



MEMBER'S MANUAL

AMENDMENT PAGES

2009: No. 2 July

Highlights

Law Society Rules: The defined term “statement of agreed facts” is changed to “agreed statement of facts” (Rules 1, 4-19(11), 4-24.1(3) and 5-5(6): pp. 7, 102, 104 and 113); marketing rules respecting former judges or masters and family law mediators are moved from the *Professional Conduct Handbook* to the Rules (Rules 2-54(4) to (6) and 3-20(3): pp. 57 and 70.02); a complainant must be notified when an adjournment of a hearing is granted, but not necessarily when it is applied for (Rule 4-29(2) and (6): p. 107); an applicant or respondent need not attend a pre-review conference in person when represented by counsel (Rule 5-18(3): p. 116.2).

Professional Conduct Handbook: Chapter 14 is revised and reorganized to make the marketing rules more focused, easier to understand and less intrusive: some definitions are deleted and the remaining definitions are updated (Chapter 14, Rule 2: p. 41); Chapter 14, Rules 3, 11, 20 and 21 and Appendix 7 are rescinded as being unnecessary or obsolete; Chapter 14, Rules 4.1, 4.2, 9, 12, 13, 13.1, 14, 15 and 17 are rescinded as being adequately covered in Rule 4; a more general test of whether marketing activities violate Rule 4 is applied (Chapter 14, Rule 5: p. 42); in order to focus Chapter 14 on marketing matters, as opposed to public comments and representations, Rule 6 is moved to Chapter 4, Rule 8 and Chapter 8, Rule 23, Rule 6.1 is moved to Chapter 8, Rule 24 and footnote 1 is moved to Chapter 8, footnote 4 (pp. 10.1, 24.1 and 24.2); marketing rules respecting former judges or masters and family law mediators are moved to Law Society Rules 2-54 and 3-20 (Chapter 14, Rules 7, 7.1 and 19); minor alterations are made to Chapter 14, Rules 4, 10, 16 and 18 (pp. 41, 43 and 44).

Articling Guidelines: A principal of an articled student is no longer required to commit to giving the student experience in at least three practice areas; this ensures that small firms are able to offer articling positions, particularly in rural areas (p. 4).

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	7 – 8 11 – 12 57 – 58.2 70.01 – 70.02 101 – 104 107 – 108 113 – 114 116.1 – 116.2	7 – 8 11 – 12 57 – 58.2 70.01 – 70.02 101 – 104 107 – 108 113 – 114 116.1 – 116.2
Professional Conduct Handbook	10.1 – 10.2 24.1 – 24.2 41 – 48 71 – 72	10.1 – 10.2 24.1 – 24.2 41 – 44 –
Articling	3 – 4	3 – 4

[continued over]

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

Updates: This amendment package updates the *Member's Manual* to **June 16, 2009**. The previous amendment package was 2009: No. 1 April.

To check that your copy of the *Manual* is up to date, consult the contents checklist on the next page. If you have further questions about updating your *Manual*, contact Robin Pollak in the Law Society Communications Department: telephone 604-697-5821 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 June 16, 2009

