client.
- (5) All rights and obligations respecting professional communications made to or information received by a lawyer, or in respect of advice given by a lawyer, apply to a law corporation and its employees, shareholders, officers, directors and contractors.
- (6) An undertaking given by or on behalf of a law corporation that would constitute a solicitor's undertaking if given by a lawyer is deemed to be a solicitor's undertaking given by the lawyer who gives, signs or authorizes it.

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PART 10 – GENERAL

Enforcement

- 85** (1) A person commits an offence if the person
- (a) contravenes section 15, or
 - (b) uses or discloses information contrary to section 88 (3) or (4).
- (2) If an offence under this Act is committed by a corporation, each director, manager, secretary or other officer of that corporation who has assented to the commission of the offence is a party to that offence.
- (3) An information alleging an offence against this Act may be laid in the name of the society on oath or by affirmation of the executive director or of a person authorized by the benchers.
- (4) Section 5 of the *Offence Act* does not apply to this Act or to the rules.
- (5) The society may apply to the Supreme Court for an injunction restraining a person from contravening this Act or the rules.
- (6) The court may grant an injunction sought under subsection (5) if satisfied that there is reason to believe that there has been or will be a contravention of this Act or the rules.
- (7) The court may grant an interim injunction until the outcome of an action commenced under subsection (5).
- (8) On the application of the society or a person interested in the proceeding, the court in which a proceeding is brought may find a person in breach of section 15 (5) to be in contempt and may punish that person accordingly.

Protection against actions

- 86** (1) No action for damages lies against a person, for anything done or not done in good faith while acting or purporting to act on behalf of the society or the foundation under this Act.
- (2) The society or the foundation, as the case may be, must indemnify a person referred to in subsection (1) for any costs or expenses incurred by the person in any legal proceedings taken for anything done or not done in good faith while acting or purporting to act on behalf of the society or the foundation under this Act.

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Certain matters privileged

87 (1) In this section:

“**proceeding**” does not include a proceeding under Part 2, 3, ~~or 4~~ or 5; [45(a)]

“**report**” includes any document, minute, note, correspondence or memorandum created or received by a person, committee, panel, review board or agent of the society in the course of an investigation, audit, inquiry or hearing, but does not include an original document that belongs to a complainant or respondent or to a person other than an employee or agent of the society. [45(b)]

(2) If a person has made a complaint to the society respecting a lawyer or law firm, neither the society nor the complainant can be required to disclose or produce the complaint and the complaint is not admissible in any proceeding, except with the written consent of the complainant. [45(c)]

(3) If a lawyer or law firm responds to the society in respect of a complaint or investigation, ~~neither none of~~ the lawyer, the law firm nor the society can be required to disclose or produce the response or a copy or summary of it, and the response or a copy or summary of it is not admissible in any proceeding, except with the written consent of the lawyer or law firm, even though the executive director may have delivered a copy or a summary of the response to the complainant. [45(d)]

(4) ~~If a person, committee or panel acting~~ A report made under the authority of this Act ~~or a record concerning~~ makes a report or conducts an investigation, an audit, an inquiry, a hearing or a review into the conduct, competence or credentials of a lawyer, that report must not be required to be produced and is not admissible in any proceeding except with the written consent of the executive director. [45(d)]

(5) ~~Except with the consent of the executive director,~~ The the society, ~~its~~ an employees or agents ~~or former employee or agent of the society,~~ or persons who are a member ~~s~~ or former member of a committee ~~s~~, ~~or panels or review board~~ established or authorized under this Act

(a) must not be compelled to ~~testify in any proceeding or to~~ disclose information that ~~they may have~~ the person has acquired during the course of an investigation, an audit, an inquiry, a hearing or a review or in the exercise of other powers or the performance of other duties authorized by ~~under~~ this Act ~~or the rules,~~ and

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(b) is not competent to testify in a proceeding if testifying in that proceeding would result in the disclosure of information referred to in paragraph (a). [45(d)]

Non-disclosure of privileged and confidential information

88 ~~(1) A lawyer who, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential, or subject to a solicitor client privilege, is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records. [repealed] [46(a)]~~

(1.1) A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege, must do so, despite the confidentiality or privilege.

(1.2) Information, files or records that are provided in accordance with subsection (1.3) are admissible in a proceeding under Part 2, 3, 4 or 5 of this Act, despite the confidentiality or privilege.

(1.3) A lawyer who or a law firm that, in accordance with this Act and the rules, provides the society with any information, files or records that are confidential or subject to a solicitor client privilege is deemed conclusively not to have breached any duty or obligation that would otherwise have been owed to the society or the client not to disclose the information, files or records. [46(b)]

(2) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, a person who, in the course of exercising powers or carrying out duties under this Act, acquires information, files or records that are confidential or are subject to solicitor client privilege has the same obligation respecting the disclosure of that information as the person from whom the information, files or records were obtained. [46(c)]

(3) A person who, during the course of an investigation, audit, inquiry or hearing under this Act, acquires information or records that are confidential or subject to solicitor client privilege must not disclose that information or those records to any person except for a purpose contemplated by this Act or the rules.

