

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2007: No. 3 July

Highlights

Legal Profession Act: Practice standards: The Benchers may make rules to permit the Practice Standards Committee to order conditions and limitations on lawyers' practices (s. 27(2): p. 18); rules made under s. 27(2)(d.1) must not permit the imposition of conditions or limitations on a lawyer's practice before that lawyer has been notified of the reasons for the proposed order and has been given reasonable opportunity to respond (s. 27(4): p. 18.1). **Hearing powers:** Panels and the Benchers are given powers to conduct hearings by reference to the *Administrative Tribunals Act*, rather than the *Inquiry Act*, which has now been repealed (ss. 44 and 45: pp. 29-30). **Society requests for evidence ex juris:** New section 45.1 permits the Law Society to apply to the Supreme Court of BC for a letter of request to judicial authorities to compel testimony from witnesses or production of documents outside BC (p. 30). **Quorum for Bencher reviews:** A review may continue to a valid conclusion, provided that at least five Benchers remain to hear the review (s. 47(4.1): p. 33). **Appointment of the Law Society as custodian:** The Society may now be appointed as a custodian of a lawyer's practice (ss. 50(1), 50.1 and 54(2): pp. 34, 36 and 36.2). The list of contents is updated (p. 2).

Law Society Rules: The Credentials Committee may require students initially exempted from the Professional Legal Training Course, but who fail the admission examination, to attend some or all of the course and to complete some or all of the assessments (Rule 2-45(6): p. 50.3); the requirements to notify the Law Society of criminal charges have been clarified and now cover practitioners of foreign law (Rule 3-90: p. 94); a respondent to a citation may apply for an extension of time to pay a fine (Rule 5-10(1): p. 114); the Society must withhold the membership certificate of any non-practising or retired member who remains in default after December 31 regarding any payment or practice condition under Rule 5-10(4) (Rules 5-9(7) and 5-10: pp. 114-115).

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
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Law Society Rules	50.3 – 50.4 92.3 – 92.4, 93 – 94 113 – 116	50.3 – 50.4 92.3 – 92.4, 93 – 94 113 – 116

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

Updates: This amendment package updates the *Member's Manual* to **June 27, 2007**. The previous amendment package was 2007: No. 2 May.

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.

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).

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Updated to June 27, 2007

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- (7) The benchers may make rules to do any of the following:
- (a) set the date by which the annual fee is payable, subject to rules made under section 30 (4) (a);
 - (b) permit late payment of the annual fee or a special assessment;
 - (c) set a fee for late payment of fees and assessments;
 - (d) determine the circumstances in which a full or partial refund of a fee or assessment may be made;
 - (e) deem a lawyer to have been a practising lawyer during a period in which the lawyer was in default of payment of fees or an assessment on conditions that the benchers consider appropriate.

Fees and assessments

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

Failure to pay fee or penalty

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

PART 3 – PROTECTION OF THE PUBLIC

Complaints from the public

- 26** (1) A person who believes that a lawyer, former lawyer or articled student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming a lawyer or a breach of this Act or the rules may make a complaint to the society.
- (2) The benchers may make rules authorizing an investigation into the conduct or competence of a lawyer, former lawyer or articled student, whether or not a complaint has been received under subsection (1).

Practice standards

- 27** (1) The benchers may
- (a) set standards of practice for lawyers,
 - (b) establish and maintain a program to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems, and
 - (c) establish and maintain a program to assist lawyers on issues arising from the practice of law.
- (2) The benchers may make rules to do any of the following:
- (a) establish a practice standards committee and delegate any or all authority and responsibility under this section, other than rule-making authority, to that committee;
 - (b) permit an investigation into a lawyer's competence to practise law if
 - (i) there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner, or
 - (ii) the lawyer consents;
 - (c) require a lawyer whose competence to practise law is under investigation to answer questions and provide access to information, files or records in the lawyer's possession or control;
 - (d) provide for a report to the benchers of the findings of an investigation into the competence of a lawyer to practise law;
 - (d.1) permit the practice standards committee established under paragraph (a) to make orders imposing conditions and limitations on lawyers' practices, and to require lawyers whose competence to practise law has been investigated to comply with those orders;
 - (e) permit the benchers to order that a lawyer pay to the society the costs of an investigation or remedial program under this Part and set and extend the time for payment;