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

Section of Manual	Pages	Dated	Section of Manual	Pages	Dated
Divider tab: LEGAL PROFESSION ACT			Text (<i>continued</i>)	85 – 86	[04/06]
Title page	—	—		87 – 88	[06/05]
Table of Contents	1 – 2	[07/07]		88.1 – 88.2	[04/06]
Table of Contents / Definitions	3 – 4	[02/05]		89 – 92.2	[12/06]
Definitions	5 – 6	[10/08]		92.3 – 92.4, 93 – 94	[07/07]
Text	7 – 8	[12/98]		94.1 – 94.8	[04/09]
	9 – 10	[03/08]		95 – 98	[10/07]
	11 – 12	[06/02]		98.1 – 98.2	[05/08]
	13 – 16	[12/98]		99 – 100	[12/06]
	17 – 18, 18.1 – 18.2	[10/08]		101 – 104	[07/09]
	19 – 22	[12/98]		105 – 106	[10/07]
	23 – 24	[04/00]		107 – 108	[07/09]
	25 – 28	[12/98]		109 – 110	[10/07]
	29 – 32	[07/07]		110.1 – 110.4	[12/07]
	33 – 34	[03/08]		111 – 112	[10/07]
	35 – 36, 36.1 – 36.2	[07/07]		113 – 114	[07/09]
	37 – 50	[12/98]		115 – 116	[10/08]
	51 – 52	[02/05]		116.1 – 116.2	[07/09]
	53 – 54	[12/05]		116.3 – 116.4	[12/07]
	55 – 56	[12/98]		117 – 118	[06/05]
	57 – 58	[03/08]		119 – 120	[05/07]
	59 – 60	[04/00]		121 – 122	[12/04]
Divider tab: LAW SOCIETY RULES				123 – 124	[06/05]
Title page	—	—		125 – 126	[09/06]
Table of Contents	1 – 2	[03/07]		127 – 128	[10/08]
Text	3 – 6.4	[04/09]		129 – 132	[12/08]
	7 – 8	[07/09]	Divider tab: PROFESSIONAL CONDUCT HANDBOOK		
	9 – 10	[12/08]	Title page	—	—
	11 – 12	[07/09]	Table of Contents	i – ii	[04/09]
	13 – 14	[10/07]		iii – iv	[12/05]
	15 – 16	[12/98]	Text	1 – 4	[01/93]
	17 – 18	[01/04]		5 – 6, 6.1 – 6.2	[12/08]
	19 – 26	[12/98]		7 – 8.2	[04/03]
	27 – 28	[12/07]		9 – 10	[12/06]
	29 – 32	[10/08]		10.1 – 10.2	[07/09]
	32.1 – 32.2	[09/06]		11 – 12	[12/99]
	33 – 34	[04/06]		13 – 14	[04/03]
	34.1 – 34.2	[12/06]		15 – 16	[07/01]
	35 – 38	[06/03]		16.1 – 16.8	[04/09]
	38.1 – 38.2	[10/03]		17 – 20	[04/03]
	38.3 – 38.4	[06/03]		20.1 – 20.2	[02/00]
	39 – 40	[01/04]		21 – 24	[10/07]
	41 – 42	[06/05]		24.1 – 24.2	[07/09]
	42.1 – 42.2	[03/04]		25 – 26	[05/04]
	43 – 44	[04/05]		27 – 30	[04/05]
	45 – 50	[04/03]		31 – 34	[10/07]
	50.1 – 50.2	[05/04]		35 – 36	[04/09]
	50.3 – 50.4	[07/07]		37 – 38	[12/04]
	50.5 – 50.6	[05/04]		39 – 40	[05/04]
	51 – 52	[09/06]		41 – 44	[07/09]
	53 – 54	[12/06]		45 – 48	deleted
	55 – 56	[09/06]		49 – 52	[10/05]
	57 – 58.2	[07/09]		53 – 54	[05/93]
	59 – 60	[12/07]		55 – 58	[04/06]
	60.1 – 60.4	[10/07]		59 – 60	[01/93]
	61 – 62	[12/04]		61 – 66	[04/09]
	62.1 – 62.2	[09/06]		67 – 70	[04/00]
	63 – 64	[10/07]	Divider tab: INSURANCE POLICIES		
	65 – 66	[12/07]	Policy No. LPL 09-01-01	1 – 22	[04/09]
	67 – 68.2	[10/07]	Divider tab: ARTICLING		
	68.3 – 68.4	[12/07]	Title page	—	—
	69 – 70	[10/08]	Text	1 – 2	[06/03]
	70.01 – 70.02	[07/09]		3 – 4	[07/09]
	70.1 – 70.4	[12/06]		5 – 8	[06/03]
	71 – 72	[09/06]	Divider tabs: BENCHERS' BULLETIN; DISCIPLINE DIGEST		
	73 – 74	[12/05]	(<i>discontinued</i>); INSURANCE ISSUES; ALERT!; MISCELLANEOUS		
	75 – 76	[04/05]			
	77 – 78	[10/07]			
	79 – 80.2	[12/06]			
	81 – 84	[06/05]			

DEFINITIONS

Definitions

1 In these Rules, unless the context indicates otherwise:

“**Act**” means the *Legal Profession Act*, S.B.C. 1998, c. 9;

“**admission program**” means the training program for articulated students administered by the Society or its agents, commencing on an articulated student’s enrolment start date and including the period during which the student is

- (a) articulated to a principal, or
- (b) registered in the training course;

“**advertising**” includes letterhead, business cards and the use of paid space or time in a public medium, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public or a group of people, for the purpose of promoting professional services or enhancing the image of the advertiser;

