



MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2006: No. 4 December

Highlights

Law Society Rules:

- *Trust assurance* – Rules concerning standards of financial responsibility are consolidated in new Rule 3-43.1. Rules have been amended to implement the new trust assurance program. The program has two main features. The first is to conduct “compliance audits” to review the books, records and accounts of lawyers. The second is to replace the current Trust Report, signed by an accountant, with a report signed by the lawyer alone. Consequently, lawyers will not be required to file a report signed by an accountant, unless required by the Executive Director to do so. (Rules 3-43.1, 3-44, 3-45, 3-47, 3-74.1, 3-75, 3-79 and 3-79.1: see pp. 77-79, 90, 91 and 92.1.)
- *Small Firm Practice Course* – New rules require all lawyers who commence practice in a “small firm” to successfully complete the “small firm course,” and to certify to the Executive Director that the lawyer has done so within 6 months of the application of the rule to the lawyer. Breach of the requirements means the lawyer has failed to meet a minimum standard of practice and may result in a referral to the Discipline Committee. (Definition of “firm” in Rule 1, and Rules 3-18.1 and 3-18.2: see pp. 8, 10, 69 and 70.)
- *Section 39 interim suspensions* – The process under which three Benchers may suspend a member, set conditions on a member's practice or require a medical examination pursuant to s.39 of the *Legal Profession Act* and Rule 4-17 is clarified. Also, policy decisions made previously with respect to disclosure and privacy in relation to interim suspensions are implemented. (Definition of “professional conduct record” in Rule 1, and Rules 2-2, 4-17(0.1), (1), (1.11) to (1.19) and (2) to (4), 4-18.1, 4-19(1), (3), (4), (12) and (14), 4-29(1), 4-37, 4-38(1) and (2) and 4-38.1(8): see pp. 31, 99, 101, 106, 110.1 and 110.2.)
- *Miscellaneous* – The Law Society has signed on to the Territorial Mobility Agreement, which extends the National Mobility Agreement of the Federation of Law Societies to the territories, as it relates to the permanent transfer of lawyers (Rules 2-10.1 and 2-49.2: see pp. 34.1 and 53); 2007 fees and assessments are set out in Schedules 1, 2 and 3 (see pp. 129-132).

Professional Conduct Handbook: Lawyers are prohibited from participating in restrictions on future representation as part of a civil settlement (Chapter 4, Rule 7: see p. 10); minor housekeeping amendments are made to Chapter 8, Rules 1 to 10, 16 and 21 for plain language and consistency (see pp. 21-24.2).

[continued over]

Filing: Please file the enclosed sheet in your *Member's Manual* as follows:

Manual section	Existing pages to be removed	Amendment pages to be inserted
Law Society Rules	7 – 10 31 – 32 34.1 – 34.2 53 – 54 69 – 70.2 77 – 80 89 – 92.2 99 – 110.2 129 – 132	7 – 10 31 – 32 34.1 – 34.2 53 – 54 69 – 70.4 77 – 80.2 89 – 92.4 99 – 110.4 129 – 132
Professional Conduct Handbook	9 – 10 21 – 24	9 – 10 21 – 24.2

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

Updates: This amendment package updates the *Member's Manual* to **November 22, 2006**. The previous amendment package was 2006: No. 3 September.

To check that your copy of the *Manual* is up to date, please consult the contents checklist on the next page. If you have further questions about updating your *Manual*, please contact Donna Kokot in the Law Society Communications Department: telephone 604 443-5768 or toll-free in BC 1-800-903-5300, by telefax 604 646-5913 or by email to communications@lsbc.org.

Website: The *Legal Profession Act*, Law Society Rules and *Professional Conduct Handbook* can be accessed in the Publications & Forms section of the Law Society website at www.lawsociety.bc.ca in both HTML (for online use) and in PDF (for printout, including printout of *Member's Manual* replacement pages).

MEMBER'S MANUAL CONTENTS CHECKLIST

Updated to November 22, 2006

The following list of pages and tabs can be used to verify that your *Member's Manual* is complete and up to date.

Section of Manual	Pages	Dated	Section of Manual	Pages	Dated
Divider tab: LEGAL PROFESSION ACT			Text (<i>continued</i>)	89 – 92.4	[12/06]
Title page	—	—		93 – 94	[06/03]
Text	1 – 2	[12/98]		95 – 98.2	[10/05]
	3 – 4	[02/05]		99 – 110.4	[12/06]
	5 – 6	[05/04]		111 – 112	[10/05]
	7 – 10	[12/98]		113 – 114	[06/03]
	11 – 12	[06/02]		115 – 116	[01/04]
	13 – 22	[12/98]		116.1 – 116.2	[06/03]
	23 – 24	[04/00]		117 – 118	[06/05]
	25 – 32	[12/98]		119 – 120	[09/99]
	33 – 34	[04/00]		121 – 122	[12/04]
	35 – 50	[12/98]		123 – 124	[06/05]
	51 – 52	[02/05]		125 – 126	[09/06]
	53 – 54	[12/05]		127 – 128	[12/04]
	55 – 58	[12/98]		129 – 132	[12/06]
	59 – 60	[04/00]			
Divider tab: LAW SOCIETY RULES			Divider tab: PROFESSIONAL CONDUCT HANDBOOK		
Title page	—	—	Title page	—	—
Text	1 – 2	[02/05]	Table of Contents	i – iv	[12/05]
	3 – 6.2	[12/05]	Text	1 – 4	[01/93]
	7 – 10	[12/06]		5 – 6	[07/95]
	11 – 12	[09/06]		7 – 8.2	[04/03]
	13 – 14	[02/00]		9 – 10	[12/06]
	15 – 16	[12/98]		10.1 – 10.2	[06/05]
	17 – 18	[01/04]		11 – 12	[12/99]
	19 – 26	[12/98]		13 – 14	[04/03]
	27 – 28	[07/04]		15 – 16.6	[07/01]
	29 – 30	[12/98]		17 – 20	[04/03]
	31 – 32	[12/06]		20.1 – 20.2	[02/00]
	32.1 – 32.2	[09/06]		21 – 24.2	[12/06]
	33 – 34	[04/06]		25 – 26	[05/04]
	34.1 – 34.2	[12/06]		27 – 30	[04/05]
	35 – 38	[06/03]		31 – 32	[06/99]
	38.1 – 38.2	[10/03]		33 – 34	[11/95]
	38.3 – 38.4	[06/03]		35 – 36	[06/00]
	39 – 40	[01/04]		37 – 38	[12/04]
	41 – 42	[06/05]		39 – 40	[05/04]
	42.1 – 42.2	[03/04]		41 – 48	[12/04]
	43 – 44	[04/05]		49 – 52	[10/05]
	45 – 50	[04/03]		53 – 54	[05/93]
	50.1 – 50.6	[05/04]		55 – 58	[04/06]
	51 – 52	[09/06]		59 – 60	[01/93]
	53 – 54	[12/06]		61 – 66	[02/95]
	55 – 58.2	[09/06]		67 – 70	[04/00]
	59 – 60	[03/04]		71 – 72	[12/04]
	60.1 – 60.2	[05/04]	Divider tab: INSURANCE POLICIES		
	61 – 62	[12/04]	2006 Renewal Endorsement	1 – 2	[02/06]
	62.1 – 62.2	[09/06]	2005 Renewal Endorsement	1 – 2	[02/05]
	63 – 64.2	[06/05]	Policy No. LPL 04-05-01	1 – 20	[05/04]
	65 – 66	[10/03]			
	66.1 – 66.2	[03/04]	Divider tab: ARTICLING		
	67 – 68	[06/05]	Title page	—	—
	69 – 70.4	[12/06]	Text	1 – 8	[06/03]
	71 – 72	[09/06]			
	73 – 74	[12/05]	Divider tab: BENCHERS' BULLETIN		
	75 – 76	[04/05]	Divider tab: DISCIPLINE DIGEST		
	77 – 80.2	[12/06]	Divider tab: DISCIPLINE CASE DIGEST (<i>discontinued</i>)		
	81 – 84	[06/05]	Divider tab: INSURANCE ISSUES		
	85 – 86	[04/06]	Divider tab: ALERT!		
	87 – 88	[06/05]	Divider tab: MISCELLANEOUS		
	88.1 – 88.2	[04/06]			

DEFINITIONS

Definitions

1 In these Rules, unless the context indicates otherwise:

“**Act**” means the *Legal Profession Act*, S.B.C. 1998, c. 9;

“**admission program**” means the training program for articled students administered by the Society or its agents, commencing on an articled student’s enrolment start date and including the period during which the student is

(a) articled to a principal, or

(b) registered in the training course;

“**advertising**” includes letterhead, business cards and the use of paid space or time in a public medium, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public or a group of people, for the purpose of promoting professional services or enhancing the image of the advertiser;

“**applicant**” means a person who has applied under Part 2 for enrolment as an articled student, for call and admission or for reinstatement;

“**articled student**” means a person who is enrolled in the admission program;

“**articling agreement**” means a contract in a form approved by the Credentials Committee executed by an applicant for enrolment and his or her prospective principal;

“**articling start date**” means the date on which an articled student begins employment with his or her principal;

“**articling term**” means the 9 month period referred to in Rule 2-32;

“**Bench**” does not include the Attorney General unless expressly stated;

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

“**company**” means a company as defined in the *Business Corporations Act*;

“**complainant**” means a person who has delivered a complaint about a lawyer or a law corporation to the Society under Rule 3-2;

“**complaint**” means an allegation that a lawyer or a law corporation has committed a discipline violation;

“**conduct unbecoming a lawyer**” includes any matter, conduct or thing that is considered, in the judgment of the Benchers or a panel,

(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;

“**costs**” includes costs assessed under Rule 3-18 or 3-74.1 or Part 5;

“**disbarred lawyer**” means a person to whom section 15(3) of the Act applies;

LAW SOCIETY RULES

“discipline violation” means any of the following:

- (a) professional misconduct;
- (b) conduct unbecoming a lawyer;
- (c) a breach of the Act or these Rules;
- (d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;
- (e) conduct that would constitute professional misconduct, conduct unbecoming a lawyer or a contravention of the Act or these Rules if done by a lawyer;

“enrolment start date” means the date on which an articulated student’s enrolment in the admission program becomes effective;

“Executive Committee” means the Committee elected under Rule 1-39;

“Executive Director” includes a person designated by the Executive Director to perform any of the duties assigned to the Executive Director in these Rules;

“firm” includes one lawyer or two or more lawyers practising together, including in the following arrangements:

- (a) a sole proprietorship;
- (b) a partnership, including a limited liability partnership or a partnership of law corporations;
- (c) an arrangement for lawyers to share certain common expenses but otherwise practise as independent practitioners;
- (d) a law corporation;
- (e) a public body such as government or a Crown corporation;
- (f) a corporation that is not a law corporation, or other private body;

[amended 10/06]

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

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

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

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

“general funds” means funds other than trust funds, received by a lawyer in relation to the practice of law;

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

DEFINITIONS

“insolvent lawyer” means a lawyer who

- (a) is the respondent of a petition for a receiving order under section 43,
 - (b) has made an assignment of all his or her property for the general benefit of the lawyer’s creditors under section 49,
 - (c) has made a proposal under section 50 or 66.11,
 - (d) has filed a notice of intention to make a proposal under section 50.4, or
 - (e) has applied for a consolidation order under section 219
- of the *Bankruptcy and Insolvency Act*, S.C. 1992, c. 27;

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

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

“investigate” includes authorizing an investigation and continuing an investigation in progress;

