

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2008: No. 1 March

Highlights

Legal Profession Act: Minor amendments are made to the *Legal Profession Act* effective December 1, as a result of the *AG's Statutes Amendment Act, 2007* (s.1(1) definition of "respondent" and ss. 8, 12(1), 25(1), 47(5), 48 and 90: pp. 5, 9, 10, 17, 33 and 58). **Law Society Rules:** The Table of Contents is updated (pp. 3-6.2). **Professional Conduct Handbook:** Chapter 8, Rule 19 is amended and footnote 3 is added to clarify the restrictions on a lawyer's personal involvement in the securing of an accused's judicial interim release (pp. 24.1-24.2). **Insurance Policies:** Insurance Policy No. LPL 07-01-01 is amended by the 2008 Renewal Endorsement.

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

Manual section	Existing pages to be removed	Amendment pages to be inserted
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Law Society Rules	3 – 6.2	3 – 6.2
Professional Conduct Handbook	24.1 – 24.2	24.1 – 24.2
Insurance Policies	–	2008 Renewal Endorsement (1 – 2) (insert directly in front of Policy No. LPL 07-01-01)

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

Updates: This amendment package updates the *Member's Manual* to **February 8, 2008**. The previous amendment package was 2007: No. 5 December.

To check that your copy of the *Manual* is up to date, please consult the contents checklist on the back of this filing sheet. If you have further questions about updating your *Manual*, 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 February 8, 2008

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DEFINITIONS

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

but does not include

- (h) any of those acts if not performed for or in the expectation of a fee, gain or reward, direct or indirect, from the person for whom the acts are performed,
- (i) the drawing, revising or settling of an instrument by a public officer in the course of the officer's duty,
- (j) the lawful practice of a notary public,
- (k) the usual business carried on by an insurance adjuster who is licensed under Division 2 of Part 6 of the *Financial Institutions Act*, or
- (l) agreeing to do something referred to in paragraph (d), if the agreement is made under a prepaid legal services plan or other liability insurance program;

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

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

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

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

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

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- “society”** means the Law Society of British Columbia continued under section 2;
- “suspension”** means temporary disqualification from the practice of law;
- “written”** or **“in writing”** includes written messages communicated electronically.
- (2) In Parts 1 to 5, **“costs”** means costs assessed under a rule made under section 27 (2) (e) or 46.

[2003-70-209; 2007-14-216]

Officers and employees

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

[2007-14-201]

Division 2 – Committees

Law Society committees

- 9**
- (1) The benchers may establish committees in addition to those established by this Act.
 - (2) The benchers may authorize a committee to do any act or exercise any jurisdiction that, by this Act, the benchers are authorized to do or to exercise, except the exercise of
 - (a) rule-making authority, or
 - (b) jurisdiction under section 47 to review the decision of a panel.
 - (3) The benchers may make rules providing for
 - (a) the appointment and termination of appointments of persons to committees, and
 - (b) the practice and procedure for meetings of committees, including proceedings before committees.
 - (4) For a quorum at a meeting of a committee, at least 1/2 of the members of the committee must be present.

Executive committee

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

Division 3 – Rules and Resolutions

Law Society rules

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

Rules requiring membership approval

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

[2007-14-216]

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

Fees and assessments

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

Failure to pay fee or penalty

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

[2007-14-145]

PART 3 – PROTECTION OF THE PUBLIC

Complaints from the public

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

Practice standards

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

PART 5 – HEARINGS AND APPEALS

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

[2007-14-40, 216]

Appeal

48 Any of the following persons who is affected by a decision, determination or order of a panel or of the benchers may appeal the decision, determination or order to the Court of Appeal:

- (a) an applicant;
- (b) a respondent;
- (c) a lawyer who is suspended or disbarred under this Act.

[2007-14-216]

PART 6 – CUSTODIANSHIPS

Definitions

49 In this Part:

“**court**” means the Supreme Court;

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

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

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

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

Appointment of custodian

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

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

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

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

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

PART 10 – GENERAL

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

Confidential documents

- 89**
- (1) If a lawyer is served with an order made under section 37 (1) or (3) or 41 (2) (b), or required to provide access to information, files or records under section 27 (2) (c), and the lawyer objects to producing or providing access to a document on the grounds that the document is confidential and that a client objects to its disclosure, the document must be sealed without inspection or copying and placed into the custody of
 - (a) any member in good standing of the society acceptable to both the lawyer and the society, or
 - (b) a sheriff.
 - (2) If a document is sealed under subsection (1), the lawyer must provide the society with the name and address of the client whose document it is.