“**agreed statement of facts**” means a written statement of facts signed by discipline counsel and by or on behalf of the respondent;

“**applicant**” means a person who has applied under Part 2 for enrolment as an articulated student, for call and admission or for reinstatement;

“**articled student**” means a person who is enrolled in the admission program;

“**articling agreement**” means a contract in a form approved by the Credentials Committee executed by an applicant for enrolment and his or her prospective principal;

“**articling start date**” means the date on which an articulated student begins employment with his or her principal;

“**articling term**” means the 9 month period referred to in Rule 2-32;

“**Benchers**” does not include the Attorney General unless expressly stated;

“**chair**” means a person appointed to preside at meetings of a committee or panel;

“**company**” means a company as defined in the *Business Corporations Act*;

“**complainant**” means a person who has delivered a complaint about a lawyer or a law corporation to the Society under Rule 3-2;

“**complaint**” means an allegation that a lawyer or a law corporation has committed a discipline violation;

“**conduct unbecoming a lawyer**” includes any matter, conduct or thing that is considered, in the judgment of the Benchers or a panel,

- (a) to be contrary to the best interest of the public or of the legal profession, or
- (b) to harm the standing of the legal profession;

“**costs**” includes costs assessed under Rule 3-18 or 3-74.1 or Part 5;

“**disbarred lawyer**” means a person to whom section 15(3) of the Act applies;

LAW SOCIETY RULES

“discipline violation” means any of the following:

- (a) professional misconduct;
- (b) conduct unbecoming a lawyer;
- (c) a breach of the Act or these Rules;
- (d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;
- (e) conduct that would constitute professional misconduct, conduct unbecoming a lawyer or a contravention of the Act or these Rules if done by a lawyer;

“enrolment start date” means the date on which an articulated student’s enrolment in the admission program becomes effective;

“Executive Committee” means the Committee elected under Rule 1-39;

“Executive Director” includes a person designated by the Executive Director to perform any of the duties assigned to the Executive Director in these Rules;

“firm” includes one lawyer or two or more lawyers practising together, including in the following arrangements:

- (a) a sole proprietorship;
- (b) a partnership, including a limited liability partnership or a partnership of law corporations;
- (c) an arrangement for lawyers to share certain common expenses but otherwise practise as independent practitioners;
- (d) a law corporation;
- (e) a public body such as government or a Crown corporation;
- (f) a corporation that is not a law corporation, or other private body;

“foreign jurisdiction” means a country other than Canada or an internal jurisdiction of a country other than Canada;

“Foundation” means the Law Foundation of British Columbia continued under section 58 (1) of the Act;

“funds” includes current coin, government or bank notes, bills of exchange, cheques, drafts, money orders, charge card sales slips, credit slips and electronic transfers;

“general” in relation to accounts, books, records and transactions means those pertaining to general funds;

“general funds” means funds other than trust funds, received by a lawyer in relation to the practice of law;

“governing body” means the governing body of the legal profession in another province or territory of Canada;

DEFINITIONS

- “Protocol”** means the Inter-Jurisdictional Practice Protocol signed on behalf of the Society on February 18, 1994, as amended from time to time;
- “qualification examination”** means an examination set by the Executive Director for the purposes of Rule 2-57;
- “remedial program”** includes anything that may be recommended by the Practice Standards Committee under Rule 3-14(1)(b);
- “respondent”** means a person whose conduct or competence is
- (a) the subject of a citation directed to be issued under Rule 4-13(1), or
 - (b) under review by the Benchers under section 47 of the Act;
- “Rule”** or **“subrule”** means a rule or subrule contained in these Rules;
- “Second Vice-President-elect”** means the Benchers elected under Rule 1-18, from the time of the election until he or she takes office as Second Vice-President;
- “section”** means a section of the *Legal Profession Act*;
- “Society”** means the Law Society of British Columbia continued under section 2(1) of the Act;
- “suspension”** means temporary disqualification from the practice of law;
- “training course”** includes any assessments, examinations and remedial work taken during or after the training course, or an educational program required by the Credentials Committee;
- “trust funds”** includes funds received in trust by a lawyer acting
- (a) in the capacity of a lawyer, including funds
 - (i) received from a client for services to be performed or for disbursements to be made on behalf of the client, or
 - (ii) belonging partly to a client and partly to the lawyer if it is not practicable to split the funds, and
 - (b) as a personal representative of a person or at the request of a person, or as a trustee under a trust established by a person, if the lawyer’s appointment derived from a solicitor-client relationship;
- “vice chair”** means a person appointed to preside at meetings of a committee in the absence of the chair;
- “visiting lawyer”** means a member of a governing body who is qualified to practise law in another Canadian jurisdiction.