“law clerk” means a law clerk employed by a judge appointed under section 96 of the *Constitution Act, 1867*, or a judge of the Supreme Court of Canada, the Federal Court of Canada or the Tax Court of Canada;

“lawyer” means a member of the Society;

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

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

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

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

“panel” means a panel established in accordance with Part 5;

“practice review” means an investigation into a lawyer’s competence to practise law ordered under Rule 3-12(3)(d) or 3-13(1);

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

LAW SOCIETY RULES

“practitioner of foreign law” means a person qualified to practise law in a country other than Canada or in an internal jurisdiction of that country, who gives legal advice in British Columbia respecting the laws of that country or of the internal jurisdiction in which that person is qualified;

“principal” means a lawyer who is qualified to employ and employs an articulated student;

“professional conduct record” includes the following information respecting a lawyer:

- (a) an order under Rule 2-30(4), prohibiting the lawyer from acting as a principal for an articulated student;
- (b) any conditions or limitations of practice or articles accepted or imposed under section 19(2) or 22(3) of the Act;
- (c) a decision by a panel or the Benchers to reject an application for enrolment, call and admission or reinstatement;
- (d) recommendations made by the Practice Standards Committee under Rule 3-14;
- (e) conditions of practice imposed by the Credentials Committee under Rule 2-59;
- (f) action taken under Rule 4-17, until final disposition of a citation, unless rescinded under Rule 4-19;
- (g) an admission accepted by the Discipline Committee under Rule 4-21;
- (h) an admission and consent to disciplinary action accepted by a hearing panel under Rule 4-22;
- (i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-9, and any written dispute of that report considered by the Committee;
- (j) a decision made under section 38(4)(b) or (c) of the Act;
- (k) an action taken under section 38(5) of the Act;
- (l) an action taken by the Benchers under section 47 of the Act;
- (m) an action taken by the Discipline Committee under Rule 3-46;
- (n) an action taken by the Benchers under Rule 4-40(1);
- (o) a payment made under section 31 of the Act on account of misappropriation or wrongful conversion by the lawyer;
- (p) an order for costs made against the lawyer under Part 5;
- (q) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the Act or these Rules, including a predecessor of either;
- (r) the outcome of an appeal taken by the lawyer under section 48 of the Act;
- (s) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

[amended 10/06]

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Division 1 – Practice of Law

Members

Categories of membership

2-1 The following are the categories of members of the Society:

- (a) practising lawyers, as defined in section 1 of the Act;
- (b) retired members;
- (c) non-practising members.

Member in good standing

2-2 A member of the Society is a member in good standing unless suspended under section 38(5)(d) of the Act or under Rules 2-77(2), 3-46(4), 3-74.1, 3-79.1, 4-17 or 4-40.

[amended 10/06]

Non-practising members

2-3 (1) Any member of the Society in good standing may become a non-practising member by

- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
- (b) paying the application fee specified in Schedule 1 and a prorated annual fee for non-practising members as provided in Schedule 3.

(2) Non-practising members must pay the annual fee specified in Schedule 1 by the preceding November 30.

[(2) amended 07/04]

Retired members

2-4 (1) A member of the Society in good standing who has done one of the following qualifies to become a retired member:

- (a) reached the age of 55 years;
- (b) been a member of the Society in good standing for 20 of the previous 25 years;
- (c) engaged in the full-time active practice of law for 20 of the previous 25 years.

(2) A lawyer who qualifies under subrule (1) may become a retired member by

- (a) undertaking in writing to the Executive Director not to engage in the practice of law until released from the undertaking, and
- (b) paying the application fee specified in Schedule 1 and the prorated annual fee for retired members as provided in Schedule 3.

LAW SOCIETY RULES

- (3) Retired members must pay the annual fee specified in Schedule 1 by the preceding November 30.
- (4) The Benchers may, by resolution, waive payment of the annual fee by a retired member or group of retired members.

[(1) and (3) amended, (4) added 07/04]

Release from undertaking

- 2-4.1** (1) A retired or non-practising member may apply for release from an undertaking given under Rule 2-3 or 2-4 by delivering to the Executive Director an application in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society.
- (2) The Executive Director must not grant a release from undertaking under this Rule unless satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

[added 06/06]

Certificates and permits

- 2-5** The Executive Director may approve the form of
- (a) practising certificate issued under section 23 of the Act,
 - (b) retired membership certificate issued under Rule 2-4,
 - (c) non-practising membership certificate issued under Rule 2-3,
 - (d) practitioner of foreign law permit issued under Rule 2-18, and
 - (e) inter-jurisdictional practice permit issued under Rule 2-12.

[amended 11/99]

Member information

Annual practice declaration

- 2-6** (1) In this Rule, “**declaration**” means the Annual Practice Declaration in a form approved by the Executive Committee.
- (2) A practising lawyer must complete and deliver a declaration to the Executive Director in each calendar year.
- (2.1) A declaration is not delivered under this Rule unless it is
- (a) complete to the satisfaction of the Executive Director,
 - (b) received by the Executive Director by the date set by the Executive Director, and
 - (c) signed by the practising lawyer.
- (3) The Executive Director must not issue a practising certificate to a lawyer who fails to deliver a declaration as required under this Rule, unless the Credentials Committee directs otherwise.

[(2) and (3) amended, (2.1) added 09/03]

“reciprocating governing body”

- (a) means a governing body that has signed the National Mobility Agreement, and adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement, and
- (b) in respect of Rule 2-49.2 before January 1, 2012, includes a governing body that has signed the Territorial Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the Territorial Mobility Agreement;

“resident” has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada);

“Territorial Mobility Agreement” means the 2006 Territorial Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time.

[added 11/99; amended effective 07/03; amended 11/06]

Inter-jurisdictional practice without a permit

- 2-10.2** (1) Subject to the other requirements of this Rule, a visiting lawyer may provide legal services without a permit
- (a) in the case of a visiting lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, for a maximum of 100 business days in any calendar year, or
 - (b) in all other cases, on not more than 10 legal matters and for not more than 20 business days in total during any 12-month period.
- (2) A visiting lawyer must not hold himself or herself out or allow himself or herself to be held out as willing or qualified to provide legal services, except as a visiting lawyer.

LAW SOCIETY RULES

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PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

- (b) completing the requirements under Rule 2-49.2(3), if the lawyer
 - (i) has practised law full-time in British Columbia for 2 years, or the equivalent in part-time practice, immediately preceding the application,
 - (ii) is entitled to practise law in the jurisdiction of a reciprocating governing body of which the applicant is a member, or
 - (iii) was, when called and admitted in British Columbia, entitled to practise law in the jurisdiction of a governing body that is now a reciprocating governing body, of which the applicant was a member.

[added 11/99; (2) and (3) amended, (4) added 07/04]

Transfer under National Mobility Agreement and Territorial Mobility Agreement

- 2-49.2** (1) This Rule applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a reciprocating governing body of which the applicant is a member.
- (2) An applicant under this Rule must fulfil all of the requirements in Rule 2-49 for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examination.
- (3) To qualify for call and admission, an applicant under this Rule must certify in a prescribed form that he or she has reviewed and understands all of the materials reasonably required by the Executive Director.
- (4) A lawyer called and admitted under this Rule has no greater rights as a member of the Society than
- (a) the lawyer has as a member of the governing body of his or her home jurisdiction, or
 - (b) any other member of the Society in similar circumstances.

[added effective 07/03; heading amended 11/06]

Consideration of application for call and admission

- 2-50** (1) The Executive Director must consider an application for call and admission by a person meeting the requirements under this division, and may conduct or authorize any person to conduct an investigation concerning the application.
- (2) On an application for call and admission, the Executive Director may
- (a) authorize the call and admission of the applicant without conditions or limitations, or
 - (b) refer the application to the Credentials Committee.
- (3) When an application is referred to the Credentials Committee under subrule (2), the Committee may
- (a) authorize the call and admission of the applicant without conditions or limitations,

LAW SOCIETY RULES

- (b) authorize the call and admission of the applicant with conditions or limitations on the practice of the applicant, if the applicant consents in writing to those conditions or limitations, or
- (c) order a hearing.

Barristers and solicitors' roll and oath

- 2-51** (1) The Executive Director must maintain the barristers and solicitors' roll in paper or electronic form, or a combination of both.
- (2) Every lawyer who is called to the Bar of British Columbia and admitted as a solicitor of the Supreme Court must,
- (a) before beginning the practice of law, take the barristers and solicitors' oath in a form approved by the Benchers before a judge of the Provincial Court or a superior court in British Columbia or before a practising lawyer, and
 - (b) be presented in open court before one or more of the judges of the Supreme Court.
- (3) The Executive Director must enter in the barristers and solicitors' roll the full names of all persons who are called as barristers and admitted as solicitors.
- (4) On proof that an applicant who has otherwise qualified for call and admission has taken the oath required under subrule (2)(a), the Executive Director must issue to the applicant a practising certificate or a non-practising certificate, as the case may be.
- (5) The Executive Director must not renew a practising certificate issued under subrule (4) unless the lawyer has been presented in open court as required under subrule (2)(b).
- (6) As an exception to subrule (5), the Executive Director may renew a certificate issued under subrule (2)(b) within four months of its expiry date.

[(1) and (2) amended, (4) to (6) added 11/99]

Reinstatement

Reinstatement of a former lawyer

- 2-52** (1) A former lawyer may apply for reinstatement as a member of the Society by delivering the following to the Executive Director:
- (a) an application for reinstatement in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
 - (b) the appropriate reinstatement fee specified in Schedule 1.

PART 3 – PROTECTION OF THE PUBLIC

- (2) A lawyer who is ordered by the Practice Standards Committee, under subrule (1), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (3) A lawyer who has not paid the amount owing under subrule (1) by the date set or extended by the Practice Standards Committee is in breach of these Rules, and if any part of the amount owing remains unpaid by the date set in Rule 2-70, must not engage in the practice of law unless the Benchers order otherwise.

Division 2.1 – Education

Definition and application

3-18.1 (1) In this Division

“**small firm**” includes

- (a) a firm in which not more than 4 lawyers practise law together, and
- (b) a lawyer in an arrangement to share expenses with other lawyers who otherwise practises as an independent practitioner, except when the lawyer relies on a firm that is not a small firm to maintain trust accounting and other financial records on the lawyer’s behalf,

but does not include

- (c) a public body such as government or a Crown corporation, or
- (d) a corporation that is not a law corporation, or other private body.

“**small firm course**” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examinations and remedial work taken during or after the course of study.

- (2) This Division applies to lawyers in any of the following circumstances:
 - (a) when a lawyer begins practising in a small firm after not having done so in British Columbia for the previous 3 years or more;
 - (b) when a lawyer practising in a small firm becomes a signatory on a trust account after not having been a signatory on a trust account in British Columbia for the previous 3 years or more;
 - (c) when the Practice Standards Committee resolves that this Division applies to a lawyer.
- (3) Subject to subrule (2)(c), this Division does not apply to a lawyer who, as a member of a governing body in another Canadian jurisdiction, has practised in a small firm and been a signatory on a trust account during the previous 3 years.

[added effective 01/07]

Small firm course

- 3-18.2** (1) Within 6 months of the date on which this Division applies to a lawyer, the lawyer must
- (a) successfully complete the small firm course, and
 - (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has successfully completed the small firm course.
- (2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee.

[added effective 01/07]

Division 3 – Specialization and Restricted Practice

Advertising

- 3-19** A lawyer must not advertise any specialization, restricted practice or preferred area of practice except as permitted in the *Professional Conduct Handbook*, Chapter 14, Rules 16 to 18.