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- (f) permit the discipline committee established under section 36 (a) to consider
 - (i) the findings of an investigation into a lawyer's competence to practise law,
 - (ii) any remedial program undertaken or recommended,
 - (iii) any order that imposes conditions or limitations on the practice of a lawyer, and
 - (iv) any failure to comply with an order that imposes conditions or limitations on the practice of a lawyer.
- (3) The amount of costs ordered to be paid by a lawyer under the rules made under subsection (2) (e) may be recovered as a debt owing to the society and, when collected, the amount is the property of the society.
- (4) Rules made under subsection (2) (d.1)
 - (a) may include rules respecting
 - (i) the making of orders by the practice standards committee, and
 - (ii) the conditions and limitations that may be imposed on the practice of a lawyer, and
 - (b) must not permit the imposition of conditions or limitations on the practice of a lawyer before the lawyer has been notified of the reasons for the proposed order and given a reasonable opportunity to make representations respecting those reasons.

[2007-14-38]

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PART 5 – HEARINGS AND APPEALS

Panels

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

Failure to attend

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

Right to counsel

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

Witnesses

- 44** (1) For the purposes of a proceeding under Part 2, 3 or 4 of this Act, sections 34(3), 48, 49 and 56 of the *Administrative Tribunals Act* apply to the benchers, a panel, the special compensation fund committee and a member of any of these.

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- (2) The society, an applicant or a respondent may apply to the Supreme Court, without notice to anyone, for an order that a subpoena in the form set out in the Rules of Court be issued to compel the attendance of a person as a witness at a hearing under Part 2, 3 or 4.
- (3) If the person who is required as a witness is in the custody of another person or the custodian of a penal institution, in addition to making an order under subsection (2), the court may make an order directing the person having custody to ensure the witness attends the hearing.
- (4) The Rules of Court respecting the following apply to a person who is the subject of an order under subsection (2) or (3):
 - (a) the use of a subpoena to compel a person to attend at the trial of an action;
 - (b) failure to obey a subpoena or order of the court.

[2007-9-54]

Order for compliance

- 45** (1) If it appears that a person has failed to comply with an order, summons or subpoena of a person or body referred to in section 44 (1), a person or body referred to in section 44 (1) may apply to the Supreme Court for an order directing the person to comply with the order, summons or subpoena.
- (2) On an application under subsection (1), the court may make the order requested or another order it considers appropriate.

[2007-9-55]

Society request for evidence

- 45.1** (1) On application by the society, if it appears to the Supreme Court that a person outside British Columbia may have evidence that may be relevant to an investigation or a hearing under this Act, the Supreme Court may issue a letter of request directed to the judicial authority of the jurisdiction in which the person who may have evidence is believed to be located.
- (2) A letter of request issued under subsection (1) must be
- (a) signed by a judge of the Supreme Court, and
 - (b) provided to the society for use under subsection (5).
- (3) A letter of request issued under subsection (1) may request the judicial authority to which it is directed to do one or more of the following:
- (a) order the person referred to in the letter of request to be examined under oath in the manner, at the place and by the date referred to in the letter of request;