[amended 09/99; 11/99; 05/00; 06/01; 03/03; amended effective 08/03; amended 12/03; 05/04; 09/04; “firm” amended and “limited liability partnership” added effective January 17, 2005; amended 02/06; 06/06; 10/06; 09/07; 04/08; “professional conduct record” amended 11/08; “statement of agreed facts” deleted and “agreed statement of facts” added 04/09]

LAW SOCIETY RULES

[This page is intentionally left blank.]

PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

- (2) The Credentials Committee may impose conditions respecting the practice of a former judge when giving approval for that lawyer to appear as counsel under subrule (1)(a).
- (3) The Credentials Committee may at any time relieve a lawyer of a practice restriction referred to in subrule (1) and may impose conditions respecting the practice of the lawyer concerned.
- (4) 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 any marketing activity.
- (5) Subrule (4) does not preclude a lawyer who has served as a judge or master from referring to the lawyer's former status in
 - (a) a public announcement that the lawyer has resumed the practice of law or joined a law firm,
 - (b) a public speaking engagement or publication that does not promote the lawyer's practice or firm,
 - (c) seeking employment, partnership or appointment other than the promotion of the lawyer's practice or firm, or
 - (d) informal conversation or correspondence.
- (6) For the purpose of this rule, it is not the promotion of a lawyer's practice or firm to provide, on request, a curriculum vitae or other statement of experience that refers to the lawyer's former status as a judge or master.

[(4) to (6) added 05/09]

Returning to practice

Definitions

- 2-55** (1) In Rules 2-55 to 2-59, unless the context indicates otherwise, "lawyer" includes a former lawyer or applicant;
- "relevant period" is the shortest of the following periods of time in the immediate past:
- (a) 5 years;
 - (b) the time since the lawyer's first call and admission in any jurisdiction;
 - (c) the time since the lawyer last passed the qualification examination;
 - (d) in the case of a practising lawyer who has paid the full-time insurance fee since January 1, 2006, the time since that date.
- (2) For the purpose of paragraph (b) of the definition of "relevant period" in subrule (1), a lawyer is deemed to have been called and admitted as of the date that a practising certificate was issued under Rule 2-51(4).

[heading and rule amended 06/06]

2-56 [rescinded 06/06]

Returning to the practice of law after an absence

- 2-57** (1) If, for a total of 3 years or more in the relevant period, a lawyer has not engaged in the practice of law, the lawyer must not practise law without first doing one of the following:
- (a) passing the qualification examination;
 - (b) obtaining the permission of the Committee under subrule (3).
- (2) Subrule (1) applies
- (a) despite any other Rule, and
 - (b) whether or not the lawyer holds or is entitled to hold a practising certificate.
- (3) A lawyer may apply in writing to the Committee for permission to practise law without passing the qualification examination.
- (4) On an application under subrule (3), the Committee may approve the application if, in its judgement
- (a) the lawyer has engaged in activities that have kept the lawyer current with substantive law and practice skills, or
 - (b) the public interest does not require the lawyer to pass the qualification examination.
- (5) Before approving an application under subrule (4), the Committee may require the lawyer to enter into a written undertaking to do any of the things set out in Rule 2-59(2)(b).

[(1.1) added 11/99; (2) amended, (3) to (5) added 05/00; heading and rule amended, (1.1) rescinded 06/06]

Qualification examination fee

- 2-58** A lawyer who is required to write the qualification examination under Rule 2-57(1) must pay, at least 30 days before writing the first examination, the fee specified in Schedule 1.