Family law mediation

- 3-20** (1) A lawyer may act as a family law mediator only if the lawyer has
- (a) engaged in the full-time practice of law for at least 3 years or the equivalent in part-time practice, and
 - (b) completed a course of study in family law mediation approved by the Practice Standards Committee.
- (2) The Practice Standards Committee may allow a lawyer with special qualifications or experience to act as a family law mediator without qualifying under subrule (1)(a).

Division 4 – Professional Liability Insurance

Compulsory liability insurance

- 3-21** (1) A lawyer must maintain professional liability insurance on the terms and conditions offered by the Society through the Lawyers Insurance Fund and pay the insurance fee under Rule 3-22, unless the lawyer is exempt or ineligible under Rule 3-25.
- (2) A lawyer is bound by the terms and conditions of professional liability insurance maintained under subrule (1).
- (3) As soon as practicable, the Executive Director must notify all governing bodies of any change to compulsory professional liability insurance under this Division that affects the limits of liability or scope of coverage.

[(3) added 11/99]

Annual insurance fee

- 3-22** (1) The insurance fee to be paid under section 23(1)(c) of the Act is calculated as follows:
- (a) the appropriate base assessment as specified in Schedule 1; plus
 - (b) any surcharge for which the lawyer is liable under Rule 3-26; minus
 - (c) any credit to which the lawyer is entitled under Rule 3-24.
- (2) If a lawyer undertakes, in a form approved by the Executive Committee, to engage in the practice of law and associated activities for an average of 25 hours or less per week, the applicable base assessment is the part-time insurance fee specified in Schedule 1.
- (3) Subject to subrule (6), a lawyer is not eligible to pay the part-time insurance fee under subrule (2) for 5 years in practice after the Society pays an indemnity claim in respect of the lawyer.
- (4) For a lawyer who does not give the undertaking referred to in subrule (2), the appropriate base assessment is the full-time insurance fee specified in Schedule 1.
- (5) For the purpose of this Rule,
- (a) the average number of hours per week that a lawyer engages in the practice of law and associated activities is calculated over successive 6 months periods, beginning on the effective date of the undertaking referred to in subrule (2), and
 - (b) “**associated activities**” includes practice management, administration and promotion and voluntary activities associated with the practice of law.
- (6) The Executive Director may, in the Executive Director’s discretion, reduce the time that a lawyer is not eligible under subrule (3) to pay the part-time insurance fee or, in extraordinary circumstances, allow the lawyer to pay the part-time insurance fee despite subrule (3).

[(3) amended, (6) added 06/03]

Payment of annual insurance fee by instalments

- 3-23** (1) A lawyer must pay the insurance fee in two equal annual instalments as follows:
- (a) the first instalment on or before November 30 of the year preceding the year for which it is paid;
 - (b) the second instalment on or before June 30 of the year for which it is paid.
- (2) A lawyer who fails to pay the second instalment by the date prescribed in subrule (1) must immediately cease the practice of law in accordance with section 30(7) of the Act and surrender to the Executive Director his or her practising certificate and any proof of professional liability insurance issued by the Society.

[(2) added 05/00; (1) amended 07/04]

Insurance fee credit

- 3-24** (1) The Benchers may approve an annual insurance fee credit and set the conditions that a lawyer must meet to be entitled to the credit.
- (2) When a lawyer is entitled to an annual insurance fee credit, the first instalment of the insurance fee payable by the lawyer is reduced by the amount of the credit.

Exemption from liability insurance

- 3-25** (1) A lawyer is exempt from the requirement to maintain professional liability insurance and pay the insurance fee if the lawyer is
- (a) not engaged in the practice of law anywhere in his or her capacity as a member of the Society, or
 - (b) employed by one of the following and is not engaged in the practice of law except in the course of that employment:
 - (i) a government department;
 - (ii) a corporation other than a law corporation;
 - (iii) a society, trade union or a similar organization.
- (2) A lawyer is not exempt under subrule (1)(b) if the lawyer engages in the practice of law in any way other than as described in those provisions.
- (3) Subrule (4) applies to a lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the lawyer is a member.
- (4) A lawyer may apply to the Executive Director for exemption from the requirement to maintain professional liability insurance and pay the insurance fee, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer
- (a) is resident, and
 - (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in British Columbia and extends to the lawyer's practice in British Columbia.

[(3) and (4) added effective 07/03]

Deductible, surcharge and reimbursement

- 3-26** (1) If a deductible amount has been paid under the Society's insurance program on behalf of a lawyer, the lawyer must reimburse the Society in full.
- (2) If indemnity has been paid under the Society's insurance program, the lawyer on whose behalf it is paid must
- (a) pay the insurance surcharge specified in Schedule 1 for each of the next 5 years in which the lawyer is a member of the Society and not exempt from the insurance fee, and

PART 3 – PROTECTION OF THE PUBLIC

- (b) if the payment was made under Part B of the policy of professional liability insurance, reimburse the Society in full on demand, for all amounts paid under Part B.
- (3) The Executive Director may, in the Executive Director's discretion, extend the time for a lawyer to reimburse the Society under subrule (1) or (2), or pay a surcharge under subrule (2) or, in extraordinary circumstances, waive payment altogether.

[heading, (2) and (3) amended 03/05; (2) amended 07/06]

Application for insurance coverage

- 3-27** (1) A lawyer may apply for insurance coverage by delivering to the Executive Director
- (a) an application for insurance coverage, and
 - (b) the prorated insurance fee as specified in Schedule 2.
- (2) A lawyer who is insured for part-time practice may apply for insurance coverage for full-time practice by delivering to the Executive Director
- (a) an application for full-time insurance coverage, and
 - (b) the difference between the prorated full-time insurance fee specified in Schedule 2 and any payment made for part-time insurance coverage for the current year.
- (3) The Executive Director must not grant the insurance coverage applied for under subrule (1) or (2) unless satisfied that the lawyer is not prohibited from practising law under Rule 2-57.

[(3) amended 06/06]

Confidentiality of insurance claims

- 3-27.1** (1) In this Rule, “**claim**” means a claim or potential claim reported under the policy of professional liability insurance.
- (2) No one is permitted to disclose any information or records associated with a claim.
- (3) Despite subrule (2), the Executive Director may do any of the following:
- (a) disclose information about a claim with the consent of the lawyer;
 - (b) if a claim has become known to the public, disclose
 - (i) the existence of the claim,
 - (ii) its subject matter,
 - (iii) its status, including, if the claim is closed, the general basis on which it was closed, and
 - (iv) any additional information necessary to correct inaccurate information.

LAW SOCIETY RULES

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- (2) A lawyer who has not repaid the full amount ordered paid under subrule (1)(a) by the date set or extended by the Special Compensation Fund Committee is in breach of these Rules and, if any part of the amount owing remains unpaid by December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer.

Division 6 – Financial Responsibility

Application

3-43 This Division applies to the following as it does to a lawyer, with the necessary changes and so far as it is applicable:

- (a) a non-practising member;
- (b) a retired member;
- (c) an articulated student;
- (d) a practitioner of foreign law;
- (e) a visiting lawyer permitted to practise law in British Columbia under Rules 2-10.2 to 2-12;
- (f) a law corporation.

[amended 11/99]

Standards of financial responsibility

3-43.1 Instances in which a lawyer has failed to meet a minimum standard of financial responsibility include, but are not limited to, the following:

- (a) a lawyer against whom a monetary judgment is entered and who does not satisfy the judgment within 7 days after the date of entry;
- (b) an insolvent lawyer;
- (c) a lawyer who does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b);
- (d) a lawyer who does not deliver a trust report as required under Rule 3-72 or 3-75(4);
- (e) a lawyer who does not report and pay the trust administration fee to the Society as required under Rule 2-72.2.

[added 09/06]

Failure to satisfy judgment

3-44 (1) A lawyer against whom a monetary judgment is entered and who does not satisfy the judgment within 7 days after the date of entry must immediately notify the Executive Director in writing of

- (a) the circumstances of the judgment, including whether the judgment creditor is a client or former client of the lawyer, and
- (b) his or her proposal for satisfying the judgment.

LAW SOCIETY RULES

- (2) Monetary judgments referred to in subrule (1) include
 - (a) an order nisi of foreclosure,
 - (b) any certificate, final order or other requirement under a statute that requires payment of money to any party, and
 - (c) a garnishment order under the *Income Tax Act* (Canada) if a lawyer is the tax debtor.
- (3) Subrule (1) applies whether or not any party has commenced an appeal from the judgment.
- (4) If a lawyer fails to deliver a proposal under subrule (1)(b) that is adequate in the discretion of the Executive Director, the Executive Director may refer the matter to the Discipline Committee.

[(2) amended 12/03; (4) added 05/05; (1) amended 09/06]

Insolvent lawyer

3-45 (1) [rescinded]

- (2) A lawyer who becomes an insolvent lawyer must immediately
 - (a) notify the Executive Director in writing that he or she has become an insolvent lawyer, and
 - (b) deliver to the Executive Director
 - (i) a copy of all material filed in the proceedings referred to in the definition,
 - (ii) all information about any debts to a creditor who is or has been a client of the lawyer,
 - (iii) all information about any debt that arose from the lawyer's practice of law, and
 - (iv) any other information, including copies of any books, records, accounts and other documents and information in his or her possession that are relevant to the proceedings referred to in the definition that the Executive Director may request.
- (3) An insolvent lawyer who becomes bankrupt has conducted himself or herself in a manner unbecoming a lawyer in either of the following circumstances:
 - (a) the lawyer's wilful neglect of creditors, financial irresponsibility or personal extravagance contributed to the bankruptcy;
 - (b) the lawyer fails or refuses to take reasonable steps to obtain a discharge from the bankruptcy within a reasonable time.
- (4) An insolvent lawyer must not operate a trust account except with
 - (a) the permission of the Executive Director, and
 - (b) a second signatory who is a practising lawyer, not an insolvent lawyer and approved by the Executive Director.

PART 3 – PROTECTION OF THE PUBLIC

- (5) Any lawyer who becomes an undischarged bankrupt must resign any directorships in corporations, including law corporations, in accordance with section 124 of the *Business Corporations Act*.

[(2) and (3) amended 12/03; (5) amended 05/04; (1) rescinded 09/06]

Consideration by Discipline Committee

- 3-46** (1) After receiving the information and material required under Rule 3-45(2), the Executive Director may refer an insolvent lawyer to the Discipline Committee.
- (2) The Executive Director may refer any matter for decision under this Division to the Discipline Committee.
- (3) When a matter is referred to the Discipline Committee under this Division, the Committee may make or authorize any investigations it considers desirable.
- (4) The Discipline Committee may suspend or impose conditions and limitations on the practice of a lawyer that it considers does not meet the standards of financial responsibility established under section 32 of the Act.
- (5) The Discipline Committee may remove the suspension or vary or remove conditions and limitations imposed under subrule (4).
- (6) The Discipline Committee must not suspend a lawyer or impose conditions and limitations on the practice of a lawyer under subrule (4) until it has notified the lawyer of the reasons for the proposed action and given the lawyer a reasonable opportunity to make representations about those reasons.
- (7) When conditions or limitations are imposed on the practice of a lawyer under subrule (4), the Executive Director may disclose the fact that the conditions or limitations apply and the nature of the conditions or limitations.
- (8) If the Executive Director discloses the existence of conditions or limitations under subrule (7) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the conditions or limitations cease to be in force.