PART 5 – HEARINGS AND APPEALS

- (b) in the case of an examination for the purposes of a hearing, order that a person who is a party to the hearing is entitled to
 - (i) be present or represented by counsel during the examination, and
 - (ii) examine the person referred to in paragraph (a);
 - (c) appoint a person as the examiner to conduct the examination;
 - (d) order the person to be examined to produce at the examination a record or thing specified in the letter of request;
 - (e) direct that the evidence obtained by the examination be recorded and certified in the manner specified in the letter of request;
 - (f) take any other action that the Supreme Court considers appropriate.
- (4) The failure of a person entitled under subsection (3) (b) to be present or represented by counsel during an examination or to examine the person referred to in subsection (3) (a) does not prevent the society from reading in the evidence from the examination at a hearing, if the examination has otherwise been conducted in accordance with the letter of request.
- (5) The society must send a letter of request issued under subsection (1),
- (a) if an examination is to be held in Canada, to the Deputy Attorney General for the Province of British Columbia, or
 - (b) if an examination is to be held outside Canada, to the Under Secretary of State for Foreign Affairs of Canada.
- (6) A letter of request must have attached to it all of the following:
- (a) any questions to be put to the person to be examined;
 - (b) if known, the name, address and telephone number of
 - (i) the solicitor or agent of the society,
 - (ii) the person to be examined, and
 - (iii) if applicable, the person entitled under subsection (3) (b) to be present or represented by counsel during the examination and to examine the person referred to in subsection (3) (a);
 - (c) a translation of the letter of request and any questions into the official language of the jurisdiction where the examination is to take place, if necessary, along with a certificate of the translator, bearing the full name and address of the translator, and certifying that the translation is a true and complete translation.
- (7) The society must file with the Deputy Attorney General for the Province of British Columbia or with the Under Secretary of State for Foreign Affairs of Canada, as the case may be, an undertaking to be responsible for any charge and expense incurred by either of them in relation to the letter of request and to pay them on receiving notification from them of the amount.

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- (8) This section does not limit any power the society may have to obtain evidence outside British Columbia by any other means.
- (9) The making of an order by a judicial authority in accordance with a letter of request issued under subsection (1) does not determine whether evidence obtained under the order is admissible in evidence in a hearing.
- (10) Unless otherwise provided by this section, the practice and procedure for appointing a person, conducting an examination and certifying and returning the appointment under this section, as far as possible, is the same as the practice and procedure that govern similar matters in civil proceedings in the Supreme Court.

[2007-14-39]

Costs

- 46**
- (1) The benchers may make rules governing the assessment of costs by a panel, the benchers or a committee under this Act including
 - (a) the time allowed for payment of costs, and
 - (b) the extension of time for payment of costs.
 - (2) If legal assistance employed by the benchers is provided by an employee of the society, the amount of costs that may be awarded under the rules in respect of that legal assistance may be the same as though the society had retained outside counsel.
 - (3) The amount of costs ordered to be paid by a respondent or applicant under the rules may be recovered as a debt owing to the society and, when collected, the amount is the property of the society.

Review on the record

- 47**
- (1) Within 30 days after being notified of the decision of a panel under section 22 (3) or 38 (5), (6) or (7), the applicant or respondent may apply in writing to the benchers for a review on the record.
 - (2) Within 30 days after the decision of a panel under section 22 (3), the credentials committee may refer the matter to the benchers for a review on the record.
 - (3) Within 30 days after the decision of a panel under section 38 (4), (5), (6) or (7), the discipline committee may refer the matter to the benchers for a review on the record.
 - (4) If, in the opinion of the benchers, there are special circumstances, the benchers may hear evidence that is not part of the record.

PART 5 – HEARINGS AND APPEALS

- (4.1) Despite the requirement of section 6 (2) that at least 7 benchers be present at a meeting of the benchers, if
- (a) a bencher who is hearing a review under this section is unable for any reason to complete the bencher's duties in respect of the review, and
 - (b) at least 5 benchers remain to hear the review,
- the remaining benchers may continue to hear the review and make a final decision, and the vacancy does not invalidate the review.
- (5) After a hearing under this section, the benchers may
- (a) confirm the decision of the panel, or
 - (b) substitute a decision the panel could have made under this Act or the rules.
- (6) The benchers may make rules establishing procedures for an application for a review under this section.

[2007-14-40]

Appeal

- 48** Any of the following persons who is affected by a decision, determination or order of a panel or of the benchers may appeal the decision, determination or order to the Court of Appeal:
- (a) an applicant;
 - (b) a respondent;
 - (c) a lawyer who is suspended or disbarred under this Act or the rules.

PART 6 – CUSTODIANSHIPS

Definitions

49 In this Part:

“**court**” means the Supreme Court;

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

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

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

- (a) within a lawyer’s possession or control, if held or used by the lawyer for the benefit of a client or other person, or otherwise held or used in the lawyer’s capacity as a barrister and solicitor,
- (b) in the possession or control of a person other than a lawyer if the lawyer has a duty to account to a client or other person for the property, or
- (c) referred to in paragraph (a) or (b), if held or used by a corporation, including a law corporation.

