

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2007: No. 4 October

Highlights

Law Society Rules:

- **Discipline:** A new summary hearing process for certain disciplinary matters will provide an efficient, timely and cost-effective mechanism for dealing with lawyers who fail to observe their regulatory obligations (Rules 1-3(8), 3-6(4), 3-12(3.1) and (4), 3-14(6.1) and (7), 3-18.2(2), 3-44(4), 4-2(4), 4-3, 4-4.1, 4-5, 4-24.1, 4-38(1) and 5-2(2): pp. 14, 65, 68, 68.1, 69, 78, 95, 96, 104, 110.1 and 111). Written reasons are required for decisions of all hearing panels and Bencher reviews (Rules 2-68(3)-(5), 4-34(2), 4-35(1), 5-12(1) and (3), 5-13(1), 5-16(1), 5-17(1) and 5-20: pp. 60.1, 108, 116, 116.1 and 116.3). The Chair or other Bencher on the Discipline Committee, in addition to the Committee itself, may extend the time for service of a citation (Rule 4-15(1): p. 98.2).
- **Practice standards:** The Practice Standards Committee now has the authority, when a lawyer whose competence has been investigated fails or refuses to comply with the Committee's recommendations, to order conditions and limitations on the lawyer's practice, and to require the lawyer to comply with that order. To ensure fairness, the lawyer will be given an opportunity to make representations concerning the proposed order. (Rules 1 (definition of "professional conduct record"), 3-14(1), (5) and (6), 3-14.1, 3-16(3.1)-(5), and 5-10(1) and (4): pp. 10, 68, 68.2, 68.3 and 115).
- **Miscellaneous:** Rule 3-3(2) is amended to implement a protocol with the Provincial Court of BC to allow the sharing of complaints information about Judicial Justices who are also lawyers. The lawyer concerned will be required to consent to the disclosure (p. 63).

Professional Conduct Handbook: Guidance is provided to lawyers on cross-examining witnesses (Chapter 8, Rule 1(e.1) and footnote 1: pp. 21 and 24.1) and dealing with payment by cheques from other lawyers (Chapter 11, footnote 1: p. 34). Minor housekeeping amendments are made to Chapter 11, Rules 5, 6 and 12 to 22 (pp. 31-34).

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	9 – 10 13 – 14 60.1 – 60.2 63 – 64.2, 65 – 66.2, 67 – 70, 77 – 78 95 – 98.2 103 – 110.2 111 – 116.2	9 – 10 13 – 14 60.1 – 60.4 63 – 68.4, 69 – 70 77 – 78 95 – 98.2 103 – 110.2 111 – 116.4
Professional Conduct Handbook	21 – 24.2 31 – 34	21 – 24.2 31 – 34

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

[continued over]

Updates: This amendment package updates the *Member's Manual* to **September 27, 2007**. The previous amendment package was 2007: No. 3 July.

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*, 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 September 27, 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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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, articled 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;
- (d.1) conditions or limitations of practice imposed by the Practice Standards Committee under Rule 3-14.1;
- (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; 09/07]

PART 1 – ORGANIZATION

Division 1 – Law Society

Benchers

Term of office

- 1-1** (1) A Bencher appointed under section 5 of the Act holds office for a 2-year term coinciding with the term of a Bencher elected under section 7, but may continue to hold office beyond that term until a successor is appointed.
- (2) An elected Bencher holds office for 2 years beginning on January 1 following his or her election.

[(1) amended 12/99]

Life Benchers

- 1-2** (1) A person, including the Attorney General, who has served as a Bencher for 4 complete or partial terms, whether consecutive or not, is
- (a) ineligible to be elected or appointed as a Bencher, and
 - (b) a Life Bencher on leaving office as a Bencher.
- (2) Despite subrule (1), a Bencher who is elected Second Vice-President-elect
- (a) may serve as Second Vice-President, First Vice-President and President under Rule 1-3, and
 - (b) is a Life Bencher on leaving office as a Bencher.
- (3) A Life Bencher
- (a) may attend and speak at meetings of the Benchers,
 - (b) has no vote in Bencher meetings, and
 - (c) except as a member of a committee under Rule 1-47, may not exercise any of the powers of a Bencher.
- (4) A person who was a Bencher on January 10, 1992
- (a) despite subrule (1), is eligible to be elected or appointed as a Bencher for a fifth and a sixth term, and
 - (b) is a Life Bencher on leaving office as a Bencher.

President, First Vice-President and Second Vice-President

- 1-3** (1) The term of office for the President, First Vice-President and Second Vice-President is from January 1 to December 31 of each year.
- (2) Subject to subrule (7), on January 1 of each year,
- (a) the First Vice-President becomes President,
 - (b) the Second Vice-President becomes First Vice-President, and
 - (c) the Second Vice-President-elect becomes Second Vice-President.
- (3) Each year, the members must elect a Bencher who is a member of the Society as the Second Vice-President-elect in accordance with Rule 1-18.

LAW SOCIETY RULES

- (4) Without further election by the district, the Bencher elected by the members under subrule (3) holds office as a Bencher representing the district that last elected the Bencher until he or she completes a term as President.
- (5) If there is a vacancy in the office of President or a Vice-President for any reason, including the operation of this subrule or the failure of a Bencher to take office under this Rule, the Bencher who would have assumed the office at the end of the term immediately assumes the vacant office.
- (6) If a vacancy under subrule (5) occurs when there is no Bencher elected by the members to assume the office,
 - (a) the Benchers may elect a Bencher who is a member of the Society to act in the vacant office until a mail ballot of all members, the next general meeting or December 31, whichever comes first, and
 - (b) if the next general meeting or a mail ballot takes place before December 31, the members must elect a Bencher who is a member of the Society to the vacant office for the remainder of the year, and a Second Vice-President-elect.
- (7) If the First Vice-President assumes the office of President under subrule (5) on or after July 1, subrule (2) does not operate on January 1 of the following year and the President and the Vice-Presidents continue in office for an additional full year.
- (8) The powers of the President under Rules 2-64, 2-69, 4-2, 4-19, 4-28, 5-2 or 5-10 may be exercised by a Vice-President or the Executive Director.