[(1) amended 12/03; heading, (1), (3) and (6) amended 05/05; (7) and (8) added 06/05]

Division 7 – Trust Accounts and Other Client Property

Definitions

3-47 In this Division,

“**cash**” means

- (a) coins referred to in section 7 of the *Currency Act* (Canada),
- (b) notes intended for circulation in Canada issued by the Bank of Canada under the *Bank of Canada Act*, and
- (c) coins or bank notes of countries other than Canada;

“**cash receipt book**” means the book of duplicate receipts referred to in Rule 3-61.1(1);

LAW SOCIETY RULES

“**client**” includes any beneficial owner of funds or valuables received by a lawyer in connection with the lawyer’s practice;

“**compliance audit**” means an examination of a lawyer’s books, records and accounts and the answering of questions by lawyers ordered under Rule 3-79;

“**public body**” means

- (a) a ministry or department of the government of Canada or of a province or territory, or
- (b) a local public body as defined in paragraphs (a) to (c) of the definition in Schedule 1 to the *Freedom of Information and Protection of Privacy Act*;

“**valuables**” means anything of value that can be negotiated or transferred, including but not limited to

- (a) securities,
- (b) bonds,
- (c) treasury bills, and
- (d) personal or real property.

[heading and rule amended 12/03; amended effective 05/04; amended 06/05; 09/06]

Personal responsibility

3-48 (1) A lawyer must account in writing to a client for all funds and valuables received on behalf of the client.

(2) In this Division, the responsibilities of a lawyer may be fulfilled by the lawyer’s firm.

(3) A lawyer is personally responsible to ensure that the duties and responsibilities under this Division are carried out, including when the lawyer

- (a) is authorized by the firm or lawyer through which the lawyer practises law to open, maintain, or deal with funds in a trust or general account, or
- (b) delegates to another person any of the duties or responsibilities assigned to a lawyer under this Division.

[(1) amended 12/03]

Designated savings institutions

3-49 Subject to Rule 3-50, a savings institution is a designated savings institution within the meaning of section 33(3)(b) of the Act if it has an office in British Columbia accepting demand deposits and is insured by

- (a) the Canada Deposit Insurance Corporation, or
- (b) the Credit Union Deposit Insurance Corporation of British Columbia.

[amended, (2) and (3) rescinded 12/03]

PART 3 – PROTECTION OF THE PUBLIC

Removal of designation

- 3-50** (1) The Executive Committee may declare, by resolution, that a savings institution is not or ceases to be a designated savings institution within the meaning of section 33(3)(b) of the Act.
- (2) A lawyer who holds trust funds in a savings institution that is not or ceases to be a designated savings institution must immediately transfer those funds into a designated savings institution.
- (3) Subrule (2) does not apply if the lawyer has written instructions from the client to the contrary.

Deposit of trust funds

- 3-51** (1) Subject to subrule (3) and Rule 3-54, a lawyer who receives trust funds must deposit the funds in a pooled trust account as soon as practicable.
- (2) [rescinded]
- (3) Despite subrule (1), a lawyer who receives trust funds with instructions to place the funds otherwise than in a pooled trust account may place the funds in a separate trust account in accordance with section 62(5) of the Act and Rule 3-53.
- (4) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.

[(1) and (3) amended, (2) rescinded 02/06]

LAW SOCIETY RULES

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PART 3 – PROTECTION OF THE PUBLIC

- (3) The Executive Director must make a modification under subrule (1) or a cancellation or amendment of a modification under subrule (2) in writing.
- (4) A lawyer who receives a written modification from the Executive Director under subrule (1) must retain it and any amendment under subrule (2) for as long as
 - (a) the books, records and accounts to which it relates are retained, or
 - (b) the lawyer would have been required to retain the books, records and accounts to which it relates, but for the modification and any amendment.

[(1) amended 12/03]

Annual CDIC report

- 3-70** A lawyer who holds pooled trusts funds in a designated savings institution insured by the Canada Deposit Insurance Corporation must file an annual report for each account maintained by the lawyer with that institution in accordance with section 3(3) of the Schedule to the *Canada Deposit Insurance Corporation Act*, so that each client's funds, rather than the account itself, are insured up to the limit of CDIC insurance.

Lawyer's right to claim funds

- 3-71** Nothing in this Division deprives a lawyer of any recourse or right, whether by way of lien, set-off, counterclaim, charge or otherwise, against
 - (a) funds standing to the credit of a client in a trust account, or
 - (b) valuables held for a client.

[amended 12/03]

Trust report

- 3-72** (1) Subject to subrules (4) and (6), a lawyer must deliver to the Executive Director completed trust reports for reporting periods of 12 months covering all the time that the lawyer is a member of the Society.
- (2) The date on which a firm ceases to practise law is the end of a reporting period.
 - (3) A lawyer must deliver a completed trust report to the Executive Director within 3 months of the end of each reporting period.
 - (4) On a written request made before the due date of a trust report, the Executive Director may allow a lawyer to submit a trust report covering a time period other than 12 months.
 - (5) A trust report delivered to the Executive Director under this Rule must
 - (a) be in a form approved by the Discipline Committee,
 - (b) be complete to the satisfaction of the Executive Director, and
 - (c) include all signatures required in the form.

LAW SOCIETY RULES

- (6) A non-practising or retired lawyer or a practising lawyer who is exempt under Rule 3-25 from the requirement to maintain professional liability insurance and pay the insurance fee, is not required to file a trust report for a reporting period of 12 months during which the lawyer has
- (a) not received any funds in trust,
 - (b) not withdrawn any funds held in trust, and
 - (c) complied with this Division.

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

3-73 [rescinded 02/06]

Late filing of trust report

- 3-74** (1) A lawyer who does not deliver a trust report as required under Rule 3-72 or 3-75(4) is in breach of these Rules.
- (2) A lawyer who fails to deliver a trust report by the date required under Rule 3-72 or 3-75(4) is deemed to have been in compliance with the Rules during the period of time that the lawyer was late in delivering the report if the lawyer delivers the following to the Executive Director within 30 days of the due date:
- (a) the required report;
 - (b) the late fee specified in Schedule 1.
- (3) A lawyer who does not deliver a trust report for 30 days after it is required under Rule 3-72 or 3-75(4) is liable to an assessment of \$400 per month or part of a month until the report is delivered.
- (4) When there are special circumstances, the Discipline Committee may, in its discretion, waive payment of all or part of an assessment made under this Rule.

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

Failure to file trust report

3-74.1 (1) [rescinded]

- (2) Subject to subrules (3) and (4), a lawyer who does not deliver a trust report under Rule 3-72 or 3-75(4) for 60 days after it is required, is suspended until the report is completed to the satisfaction of the Executive Director and delivered as required.
- (2.1) A trust report is not delivered for the purposes of subrules (1) and (2) unless all explanations of exceptions required by the Executive Director are delivered to the Executive Director.

PART 3 – PROTECTION OF THE PUBLIC

- (3) When there are special circumstances, the Discipline Committee may, in its discretion, order that
 - (a) a lawyer not be suspended under subrule (2), or
 - (b) a suspension under subrule (2) be delayed for a specified period of time.
- (4) At least 30 days before a suspension under subrule (2) can take effect, the Executive Director must deliver to the lawyer notice of the following:
 - (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (3) and the deadline for making such an application before the suspension is to take effect.
- (5) If a lawyer has not delivered a trust report after it is required, the Executive Director may do either or both of the following:
 - (a) engage or assign a qualified accountant to complete the trust report;
 - (b) order an examination of the lawyer's books, records and accounts under Rule 3-79.
- (6) The Discipline Committee may order that a lawyer pay to the Society all or part of the costs associated with the trust report referred to in subrule (5)(a).
- (7) A lawyer who is ordered by the Discipline Committee, under subrule (6), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (8) A lawyer who has not paid the amount owing under subrule (6) by the date set or extended by the Discipline Committee is in breach of these Rules, and if any part of the amount owing remains unpaid by the date set in Rule 2-70, must not engage in the practice of law unless the Benchers order otherwise.

[added effective 08/03; heading, (1), (2), (5) and (6) amended 12/03; (1) and (2) amended, (2.1) added 02/06; (1) rescinded, (2) amended 09/06]

Report of accountant when required

- 3-75** (1) The Executive Director may require a lawyer who is required to deliver a trust report under Rule 3-72 or a lawyer or former lawyer who is required to deliver a trust report under Rule 3-78 to deliver as part of the report required under the relevant Rule, an accountant's report completed and signed by a person in public accounting practice who is permitted to perform audit engagements by
- (a) the Institute of Chartered Accountants of British Columbia, or
 - (b) the Certified General Accountants Association of British Columbia.
- (1.1) The Executive Director must specify the matters to be included in the accountant's report referred to in subrule (1) and the time within which it must be delivered to the Executive Director.

LAW SOCIETY RULES

- (2) Despite subrule (1), an accountant's report must not be completed and signed by any person determined by the Executive Director to be ineligible to do so.
- (3) Despite subrule (1), on application by the lawyer, the Executive Director may allow a person without the credentials referred to in subrule (1) to complete and sign an accountant's report if the Executive Director is satisfied that
 - (a) the person has adequate accounting credentials, and
 - (b) no person qualified under subrule (1) is reasonably available to the lawyer.
- (4) The Executive Director may at any time require a lawyer whose accountant's report was completed and signed by a person without the credentials referred to in subrule (1) or ineligible under subrule (2) to deliver a new accountant's report completed and signed by a person who has the qualifications specified by the Executive Director.
- (5) If the Executive Director requires a new accountant's report under subrule (4), the lawyer must deliver the report within 3 months of notice of the requirement being sent by the Executive Director.

[amended 12/03; heading and rule amended, (1.1) added 09/06]

3-76 [rescinded 12/03]

Exceptions and qualifications

- 3-77** (1) The trust report of a lawyer who has not complied with this Division must state the exceptions and qualifications, together with an explanation of the circumstances of and reasons for them.
- (2) The Executive Director may, following a review of a trust report with exceptions and qualifications, accept the lawyer's explanation and reasons
 - (a) without condition, in which case the lawyer is deemed to have complied with Rule 3-72, or
 - (b) subject to the lawyer fulfilling accounting conditions specified by the Executive Director, in which case, on fulfilment of those conditions, the lawyer is deemed to have complied with Rule 3-72.

[amended 12/03]

Former lawyers

- 3-78** (1) A former lawyer must deliver a trust report as required under Rule 3-72 for any period during which the former lawyer was a member of the Society.
- (2) If a former lawyer does not deliver a trust report as required under subrule (1), an assessment under Rule 3-74 applies.

[(3) rescinded effective 08/03; amended 12/03; 02/06]

Compliance audit of books, records and accounts

- 3-79** (1) The Executive Director may at any time order a compliance audit of the books, records and accounts of a lawyer for the purpose of determining whether the lawyer meets standards of financial responsibility established under this Part, including but not limited to maintaining books, records and accounts in accordance with this Division.
- (2) When an order is made under subrule (1),
- (a) the Executive Director must designate one or more persons to conduct the compliance audit, and
 - (b) on notification of the order, the lawyer concerned must immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and must provide any explanations required by the person designated under paragraph (a) for the purpose of completing the compliance audit.