Appointment of custodian

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

- (a) take possession of or control over all or part of the property of the lawyer, and
- (b) determine the status of, manage, arrange for the conduct of and, if appropriate, terminate the practice of the lawyer.

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

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

- (a) consents to the appointment of a custodian,
- (b) dies, resigns or otherwise terminates membership in the society,
- (c) is unable to practise as a lawyer because of physical or mental illness or for any other reason,
- (d) disappears or neglects or abandons the practice of law, or
- (e) is disbarred or suspended from the practice of law in British Columbia or any other jurisdiction.

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- (4) When a law corporation carries on the business of providing legal services to the public through a lawyer who is the subject of an application under this section, the court may order the custodian appointed under subsection (2) to
 - (a) take possession of or control over all or part of the law corporation's property, and
 - (b) determine the status of, manage, arrange for the conduct of and, if appropriate, terminate the practice of the law corporation.
- (5) An order under this section must direct that any person receiving notice of the order must retain all the lawyer's property that is within or comes into that person's possession or control, until directed otherwise by the custodian or by an order of the court.
- (6) An order under this section may
 - (a) direct the sheriff to search for, seize, remove and place into the possession or control of the custodian all or part of the lawyer's property,
 - (b) authorize the sheriff, for the purpose of paragraph (a), to enter
 - (i) any building or place other than the lawyer's dwelling house and open any safety deposit box or other receptacle, and
 - (ii) the lawyer's dwelling house and open any safe or other receptacle, if there are grounds to believe that the lawyer's property may be found there,
 - (c) direct any savings institution or other person to deal with, hold or dispose of the lawyer's property as the court directs, and to deliver to the custodian or otherwise, as the court directs, one or more of the following:
 - (i) the lawyer's property;
 - (ii) a copy of records relating to the lawyer's practice;
 - (iii) a copy of other records, when it is necessary for the effective conduct of the custodianship to do so,
 - (d) give directions to the custodian respecting the disposition of the lawyer's property and the manner in which the custodianship should be conducted,
 - (e) give directions as to the service of an order made or notice required under this Part,
 - (f) include other orders or give other directions to facilitate the conduct of the custodianship, and
 - (g) if the lawyer is a person referred to in section 15 (3) (a) or (b), prohibit the lawyer from acting as any or all of the following until the lawyer is a member in good standing of the society or until the court orders otherwise:
 - (i) a personal representative of a deceased person;
 - (ii) a trustee of the estate of a deceased person;

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- (iii) a decision maker or guardian under the *Adult Guardianship Act*;
 - (iv) a representative under the *Representation Agreement Act*.
- (7) Unless otherwise directed by the court, the custodian must cause an order made under this Part to be served promptly on the lawyer.
- (8) A sheriff, deputy sheriff or court bailiff executing an order under this Part has the same powers as that person has in the execution of a writ of seizure and sale.

[1998-9-108; 2007-14-41]

If society appointed as custodian

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

- (a) designate a person who is
 - (i) an employee of the society, and
 - (ii) a practising lawyer, or
- (b) retain the services of a practising lawyer

to perform the duties and functions and exercise the powers of a custodian on behalf of the society.

[2007-14-42]

Powers of custodian

51 A custodian may do any or all of the following:

- (a) notify a client of the lawyer, or any other person, of the custodian's appointment, and may communicate with that client or person respecting the conduct of the custodianship;
- (b) represent a client of the lawyer, in place of that lawyer, in any cause or matter in respect of which that lawyer was acting at the time a custodian was appointed, to the extent necessary to preserve the interests of the client;
- (c) conduct or authorize an investigation of the property of the lawyer;
- (d) require from the lawyer or any other person records and information that may be reasonably necessary to facilitate the conduct of the custodianship and, if necessary, apply to the court for an order to enforce the requirement;
- (e) report to an insurer any facts of which the custodian becomes aware that indicate that the lawyer in that lawyer's professional capacity may be liable to a client or other person;
- (f) cooperate with an insurer respecting any claim arising out of the lawyer's practice, to the extent required by the policy;
- (g) advise a client or other person of any facts of which the custodian becomes aware that may give rise to a claim for payment under section 31;

PART 6 – CUSTODIANSHIPS

- (h) deal with the assets and liabilities of the lawyer's practice to the extent necessary to protect the interests of clients and, subject to the interests of clients,
 - (i) pay all or part of the expenses and disbursements of and incidental to any acts done or proceedings taken under this Part, and
 - (ii) preserve the value of the practice;
- (i) employ or retain assistance in the conduct of the custodianship.