[heading and rule amended, (1) rescinded 06/06]

Conditions on returning to the practice of law

- 2-59** (1) A lawyer or applicant who has spent a period of 7 years or more not engaged in the practice of law must not practise law without the permission of the Credentials Committee.
- (2) As a condition of permission to practise law under subrule (1), the Credentials Committee may require one or more of the following in addition to passing the qualification examination:
- (a) successful completion of
 - (i) the admission program,
 - (ii) the training course, or
 - (iii) a part of the training course;

- (b) a written undertaking to do any or all of the following:
 - (i) practise law in British Columbia immediately on being granted permission;
 - (ii) not practise law as a sole practitioner;
 - (iii) practise law only in a situation approved by the Committee for a period set by the Committee, not exceeding 2 years;
 - (iv) successfully complete the training course or a part of the training course within a period set by the Committee, not exceeding one year from the date permission is granted;
 - (v) practise only in specified areas of law;
 - (vi) not practise in specified areas of law.
- (3) Despite Rule 2-26(3), the Credentials Committee may vary a condition under subrule (2)(a) without the consent of the lawyer concerned.
- (4) On the written application of the lawyer, the Credentials Committee may allow a variation of an undertaking given under subrule (2)(b).

[heading and (1), (2) and (4) amended 06/06]

2-60 [rescinded 06/06]

Credentials hearings

Notice to applicant

- 2-61** (1) When a hearing is ordered under this Division, the Executive Director must promptly notify the applicant in writing of
- (a) the purpose of the hearing,
 - (b) the date, time and place of the hearing,
 - (c) the circumstances to be inquired into at the hearing, and
 - (d) the amount of security for costs set by the Credentials Committee under Rule 2-62.
- (2) The Executive Director must serve the notice referred to in subrule (1)
- (a) in accordance with Rule 10-1, and
 - (b) not less than 30 days before the date set for the hearing, unless the applicant consents in writing to a shorter period.

Security for costs

- 2-62** (1) When a hearing is ordered under this Division, the Credentials Committee must set an amount to be deposited by the applicant as security for costs.
- (2) In setting the amount to be deposited as security for costs under this Rule, the Credentials Committee may take into account the circumstances of the matter, including but not limited to, the applicant's
- (a) ability to pay, and
 - (b) likelihood of success in the hearing.

LAW SOCIETY RULES

- (3) The amount to be deposited as security for costs cannot exceed an amount that approximates the amount that the panel may order to be paid under Rule 5-9.
- (4) The Credentials Committee may vary the amount set to be deposited as security for costs under this Rule on application by the applicant or counsel for the Society.
- (5) If the amount set for security for costs under this Rule has not been deposited with the Executive Director 15 days before the date set for a hearing, the hearing is adjourned.
- (6) Before the time set for depositing security for costs under subrule (5), an applicant may apply to the Credentials Committee for extension of time, and the Committee may, in its discretion, grant all or part of the extension applied for.

[(5) amended, (6) added 06/03]

PART 3 – PROTECTION OF THE PUBLIC

- (b) certifies the completion of the required professional development as required in Rule 3-18.3(3)(b);
 - (c) pays the late fee specified in Schedule 1.
- (2) Required professional development completed before April 1 that is applied to the requirement for the previous year cannot be applied to the requirement for the calendar year in which it is completed.

[added 07/08]

Failure to complete professional development

- 3-18.5** (1) Subject to subrules (2) and (3), a practising lawyer who fails to comply with Rule 3-18.3 by April 1 of the following year is suspended until all required professional development is completed and completion is certified to the Executive Director as required by Rule 3-18.3.
- (2) When there are special circumstances, the Practice Standards Committee may, in its discretion, order that
- (a) the lawyer not be suspended under subrule (1), or
 - (b) a suspension under subrule (1) be delayed for a specified period of time.
- (3) At least 60 days before a suspension under subrule (1) can take effect, the Executive Director must deliver to the lawyer notice of the following:
- (a) the date on which the suspension will take effect;
 - (b) the reasons for the suspension;
 - (c) the means by which the lawyer may apply to the Practice Standards Committee for an order under subrule (2) and the deadline for making such an application before the suspension is to take effect.

[added 07/08]

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).

LAW SOCIETY RULES

- (3) A lawyer who has been accredited by the Society as a family law mediator may so state in any marketing activity.

[(3) added 05/09]

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]

Disclosure

- 4-18.1** (1) Unless an order has been made under Rule 4-17(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) the fact that a Committee or an individual has referred a matter for consideration by 3 or more Benchers under Rule 4-17;
 - (b) the scheduling of a proceeding under Rule 4-17;
 - (c) the fact that a proceeding has taken place.
- (2) When an order has been made or refused under Rule 4-17(1), the Executive Director may, on request, disclose the fact of the order or refusal and the reasons for it.