[(8) amended 07/07]

Removal of the President or a Vice-President

- 1-4** (1) On a resolution of a majority of the Benchers to remove the President or a Vice-President from office, the Executive Director must conduct a referendum of all members of the Society to determine if the President or Vice-President, as the case may be, should be removed from office.
- (2) If a 2/3 majority of the members voting in a referendum under this Rule vote to remove the President or a Vice-President from office, he or she ceases to hold that office and ceases to be a Bencher.
 - (3) Before conducting a referendum under subrule (1), the Executive Director must notify the President or Vice-President who is affected.
 - (4) Within 30 days after the Benchers pass a resolution under subrule (1), the Executive Director must mail to each member of the Society in good standing
 - (a) a notice stating
 - (i) that the Benchers have resolved to remove from office the President or a Vice-President, as the case may be,
 - (ii) the reasons for the Benchers' resolution,
 - (iii) that a referendum from among the membership is being conducted to determine if the President or Vice-President, as the case may be, should be removed from office, and
 - (iv) the date on which the referendum votes will be counted,

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

- (3) After submissions under subrule (1), the panel must determine the facts and decide whether to
 - (a) grant the application
 - (b) grant the application subject to conditions or limitations that the panel considers appropriate, or
 - (c) reject the application.
- (4) The panel must prepare written reasons for its findings.
- (5) The Executive Director must promptly deliver a copy of the panel's reasons prepared under subrule (4) to the applicant and counsel for the Society.

[(3) to (5) added 07/07]

Variation or removal of conditions or limitations

- 2-69** (1) A lawyer or articled student on whom conditions or limitations have been imposed by a panel under this Division may apply to the President to have them varied or removed.
- (2) The President must refer an application under subrule (1) to the same panel that conducted the hearing or to the Credentials Committee, as the President considers appropriate.

Publication of credentials decision

- 2-69.1** (1) Subject to Rule 2-69.2, the Executive Director may publish and circulate to the profession a summary of the circumstances and of any decision of a hearing panel on an application under this Division and the reasons given for the decision.
- (2) When a publication is allowed under subrule (1), the Executive Director may also publish generally
 - (a) a summary of the circumstances of the decision of the hearing panel and the reasons given for the decision, or
 - (b) all or part of the report of the hearing panel.
- (3) 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 6 months have elapsed from the decision of the hearing panel.
- (4) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[added 02/04]

Anonymous publication

- 2-69.2** (1) Except as required or allowed under this Rule, a publication under Rule 2-69.1 must identify the applicant.
- (2) If the application that is the subject of the hearing is rejected, the publication must not identify the applicant unless the applicant consents in writing.

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- (3) The panel may order that publication not identify the applicant if
 - (a) the application is approved without limitation or conditions on the practice or articles of the applicant, and
 - (b) publication will cause grievous harm to the applicant or another identifiable individual that outweighs the interest of the public and the Society in full publication.
- (4) An applicant 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 hearing report is issued or oral reasons delivered.
- (5) The Executive Director must not publish under Rule 2-69.1 until
 - (a) 7 days after a hearing report is issued or oral reasons given, unless the applicant 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 rejecting an application, the Benchers approve the application, the applicant may apply to the Benchers under subrule (4), and subrules (3) to (6) apply as if the Benchers were a panel.

[added 02/04]

Division 3 – Fees and Assessments

Annual practising fees

- 2-70** (1) The annual practising fee, special compensation fund assessment and insurance fee are payable in respect of each calendar year.
- (2) The date for payment of the annual practising fee, special compensation fund assessment and first insurance fee instalment is November 30 of the year preceding the year for which they are payable.

[(2) amended 05/04]

Assessments

- 2-71** (1) The Benchers may, by resolution, set a special assessment of all
 - (a) practising lawyers,
 - (b) practising lawyers and applicants,
 - (c) members of the Society, or
 - (d) members of the Society and applicants.
- (2) A resolution under subrule (1) must set a date by which the assessment must be paid.

Late payment

- 2-72** (1) A lawyer who fails to pay fees by the date required under Rule 2-70 but pays all required fees before December 31 of the year preceding the year for which they are payable, together with the late payment fee under this Rule, continues to be a member of the Society.
- (2) The Executive Director may extend the time for a lawyer or class of lawyers to pay fees or a special assessment and, if the lawyer pays
- (a) the annual fee or special assessment by the date to which the time is extended, and
 - (b) the late payment fee under this Rule,
- the lawyer is deemed to be a member of the Society in good standing and to have been in good standing during the period of time that the lawyer's fee or special assessment was unpaid.

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PART 3 – PROTECTION OF THE PUBLIC

Division 1 – Complaints

Application

3-1 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 former lawyer;
- (b) an articled student;
- (c) a visiting lawyer permitted to practise law in British Columbia under Rules 2-10.2 to 2-12;
- (d) a practitioner of foreign law;
- (e) a law corporation.

[amended 11/99]

Complaints

3-2 Any person may deliver a written complaint against a lawyer to the Executive Director.

Confidentiality of complaints

3-3 (1) No one is permitted to disclose any information or records that form part of the Executive Director's investigation of a complaint or the Complainants' Review Committee's review of it except for the purpose of complying with the objectives of the Act or with these Rules.

(2) Despite subrule (1), the Executive Director may do any of the following:

- (a) disclose information referred to in that subrule, with the consent of the lawyer,
 - (i) in responding to an enquiry made for the purpose of a potential judicial appointment, or
 - (ii) under a protocol with a Court of which the lawyer is a part-time judicial officer;
- (b) if a complaint has become known to the public, disclose
 - (i) the existence of the complaint,
 - (ii) its subject matter,
 - (iii) its status, including, if the complaint is closed, the general basis on which it was closed, and
 - (iv) any additional information necessary to correct inaccurate information;

LAW SOCIETY RULES

- (c) with the consent of the Discipline Committee, deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence;
 - (d) if, in the course of the investigation of a complaint, a lawyer has given an undertaking to the Society that restricts, limits or prohibits the lawyer's practice in one or more areas of law, disclose the fact that the undertaking was given and its effect on the lawyer's practice.
- (3) For the purpose of subrule (2)(b), the status of a complaint is its stage of progress through the complaints handling process, including, but not limited to the following:
- (a) opened;
 - (b) under investigation;
 - (c) referred to a Committee;
 - (d) closed.
- (3.1) If the Executive Director discloses the existence of an undertaking under subrule (2)(d) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time after the undertaking ceases to be in force.
- (4) This Division must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[(2) and (3) amended, (4) added 10/03; (2) amended 02/04; (2) amended, (3.1) added 06/05;
(2) amended 07/07]

Consideration of complaints and other information

- 3-4** (1) The Executive Director must consider every complaint received under Rule 3-2.
- (2) Information received from any source that indicates that a lawyer's conduct may constitute a discipline violation must be treated as a complaint under these Rules.