[heading and rule amended 09/06]

Failure to produce records on compliance audit

- 3-79.1** (1) Subject to subrules (2) and (3), a lawyer who does not produce and permit the copying of records and other evidence or provide explanations as required under Rule 3-79(2)(b) is suspended until the records are produced, copying permitted and explanations provided to the satisfaction of the Executive Director.
- (2) When there are special circumstances, the Discipline Committee may, in its discretion, order that
- (a) a lawyer not be suspended under subrule (1), or
 - (b) a suspension under this Rule be delayed for a specified period of time.
- (3) At least 7 days before a suspension under this Rule can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the Discipline Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

[added 09/06]

Disposition of files, trust money and other documents and valuables

- 3-80** (1) Before leaving a firm in British Columbia, a lawyer must advise the Executive Director in writing of his or her intended disposition of all of the following that relate to the lawyer's practice in British Columbia and are in the lawyer's possession or power:
- (a) open and closed files;
 - (b) wills and wills indices;

LAW SOCIETY RULES

- (c) titles and other important documents and records;
 - (d) other valuables;
 - (e) trust accounts and trust funds.
- (2) Within 30 days after withdrawing from the practice of law in British Columbia, a lawyer or former lawyer must confirm to the Executive Director in writing that
- (a) the documents and property referred to in subrule (1)(a) to (d) have been disposed of, and any way in which the disposition differs from that reported under subrule (1),
 - (b) all trust accounts referred to in subrule (1)(e) have been closed and that
 - (i) all the balances have been
 - (A) remitted to the clients or other persons on whose behalf they were held,
 - (B) transferred to another lawyer with written instructions concerning the conditions attaching to them, or
 - (C) paid to the Society under Rule 3-82, and
 - (ii) any net interest earned on a pooled trust account has been remitted to the Foundation in accordance with this Division, and
 - (c) the lawyer or former lawyer has notified all clients and other persons for whom the lawyer is or potentially may become a personal representative, executor or trustee regarding the lawyer or former lawyer's withdrawal from practice and any change in his or her membership status.
- (2.1) A law corporation must confirm to the Executive Director as required under subrule (2) within 30 days of
- (a) cancellation of its permit under Part 9, and
 - (b) ceasing to provide legal services.
- (3) The Executive Director may, on application in writing by the lawyer, former lawyer or law corporation, extend the time limit referred to in subrule (1), (2) or (2.1) or, if in the opinion of the Executive Director it is in the public interest, relieve the lawyer, former lawyer or law corporation of any of the requirements of those subrules.
- (4) [rescinded 12/03]
- (5) On an enquiry, the Executive Director may disclose information collected under this Rule if satisfied that
- (a) the person enquiring has a bona fide reason to obtain the information, and
 - (b) disclosure of the information would not be an unreasonable invasion of anyone's privacy.

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

Division 8 – Unclaimed Trust Money

Definition

3-81 In this Division, “**efforts to locate**” means steps that are reasonable and adequate in all the circumstances, including the amount of money involved.

Payment of unclaimed trust funds to the Society

- 3-82** (1) A lawyer who has held funds in his or her trust account on behalf of a person whom the lawyer has been unable to locate for 2 years may apply to the Executive Director to pay those funds to the Society under section 34 of the Act.
- (2) A lawyer must make the application referred to in subrule (1) in writing containing all of the following information that is available to the lawyer:
- (a) the full name and last known mailing address of each person on whose behalf the funds were held;
 - (b) the exact amount to be paid to the Society in respect of each such person;
 - (c) the efforts made by the lawyer to locate each such person;
 - (d) any unfulfilled undertakings given by the lawyer in relation to the funds;
 - (e) the details of the transaction in respect of which the funds were deposited with the lawyer.
- (3) A lawyer who cannot provide all the information described in subrule (2) must advise the Executive Director of the reasons why the lawyer does not have that information and deliver to the Executive Director copies of all records in the lawyer’s power or possession that relate to the ownership and source of the funds.
- (4) If the Executive Director is satisfied that the lawyer has made appropriate efforts to locate the owner of the funds, the Executive Director may accept the funds under section 34 of the Act.
- (5) The Executive Director must account for funds received by the Society under subrule (4) separately from the other funds of the Society.

Investigation of claims

- 3-83** (1) A person may make a claim under section 34 of the Act in writing, in the form approved by the Executive Committee by delivering it to the Executive Director.
- (2) A claimant must provide the Executive Director with information and documents that the Executive Director reasonably requires.
- (3) In order to determine the validity of a claim, the Executive Director may make or authorize inquiries or further investigations that he or she considers desirable.

[(3) amended 05/04]

Adjudication of claims

- 3-84** (1) The Executive Director may
- (a) approve a claim if satisfied that the claim is valid, or
 - (b) refer the claim to the Executive Committee.
- (2) When the Executive Director refers a claim to the Executive Committee, it may, in its discretion
- (a) approve or reject a claim based on the information received under Rule 3-83,
or
 - (b) order a hearing to determine the validity of a claim.
- (3) If a hearing is ordered, the Executive Director must give the claimant reasonable notice in writing of the date, time and place of the hearing.

PART 4 – DISCIPLINE

- (2) If it is impractical for any reason to serve a citation as set out in subrule (1)(a), the President may order substituted service, whether or not there is evidence that the citation will probably reach the respondent or will probably come to the respondent's attention or that the respondent is evading service.
- (3) The President may designate another Benchers to act under subrule (2).

[amended, (2) and (3) added 09/99]

Disclosure of citation

- 4-16** (1) Once the respondent has been notified of a direction to issue a citation, the Executive Director may disclose to the public the citation and its status.
- (2) The Executive Director may disclose the outcome of a citation, including dismissal by a panel, rescission by the Discipline Committee or the acceptance of a conditional admission.
 - (3) Disclosure under this Rule may be made by means of the Society's website.
 - (4) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[(2) amended, (3) rescinded 02/03; (3) replaced, (4) added 05/03]

Interim suspension, practice conditions or medical examination

4-17 (0.1) In Rules 4-17 to 4-18.1, "**proceeding**" means the proceeding required under subrule (1.11).

- (1) If there has been a direction under Rule 4-13(1) to issue a citation, any 3 Benchers may do one or more of the following with or without notice to the respondent:
 - (a) suspend the lawyer, if the 3 Benchers consider, on the balance of probabilities, that the continued practice of the lawyer will be dangerous or harmful to the public or the lawyer's clients;
 - (b) in any case not referred to in paragraph (a), place conditions on the practice of the lawyer;
 - (c) suspend the enrolment of an articled student;
 - (d) require the respondent to
 - (i) submit to an examination by a qualified medical practitioner named by the 3 Benchers or to be named by the Chair or Vice-Chair of the Discipline Committee, and
 - (ii) instruct the qualified medical practitioner to report to the Discipline Committee on the respondent's ability to practise law or, in the case of an articled student, the respondent's ability to complete his or her articles.
- (1.1) The 3 Benchers referred to in subrule (1) must not include the Chair of the Discipline Committee.
- (1.11) Before Benchers take action under this Rule, there must be a proceeding at which 3 or more Benchers and discipline counsel must be present.

LAW SOCIETY RULES

- (1.12) The respondent and respondent's counsel may be present at a proceeding.
- (1.13) All proceedings under this Rule must be recorded by a court reporter.
- (1.14) Subject to the Act and these Rules, the Benchers present may determine the practice and procedure to be followed at a proceeding.
- (1.15) Unless the Benchers present order otherwise, the proceeding is not open to the public.
- (1.16) The respondent or discipline counsel may request an adjournment of a proceeding.
- (1.17) Rule 4-29 applies to an application for an adjournment made before the commencement of the proceeding as if it were a hearing.
- (1.18) Despite subrule (1.17), the Executive Director is not required to notify a complainant of a request made under subrule (1.16).
- (1.19) After a proceeding has commenced, the Benchers present may adjourn the proceeding, with or without conditions, to a specified date, time and place.
 - (2) An order made under subrule (1) or varied under subrule (3) is effective until the first of
 - (a) final disposition of the citation,
 - (a.1) variation or further variation under subrule (3), or
 - (b) a contrary order under Rule 4-19.
 - (3) An order made under subrule (1)(b) or (d) may be varied by the 3 Benchers, or a majority of them, on the application of the respondent or discipline counsel.
 - (4) On an application to vary an order under subrule (3),
 - (a) both the respondent and discipline counsel must be given a reasonable opportunity to make submissions in writing, and
 - (b) the 3 Benchers may allow oral submissions if, in their discretion, it is appropriate to do so.

[(1.1) added 10/01; (1) and (2) amended, (0.1), (1.11) to (1.19), (3) and (4) added 10/06]

Notification of respondent

- 4-18** When an order is made under Rule 4-17(1) without notice to the respondent, the Executive Director must immediately notify the respondent in writing, that
- (a) the action has been taken,
 - (b) the respondent is entitled, on request, to a transcript of the proceeding under Rule 4-17(1), and
 - (c) the respondent may apply under Rule 4-19 to have the order rescinded or varied.

Disclosure

- 4-18.1** (1) Unless an order has been made under Rule 4-17(1), no one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these Rules:
- (a) the fact that a Committee or an individual has referred a matter for consideration by 3 or more Benchers under Rule 4-17;
 - (b) the scheduling of a proceeding under Rule 4-17;
 - (c) the fact that a proceeding has taken place.
- (2) When an order has been made or refused under Rule 4-17(1), the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

[added 10/06]

Review of interim suspension, practice conditions or medical examination order

- 4-19** (1) If an order has been made under Rule 4-17(1), the respondent may apply in writing to the President at any time for rescission or variation of the order.
- (2) An application under subrule (1) must be heard as soon as practicable and, if the respondent has been suspended without notice, in any event not later than 7 days after the date on which it is received by the Society, unless the respondent consents to a longer time.
- (3) [rescinded]
- (4) When application is made under subrule (1), the President must appoint a new panel under Rule 4-28.
- (5) A panel appointed under subrule (4) must not include a person who
- (a) participated in the decision that authorized the issue of the citation,
 - (b) was one of the Benchers who made the order under review, or
 - (c) is part of a panel assigned to hear the citation.
- (6) A hearing under this Rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.
- (6.1) On application by anyone, the panel may make the following orders to protect the interests of any person:
- (a) an order that specific information not be disclosed;
 - (b) any other order regarding the conduct of the hearing necessary for the implementation of an order under paragraph (a).
- (7) All proceedings at a hearing under this Rule must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript of any part of the hearing that he or she was entitled to attend.

LAW SOCIETY RULES

- (8) The respondent and discipline counsel may call witnesses to testify who
 - (a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and
 - (b) are subject to cross-examination.
 - (9) If the order under Rule 4-17(1) took effect without notice to the respondent, witnesses called by discipline counsel must testify first, followed by witnesses called by the respondent.
 - (10) If subrule (9) does not apply, witnesses called by the respondent must testify first, followed by witnesses called by discipline counsel.
 - (11) The panel may
 - (a) accept a statement of agreed facts, and
 - (b) admit any other evidence it considers appropriate.
 - (12) Following completion of the evidence, the panel must
 - (a) invite the respondent and discipline counsel to make submissions on the issues to be decided by the panel,
 - (b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and
 - (c) make an order if required under subrule (13) or (14).
 - (13) If an order has been made under Rule 4-17(1) with notice to the respondent, the panel must, if cause is shown on the balance of probabilities by or on behalf of the respondent, rescind or vary the order.
 - (14) If an order has been made under Rule 4-17(1) without notice to the respondent, the panel must rescind or vary the order, unless discipline counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.
- [[6] amended, (6.1) added 09/99; (1), (4), (12) and (14) amended, (3) rescinded 10/06]

Appointment of discipline counsel

- 4-20** The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when
- (a) a direction to issue a citation is made under Rule 4-13,
 - (b) a respondent or a suspended lawyer appeals to the Court of Appeal under section 48 of the Act, or
 - (c) the Society is a respondent in any other action involving the investigation of a complaint against a lawyer or the discipline of a lawyer.

Conditional admissions

- 4-21** (1) A respondent may, at least 14 days before the date set for a hearing under this Part, tender to the Discipline Committee a conditional admission of a discipline violation.
- (2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).