Society access to property

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

Property in the custody of a custodian

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

Applications to the court

- 54** (1) A custodian, the society, the lawyer concerned or any other interested person may apply to the court for an order under this section, with or without notice to anyone.
- (2) On an application under subsection (1), the court may do one or more of the following:
- (a) discharge the custodian, unless the society shows cause why the custodianship should be continued;
 - (b) appoint another practising lawyer or the society as a custodian;
 - (c) make any other order provided for in section 50 (4), in which case section 50 (5) and (6) applies;
 - (d) summarily determine the validity of a claim to a solicitor's lien;
 - (e) make no order.
- (3) Despite anything in this Part, the court may at any time extend or shorten the time within which anything is required to be done or dispense with any of the requirements of this Part.

[2007-14-43]

Custodianship rules

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

Liability and costs

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

Review by Credentials Committee

- 2-45** (1) Subject to subrule (1.1), an articulated student who has failed the training course may apply in writing to the Credentials Committee not more than 21 days after the date on which the Executive Director issued the transcript, for a review of his or her failed standing.
- (1.1) An articulated student may not apply to the Credentials Committee under subrule (1) if the student has failed in 3 attempts to pass the training course, including any of the following:
- (a) the original attempt;
 - (b) a further attempt to pass examinations, assignments or assessments under Rule 2-44(5.1);
 - (c) any attempt to meet a requirement under subrule (6).
- (2) The Credentials Committee may, in its discretion, consider an application for review received after the period specified in subrule (1).
- (3) An articulated student applying for a review under this Rule must state the following in the application:
- (a) any compassionate grounds, supported by medical or other evidence, that relate to the student's performance in the training course;
 - (b) any grounds, based on the student's past performance, that would justify the Credentials Committee granting opportunities for further remedial work;
 - (c) the relief that the student seeks under subrule (6).
- (4) The Credentials Committee may
- (a) deliver a copy of the student's application for review to the Executive Director,
 - (b) consider any written submission made by the Executive Director, the student, the principal or other person who, in the Committee's opinion, could provide information relevant to the grounds for review, or
 - (c) invite one or more of the student, the principal or the Executive Director, to make any further written submissions, or to meet informally with the Committee.
- (5) Subject to the Act and these Rules, the Credentials Committee may determine the practice and procedure to be followed at a review under this Rule.
- (6) After considering the submissions made under subrules (3) and (4), the Credentials Committee may do one or more of the following:
- (a) confirm the standing, including any failed standing, stated in the transcript delivered by the Executive Director;
 - (b) grant the student an adjudicated pass in a training course examination, assignment or assessment, with or without conditions;

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- (c) require the student to complete further examinations, assignments or assessments, and to pass them at a standard set by the Committee;
 - (d) require the student to complete or repeat and pass all or a portion of the training course;
 - (e) require the student to complete a specified program of training at an educational institution or under the supervision of a practising lawyer, or both.
- (7) A student who is directed to do anything under subrule (6) must pay the fee for the training course, or for each examination, assignment or assessment as specified in Schedule 1.
- (8) The Executive Director must deliver to each student who has been required by the Credentials Committee to do anything under subrule (6), and to that student's principal, a transcript stating the student's standing and the extent to which any standards or conditions set by the Committee have been met.

[(1), (4), (6) and (8) amended 03/03; (1) amended, (1.1) added 03/04; (6) amended 05/07]

Termination of enrolment

- 2-46** (1) An articulated student is no longer enrolled in the admission program if the student's articles are terminated by the principal or the student for any reason and no assignment of the student's articles is approved within 30 days.
- (2) The 30-day period referred to in subrule (1) does not run while the student is registered in and attending the training course.
- (3) A person whose enrolment has ceased under subrule (1) may apply for enrolment under Rule 2-27(3).