[heading and (2) amended 09/99]

Investigation of complaints

- 3-5** (1) Subject to subrule (2), the Executive Director may, and at the instruction of a member of the Discipline Committee must, investigate the complaint to determine its validity.
- (2) The Executive Director may decline to investigate a complaint or other matter, if the Executive Director is satisfied that the complaint or matter
- (a) is outside the jurisdiction of the Society,
 - (b) is frivolous, vexatious or an abuse of process, or
 - (c) does not allege facts that, if proved, would constitute a discipline violation.
- (3) The Executive Director must deliver to the lawyer a copy of the complaint or, if that is not practicable, a summary of it.

PART 3 – PROTECTION OF THE PUBLIC

- (4) Despite subrule (3), if the Executive Director considers it necessary for the effective investigation of the complaint, the Executive Director may delay notification of the lawyer.
- (5) When acting under subrule (3), the Executive Director may decline to identify the complainant or the source of the complaint.
- (6) The Executive Director may require the lawyer to whom a copy or summary of the complaint has been delivered under subrule (3) to respond to the substance of the complaint.
- (7) The lawyer's response under subrule (6) must be
 - (a) in writing and, unless the Executive Director permits otherwise, signed by
 - (i) the lawyer personally,
 - (ii) a director of the law corporation, if the complaint is about a law corporation, or
 - (iii) counsel for the lawyer or law corporation, and
 - (b) delivered to the Executive Director as soon as practicable and, in any event, by the date set by the Executive Director.
- (8) After receiving a response from the lawyer, the Executive Director may deliver to the complainant a copy of the response or a summary of it, subject to solicitor and client privilege and confidentiality.
- (9) The Executive Director may, at any time, attempt to resolve a complaint through mediation or other informal means.

Action after investigation

- 3-6** (1) After investigating a complaint, the Executive Director must take no further action if the Executive Director is satisfied that the complaint
- (a) is not valid or its validity cannot be proved, or
 - (b) does not disclose conduct serious enough to warrant further action.
- (2) The Executive Director may take no further action on a complaint if the Executive Director is satisfied that the matter giving rise to the complaint has been resolved.
- (3) Unless subrule (1) applies or the Executive Director takes no further action under subrule (2), the Executive Director must refer the complaint to the Practice Standards Committee or to the Discipline Committee.
- (4) Despite subrule (3), the Executive Director may refer a complaint to the Chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:
- (a) breached a Rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society.

[4) added 07/07]

Notifying the parties

- 3-7** (1) When a decision has been made under Rule 3-6, the Executive Director must advise the complainant and the lawyer in writing of the disposition.
- (2) When the Executive Director takes no further action on a complaint under Rule 3-6(1), notice to the complainant under subrule (1) must include
- (a) the reason for the decision, and
 - (b) instructions on how to apply for a review of the decision under Rule 3-9.

Appointment of Complainants' Review Committee

- 3-8** (1) For each calendar year, the President must appoint a Complainants' Review Committee.
- (2) If one or more lay Benchers have been appointed under section 5 of the Act, the President must appoint at least one of the lay Benchers to the Complainants' Review Committee.

Review by Complainants' Review Committee

- 3-9** (1) A complainant may apply to the Complainants' Review Committee for a review of a decision by the Executive Director under Rule 3-6 to take no further action after investigating a complaint.
- (2) To initiate a review under subrule (1), the complainant must apply to the Complainants' Review Committee within 30 days after the decision is communicated to the complainant.
- (3) The chair of the Complainants' Review Committee may extend the time for applying for a review under subrule (2) in extraordinary circumstances beyond the control of the complainant.
- (4) The Complainants' Review Committee must
- (a) review the documents obtained, collected or produced by the Executive Director under Rules 3-4 to 3-7, and
 - (b) on the direction of a lay Bencher member of the Committee, make enquiries of the complainant, the lawyer or any other person.
- (5) After its review and enquiries, the Complainants' Review Committee must do one of the following:
- (a) confirm the Executive Director's decision to take no further action;
 - (b) refer the complaint to the Practice Standards Committee or to the Discipline Committee with or without recommendation.
- (6) The chair of the Complainants' Review Committee must inform the complainant, the lawyer and the Executive Director, in writing, of the Committee's decision under subrule (5) and the reasons for that decision.
- (7) If the Complainants' Review Committee keeps minutes of its consideration of a complaint, the Executive Director may disclose all or part of the minutes to the complainant or lawyer concerned.

[(7) added 10/03]

Division 2 – Practice Standards

Practice Standards Committee

- 3-10** (1) For each calendar year, the President must appoint a Practice Standards Committee consisting of
- (a) a chair and vice chair, both of whom must be Benchers, and
 - (b) other Benchers and lawyers.
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a lawyer or Bencher to the Practice Standards Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.

Objectives

- 3-11** The objectives of the Practice Standards Committee are to
- (a) recommend standards of practice for lawyers,
 - (b) develop programs that will assist all lawyers to practise law competently, and
 - (c) identify lawyers who do not meet accepted standards in the practice of law, and recommend remedial measures to assist them to improve their legal practices.

Consideration of complaints

- 3-12** (1) The Practice Standards Committee must consider any complaint referred to it by the Executive Director, the Complainants' Review Committee or any other Committee, and may instruct the Executive Director to make or authorize any further investigation that the Practice Standards Committee considers desirable.
- (2) While considering a complaint under this Rule, the Practice Standards Committee may also consider any other matter arising out of the lawyer's practice of law.
- (3) When considering a complaint under this Rule, the Practice Standards Committee may do one or more of the following:
- (a) decide that no further action be taken on the complaint;
 - (b) make recommendations to the lawyer, if it considers that the carrying out of the recommendations will improve the lawyer's practice of law;
 - (c) require the lawyer to meet and discuss the circumstances of the complaint with a lawyer or Bencher designated by the Practice Standards Committee, who must then report to the Committee;
 - (d) find that there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner and order a practice review in respect of the lawyer's practice;
 - (e) refer the complaint to the Discipline Committee.

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- (3.1) Despite subrule (3)(e), the Practice Standards Committee may refer a complaint to the Chair of the Discipline Committee if the complaint concerns only allegations that the lawyer has done one or more of the following:
- (a) breached a Rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society.
- (4) The Practice Standards Committee is not precluded from taking any of the steps in subrule (3) or (3.1) because it has previously taken another of those steps in the same matter.