[added 10/06]

Review of interim suspension, practice conditions or medical examination order

- 4-19** (1) If an order has been made under Rule 4-17(1), the respondent may apply in writing to the President at any time for rescission or variation of the order.
- (2) An application under subrule (1) must be heard as soon as practicable and, if the respondent has been suspended without notice, in any event not later than 7 days after the date on which it is received by the Society, unless the respondent consents to a longer time.
- (3) [rescinded]
- (4) When application is made under subrule (1), the President must appoint a new panel under Rule 4-28.
- (5) A panel appointed under subrule (4) must not include a person who
- (a) participated in the decision that authorized the issue of the citation,
 - (b) was one of the Benchers who made the order under review, or
 - (c) is part of a panel assigned to hear the citation.
- (6) A hearing under this Rule is open to the public, but the panel may exclude some or all members of the public in any circumstances it considers appropriate.
- (6.1) On application by anyone, 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).
- (7) All proceedings at a hearing under this Rule must be recorded by a court reporter, and any person may obtain, at his or her expense, a transcript of any part of the hearing that he or she was entitled to attend.

LAW SOCIETY RULES

- (8) The respondent and discipline counsel may call witnesses to testify who
 - (a) if competent to do so, must take an oath or make a solemn affirmation before testifying, and
 - (b) are subject to cross-examination.
- (9) If the order under Rule 4-17(1) took effect without notice to the respondent, witnesses called by discipline counsel must testify first, followed by witnesses called by the respondent.
- (10) If subrule (9) does not apply, witnesses called by the respondent must testify first, followed by witnesses called by discipline counsel.
- (11) The panel may
 - (a) accept an agreed statement of facts, and
 - (b) admit any other evidence it considers appropriate.
- (12) Following completion of the evidence, the panel must
 - (a) invite the respondent and discipline counsel to make submissions on the issues to be decided by the panel,
 - (b) decide by majority vote whether cause has been shown by the appropriate party under subrule (13) or (14), as the case may be, and
 - (c) make an order if required under subrule (13) or (14).
- (13) If an order has been made under Rule 4-17(1) with notice to the respondent, the panel must, if cause is shown on the balance of probabilities by or on behalf of the respondent, rescind or vary the order.
- (14) If an order has been made under Rule 4-17(1) without notice to the respondent, the panel must rescind or vary the order, unless discipline counsel shows cause, on the balance of probabilities, why the order should not be rescinded or varied.

[(6) amended, (6.1) added 09/99; (1), (4), (12) and (14) amended, (3) rescinded 10/06;
(11) amended 04/09]

Appointment of discipline counsel

- 4-20** The Executive Director must appoint a lawyer employed by the Society or retain another lawyer to represent the Society when
- (a) a direction to issue a citation is made under Rule 4-13,
 - (b) a respondent or a suspended lawyer appeals to the Court of Appeal under section 48 of the Act, or
 - (c) the Society is a respondent in any other action involving the investigation of a complaint against a lawyer or the discipline of a lawyer.

Conditional admissions

- 4-21** (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.
- (2) The chair of the Discipline Committee may waive the 14-day time limit in subrule (1).

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) notify 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; 10/07]

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) notify the respondent and the complainant of the disposition.

[(5) amended 10/07]

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.

LAW SOCIETY RULES

- (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) an agreed statement of facts.
- (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; (3) amended 04/09]

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) [rescinded 04/09]
 - (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 Benchler 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.
- (6) When an adjournment is granted under this Rule, the Executive Director must notify the complainant.

[(1) amended 09/99; 10/06; (2) and (3) amended 10/07; (2) amended, (6) added 04/09]

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

LAW SOCIETY RULES

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]

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) an agreed statement of facts;
 - (b) evidence tendered in a form agreed to by the respondent or applicant and Society counsel;
 - (c) any other evidence it considers appropriate.

[(6) amended 04/09]

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]

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.

[added 05/02; amended 10/07]

Record of credentials hearing

5-16 (1) Unless counsel for the applicant and for the Society agree otherwise, the record for a review of a credentials decision 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; 10/07]

Record of discipline hearing

5-17 (1) Unless counsel for the respondent and for the Society agree otherwise, the record for a review of a discipline decision 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; 10/07]

LAW SOCIETY RULES

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 the respondent, as the case may be, or his or her 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; (3) amended 04/09]

Public representations

8. A lawyer must not endorse or lend his or her credibility as a lawyer to the promotion or advertisement of any product, property, investment or service for sale to the public except:
 - (a) a law practice with which the lawyer is affiliated,
 - (b) a book or other publication that the lawyer has written or assisted in writing, or
 - (c) a product designed to assist in the practice of law and with which the lawyer has experience.