[(4) rescinded 11/99]

Call and admission

Call and admission

- 2-47** To qualify for call and admission, an articulated student must complete the following satisfactorily:
- (a) the articling term;
 - (b) the training course;
 - (c) any other requirements of the Act or Rules imposed by the Credentials Committee or the Benchers.

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.
- (4) The Executive Director must serve the notice referred to in subrule (3) in accordance with Rule 10-1.
- (5) The Executive Committee must conduct every hearing under this Rule in private unless the Committee determines, in the public interest, that a specific individual or the public generally may be present at part or all of the hearing.
- (6) Subject to the Act and these Rules, the Executive Committee may determine the practice and procedure to be followed at a hearing.
- (7) The claimant or the Society may call a witness to testify, who
- (a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and
 - (b) is subject to cross-examination.
- (8) Following completion of the evidence, the Executive Committee must invite the claimant and the Society to make submissions on the issues to be decided by the Committee.
- (9) Following the hearing of the evidence and submissions, the Executive Committee must determine whether the claimant is entitled to the funds held in trust by the Society.
- (10) If the claim is approved under subrule (1)(a) or (9), the Executive Director must
- (a) calculate the exact amount owing to the claimant,
 - (b) calculate, in accordance with Rule 3-85, the interest owing to the claimant on that amount, and
 - (c) pay to the claimant the total of the amounts calculated under paragraphs (a) and (b).

PART 3 – PROTECTION OF THE PUBLIC

Calculation of interest

- 3-85** (1) In calculating the interest owing to a claimant under Rule 3-84, the Executive Committee must allow interest, for each 3-month period, at 2% below the prime lending rate of the Society's banker on March 31, June 30, September 30 and December 31 respectively, in each year, with interest to be compounded on June 30 and December 31 in each year.
- (2) Interest calculated under subrule (1) is payable from the first day of the month following receipt of the unclaimed trust funds by the Society, until the last day of the month before payment out by the Society.

Efforts to locate the owner of funds

- 3-86** From time to time, the Executive Director must conduct or authorize efforts to locate the owner of funds held under this Part.

Payment to the Law Foundation

- 3-87** Before paying the principal amount received under Rule 3-82 to the Foundation under section 34 of the Act, the Executive Director must be satisfied that the owner of the funds cannot be located following efforts to locate the owner.

Division 9 – Real Estate Practice

Definitions

- 3-88** In this Division,

“**closing date**” means the date upon which the documents to effect a transaction are filed as a pending application in the appropriate land title office;

“**discharge of mortgage**” means any discharge of mortgage that releases any portion of the land or interest in land charged by the mortgage;

“**mortgage**” means one of the following registered in a land title office in British Columbia:

- (a) a mortgage of land or an interest in land;
- (b) a debenture or trust deed containing a fixed charge on land or an interest in land;

“**mortgagee**” includes the holder of a fixed charge under a debenture or trust deed that is a mortgage;

“**notary**” means a member of the Society of Notaries Public of British Columbia.

[added effective 03/03]

Report of failure to cancel mortgage

- 3-89** A lawyer must deliver to the Executive Director within 5 business days a report in a form approved by the Executive Committee when
- (a) the lawyer delivers funds to
 - (i) a mortgagee to obtain a registrable discharge of mortgage, or
 - (ii) another lawyer or a notary on the undertaking of the other lawyer or notary to obtain and register a discharge of mortgage, and

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- (b) 60 days after the closing date of the transaction giving rise to the delivery of such funds, the lawyer has not received
 - (i) a registrable discharge of mortgage from the mortgagee, or
 - (ii) satisfactory evidence of the filing of a registrable discharge of mortgage as a pending application in the appropriate land title office from the other lawyer or notary.

[added effective 03/03]

Division 10 – Criminal charges

Reporting criminal charges

3-90 (0.1) This Rule applies to lawyers, articulated students, practitioners of foreign law and applicants.

