

# MEMBER'S MANUAL

The Law Society  
of British Columbia



## AMENDMENT PAGES

2007: No. 2 May

### Highlights

**Law Society Rules:** Publication of suspensions under the financial rules is no longer mandatory, but may be undertaken in the Executive Director's discretion (Rule 4-37: see p. 110.1); the maximum remuneration in contingency fee agreements applies to trial only, and not to appeals (Rule 8-2: see p. 119), and the notice required in contingent fee agreements is modified to ensure that clients are notified of that fact (Rule 8-4: see p. 120).

**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	110.1 – 110.4 119 – 120	110.1 – 110.4 119 – 120

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

**Updates:** This amendment package updates the *Member's Manual* to **April 20, 2007**. The previous amendment package was 2007: No. 1 March.

To check that your copy of the *Manual* is up to date, please consult the contents checklist on the back of this filing sheet. 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](mailto: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](http://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 April 20, 2007*

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

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**Public notice of suspension or disbarment**

- 4-37** (1) When a person is suspended under this Part or Part 5 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.
- (2) When a person is suspended under Part 2 or 3, the Executive Director may take any of the steps referred to in subrule (1).

[amended 03/99; amended effective February 28, 2000; amended 10/06;  
(1) amended, (2) added 04/07]

**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).

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- (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.
- (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.

## PART 4 – DISCIPLINE

- (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.

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- (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.

## **PART 8 – LAWYERS’ FEES**

### **Reasonable remuneration**

- 8-1** (1) A lawyer who enters into a contingent fee agreement with a client must ensure that, under the circumstances existing at the time the agreement is entered into,
- (a) the agreement is fair, and
  - (b) the lawyer’s remuneration provided for in the agreement is reasonable.
- (2) A lawyer who prepares a bill for fees earned under a contingent fee agreement must ensure that the total fee payable by the client
- (a) does not exceed the remuneration provided for in the agreement, and
  - (b) is reasonable under the circumstances existing at the time the bill is prepared.

### **Maximum remuneration in personal injury actions**

- 8-2** (1) Subject to the court’s approval of higher remuneration under section 66(7) of the Act, the maximum remuneration to which a lawyer is entitled under a contingent fee agreement for representing a client up to and including all matters pertaining to the trial of an action, when acting for a plaintiff in
- (a) a claim for personal injury or wrongful death arising out of the use or operation of a motor vehicle, is 33 1/3% of the amount recovered, and
  - (b) any other claim for personal injury or wrongful death, is 40% of the amount recovered.
- (2) Despite subrule (1), a contingent fee agreement may provide that the lawyer may elect to forego any remuneration based on a proportion of the amount recovered and receive instead an amount equal to any costs awarded to the client by order of a court.
- (3) This Rule does not prevent a lawyer and client from making a separate agreement for payment beyond the amount specified in subrule (1) to compensate the lawyer for representing the client in an appeal from a trial judgment pronounced in the proceeding for which the lawyer was retained.

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

### **Form and content of contingent fee agreements**

- 8-3** A contingent fee agreement must
- (a) be in writing,
  - (b) state that the person who entered into the agreement with the lawyer may, within 3 months after the agreement was made or the retainer between the solicitor and client was terminated by either party, apply to a district registrar of the Supreme Court of British Columbia to have the agreement examined, even if the person has made payment to the lawyer under the agreement, and

- (c) not include a provision that
  - (i) the lawyer is not liable for negligence or is relieved from any responsibility to which a lawyer would otherwise be subject,
  - (ii) the claim or cause of action that is the subject matter of the agreement cannot be abandoned, discontinued or settled without the consent of the lawyer, a law firm or a law corporation, or
  - (iii) the client may not change lawyers before the conclusion of the claim or cause of action that is the subject matter of the agreement.

[amended 09/99]

**Statement of Rules in contingent fee agreements**

- 8-4** (1) A contingent fee agreement between a lawyer and a plaintiff in a claim for personal injury or wrongful death arising out of the use or operation of a motor vehicle must include the following statement, prominently placed:

Under the Rules of the Law Society of British Columbia, without court approval, a lawyer may charge a maximum of 33 1/3% of the total amount recovered in a claim for personal injury or wrongful death arising out of the use of a motor vehicle.

The percentage limit applies to all matters related to the trial of a lawsuit, but does not include any appeal. A lawyer and a client may make a separate agreement for legal fees for an appeal.

Fees charged by different lawyers vary.

- (2) A contingent fee agreement between a lawyer and a plaintiff in a claim for personal injury or wrongful death not affected by subrule (1) must include the following statement, prominently placed:

Under the Rules of the Law Society of British Columbia, without court approval, a lawyer may charge a maximum of 40% of the total amount recovered in a claim for personal injury or wrongful death.

The percentage limit applies to all matters related to the trial of a lawsuit, but does not include any appeal. A lawyer and a client may make a separate agreement for legal fees for an appeal.

Fees charged by different lawyers vary.

- (3) If a contingent fee agreement includes a provision permitted under Rule 8-2(2), the statement required under subrule (1) or (2) must include the following:

The Law Society Rules allow a lawyer and client to agree that the lawyer may choose to charge the amount of costs awarded instead of a percentage of the amount recovered.

[(1) and (2) amended 04/07]