[(3.1) added, (4) amended 07/07]

Practice review

- 3-13** (1) The Practice Standards Committee may order a practice review of the practice of a lawyer under Rule 3-12(3)(d) or if the lawyer consents to the review.
- (2) When a practice review is ordered, the Executive Director must name one or more qualified persons to conduct the review.
- (3) After consultation with the lawyer and the practice reviewers, the Executive Director must set a date, time and place for the practice review.
- (4) A lawyer whose practice is being reviewed under subrule (1) must answer any inquiries and provide the practice reviewers with any information, files or records in the lawyer's possession or power as reasonably requested.
- (5) After completing a practice review, the practice reviewers must deliver to the Practice Standards Committee and to the lawyer a written report of their findings and recommendations.

Action by the Practice Standards Committee

- 3-14** (1) After its consideration of a report received under Rule 3-12(3)(c) or 3-13(5), the Practice Standards Committee must
- (a) decide that no further action be taken, or
 - (b) recommend that the lawyer do one or more of the following:
 - (i) undertake not to practise in specified areas of law;
 - (ii) satisfactorily complete a remedial program;
 - (iii) satisfactorily complete an examination approved by the Committee or its designate;
 - (iv) obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;

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- (v) obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;
 - (vi) practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;
 - (vii) take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.
- (2) When making recommendations under subrule (1)(b), the Practice Standards Committee may set one or more dates by which the lawyer is to complete the recommendations.
- (3) On application by the lawyer or the Executive Director, the Practice Standards Committee may extend the date by which the lawyer is to complete a recommendation.
- (4) The Practice Standards Committee's recommendations under subrule (1)(b) form part of the lawyer's professional conduct record.
- (5) The Executive Director must reduce the Practice Standards Committee's recommendations to writing and deliver a copy to the lawyer.
- (6) The Practice Standards Committee may, at any stage, refer to the Discipline Committee
- (a) all or any part of a practice review report delivered under Rule 3-13(5),
 - (b) a report on the manner in which the lawyer has carried out or followed any recommendations or has failed or refused to do so,
 - (c) an order made under Rule 3-14.1, or
 - (d) a report on the failure to comply with an order made under Rule 3-14.1.
- (6.1) Despite subrule (6), the Practice Standards Committee may refer a report to the Chair of the Discipline Committee with respect to allegations that the lawyer has done one or more of the following:
- (a) breached a Rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society.
- (7) The Practice Standards Committee is not precluded from making a recommendation under subrule (1) or a referral under subrule (6) or (6.1) because it has previously made a recommendation or a referral in the same matter.

[[6.1) added, (7) amended 07/07; (1), (5) and (6) amended 09/07]

Conditions or limitations on practice

3-14.1 (1) If the lawyer refuses or fails to comply with a recommendation under Rule 3-14(1)(b) by the time set by the Practice Standards Committee under Rule 3-14(2), the Committee may make an order imposing conditions and limitations on the lawyer's practice, including but not limited to the following:

- (a) specifying areas of law in which the lawyer must not practise;
- (b) requiring that the lawyer satisfactorily complete a remedial program;
- (c) requiring that the lawyer satisfactorily complete an examination approved by the Committee or its designate;
- (d) requiring that the lawyer obtain a psychiatric or psychological assessment or counselling, or both, and, if the Committee requests, provide a report on that assessment or counselling to the Committee;
- (e) requiring that the lawyer obtain a medical assessment or assistance, or both, and if the Committee requests, provide a report on that assessment or assistance to the Committee;
- (f) requiring that the lawyer practise in a setting approved by the Committee, including under the supervision of a lawyer approved by the Committee;
- (g) requiring that the lawyer take other steps intended to improve the lawyer's practice of law or otherwise protect the public interest.

(2) At least 30 days before the Practice Standards Committee is to make an order under subrule (1), the Executive Director must deliver to the lawyer notice of the following:

- (a) the terms of the proposed order;
- (b) the date on which the proposed order is to take effect;
- (c) the reasons for the proposed order;
- (d) the means by which the lawyer may make submissions to the Practice Standards Committee concerning the proposed order and the deadline for making such submissions before the order is to be considered by the Committee.

(3) A lawyer must comply with an order made under this Rule.

[added 09/07]

Remedial program

3-15 (1) A remedial program under this Division may include any program intended to improve the lawyer's knowledge and skill in the practice of law, including, but not limited to, one or more of the following:

- (a) a continuing legal education course;
- (b) a remedial course;
- (c) a course offered by an educational institution;
- (d) a program of mentoring or supervision by a practising lawyer approved by the Practice Standards Committee.

(2) To form part of a remedial program, a course or program must be approved by the Practice Standards Committee or its designate.

Confidentiality of Practice Standards Committee deliberations

- 3-16** (1) Subject to subrules (2) to (4) and Rule 3-17, the following must be treated confidentially, and must not be disclosed except for the purpose of complying with the objects of the Act or, with the consent of the lawyer concerned, in responding to an enquiry made for the purpose of a potential judicial appointment:
- (a) all of the information and documents that form part of the Practice Standards Committee's consideration of a complaint;
 - (b) any action taken or decision made by the Committee;
 - (c) any report prepared for or on behalf of the Committee.
- (2) If a matter referred to or considered by the Practice Standards Committee has become known to the public, the Executive Director may disclose
- (a) the fact that the matter is or has been before the Committee,
 - (b) the status of the matter, including, if the matter is concluded, the general basis on which it was concluded, and
 - (c) any additional information necessary to correct inaccurate information.
- (3) With the consent of the Practice Standards Committee, the Executive Director may deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (3.1) Subrules (4) and (5) apply to
- (a) an undertaking under this division that restricts, limits or prohibits the lawyer's practice in one or more areas of law, and
 - (b) a condition or limitation of a lawyer's practice imposed under Rule 3-14.1.
- (4) The Executive Director may disclose the fact that a lawyer has given an undertaking or that the Practice Standards Committee has imposed a condition or limitation and the effect on the lawyer's practice.
- (5) If the Executive Director discloses the existence of an undertaking, condition or limitation under subrule (4) by means of the Society's website, the Executive Director must remove the information from the website within a reasonable time when the undertaking, condition or limitation is no longer in force.

[amended, (2) and (3) added 02/04; (1) amended, (4) and (5) added 06/05; (3.1) added, (4) and (5) amended 09/07]

Report to complainant

- 3-17** The Executive Director must advise the complainant in writing of the Practice Standards Committee's decision under Rule 3-12, but must not deliver to the complainant a copy of any report or the Committee's recommendations about the lawyer's practice.

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Costs

- 3-18** (1) The Practice Standards Committee may order that a lawyer pay to the Society the cost of a practice review, action or remedial program ordered or allowed under this Division, and may set and extend the date for payment.
- (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 or the Chair of the Discipline Committee.

[added effective 01/07; (2) amended 07/07]

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]

- (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 articled 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.