PART 4 – DISCIPLINE

- (3) The Discipline Committee may, in its discretion,
 - (a) accept the conditional admission,
 - (b) accept the conditional admission subject to any undertaking that the Committee requires the respondent to give in order to protect the public interest, or
 - (c) reject the conditional admission.
- (4) If the Discipline Committee accepts a conditional admission tendered under this Rule,
 - (a) those parts of the citation to which the conditional admission applies are resolved,
 - (b) the Executive Director must
 - (i) record the respondent's admission on the respondent's professional conduct record, and
 - (ii) advise the respondent and the complainant of the disposition, and
 - (c) subject to solicitor and client privilege and confidentiality, the Executive Director may disclose the reasons for the Committee's decision.
- (5) A respondent who undertakes under this Rule not to practise law is a person who has ceased to be a member of the Society as a result of disciplinary proceedings under section 15(3) of the Act.

[(3) and (4) amended, (5) added 02/03; (4) amended 05/03]

Consent to disciplinary action

- 4-22** (1) A respondent may, at least 14 days before the date set for a hearing under this Part, tender to the Discipline Committee a conditional admission of a discipline violation and the respondent's consent to a specified disciplinary action.
- (2) The chair of the Discipline Committee may waive the 14-day limit in subrule (1).
 - (3) The Discipline Committee may, in its discretion, accept or reject a conditional admission and proposed disciplinary action.
 - (4) If the Discipline Committee accepts the conditional admission and proposed disciplinary action, it must instruct discipline counsel to recommend its acceptance to the hearing panel.
 - (5) If the panel accepts the respondent's proposed disciplinary action it must
 - (a) instruct the Executive Director to record the lawyer's admission on the lawyer's professional conduct record,
 - (b) impose the disciplinary action that the respondent has proposed, and
 - (c) advise the respondent and the complainant of the disposition.

Rejection of admissions

- 4-23** (1) A conditional admission tendered under Rule 4-21 must not be used against the respondent in any proceeding under this Part or Part 5 unless the admission is accepted by the Discipline Committee.
- (2) A conditional admission tendered under Rule 4-22 must not be used against the respondent in any proceeding under this Part unless
- (a) the admission is accepted by the Discipline Committee, and
 - (b) the admission and proposed disciplinary action is accepted by a hearing panel.
- (3) If a panel rejects the respondent's proposed disciplinary action tendered in accordance with Rule 4-22, it must advise the chair of the Discipline Committee of its decision and proceed no further with the hearing of the citation.
- (4) On receipt of a notification under subrule (3), the chair of the Discipline Committee must instruct discipline counsel to proceed to set a date for the hearing of the citation.
- (5) When a panel rejects a proposed disciplinary action tendered in accordance with Rule 4-22, no member of that panel is permitted sit on the panel that subsequently hears the citation.

[(1) amended 02/03]

Setting a date for the hearing

- 4-24** (1) The date, time and place for the hearing must be set
- (a) by agreement between discipline counsel and the respondent, or
 - (b) failing agreement, by the Executive Director.
- (2) The Executive Director must notify the following in writing of the date, time and place of the hearing:
- (a) the respondent, when the hearing has been scheduled under subrule (1)(b);
 - (b) the complainant.

Demand for disclosure of evidence

- 4-25** (1) In this Rule, "**evidence**" does not include any information or document about any discussion or other communication with the Ombudsperson in that capacity.
- (2) At any time after a citation has been issued and before the hearing commences, a respondent may demand in writing that discipline counsel disclose the evidence that the Society intends to introduce at the hearing.

PART 4 – DISCIPLINE

- (3) On receipt of a demand for disclosure under subrule (2), discipline counsel must provide the following to the respondent by a reasonable time before the start of the hearing:
 - (a) a copy of every document that the Society intends to tender in evidence;
 - (b) a copy of any statement made by a person whom the Society intends to call as a witness;
 - (c) if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Society intends to introduce;
 - (d) a summary of any other relevant evidence in discipline counsel's possession or in a Society file available to discipline counsel, whether or not counsel intends to introduce that evidence at the hearing.

[(3) amended 09/99]

Application for details of the circumstances

- 4-26** (1) At any time before the hearing commences, a respondent may apply in writing to the Executive Director for disclosure of the details of the circumstances of misconduct alleged in a citation.
- (2) The Executive Director must promptly notify the following of an application under subrule (1):
 - (a) discipline counsel;
 - (b) the President.
 - (3) If the President is satisfied that an allegation in the citation does not contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proved, and to identify the transaction referred to, the President must order discipline counsel to disclose further details of the circumstances.
 - (4) Details of the circumstances disclosed under subrule (3) must be
 - (a) in writing, and
 - (b) delivered to the respondent or respondent's counsel.
 - (5) The President may designate another Bencher to make a determination under subrule (3).

Pre-hearing conference

- 4-27** (1) The President may order a pre-hearing conference at any time before the hearing on a citation commences, at the request of the respondent or discipline counsel, or on the President's own initiative.
- (2) When a conference has been ordered under subrule (1), the President must
 - (a) set the date, time and place of the conference, and
 - (b) designate a Bencher to preside at the conference.
 - (3) Discipline counsel, and the respondent or respondent's counsel or both, must be present at the conference.

LAW SOCIETY RULES

- (4) Any person may participate in a conference by telephone or by any other means of communication that allows all persons participating to hear each other, and a person so participating is present under subrule (3).
- (5) The conference must consider
 - (a) the simplification of the issues,
 - (b) the necessity or desirability of amendments to the citation,
 - (c) the possibility of obtaining admissions that might facilitate the hearing,
 - (d) the discovery and production of documents,
 - (d.1) the possibility that privilege or confidentiality might require that all or part of the hearing be closed to the public, or that exhibits and other evidence be excluded from public access,
 - (e) setting a date for the hearing,
 - (f) any application by discipline counsel to withhold the identity or locating particulars of a witness, and
 - (g) any other matters that may aid in the disposition of the citation.
- (6) The Bencher presiding at a pre-hearing conference may
 - (a) adjourn the conference to a specified date, time and place,
 - (b) order discovery and production of documents,
 - (c) set a date for the hearing, and
 - (d) allow or dismiss an application under subrule (5)(f).

[(5) amended 05/03]

Appointment of panel

4-28 When a citation is issued under Rule 4-13(1), the President must establish a panel to conduct a hearing, make a determination under Rule 4-34 and take action, if appropriate, under Rule 4-35.

Adjournment

- 4-29** (1) Before the hearing commences, the respondent or discipline counsel may request that the hearing be adjourned by delivering to the Executive Director a notice in writing that sets out the reasons for the request.
- (2) The Executive Director must promptly advise the following of a request under subrule (1) and the reasons for it:
- (a) the party not making the request;
 - (b) the complainant;
 - (c) the President;
 - (d) anyone else who, in the Executive Director's opinion, should be notified.
- (3) Before the hearing commences, the President must decide whether to grant the adjournment, with or without conditions, and must advise the parties accordingly.

PART 4 – DISCIPLINE

- (4) The President may designate another Bencher to make a determination under subrule (3).
- (5) After a hearing has commenced, the chair of the panel may adjourn the hearing, with or without conditions, to a specified date, time and place.

[(1) amended 09/99; 10/06]

Preliminary procedures

- 4-30** (1) Before hearing any evidence on the allegations set out in the citation, the panel must determine whether
- (a) the citation was served in accordance with Rule 4-15, or
 - (b) the respondent waives any of the requirements of Rule 4-15.
- (2) If the requirements of Rule 4-15 have been met, or have been waived by the respondent, the citation or a copy of it must be filed as an exhibit at the hearing, and the hearing may proceed.

Citation

- 4-31** (1) A panel may consider at one hearing a citation that contains one or more allegations.
- (2) A citation may be amended by
- (a) discipline counsel before the hearing begins, and
 - (b) the panel after the hearing has begun.

Evidence at the hearing

- 4-32** (1) Discipline counsel must give reasonable notice to the respondent of an application for an order that the respondent give evidence at the hearing.
- (2) Unless the panel orders otherwise, witnesses called by discipline counsel testify first, followed by witnesses called by the respondent.

Communication with Ombudsperson

- 4-33** (1) This Rule is to be interpreted in a way that will facilitate the Ombudsperson assisting in the resolution of disputes through communication without prejudice to the rights of any person.
- (2) Communication between the Ombudsperson acting in that capacity and any person receiving or seeking assistance from the Ombudsperson is confidential and must remain confidential in order to foster an effective relationship between the Ombudsperson and that individual.
- (3) The Ombudsperson must hold in strict confidence all information acquired in that capacity from participants.

LAW SOCIETY RULES

- (4) In a proceeding under this Part or Part 2
 - (a) no one is permitted to give evidence about any discussion or other communication with the Ombudsperson in that capacity, and
 - (b) no record can be admitted in evidence or disclosed under Rule 4-25 or 4-26 if it was produced
 - (i) by or under the direction of the Ombudsperson in that capacity, or
 - (ii) by another person while receiving or seeking assistance from the Ombudsperson, unless the record would otherwise be admissible or subject to disclosure under Rule 4-25 or 4-26.

Submissions and verdict

- 4-34** (1) Following completion of the evidence, the panel must invite submissions from discipline counsel and the respondent on the facts and verdict on each allegation in the citation.
- (2) After submissions under subrule (1), the panel must
 - (a) by majority decision, determine the facts and a verdict on each allegation, and
 - (b) prepare written reasons for its findings on each allegation.
- (3) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (2)(b) to each party.

Penalty

- 4-35** (1) Following a verdict under Rule 4-34 adverse to the respondent, the panel must
 - (a) invite the respondent and discipline counsel to make submissions as to penalty,
 - (b) by majority decision, take one or more of the actions referred to in section 38(5) or (6) of the Act,
 - (c) include in its order under this Rule any order under Rule 5-9 on the costs of the hearing, including any order respecting time to pay,
 - (d) prepare a written record, with reasons, of its action taken under subrule (b) and its order for costs, if any, under subrule (c),
 - (e) if it imposes a fine, set the date by which payment to the Society must be completed, and
 - (f) if it imposes conditions on the respondent's practice, set the date by which the conditions must be fulfilled.
- (1.1) If a panel gives reasons orally for its decision under Rule 4-34(2)(a), the panel may proceed under subrule (1) before written reasons are prepared under Rule 4-34(2)(b).

PART 4 – DISCIPLINE

- (2) Despite subrule (1)(b), if the respondent is a member of another governing body and not a member of the Society, the panel may do one or more of the following:
 - (a) reprimand the respondent;
 - (b) fine the respondent an amount not exceeding \$20,000;
 - (c) prohibit the respondent from practising law in British Columbia permanently or for a specified period of time;
 - (d) declare that, had the respondent been a member of the Society, the panel would have
 - (i) disbarred the respondent,
 - (ii) suspended the respondent, or
 - (iii) imposed conditions on the practice of the respondent.
- (3) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (1)(d) to each party.
- (4) The panel may consider the professional conduct record of the respondent in determining a penalty under this Rule.

[(1) and (2) amended, (1.1) added 03/05]

Discipline proceedings involving members of other governing bodies

- 4-36** (1) The Executive Director must send written notice of the action to every governing body of which the person is known to be a member when
- (a) a citation is authorized under Rule 4-13,
 - (b) action is taken under Rule 4-4(1)(b) or (c), or
 - (c) a penalty is imposed under Rule 4-35.
- (2) When a citation is authorized against a lawyer who is a member of a governing body or when another governing body initiates disciplinary proceedings against a member of the Society, the Discipline Committee must consult with the other governing body about the manner in which disciplinary proceedings are to be taken and the Society is bound by any agreement the Discipline Committee makes with the other governing body.
 - (3) The Discipline Committee may agree that the venue of disciplinary proceedings be changed to or from the Society, if it is in the public interest or if there is a substantial savings in cost or improvement in the convenience of any person without compromising the public interest.
 - (4) The Discipline Committee may take action under Rule 4-4 against a lawyer who
 - (a) has failed or refused to pay to a governing body a fine or other monetary order arising out of the lawyer's inter-jurisdictional practice,
 - (b) has violated a prohibition against practice imposed by a governing body, or
 - (c) is the subject of a declaration by a governing body under a provision similar to Rule 4-35(2)(d).

