

MEMBER'S MANUAL

The Law Society
of British Columbia



AMENDMENT PAGES

2008: No. 2 May

Highlights

Law Society Rules: A panel making an order against a lawyer or articulated student under section 38(5) or (6) of the Act, must include any additional orders and declarations or imposed conditions in its written decision, and that forms part of the lawyer's professional conduct record (definition of "professional conduct record" and Rule 4-35(1): pp. 10 and 108); when the Discipline Committee rescinds a citation, it must substitute a decision it is entitled to make under Rule 4-4(1) (Rule 4-13(2): p. 98.2). **Insurance Policies:** The reference to the Declaration in Condition 1.6.1 of Insurance Policy No. LPL 07-01-01 and Insurance Policy No. LPL 08-01-01 is corrected through Endorsements to both Policies.

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 98.1 – 98.2 107 – 108	9 – 10 98.1 – 98.2 107 – 108
Insurance Policies	– –	Endorsement to Policy No. LPL 07-01-01 (1 page) (insert directly in front of Policy No. LPL 07-01-01) Endorsement to Policy No. LPL 08-01-01 (1 page) (insert directly in front of the 2008 Renewal Endorsement)

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

Updates: This amendment package updates the *Member's Manual* to **May 9, 2008**. The previous amendment package was 2008: No. 1 March.

To check that your copy of the *Manual* is up to date, please consult the contents checklist on the back of this filing sheet. If you have further questions about updating your *Manual*, 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 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 May 9, 2008

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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, articulated students, law students and support staff of legal employers, regarding allegations of harassment or discrimination by lawyers on the basis of race, national or ethnic origin, colour, religion, sex, sexual orientation, marital or family status, disability or age, and includes anyone employed by the Ombudsperson to assist in that capacity;

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

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

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

“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), (6) or (7) 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; 04/08]

PART 4 – DISCIPLINE

- (8) After making its decision under subrule (6), the Discipline Committee must
 - (a) notify 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; (8) amended 10/07]

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) At any time before a panel makes a determination under Rule 4-35, the Discipline Committee may rescind a citation and substitute another decision under Rule 4-4(1).

[(2) amended 04/08]

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

- (2) The Executive Director must promptly notify 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 notify the parties accordingly.
- (4) The President may designate another Benchers 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; (2) and (3) amended 10/07]

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 decision under this Rule
 - (i) any order, declaration or imposition of conditions under section 38(7) of the Act, and
 - (ii) 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 any action taken 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).

[(1) amended 04/08]

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

**INSURER:
THE LSBC CAPTIVE INSURANCE COMPANY LTD.**

It is hereby understood and agreed that effective January 1, 2007, Condition 1.6.1 of Condition 1.6 LIMIT OF LIABILITY PART B — PROFESSION-WIDE AGGREGATE LIMIT is hereby replaced as follows:

- 1.6.1 The limit of liability stated in Declaration 3(d) is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Insureds** covered by Part B of this policy. For clarity, all **Insureds** covered by Part B of this policy means all present and former **members** of the **Law Society**. All payments by us of **damages** and **claims expenses** arising out of all **claims** and potential **claims** first reported during the **policy period** reduce the Profession-Wide Aggregate Limit for that **policy period** in the amount of the payments.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

The LSBC Captive Insurance Company Ltd.

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Susan I. Forbes, Q.C., Secretary

INSURANCE POLICIES

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**B.C. LAWYERS' COMPULSORY PROFESSIONAL LIABILITY INSURANCE
ENDORSEMENT
ATTACHED TO AND FORMING PART OF POLICY NO. LPL 08-01-01**

INSURER:
THE LSBC CAPTIVE INSURANCE COMPANY LTD.

It is hereby understood and agreed that effective January 1, 2008, Condition 1.6.1 of Condition 1.6 LIMIT OF LIABILITY PART B — PROFESSION-WIDE AGGREGATE LIMIT is hereby replaced as follows:

- 1.6.1 The limit of liability stated in Declaration 3(d) is the maximum amount payable under this policy for the **policy period** on an aggregate basis for all **Insureds** covered by Part B of this policy. For clarity, all **Insureds** covered by Part B of this policy means all present and former **members** of the **Law Society**. All payments by us of **damages** and **claims expenses** arising out of all **claims** and potential **claims** first reported during the **policy period** reduce the Profession-Wide Aggregate Limit for that **policy period** in the amount of the payments.

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INSURANCE POLICIES

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