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- (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 or the Chair of the Discipline Committee.

[(2) amended 12/03; (4) added 05/05; (1) amended 09/06; (4) amended 07/07]

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.

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Interpretation and application

- 4-1** (1) This Part applies to a former lawyer, an articled student, a visiting lawyer permitted to practise law under Rules 2-10.2 to 2-12 and a practitioner of foreign law as it does to a lawyer, with the necessary changes and so far as it is applicable.
- (2) This Part must be interpreted in a manner consistent with standards of simplicity, fairness and expediency, and so as to provide maximum protection to the public and to lawyers.
- (3) In this Part, “**conduct meeting**” means a meeting that a lawyer is required to attend under Rule 4-4(1)(a.2).

[(1) amended 11/99; (3) added 07/05]

Discipline Committee

- 4-2** (1) For each calendar year, the President must appoint a Discipline Committee consisting of
- (a) a chair and vice chair, both of whom must be Benchers, and
 - (b) other Benchers and lawyers.
- (2) The President may remove any person appointed under subrule (1).
- (3) At any time, the President may appoint a lawyer or Bencher to the Discipline Committee to replace a Committee member who resigns or otherwise ceases membership in the Committee, or to increase the number of members of the Committee.
- (4) Any function of the Chair of the Discipline Committee under this Part may be performed by the Vice Chair if the Chair is not available for any reason, or by another Bencher member of the Committee designated by the President if neither the Chair nor the Vice-Chair is available for any reason.

[(4) added 07/07]

Consideration of complaints by Committee

- 4-3** The Discipline Committee must consider any complaint referred to it under these Rules and may instruct the Executive Director to make or authorize further investigation that the Discipline Committee considers desirable.

[heading and rule amended 07/07]

Action on complaints

- 4-4** (1) After its consideration under Rule 4-3, the Discipline Committee must
- (a) decide that no further action be taken on the complaint,
 - (a.1) authorize the chair or other Bencher member of the Discipline Committee to send a letter to the lawyer concerning the lawyer’s conduct,
 - (a.2) require the lawyer to attend a meeting with one or more Benchers or lawyers to discuss the conduct of the lawyer,

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- (b) require the lawyer to appear before the Conduct Review Subcommittee, or
 - (c) recommend that a citation be issued against the lawyer under Rule 4-13(1).
- (2) In addition to the determination under subrule (1), the Discipline Committee may refer any matter or any lawyer to the Practice Standards Committee.
- (3) In addition to any action taken under subrules (1) and (2), if a complaint discloses that there may be grounds for revoking a law corporation's permit under Rule 9-11, the Discipline Committee may order a hearing on the revocation of the law corporation's permit.
- (4) At any time before the Discipline Committee makes a decision under Rule 4-9(6)(a) to (c), the Committee may resolve to rescind a decision made under subrule (1)(b) to require a lawyer to appear before the Conduct Review Subcommittee and substitute another decision under subrule (1).

[(1) amended, (4) added 07/05]

Consideration of complaints by Chair

- 4-4.1** (1) The Chair of the Discipline Committee must consider any complaint referred to him or her under these Rules and may instruct the Executive Director to make or authorize further investigation that the Chair considers desirable.
- (2) After considering a complaint under subrule (1), the Chair of the Discipline Committee must
- (a) order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer, or
 - (b) refer the complaint to the Discipline Committee.

[added 07/07]

Notification

- 4-5** The Executive Director must notify the complainant and the lawyer or law corporation in writing of the determination of the Discipline Committee under Rule 4-4 or of the Chair under Rule 4-4.1.

[amended 07/07]

Confidentiality of Discipline Committee deliberations

- 4-6** (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) all of the information and documents that form part of the Discipline Committee's consideration of a complaint;
 - (b) the Discipline Committee's determination under Rule 4-4.
- (2) As an exception to subrule (1), the Executive Director may disclose information referred to in that subrule, with the consent of the lawyer, in responding to an enquiry made for the purpose of a potential judicial appointment.
- (3) No one is permitted to disclose a direction to issue a citation until the respondent is notified.

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- (4) Despite subrule (3), the Executive Director may disclose to the public a direction to issue a citation, its subject matter and its status before the respondent is notified if
 - (a) the identity of the respondent has already been disclosed to the public,
 - (b) the citation is in respect of a crime to which the respondent has pleaded guilty or of which the respondent has been found guilty, or
 - (c) the citation is based on a complaint that has become known to the public.
- (5) Despite subrule (1), with the consent of the Discipline Committee, the Executive Director may deliver to a law enforcement agency any information or documents that the Committee reasonably believes may be evidence of an offence.
- (6) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[(4) amended 05/03; (5) amended 02/04]

Conduct letter from the Chair

- 4-6.1** (1) When a letter authorized under Rule 4-4(1)(a.1) is sent to the lawyer, the Executive Director must provide the complainant with
 - (a) a copy of the letter, or
 - (b) if directed by the Discipline Committee, a summary of the letter.
- (2) A letter authorized under Rule 4-4(1)(a.1)
 - (a) does not form part of the lawyer's professional conduct record, and
 - (b) is not admissible in the hearing of a citation under this Part.

[added 07/05]

Conduct meeting

- 4-6.2** (1) A conduct meeting must be held in private.
- (2) No record of an order under Rule 4-4(1)(a.2) or of the conduct meeting forms part of the lawyer's professional conduct record.
- (3) A Bencher or other lawyer who has participated in a conduct meeting is not permitted to testify in the hearing of a citation as to any statement made by the respondent during the conduct meeting, unless the matter is put in issue by the respondent.

[added 07/05]

Conduct Review Subcommittee

- 4-7** (1) The Discipline Committee or the chair of the Discipline Committee may appoint a Conduct Review Subcommittee to consider the conduct of a lawyer referred to the Subcommittee under Rule 4-4(1)(b).
- (2) A Conduct Review Subcommittee
 - (a) must include at least one lawyer,
 - (b) may include one or more lay Benchers, and
 - (c) must be chaired by a Bencher or a Life Bencher.

Conduct review meeting

- 4-8** (1) A conduct review is an informal proceeding at which the lawyer
- (a) must appear personally, and
 - (b) may be represented by counsel.
- (2) Subject to subrule (3), a conduct review must be conducted in private.
- (3) The Conduct Review Subcommittee may, in its discretion, permit the complainant to be present at all or part of the meeting, with or without the right to speak at the meeting.