LAW SOCIETY RULES

- (5) The fact that a lawyer concerned is or has been the subject of disciplinary proceedings by a governing body does not preclude any disciplinary action for the same or related conduct under this Part.
- (6) In a proceeding under this Part, the filing of a duly certified copy of the disciplinary decision of a governing body against a lawyer found guilty of misconduct is proof of the lawyer's guilt.

[(1) amended 09/99; (4) amended 06/01]

Discipline involving lawyers practising in other jurisdictions

- 4-36.1** (1) If there is an allegation of misconduct against a member of the Society while practising temporarily in another Canadian jurisdiction under provisions of a governing body equivalent to Rules 2-10.1 to 2-17.1, the Discipline Committee will
- (a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and
 - (b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings under this Part.
- (2) The Discipline Committee may agree to allow the other governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including expenses of the proceeding.
 - (3) In deciding whether to agree under subrule (2), the primary considerations will be the public interest, convenience and cost.
 - (4) To the extent that is reasonable in the circumstances, the Executive Director must do the following on the request of a governing body that is investigating the conduct of a member or former member of the Society or a visiting lawyer who has provided legal services:
 - (a) provide all relevant information and documentation respecting the lawyer or visiting lawyer as is reasonable in the circumstances;
 - (b) cooperate fully in the investigation and any citation and hearing.
 - (5) Subrule (4) applies when the Society agrees with a governing body under subrule (2).
 - (6) When the Executive Director provides information or documentation to a governing body under subrule (4) or (5), the Executive Director may inform any person whose personal, confidential or privileged information may be included of that fact and the reasons for it.

[added effective 07/03; (4) amended, (6) added 10/03]

Public notice of suspension or disbarment

4-37 When a person is suspended or becomes a disbarred lawyer, the Executive Director must immediately give effective public notice of the suspension, disbarment or resignation by means including but not limited to the following:

- (a) publication of a notice in
 - (i) the *British Columbia Gazette*,
 - (ii) a newspaper of general circulation in each municipality and each district referred to in Rule 1-20, in which the person maintained a law office, and
 - (iii) the Society website;
- (b) notifying the following:
 - (i) the Registrar of the Supreme Court;
 - (ii) the Public Guardian and Trustee.

[amended 03/99; amended effective February 28, 2000; amended 10/06]

Publication of disciplinary action

4-38 (1) Subject to Rule 4-38.1, the Executive Director must publish and circulate to the profession a summary of the circumstances and of any decision, reasons and action taken

- (a) at the conclusion of the facts and verdict portion of a hearing on a citation,
- (a.1) at the conclusion of the penalty portion of a hearing on a citation,
- (b) at the conclusion of a hearing before the Benchers under section 47 of the Act,
- (c) at the conclusion of an appeal to the Court of Appeal under section 48 of the Act,
- (d) when an order is made or refused under Rule 4-19(13) or (14),
- (e) when a lawyer or former lawyer is suspended or disbarred under Rule 4-40, or
- (f) when an admission is accepted under Rule 4-21 or 4-22.

(2) Subject to Rule 4-38.1, the Executive Director may publish and circulate to the profession a summary of any decision, reasons and action taken not enumerated in subrule (1), other than

- (a) a decision not to accept a conditional admission under Rule 4-21 or 4-22, or
- (b) any decision under Rule 4-17(1).

(3) When a publication is required under subrule (1), the Executive Director may also publish generally

- (a) a summary of the circumstances of the decision, reasons and action taken,
- (b) all or part of the report of the hearing panel, or
- (c) in the case of a conditional admission that is accepted under Rule 4-21, all or part of an agreed statement of facts.

LAW SOCIETY RULES

- (4) When the Executive Director publishes a document under this Rule by means of the Society's website, the Executive Director must remove the publication from the part of the website for current decisions and may relocate it to an archive part of the website when
 - (a) 6 months have elapsed from the decision of the hearing panel, and
 - (b) all aspects of the penalty imposed have been completed.
- (5) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[heading and (1) amended, (2) and (3) rescinded and replaced, (4) and (5) added 05/03;
(1) and (2) amended 10/06]

Anonymous publication

- 4-38.1** (1) Except as allowed under this Rule, a publication under Rule 4-38 must identify the respondent.
- (2) If all counts of the citation are dismissed by a panel, the publication must not identify the respondent unless the respondent consents in writing.
 - (3) The panel may order that publication not identify the respondent if
 - (a) the panel has imposed a penalty that does not include a suspension or disbarment, and
 - (b) publication will cause grievous harm to the respondent or another identifiable individual that outweighs the interest of the public and the Society in full publication.
 - (4) A respondent may apply to the panel for an order under subrule (3)
 - (a) in writing or on the record in the course of a hearing, and
 - (b) no later than 7 days after the written report on findings of fact and verdict is issued or oral reasons delivered.
 - (5) The Executive Director must not publish under Rule 4-38 until
 - (a) 7 days after a report is issued unless
 - (i) a penalty of suspension or disbarment is imposed, or
 - (ii) the respondent waives the right to apply under subrule (4), or
 - (b) an application under subrule (4) is resolved or withdrawn.
 - (6) If a panel orders that a respondent's identity not be disclosed under subrule (3), the panel must state in writing the specific reasons for that decision.
 - (7) If, on a review of a panel decision dismissing all counts of a citation, the Benchers make a finding that upholds one or more counts, the respondent may apply to the Benchers under subrule (4), and subrules (3) to (6) apply as if the Benchers were a panel.
 - (8) When an order is made or refused under Rule 4-19(13) or (14), the respondent may apply to the panel under subrule (4) as if the reasons for the order or refusal were a report on findings of fact and verdict, and subrules (3) to (6) apply.

[added 05/03; (4) amended 02/04; (8) added 10/06]

Disclosure of practice restrictions

- 4-38.2** (1) When, under this Part or Part 4 of the Act, a condition is imposed on the practice of a lawyer or a lawyer is suspended from the practice of law in one or more fields of law, the Executive Director may disclose the fact that the condition or suspension applies and the nature of the condition or suspension.
- (2) If a lawyer gives an undertaking that restricts, limits or prohibits the lawyer's practice in one or more areas of law, the Executive Director may disclose the fact that the undertaking was given and its effect on the lawyer's practice.
- (3) If the Executive Director discloses the existence of a condition or suspension under subrule (1) or an undertaking under subrule (2) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the condition or suspension ceases to be in force.

[added 06/05]

Disbarment

- 4-39** If a lawyer is disbarred, the Executive Director must strike the lawyer's name from the barristers and solicitors' roll.

Conviction

- 4-40** (1) On proof that a lawyer or former lawyer has been convicted of an offence that can only be prosecuted by way of indictment, the Benchers may, without following the procedure provided for in the Act or these Rules, summarily suspend or disbar the lawyer or former lawyer.
- (2) If the Discipline Committee is satisfied that a lawyer or former lawyer has been convicted of an offence that can only be prosecuted by way of indictment, the Committee may refer the matter to the Benchers under subrule (1).

Notice

- 4-41** (1) Before the Benchers proceed under Rule 4-40, the Executive Director must notify the lawyer or former lawyer in writing that
- (a) proceedings will be taken under that Rule, and
 - (b) the lawyer or former lawyer may, by a specified date, make written submissions to the Benchers.
- (2) The notice referred to in subrule (1) may be served by mailing it by registered mail to the last known address of the lawyer or former lawyer.
- (3) In extraordinary circumstances, the Benchers may proceed without notice to the lawyer or former lawyer under subrule (1).

Summary procedure

- 4-42** (1) This Rule applies to summary proceedings before the Benchers under Rule 4-40.
- (2) The Benchers may, in their discretion, hear oral submissions from the lawyer or former lawyer.
- (3) Subject to the Act and these Rules, the Benchers may determine practice and procedure.

Investigation of books and accounts

- 4-43** (1) If the chair, vice chair or another Bencher member of the Discipline Committee believes that a lawyer or former lawyer may have committed a discipline violation, that Bencher may order that an investigation be made of the books, records and accounts of the lawyer or former lawyer.
- (2) When an order is made under subrule (1),
- (a) the Executive Director must designate one or more persons to conduct the investigation, and
 - (b) the lawyer or former lawyer concerned must immediately produce and permit the copying of all files, vouchers, records, accounts, books and any other evidence and must provide any explanations that the persons designated by the Executive Director under paragraph (a) require for the purpose of the investigation.

SCHEDULE 1 – 2007 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee	\$
1. Practice fee set by members (Rule 2-70)	1,296.50
2. Special Compensation Fund assessment (Rule 2-70)	500.00
3. Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-22(1)):	
(a) member in full-time practice	1,400.00
(b) member in part-time practice	700.00
4. Liability insurance surcharge (Rule 3-26(2))	1,000.00
5. Late payment fee for practising members (Rule 2-72(3))	100.00
6. Retired member fee (Rule 2-4(3))	75.00
7. Late payment fee for retired members (Rule 2-72(4)).....	nil
8. Non-practising member fee (Rule 2-3(2))	300.00
9. Late payment fee for non-practising members (Rule 2-72(5)).....	25.00
10. Administration fee (Rule 2-75(3))	50.00
 A.1 Trust administration fee	
1. Each client matter subject to fee (Rule 2-72.2(1))	10.00
 B. Special assessments	
 C. Articled student fees	
1. Enrolment in admission program (Rules 2-27(3)(e) and 2-33(1)(b))	250.00
2. Temporary articles fee (Rule 2-42(1)(c))	125.00
3. Temporary articles (legal clinic) fee (Rule 2-42(1)(c))	25.00
4. Training course registration (Rule 2-44(4)(a))	2,250.00
5. Remedial work (Rule 2-45(7)):	
(a) for each piece of work	50.00
(b) for repeating the training course	3,500.00
 D. Investigation and examination fees	
1. Transfer from another Canadian province or territory – investigation fee (Rule 2-49(1)(f))	1,125.00
2. Transfer or qualification examination (Rules 2-49(6) and 2-58(2))	300.00
 E. Call and admission fees	
1. After enrolment in admission program (Rule 2-48(1)(d))	200.00
2. After transfer from another Canadian province or territory (Rule 2-49(1)(f))...	200.00
 F. Reinstatement fees	
1. Following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b))	600.00
1.1 Following 3 years or more as a former member (Rule 2-52(1)(b))	500.00
2. All other cases (Rule 2-52(1)(b))	415.00

LAW SOCIETY RULES

G. Application fees		\$
1.	Application to become retired member (Rule 2-4(2)(b))	30.00
2.	Application to become non-practising member (Rule 2-3(1)(b))	60.00
3.	Non-practising or retired member applying for practising certificate (Rule 2-56(b))	60.00
H. Inter-jurisdictional practice fees		
1.	Original application for permit (Rule 2-11(2)(b))	500.00
2.	Renewal of permit (Rule 2-11(2)(b))	100.00
I. Corporation and limited liability partnership fees		
1.	Permit fee for law corporation (Rule 9-4(c))	300.00
2.	New permit on change of name fee (Rule 9-6(4)(c))	75.00
3.	LLP registration fee (Rule 9-15(1))	300.00
J. Practitioners of foreign law		
1.	Permit fee for practitioners of foreign law (Rule 2-18(1)(b))	600.00
2.	Permit renewal fee for practitioners of foreign law (Rule 2-22(2)(c))	125.00
3.	Late payment fee (Rule 2-22(6))	100.00
K. Trust Report		
1.	Late filing fee (Rule 3-74(2))	200.00