- (1) Subject to subrule (2), a person who is charged with an offence under a federal or provincial statute must provide to the Executive Director written notice containing all relevant information as soon as practicable after each of the following events:
 - (a) laying of the charge;
 - (b) disposition of the charge;
 - (c) sentencing in respect of the charge;
 - (d) commencement of an appeal of the verdict or sentence;
 - (e) disposition of the appeal.
- (1.1) A person charged with an offence must provide the Executive Director with a copy of any statement of the particulars of the charge immediately on receipt.
- (2) No notification is required under subrule (1) if a person is issued or served with a ticket as defined in the *Contraventions Act* (Canada) or a violation ticket as defined in the *Offence Act*.

[added effective 07/03; (0.1) and (1.1) added, (1) and (2) amended 06/07]

PART 5 – HEARINGS AND APPEALS

- (2) On application by anyone, or on its own motion, 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).
- (3) Despite the exclusion of the public under subrule (1) in a hearing on a citation, the complainant and one other person chosen by the complainant may remain in attendance during the hearing, unless the panel orders otherwise.
- (4) Except as required under Rule 5-7, when a hearing is proceeding, no one is permitted to possess or operate any device for photographing, recording or broadcasting in the hearing room without the permission of the panel, which the panel in its discretion may refuse or grant, with or without conditions or restrictions.

[(2) amended, (4) added 05/03]

Transcript and exhibits

- 5-7** (1) All proceedings at a hearing must be recorded by a court reporter and any person may obtain, at his or her expense, a transcript pertaining to any part of the hearing that he or she was entitled to attend.
- (2) Subject to solicitor-client privilege or an order under Rule 5-6(2), any person may obtain, at his or her own expense, a copy of an exhibit entered in evidence when a hearing is open to the public.

[heading amended, (2) added 05/03]

Decision

- 5-8** (1) A decision of a hearing panel is made by majority vote.
- (2) On request, the Executive Director must disclose a panel's written reasons for its decision, subject to the protection of solicitor and client privilege and confidentiality.
- (3) When a hearing panel gives written reasons for its decision, it must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.

[(2) and (3) amended 05/03]

Costs of hearings

- 5-9** (0.1) A panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1, and may set a time for payment.
- (0.2) The Benchers may order that an applicant or respondent pay the costs of a review under section 47 of the Act, and may set a time for payment.
- (1) In calculating the costs payable by an applicant or respondent, the panel or the Benchers may include part or all of one or more of the following:
 - (a) the cost of any investigation undertaken in relation to the applicant's application for enrolment, call and admission or reinstatement;

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- (b) the cost of an accounting, investigation or inspection of the respondent's practice, undertaken as part of the inquiry;
 - (c) a fee of \$25 per witness, multiplied by the number of days the witness was required to remain in attendance at the hearing;
 - (d) reasonable travel and living expenses of a witness;
 - (e) the court reporter's fee for attendance at the hearing;
 - (f) the cost of a transcript of a hearing held under Part 2 or 4, if the Society would otherwise be liable for its cost;
 - (g) a fee of \$750 for each part or full day of hearing;
 - (h) reasonable fees and disbursements of counsel appointed under Rule 2-63 or 4-20;
 - (i) any other amount, arising out of the investigation and hearing, for which the Society would otherwise be liable.
- (2) If the legal assistance used by the Society is provided by an employee of the Society, costs may be awarded for that legal assistance in the amount that would have been payable if the Society had retained outside counsel.
- (3) In the following circumstances, the panel or the Benchers have the discretion to direct that the applicant or respondent be awarded costs in a fixed amount or in accordance with subrule (1):
- (a) no adverse finding is made against the applicant;
 - (b) the citation is dismissed;
 - (c) the citation is rescinded after the hearing has commenced.
- (4) Costs deposited under Rule 2-62 must be applied to costs ordered under this Rule.
- (5) An applicant must not be enrolled, called and admitted or reinstated until the costs ordered under this Rule or the Act are paid in full.
- (6) As an exception to subrule (5), the Credentials Committee may direct that an applicant be enrolled, called and admitted or reinstated even though costs ordered under this Rule have not been paid in full and may make the direction subject to any conditions that the Committee finds appropriate.