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- (3) The person who has custody of a sealed document must return the document to the lawyer unless within 30 days the society delivers to the person having custody
 - (a) a written waiver of confidentiality signed by the client, or
 - (b) the executive director's certification that the client has been contacted and has given an oral waiver of confidentiality.
- (4) If subsection (3) (a) or (b) applies, the person who has custody must deliver the document to the executive director.
- (5) A judge or master of the Supreme Court may, on application,
 - (a) extend the time period referred to in subsection (3),
 - (b) if the client cannot be located, order that the sealed document be delivered to the society on conditions as to notice or substitutional service that the judge or master considers appropriate, and
 - (c) examine the sealed document and any affidavit evidence that the judge or master considers relevant, and
 - (i) if the judge or master considers that the document should not be disclosed, ensure that it is resealed and order the person who has custody to return the document to the lawyer, or
 - (ii) if the judge or master considers that the document should be disclosed, order the person who has custody to deliver the document to the executive director, subject to any restrictions or conditions that the judge or master considers appropriate.

Service

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

[2007-14-145]

Law society insurance

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

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Judicial interim release

19. A lawyer must not act as surety for, deposit the lawyer's own money or other valuable security for or act in a supervisory capacity to an accused person for whom the lawyer acts.³

[amended 12/07]

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]

PROFESSIONAL CONDUCT HANDBOOK

3. This rule does not apply when the accused is in a family relationship with the lawyer and the accused is represented by the lawyer's partner or associate.

[added 12/07]

**B.C. LAWYERS' COMPULSORY PROFESSIONAL LIABILITY INSURANCE
2008 RENEWAL ENDORSEMENT
ATTACHED TO AND FORMING PART OF POLICY NO. LPL 07-01-01**

INSURER:
THE LSBC CAPTIVE INSURANCE COMPANY LTD.

In consideration of the premium paid, it is hereby understood and agreed that the following amendments are made to this policy effective January 1, 2008:

1. The Policy Number is changed to LPL 08-01-01.
2. The following change is made to the Declarations:
 2. **Policy Period** From January 1, 2008 to January 1, 2009 (12:01 A.M. standard time).
3. In the bolded sentence at the end of the DECLARATIONS and before the DEFINITIONS, "**2007**" is changed to "**2008.**"
4. The following changes are made to the DEFINITIONS:

The following definition of "Confidentiality Protocol" is added:

"Confidentiality Protocol means: the **Law Society's** protocol for the preservation of confidentiality of professional liability insurance claims information, as amended from time to time".

The definition of "unauthorized practice" is changed to:

"Unauthorized practice means: the practice of law by an **Individual Insured**:

- i. in breach of an undertaking given to the **Law Society** or in contravention of a condition or limitation of practice imposed or agreed to under the **Law Society Rules**, for the purposes of Condition 3.3; or
- ii. in contravention of the rules of any other law society or bar, for the purposes of Exclusion 9."

5. The following changes are made to the EXCLUSIONS:

Exclusion 7 is amended by replacing "an employee or partner of" with "an employee, dependent contractor or partner of".

INSURANCE POLICIES

Exclusion 8 is changed to: “a **claim** against you where the **Individual Insured** is a member of any other law society or bar, except a law society of another province or territory of Canada, arising out of that **Individual Insured’s** permanent practice in the other jurisdiction. For the purposes of Part B of this policy, this exclusion shall be read without the words “except a law society of another province or territory of Canada” and “permanent”; or”

6. The following changes are made to the CONDITIONS:

The following is added as Condition 3.3:

“If you are engaged in **unauthorized practice** and a **claim** that falls within Part A of this policy relates to the **unauthorized practice**, and we pay **damages** or **claims expenses** on behalf of you or any other **Insured** pursuant to this policy, the **Individual Insured** will reimburse us for all such amounts.”

Condition 3.3 is renumbered “3.4”.

Conditions 3.3.1 and 3.3.2 are renumbered “3.4.1” and “3.4.2” respectively.

Condition 3.4 is renumbered “3.5”.

Condition 5.4 is amended by adding “, and to the **Law Society** pursuant to the **Confidentiality Protocol**” after “excess and **Law Society** insurers”.

Condition 9.2 is amended by deleting “by the **Individual Insured**” after “specifically arranged” and before “to apply as excess insurance”.

The following is added as Condition 19:

“19. **CURRENCY**

The deductibles and limits are expressed in Canadian currency”.

Condition 19 is renumbered “20”.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Dated this 19th day of December, 2007.

The LSBC Captive Insurance Company Ltd.



Susan I. Forbes, Q.C., Secretary