[(2) amended 09/99]

Conduct Review Subcommittee report

- 4-9** (1) The Conduct Review Subcommittee must
- (a) prepare a written report of its findings of fact, conclusions and any recommendations, and
 - (b) deliver a copy of that report to the lawyer, together with written notice that the lawyer has 30 days from the date of the notice to notify the chair of the Subcommittee in writing of any dispute as to the contents of the report and the reasons he or she disputes the contents of the report.
- (2) If the Subcommittee considers it necessary for the effective consideration of the lawyer's dispute, it may order a further meeting.
- (3) If a further meeting is ordered under subrule (2), Rule 4-8 applies.
- (4) The Subcommittee must consider the lawyer's dispute and
- (a) amend its report as it considers appropriate, or
 - (b) forward its report to the Discipline Committee without amendment.
- (5) The Subcommittee must notify the lawyer in writing of its decision under subrule (4) and, if the report is amended, provide a copy of the amended report to
- (a) the lawyer, and
 - (b) the Discipline Committee.
- (6) After considering the Conduct Review Subcommittee's report, the Discipline Committee must do one or more of the following:
- (a) decide to take no further action on the complaint;
 - (b) refer the lawyer to the Practice Standards Committee;
 - (c) recommend that a citation be issued against the lawyer;
 - (d) rescind the decision under Rule 4-4(1)(b) to require the lawyer to appear before the Conduct Review Subcommittee, and substitute another decision under Rule 4-4(1).
- (7) A member of the Discipline Committee who has participated in the Conduct Review Subcommittee is not, for that reason, precluded from participating in and voting on a decision under subrule (6).

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- (8) After making its decision under subrule (6), the Discipline Committee must
- (a) advise the lawyer and the complainant of its decision, and
 - (b) subject to Rule 4-10, deliver a copy or summary of the report to the complainant.

[(6) amended 07/05]

Privilege and confidentiality

- 4-10** In complying with Rule 4-9, the Discipline Committee and the Conduct Review Subcommittee must not disclose to the complainant information subject to the solicitor and client privilege of a client other than the complainant or other confidential information that the complainant is not entitled to receive.

[amended 07/05]

Publication and disclosure

- 4-11** (1) The Executive Director may publish and circulate to the profession a summary of the circumstances of a matter that has been the subject of a conduct review.
- (2) A summary published under subrule (1) must not identify the lawyer or complainant unless that person consents in writing to being identified.
- (3) If a complaint giving rise to a conduct review is known to the public or if a conduct review is ordered in a matter that was the subject of a citation that has been rescinded, the Executive Director may disclose
- (a) the fact that the lawyer is or was required to appear before the Conduct Review Subcommittee, and
 - (b) the decision of the Discipline Committee under Rule 4-9(6).
- (4) Subject to subrule (5), the Executive Director may disclose the report of a Conduct Review Subcommittee that has been considered by a hearing panel as part of a lawyer's professional conduct record under Rule 4-35(4).
- (5) This Rule must not be interpreted to permit the disclosure of any information subject to solicitor and client privilege or confidentiality.

[heading amended, (3) to (5) added 10/03]

Evidence of conduct review at the hearing of a citation

- 4-12** If a hearing is held on a citation issued following a conduct review,
- (a) the Conduct Review Subcommittee's written report is not admissible at the hearing, and
 - (b) no member of the Conduct Review Subcommittee is permitted to testify as to any statement made by the lawyer during the conduct review, unless the matter is put in issue by the respondent.

Direction to issue or rescind citation

- 4-13** (1) The chair of the Discipline Committee or any 3 Benchers may order a hearing into the conduct or competence of a lawyer by directing that the Executive Director issue a citation against the lawyer.
- (2) The Discipline Committee may rescind a citation at any time before a panel makes a determination under Rule 4-35.

Contents of citation

- 4-14** (1) A citation may contain one or more allegations.
- (2) Each allegation in a citation must
- (a) be clear and specific enough to give the respondent notice of the misconduct alleged, and
 - (b) contain enough detail of the circumstances of the alleged misconduct to give the respondent reasonable information about the act or omission to be proved against the respondent and to identify the transaction referred to.

Service of citation

- 4-15** (1) A citation must be served on the respondent
- (a) personally, or by mailing it by registered mail to the respondent's last known address,
 - (b) not more than 90 days after the direction that it be issued, unless the Discipline Committee or the chair, vice-chair or another Bencher member of the Committee otherwise directs, and
 - (c) not less than 30 days before the date set for the hearing, unless the respondent consents in writing to a shorter period.

[1) amended 09/07]

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.

Summary hearing

- 4-24.1** (1) This Rule may be applied in respect of the hearing of a citation comprising only allegations that the respondent has done one or more of the following:
 - (a) breached a Rule;
 - (b) breached an undertaking given to the Society;
 - (c) failed to respond to a communication from the Society.
- (2) Despite Rule 4-27(5), the Bencher presiding at a pre-hearing conference may order that the conference not consider any or all of the matters referred to in that subrule.
- (3) Unless the panel rules otherwise, the respondent and discipline counsel may adduce evidence by
 - (a) affidavit, or
 - (b) statement of facts agreed between the parties.
- (4) Despite Rules 4-34 and 4-35, the panel may consider facts, verdict, penalty and costs and make one decision respecting all aspects of the proceeding.

[added 07/07]

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.
- (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.
- (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.

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- (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.
- (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.
- (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) 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.

[(2) amended 07/07]

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) 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; (1) amended 07/07]

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).
 - (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** (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,
 - (a.2) at the conclusion of a hearing on a citation under Rule 4-24.1.
 - (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; (1) amended 07/07]

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 5 – HEARINGS AND APPEALS

Application of Part

5-1 This Part applies to

- (a) a hearing on an application for enrolment, call and admission or reinstatement,
- (b) a hearing on a citation, and
- (c) unless the context indicates otherwise, a review by the Benchers of a hearing decision.

[amended 05/02]

Hearing panels

- 5-2** (1) A panel must consist of an odd number of persons but, subject to subrule (2), must not consist of one person.
- (2) A panel may consist of one Bencher who is a lawyer when
- (a) no facts are in dispute,
 - (b) the hearing is to consider a conditional admission under 4-22,
 - (b.1) the hearing proceeds under Rule 4-24.1,
 - (c) it is not otherwise possible, in the opinion of the President, to convene a panel in a reasonable period of time, or
 - (d) one or more of the original panel members cannot complete a hearing that has been commenced.
- (3) A panel must be chaired by a Bencher who is a lawyer.
- (4) All Benchers, all Life Benchers and all lawyers are eligible to be appointed to a panel.
- (5) A member of a panel who ceases to be a Bencher may, with the consent of the President and with or without the consent of the applicant or respondent, continue to be a member of the panel and, if that member is the chair of the panel, may continue to chair the panel, and the panel may complete any hearing or hearings already scheduled or commenced.
- (6) A member of a panel who ceases to be a lawyer may, with the consent of the President and with or without the consent of the applicant or respondent, continue to be a member of the panel and the panel may complete any hearing or hearings already scheduled or commenced.
- (7) Two or more panels may proceed with separate matters at the same time.
- (8) The President may refer a matter that is before a panel to another panel, fill a vacancy on a panel and, on the advice of the Executive Committee, may terminate an appointment to a panel.