[(0.1) added 03/99; (3) amended 06/99; (0.2) added, (1) and (3) amended 09/99;
(7) rescinded 06/07]

Time to pay a fine or costs, or to fulfil a practice condition

- 5-10** (1) An applicant or respondent may apply for
- (a) an extension of time
 - (i) to pay a fine or the amount owing under Rule 5-9, or
 - (ii) to fulfil a condition imposed under section 21, 22, 32 or 38 of the Act or accepted under section 19 of the Act, or
 - (b) a variation of a condition referred to in paragraph (a)(ii).

PART 5 – HEARINGS AND APPEALS

- (2) An application under subrule (1) must be made to the President who must refer the application to one of the following, as may in the President's discretion appear appropriate:
 - (a) the same panel that made the order;
 - (b) a new panel;
 - (c) the Discipline Committee;
 - (d) the Credentials Committee.
- (3) The panel or Committee that hears an application under subrule (1) must
 - (a) dismiss it,
 - (b) extend to a specified date the time for payment, or
 - (c) vary the conditions imposed, or extend to a specified date the fulfilment of the conditions.
- (4) An applicant or respondent must do the following by the date set by the hearing panel or the Benchers or extended under this Rule:
 - (a) pay in full a fine or the amount owing under Rule 5-9;
 - (b) fulfil a practice condition as established under section 21, 22, 32 or 38 of the Act or accepted under section 19 of the Act, or varied under subrule (3)(c).
- (5) If, on December 31, an applicant or respondent is in breach of subrule (4), the Executive Director must not issue to the applicant or respondent a practising certificate or a non-practising or retired membership certificate, and the applicant or respondent is not permitted to engage in the practice of law.

[(1) and (4) amended, (5) added 06/07]

Recovery of investigation or audit costs, trust report penalty and Special Compensation Fund payments

- 5-11** (1) A lawyer or former lawyer who is liable to pay money under the following provisions must pay to the Society the full amount owing by the date set by the Discipline Committee:
- (a) costs of an audit or investigation ordered under Part 2 or Rule 4-43;
 - (b) an assessment under Rule 3-74;
 - (c) recovery under Rule 3-42 of part or all of the amount paid out by the Society on that lawyer's behalf under section 31 of the Act.
- (2) A lawyer who has not paid the full amount owing under subrule (1) 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 December 31 following the making of the order, the Executive Director must not issue a practising certificate to the lawyer unless the Benchers order otherwise.

[heading and (1) amended 12/03]

Reviews and appeals

Review by Benchers

- 5-12** (1) In Rules 5-12 to 5-19, “review” means a review under section 47 of the Act of a hearing panel decision.
- (2) Subject to the Act and these Rules, the Benchers may determine the practice and procedure to be followed at a review.
- (3) Delivery of documents to a respondent or applicant under Rules 5-12 to 5-19 may be effected by delivery to counsel representing the respondent or the applicant.

[amended, (3) added 05/02]

Initiating a review

- 5-13** (1) An applicant or a respondent may initiate a review of a decision under section 47 of the Act by delivering a Notice of Review under Rule 5-15 to the Executive Director within 30 days after the applicant or respondent is notified of the decision of the panel.
- (2) The Credentials Committee may initiate a review of a decision of a panel under section 22(3) of the Act by adopting a resolution to refer the decision to the Benchers under section 47 of the Act within 30 days of the decision.
- (3) The Discipline Committee may initiate a review of a decision of a panel under section 38(4), (5), (6) or (7) of the Act by adopting a resolution to refer the decision to the Benchers under section 47 of the Act within 30 days of the decision.
- (4) When a review is initiated under subrule (2) or (3), the Executive Director must promptly deliver a Notice of Review to the applicant or respondent concerned.

[(2.1) added, (4) and (5) amended 09/99; rescinded and replaced 05/02]

Stay of order pending review

- 5-14** (1) When a review is initiated under Rule 5-13, the order of the panel with respect to costs is stayed.
- (2) When the Credentials Committee initiates a review under Rule 5-13(2), an order of the hearing panel to call and admit or reinstate the applicant is stayed.
- (3) A person or Committee initiating a review under Rule 5-13 may apply to the President for a stay of any order not referred to in subrule (1) or (2).
- (4) On an application under subrule (3), the President may designate another Bencher to make a determination.

[(5) amended 06/99; (2.1) added, (4) and (5) amended 09/99; rescinded and replaced 05/02]