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- (4) A person who, during the course of an appeal under section 48 or an application under the *Judicial Review Procedure Act* respecting a matter under this Act, acquires information or records that are confidential or are subject to solicitor client privilege must not
 - (a) use the information other than for the purpose for which it was obtained, or
 - (b) disclose the information to any person.
- (5) The Court of Appeal, on an appeal under section 48, and the Supreme Court, on an application under the *Judicial Review Procedure Act* respecting a matter under this Act, may exclude members of the public from the hearing of the appeal or application if the court considers the exclusion is necessary to prevent the disclosure of information, files or records that are confidential or subject to solicitor client privilege.
- (6) In giving reasons for judgment on an appeal or application referred to in subsection (5), the Court of Appeal or the Supreme Court must take all reasonable precautions to avoid including in those reasons any information before the court on the appeal or application that is confidential or subject to solicitor client privilege.
- (7) Despite section 14 of the *Freedom of Information and Protection of Privacy Act*, the benchers may make rules for the purpose of ensuring the non-disclosure of any confidential information or information that, but for this Act, would be subject to solicitor client privilege, and the rules may be made applicable to any person who, in the course of any proceeding under this Act, would acquire the confidential or privileged information.
- (8) Section 47 (4) of the *Freedom of Information and Protection of Privacy Act* does not apply to information that, but for this Act and the production of the information to the commissioner under that Act, would be subject to solicitor client privilege.

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Confidential documents

- 89** ~~(1) If a lawyer is served with an order made under section 37 (1) or (3) or 41 (2) (b), or required to provide access to information, files or records under section 27 (2) (c), and the lawyer objects to producing or providing access to a document on the grounds that the document is confidential and that a client objects to its disclosure, the document must be sealed without inspection or copying and placed into the custody of [repealed] [47]~~
- ~~(a) any member in good standing of the society acceptable to both the lawyer and the society, or~~
- ~~(b) a sheriff.~~
- ~~(2) If a document is sealed under subsection (1), the lawyer must provide the society with the name and address of the client whose document it is.~~
- ~~(3) The person who has custody of a sealed document must return the document to the lawyer unless within 30 days the society delivers to the person having custody~~
- ~~(a) a written waiver of confidentiality signed by the client, or~~
- ~~(b) the executive director's certification that the client has been contacted and has given an oral waiver of confidentiality.~~
- ~~(4) If subsection (3) (a) or (b) applies, the person who has custody must deliver the document to the executive director.~~
- ~~(5) A judge or master of the Supreme Court may, on application,~~
- ~~(a) extend the time period referred to in subsection (3),~~
- ~~(b) if the client cannot be located, order that the sealed document be delivered to the society on conditions as to notice or substitutional service that the judge or master considers appropriate, and~~
- ~~(c) examine the sealed document and any affidavit evidence that the judge or master considers relevant, and~~
- ~~(i) if the judge or master considers that the document should not be disclosed, ensure that it is resealed and order the person who has custody to return the document to the lawyer, or~~
- ~~(ii) if the judge or master considers that the document should be disclosed, order the person who has custody to deliver the document to the executive director, subject to any restrictions or conditions that the judge or master considers appropriate.~~

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Service

90 The benchers may make rules respecting service of documents under this Act.

Law society insurance

- 91 (1) The benchers may purchase and maintain insurance protecting the society, the benchers, officers and employees of the society and former benchers, officers and employees against liability arising out of the operations or activities of the society and providing for indemnity with respect to any claims arising out of acts done or not done by those individuals in good faith while acting or purporting to act on behalf of the society.
- (2) The benchers may enter into, on behalf of members, contracts of life, accident, income replacement and any other type of insurance that they consider will benefit the members.

Legal archives

- 92 (1) The benchers may make rules permitting a lawyer or law firm to deposit records in the possession of the lawyer or law firm in an archives, library or records management office in Canada. [48]
- (2) Rules made under this section may provide for
- (b) the restrictions or limitations on public access that the lawyer or law firm may attach on depositing them, and [48]
 - (c) circumstances under which the lawyer or law firm cannot be liable for disclosure of confidential or privileged information arising out of the deposit. [48]

PART 11 – TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

Transitional rules

- 93 ~~(1) The benchers may make rules for the purpose of more effectively bringing into operation this Act and to obviate any transitional difficulties encountered in so doing. [repealed] [49]~~
- ~~(2) Unless earlier rescinded, a rule under subsection (1) is rescinded one year after it is made.~~

LEGAL PROFESSION AMENDMENT ACT, 2012

Transitional Provisions

Transition – special compensation fund

50 On repeal of section 31 of the *Legal Profession Act* by this Act, the benchers

- (a) must promptly deposit any monies remaining in the “fund”, as it was defined in section 31 (1) of the *Legal Profession Act* before its repeal by this Act, to the account of the insurance fund established under section 30 (6) of the *Legal Profession Act*, and
- (b) may use the monies for the purposes of the insurance programs referred to in sections 30 (2) of the *Legal Profession Act* and 30 (2.1) of the *Legal Profession Act* as enacted by this Act.

Transition – power to make rules

- 51**
- (1) The benchers may make rules for the purpose of more effectively bringing into operation the amendments made to the *Legal Profession Act* by this Act and to obviate any transitional difficulties encountered in so doing.
 - (2) Unless earlier rescinded, a rule under subsection (1) is rescinded two years after it is made.
 - (3) A rule under subsection (1) may be made retroactive to a date on or after the date this section comes into force, and if made retroactive is deemed to have been made on the specified date.
 - (4) This section is repealed 2 years after it comes into force.