- (9) Unless otherwise provided in the Act and these Rules, a panel must decide any matter by a majority, and the decision of the majority is the decision of the panel.

[(1), (2) and (4) amended 09/05; (2) amended 07/07]

Disqualification

- 5-3** (1) The following persons must not participate in a panel hearing a citation:
- (a) a person who participated in the decision that authorized issuing the citation;
 - (b) one of the Benchers who made an order under Rule 4-17 regarding the respondent;
 - (c) a member of a panel that heard an application under Rule 4-19 to rescind or vary an interim suspension, practice condition or order for a medical examination in respect of the respondent.
- (2) A person who participated in the decision to order the hearing on an application for enrolment as an articulated student, for call and admission or for reinstatement must not participate in the panel on that hearing.
- (3) A Bencher who is disqualified from participation in a hearing panel under this Rule must not sit on a review by the Benchers under section 47 of the Act.
- (4) A person must not appear as counsel for any party for three years after
- (a) serving as a Bencher, or
 - (b) the completion of a hearing in which the person was a member of the panel.

[(4) added 02/02]

Powers of hearing panels

- 5-4** A panel may
- (a) compel the applicant or respondent to give evidence under oath, and
 - (b) at any time before or during a hearing, order the applicant or respondent to produce all files and records that are in the applicant's or respondent's possession or control that may be relevant to the matters raised in the citation.

Procedure

- 5-5** (1) Subject to the Act and these Rules, the panel may determine the practice and procedure to be followed at a hearing.
- (2) At the beginning of the hearing, the chair of the panel must swear the court reporter.
- (3) The applicant, respondent or counsel for the Society may call witnesses to testify.
- (4) All witnesses, including a respondent ordered to give evidence under section 41(2)(a) of the Act,
- (a) must take an oath or make a solemn affirmation, if competent to do so, before testifying, and
 - (b) are subject to cross-examination.

PART 5 – HEARINGS AND APPEALS

- (5) The panel may make inquiries of a witness as it considers desirable.
- (6) The hearing panel may accept any of the following as evidence:
 - (a) a statement of agreed facts;
 - (b) evidence tendered in a form agreed to by the respondent or applicant and Society counsel;
 - (c) any other evidence it considers appropriate.

Public hearing

- 5-6** (1) Every hearing is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.
- (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;
- (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, 27, 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).
- (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, 27, 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; (1) and (4) amended 09/07]

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 5-20, “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 5-20 may be effected by delivery to counsel representing the respondent or the applicant.

[amended, (3) added 05/02; (1) and (3) amended 07/07]

Initiating a review

- 5-13** (1) An applicant or a respondent may initiate a review 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; (1) amended 07/07]

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).

PART 5 – HEARINGS AND APPEALS

- (4) On an application under subrule (3), the President may designate another Benchers to make a determination.

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

Notice of review

5-15 A Notice of Review must contain the following in summary form:

- (a) a clear indication of the decision to be reviewed by the Benchers;
- (b) the nature of the order sought;
- (c) the issues to be considered on the review of the decision.

[added 05/02]

Record of credentials hearing

5-16 (1) Unless counsel for the applicant and for the Society agree otherwise, the record to be reviewed by the Benchers under section 47(1) or (2) of the Act consists of the following:

- (a) the application;
- (b) a transcript of the proceedings before the panel;
- (c) exhibits admitted in evidence by the panel;
- (d) the panel's written reasons for any decision;
- (e) the Notice of Review under Rule 5-15.

- (2) If, in the opinion of the Benchers, there are special circumstances, the Benchers may admit evidence that is not part of the record.

[added 05/02; (1) amended 07/07]

Record of discipline hearing

5-17 (1) Unless counsel for the respondent and for the Society agree otherwise, the record to be reviewed by the Benchers under section 47(1) or (3) of the Act consists of the following:

- (a) the citation;
- (b) a transcript of the proceedings before the panel;
- (c) exhibits admitted in evidence by the panel;
- (d) the panel's written reasons for any decision;
- (e) the Notice of Review under Rule 5-15.

- (2) If, in the opinion of the Benchers, there are special circumstances, the Benchers may admit evidence that is not part of the record.

[added 05/02; (1) amended 07/07]

Pre-review conference

5-18 (1) The President may order a pre-review conference at any time before the hearing on a review, at the request of the applicant, respondent or counsel for the Law Society, 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) The following must be present at the conference:

- (a) the applicant or respondent, with or without counsel;
- (b) counsel representing the Law Society.

(4) If the Bencher presiding at a pre-review conference considers it appropriate, he or she may allow any person to participate in the 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) any issues concerning the record to be reviewed,
- (c) the possibility of agreement on any issues in the review,
- (d) the exchange of written arguments or outlines of argument and of authorities,
- (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 review, and
- (f) any other matters that may aid in the disposition of the review.

(6) The Bencher presiding at a pre-review conference may

- (a) adjourn the conference to a specified date, time and place,
- (b) order the exchange of written arguments or outlines of argument and of authorities, and set deadlines for that exchange, and
- (c) set a date for the review.

[added 05/02; (5) amended 05/03]

Adjournment

- 5-19** (1) Before the review commences before the Benchers, the applicant, respondent or counsel for the Society may request that the review 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 President;
 - (c) anyone else who, in the Executive Director’s opinion, should be notified.
- (3) Before the review commences, the President must decide whether to grant the adjournment, with or without conditions, and must advise the parties accordingly.
- (4) The President may designate another Bencher to make a determination under subrule (3).
- (5) After a review has commenced, the President or other Bencher presiding at the review may adjourn the review, with or without conditions, to a specified date, time and place.

[added 05/02]

Decision on review

- 5-20** (1) The decision of the Benchers on a review is made by majority vote.
- (2) The Benchers must prepare written reasons for their decision on a review.
- (3) On request, the Executive Director must disclose the Benchers’ written reasons for their decision, subject to the protection of solicitor and client privilege and confidentiality.
- (4) When the Benchers give written reasons for their decision, they must not disclose in those reasons any information that is confidential or subject to solicitor and client privilege.
- (5) The Executive Director must promptly deliver a copy of the Benchers’ written reasons prepared under subrule (2) to the applicant or respondent and counsel for the Society.