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

SCHEDULES – LAW SOCIETY FEES AND ASSESSMENTS

**SCHEDULE 2 – 2007 PRORATED FEES AND ASSESSMENTS
FOR PRACTISING MEMBERS**

	Law Society fee	Special Compensation Fund	Liability insurance fee	
			Payable prior to call	Payable by June 30
Full-time insurance				
January	1,296.50	500.00	700.00	700.00
February	1,186.17	458.33	583.33	700.00
March	1,080.42	416.67	466.67	700.00
April	970.08	375.00	350.00	700.00
May	864.33	333.33	233.33	700.00
June	754.00	291.67	116.67	700.00
July	648.25	250.00	700.00	0.00
August	537.92	208.33	583.33	0.00
September	432.17	166.67	466.67	0.00
October	321.83	125.00	350.00	0.00
November	216.08	83.33	233.33	0.00
December	105.75	41.67	116.67	0.00
Part-time insurance				
January	1,296.50	500.00	350.00	350.00
February	1,186.17	458.33	291.67	350.00
March	1,080.42	416.67	233.33	350.00
April	970.08	375.00	175.00	350.00
May	864.33	333.33	116.67	350.00
June	754.00	291.67	58.33	350.00
July	648.25	250.00	350.00	0.00
August	537.92	208.33	291.67	0.00
September	432.17	166.67	233.33	0.00
October	321.83	125.00	175.00	0.00
November	216.08	83.33	116.67	0.00
December	105.75	41.67	58.33	0.00

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

**SCHEDULE 3 – 2007 PRORATED FEES
FOR NON-PRACTISING AND RETIRED MEMBERS**

	Non-practising members	Retired members
	Fee	Fee
January	300.00	75.00
February	275.00	68.75
March	250.00	62.50
April	225.00	56.25
May	200.00	50.00
June	175.00	43.75
July	150.00	37.50
August	125.00	31.25
September	100.00	25.00
October	75.00	18.75
November	50.00	12.50
December	25.00	6.25

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

CHAPTER 4

AVOIDING QUESTIONABLE CONDUCT, INCLUDING IMPROPER COMMUNICATIONS

Dealing with unrepresented persons

1. A lawyer acting for a client in a matter in which there is an unrepresented person must advise that client and unrepresented person that the latter's interests are not being protected by the lawyer.

[amended 03/05]

Communication with clients of other lawyers

- 1.1 A lawyer who has an interest in a matter, or represents a client who has an interest in a matter, must not communicate with any person regarding the matter if, to the lawyer's knowledge, the person is represented by another lawyer, except through or with the consent of the person's lawyer.¹

[added 04/96; amended 12/99]

Threatening criminal or disciplinary proceedings

2. A lawyer must not threaten, or advise a person to threaten, to:
 - (a) initiate or proceed with a criminal or quasi-criminal charge, or
 - (b) make a complaint to a regulatory authority,

for the collateral purpose of enforcing the payment of a civil claim or securing any other civil advantage.

[amended 03/05]

Coercion, improper influence or offering compensation to avoid prosecution

3. A lawyer must not *wrongfully* influence any person to prevent the Crown from proceeding with charges or cause the Crown to withdraw or stay charges in a criminal or quasi-criminal charge against the lawyer's client.

[amended 03/05]

4. A lawyer must not:
 - (a) advise a person to give, or

PROFESSIONAL CONDUCT HANDBOOK

- (b) personally give or offer to give,

any valuable consideration to another person in exchange for influencing the Crown not to proceed with a criminal or quasi-criminal charge that has been instituted against a client of the lawyer, unless the lawyer obtains the consent of the Attorney General or his or her agent.

[amended 03/05]

Errors and omissions

- 5. A lawyer must comply with the terms of each professional liability insurance policy.²

[amended 01/94]

- 5.1 If, in respect of a matter in which the lawyer is or was engaged, the lawyer has a reasonable apprehension that an error or omission:

- (a) has been made,
- (b) is one for which the lawyer is or may be responsible, and
- (c) is or may be damaging to the client,

then the lawyer must promptly:

- (d) inform the client of the facts of the error or omission, without admitting legal liability, and
- (e) recommend that the client obtain independent legal advice.

[added 01/94]

Dishonesty, crime or fraud of client

- 6. A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud, including a fraudulent conveyance, preference or settlement.³

[heading and rule amended 03/05; heading amended 05/05]

Restricting future representation

- 7. A lawyer must not participate in offering or making an agreement in which a restriction on any lawyer's right to practise is part of the settlement of a client lawsuit or other controversy.

[added 10/06]

CHAPTER 8

THE LAWYER AS ADVOCATE

Prohibited conduct

1. A lawyer must not:
 - (a) abuse the process of a court or tribunal by instituting or prosecuting proceedings that, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring another party,
 - (b) knowingly assist the client to do anything or acquiesce in the client doing anything dishonest or dishonourable,
 - (c) appear before a judicial officer when the lawyer, the lawyer's associates or the client have business or personal relationships with the officer that may reasonably be perceived to affect the officer's impartiality,
 - (d) attempt or acquiesce in anyone else attempting, directly or indirectly, to influence the decision or actions of a court or tribunal or any of its officials by any means except open persuasion as an advocate,
 - (e) knowingly assert something for which there is no reasonable basis in evidence, or the admissibility of which must first be established,
 - (f) deliberately refrain from informing the court or tribunal of any pertinent authority directly on point that has not been mentioned by an opponent,
 - (g) dissuade a material witness from giving evidence, or advise such a witness to be absent,
 - (h) knowingly permit a party or a witness to be presented in a false way, or to impersonate another person, or
 - (i) appear before a court or tribunal while impaired by alcohol or a drug.

[amended 09/06]

Offering to give false testimony

2. When a client advises a lawyer that the client intends to offer false testimony in a proceeding, the lawyer must explain to the client the lawyer's professional duty to withdraw if the client insists on offering, or in fact does offer, false testimony.

[amended 09/06]

PROFESSIONAL CONDUCT HANDBOOK

3. When a client who has been counselled in accordance with Rule 2 advises the lawyer that the client intends to offer false testimony in a proceeding, the lawyer must withdraw from representing the client in that matter, in accordance with Chapter 10.

[amended 09/06]

4. A lawyer who withdraws under Rule 3 must not disclose to the court or tribunal, or to any other person, the fact that the withdrawal was occasioned by the client's insistence on offering false testimony.

[amended 09/06]

5. A lawyer must not call as a witness in a proceeding a person who has advised the lawyer that the witness intends to offer false testimony.

[amended 09/06]

Inconsistent statements or testimony

6. Mere inconsistency in a client's or witness's statements or testimony, or between two proffered defences, is insufficient to support the conclusion that the person will offer or has offered false testimony. However, when such inconsistency exists, the lawyer must explore the inconsistency with the client or witness at the first available opportunity. If, based on that enquiry, the lawyer is certain that the client or witness intends to offer false testimony, the lawyer must comply with Rules 2 to 5. Otherwise, the lawyer is entitled to proceed, leaving it to the court or tribunal to assess the truth or otherwise of the client's or witness's statements or testimony.

[amended 09/06]

Duty to withdraw

7. When a client wishes to adopt a course prohibited by this Chapter, the lawyer must do everything reasonably possible to prevent it.

[amended 09/06]

8. If, despite the lawyer's actions under Rule 7, the client does anything prohibited under this Chapter, the lawyer must withdraw from representing the client, subject to Rules 2 to 5 and in accordance with Chapter 10.

[amended 09/06]

The lawyer as witness

9. A lawyer who gives *viva voce* or affidavit evidence in a proceeding must not continue to act as counsel in that proceeding unless
- (a) the evidence relates to a purely formal or uncontroverted matter, or
 - (b) it is necessary in the interests of justice.

[amended 09/06]

10. A lawyer who was a witness in proceedings must not appear as advocate in any appeal from the decision in those proceedings, when the lawyer's evidence may reasonably be expected to be an issue on the appeal.

[amended 09/06]

Interviewing witnesses

11. [rescinded 05/96]

12. There is no property in a witness, and a lawyer may properly seek information from any potential witness, whether or not the witness is under subpoena.

This Rule is subject to Rules 12.1 to 17 when the lawyer has an interest in the proceeding or represents a client who has an interest in the proceeding.

[amended 05/96; 12/99]

- 12.1 If a lawyer knows that a potential witness is represented in the proceeding by another lawyer, the lawyer must:
- (a) notify the other lawyer before contacting the potential witness, and
 - (b) if the potential witness is a party to the proceeding, make no contact except through or with the consent of the other lawyer.

[added 05/96]

- 12.2 A lawyer must disclose to a potential witness the lawyer's interest in the proceeding before seeking any information from him or her.

[added 05/96]

- 12.3 In contacting a potential witness, a lawyer must take care not to:

- (a) subvert or suppress any evidence, or
- (b) procure the witness to stay out of the way.

[added 05/96]

PROFESSIONAL CONDUCT HANDBOOK

13. A lawyer must not advise a person, who is a potential witness on behalf of the lawyer's client, that the person must not communicate with an opposing party or with that party's counsel.

[amended 12/99]

Contacting an opponent's expert

14. A lawyer acting for one party must not question an opposing party's expert on matters properly protected by the doctrine of legal professional privilege, unless the privilege has been waived.

[amended 12/99]

15. Before contacting an opposing party's expert, the lawyer must notify the opposing party's counsel of the lawyer's intention to do so.

[amended 12/99]

16. When a lawyer contacts an opposing party's expert in accordance with Rules 14 and 15, the lawyer must, at the outset:

- (a) state clearly for whom the lawyer is acting, and that the lawyer is not acting for the party who has retained the expert, and
- (b) raise with the expert whether the lawyer is accepting responsibility for payment of any fee charged by the expert arising out of the lawyer's contact with the expert.

[amended 09/06]

17. In Rules 14 to 16, "lawyer" includes a lawyer's agent.

Duties of prosecutor

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

[amended 03/04]

Judicial interim release

19. The lawyer shall not act as surety for, deposit money or other valuable security for or act in a supervisory capacity to an accused person for whom the lawyer or a partner or associate is acting, except where there is a family relationship with the accused in which case the accused should not be represented by the lawyer, but may be represented by a partner or associate.

Representation of an accused on guilty plea

20. A lawyer may represent an accused on a guilty plea provided that the accused:
- (a) admits to all the factual elements of the offence, and
 - (b) is competent to instruct the lawyer.

Role in without notice proceedings

21. In without notice proceedings, a lawyer must inform the court or tribunal of all material facts known to the lawyer that will enable the court or tribunal to make an informed decision, even if the facts are adverse to the interests of the lawyer's client.

[amended 09/06]

Former judge or master

22. A lawyer who has served as a judge or master in any court must not use any judicial title or otherwise allude to the lawyer's former status in addressing any court as counsel.

[added effective 05/98]

FOOTNOTE:

1. In view of the policy, legal and constitutional considerations that favour permitting prosecutors to function independently, this rule is not intended to interfere with the proper exercise of a prosecutor's discretion. See *Krieger v. Law Society of Alberta*, [2002] 3 S.C.R. 372 and other cases.

[added 03/04]

PROFESSIONAL CONDUCT HANDBOOK

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