[added 07/07]

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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,
 - (e.1) make suggestions to a witness recklessly or that the lawyer knows to be false,¹
 - (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; 09/07]

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]

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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]

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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.²

[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]

FOOTNOTES:

1. The Supreme Court of Canada in *R. v. Lyttle*, [2004] 1 S.C.R. 193 reviewed the question of what foundation counsel must have before cross-examining a witness on an issue and concluded that a lawyer may pursue any hypothesis that is honestly advanced on the strength of reasonable inference, experience or intuition.

[added 09/07]

2. 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; renumbered 09/07]

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CHAPTER 11

RESPONSIBILITY TO OTHER LAWYERS

1 – 4. [Rescinded 09/94 — see Chapter 2]

Fulfilling professional commitments

5. A lawyer must be punctual in fulfilling all professional commitments.

[amended 09/07]

Responding to correspondence from other lawyers

6. A lawyer must reply reasonably promptly to any communication from another lawyer that requires a response.

[amended 09/07]

Undertakings and trust conditions

7. A lawyer must
- (a) not give an undertaking that cannot be fulfilled,
 - (b) fulfil every undertaking given, and
 - (c) scrupulously honour any trust condition once accepted.

[amended 09/95]

7.1 Undertakings and trust conditions should be

- (a) written, or confirmed in writing, and
- (b) unambiguous in their terms.

[added 09/95]

Trust cheques

8. Except in the most unusual and unforeseen circumstances, which the lawyer must justify, a lawyer who withdraws or authorizes the withdrawal of funds from a trust account by cheque undertakes that the cheque

- (a) will be paid, and
- (b) is capable of being certified if presented for that purpose.¹

[amended 09/95; 06/99; footnote added 09/07]

Real estate transactions

- 8.1 If a lawyer acting for a purchaser of real property accepts the purchase money in trust and receives a registrable conveyance from the vendor in favour of the purchaser, then the lawyer is deemed to have undertaken to pay the purchase money to the vendor on completion of registration.

[added 09/95]

Conditional undertakings

9. If a lawyer gives an undertaking conditional on something else happening or in respect of which the lawyer does not intend to accept personal responsibility, this must be stated clearly in the undertaking itself.

[amended 09/95]

Imposed undertakings

10. A lawyer must not impose on other lawyers impossible, impractical or manifestly unfair conditions of trust.

[amended 09/95]

11. If a lawyer is unable or unwilling to honour a trust condition imposed by someone else, the subject of the trust condition must be immediately returned to the person imposing the trust condition unless its terms can be forthwith amended in writing on a mutually agreeable basis.

[amended 09/95]

Proceeding in default

12. A lawyer who knows that another lawyer has been consulted in a matter must not proceed by default in the matter without inquiry and reasonable notice.

[amended 09/07]

Acting against another lawyer

13. A lawyer must avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

[amended 09/07]

Tape recording and monitoring conversations

14. Even if it is lawful to do so, a lawyer must not:
- (a) use, or permit another person to use, a tape recorder or other device to record, or
 - (b) permit anyone to listen to,
- the statements of another lawyer with whom the lawyer is having a conversation, without first informing the other lawyer of the intention to do so.

[amended 09/07]

- 14.1 Rule 14 does not apply if the lawyer has reasonable grounds to believe that, during the conversation, the other lawyer will commit or indicate an intention to commit a criminal offence.

[added 09/07]

Threatening to report another lawyer

15. A lawyer must not threaten to report another lawyer's past illegal or unprofessional conduct to the Law Society.²

[amended 09/07]

Duty of lawyer on termination of employment

16. When a lawyer departs from a law firm to practise alone or to join another law firm, there is a duty upon the departing lawyer and the law firm to inform all clients for whom the departing lawyer is the responsible lawyer in a legal matter of the clients' right to choose who will continue to represent them.

[amended 09/07]

17. This duty does not arise if the departing lawyer and the law firm, acting reasonably, both conclude that the circumstances make it obvious that a client will continue as a client of the law firm notwithstanding the departure of the lawyer.

[amended 09/07]

18. When these Rules require a notification to clients, each client for whom the departing lawyer is the responsible lawyer in a legal matter must receive a letter informing them of the right to choose his or her lawyer as soon as practicable after the date of the departure is determined.

[amended 09/07]

19. It is preferable that this letter be sent jointly by the departing lawyer and the law firm. However, in the absence of a joint announcement, letters in substantially the form set out in Appendix 4 to this *Handbook* may be sent by either the departing lawyer or the law firm.

[amended 09/07]

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20. The right of the client to be informed and to choose his or her lawyer cannot be curtailed by any contractual or other arrangement.

[amended 09/07]

21. With respect to communication other than that required by these Rules, lawyers should be mindful of the common law restrictions upon uses of proprietary information, and interference with contractual and professional relations between the law firm and its clients.

[amended 09/07]

Restrictive covenants

22. A lawyer or a law firm must not require, as a condition of employment of an articulated student, agreement to a restrictive covenant limiting either in time or distance the freedom of the articulated student to engage in practice upon the termination of such employment.

[amended 09/07]

FOOTNOTES:

1. Unless funds are to be paid under an agreement that specifically requires another form of payment or payment by another person, a lawyer must not refuse to accept another lawyer's uncertified cheque for the funds. It is not improper for a lawyer, at his or her own expense, to have another lawyer's cheque certified.

[added 09/07]

2. The duty to report another lawyer to the Law Society under Chapter 13 must be clearly distinguished from the situation where a lawyer threatens to report another lawyer. It is proper for a lawyer to forewarn another lawyer, where an illegality or a violation of a standard of professional responsibility contained in this *Handbook* has not yet occurred, that the other lawyer will be reported to the Law Society if the illegal or unprofessional conduct occurs. It is improper, however, for a lawyer to threaten to report another lawyer for the latter's past illegal or unprofessional conduct. There is a risk that the threatening lawyer will use the threat, or the threatened lawyer will perceive the threat being made, for the purpose of gaining an advantage for the threatening lawyer or his or her client. A lawyer must not use the Law Society's disciplinary machinery to coerce another lawyer into a course of conduct.

It is proper for a lawyer who reasonably believes that another lawyer has committed an illegality or unprofessional conduct, to draw to the latter's attention the specific provision of this *Handbook* or other authority proscribing such conduct.

[renumbered 09/94; 09/07]