[moved from Chapter 14, Rule 6 05/09]

FOOTNOTES:

1. A lawyer who is not otherwise interested in a matter may provide a second opinion to a person with other legal representation, whether or not the lawyer is formally retained to do so.

This rule is subject to a lawyer's right to contact a witness under the conditions set out in Chapter 8.

[added 04/96; amended 05/96; 12/99]

2. Under both the Lawyers' Compulsory Professional Liability Insurance Policy and any excess professional liability insurance policy in effect, a lawyer is contractually required to give written notice to the insurer as soon as practicable after the lawyer becomes aware of any actual or alleged error or any circumstances which could reasonably be expected to be the basis of a claim or suit covered under the policy. A lawyer who fails to comply with this contractual requirement risks having coverage denied, assuming personal liability for any damages awarded. Rule 5 imposes an ethical duty to report to the insurer. Imposing such an ethical obligation is necessary, in the public interest, to reduce the risk of coverage being denied.

[amended 01/94; renumbered 04/96]

3. A lawyer has a duty to be on guard against becoming the tool or dupe of an unscrupulous client or of persons associated with such a client and, in some circumstances, may have a duty to make inquiries. For example, a lawyer should make inquiries of a client who:
 - (a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matters, or
 - (b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

[renumbered 04/96; amended 03/05; 05/05]

[This page is intentionally left blank.]

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.

[heading and rule 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]

Public representations

23. A lawyer must not:
- (a) comment publicly on the validity, worth or probable outcome of a legal proceeding in which the lawyer acts, or
 - (b) state publicly that the lawyer speaks on behalf of the legal profession unless the lawyer has been expressly authorized to state the official position of the legal profession.

[moved from Chapter 14, Rule 6 05/09]

PROFESSIONAL CONDUCT HANDBOOK

24. Before making a public statement concerning a client's affairs, a lawyer must be satisfied that any communication is in the best interests of the client and made with the client's consent.⁴

[moved from Chapter 14, Rule 6.1 05/09]

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]

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]

4. The lawyer owes a duty to the client to be qualified to represent the client effectively before the public and not to permit any personal interest or other cause to conflict with the client's interests.

[moved from Chapter 14 05/09]

CHAPTER 14

MARKETING OF LEGAL SERVICES

Application of Chapter

1. This Chapter applies to any marketing activity undertaken or authorized by a lawyer in which he or she is identified as a lawyer, mediator or arbitrator.

[amended effective 05/98]

Definitions

2. In this Chapter:

“lawyer” includes a member of the Law Society, and a person enrolled in the Law Society Admission Program; and

“marketing activity” includes any publication or communication in the nature of an advertisement, promotional activity or material, letterhead, business card, listing in a directory, public appearance or any other means by which professional legal services are promoted or clients are solicited.

[amended effective 01/00; amended 10/04; 05/09]

3. [rescinded 05/09]

Content and format of marketing activities

4. Any marketing activity undertaken or authorized by a lawyer must not be:
 - (a) false,
 - (b) inaccurate,
 - (c) unverifiable,
 - (d) reasonably capable of misleading the recipient or intended recipient, or
 - (e) contrary to the best interests of the public.

[amended 05/09]

- 4.1 and 4.2 [rescinded 05/09]

PROFESSIONAL CONDUCT HANDBOOK

Examples

5. For example, a marketing activity violates Rule 4 if it:
 - (a) is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient,
 - (b) is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results which the lawyer can achieve, or
 - (c) otherwise brings the administration of justice into disrepute.

[amended effective 01/00; amended 11/02; 05/09]

6. [moved to Chapter 4, Rule 8 and Chapter 8, Rule 23 05/09]

6.1 [moved to Chapter 8, Rule 24 05/09]

7 and 7.1 [moved to Law Society Rule 2-54 05/09]

Former firm of current judge or master

- 7.2 A lawyer must not state on any letterhead or business card or in any other marketing activity the name of a judge or master as being a predecessor or former member of the lawyer's firm.

[added effective 05/98]

Notary Public

8. A lawyer who, on any letterhead, business card or sign, or in any other marketing activity:
 - (a) uses the term "Notary," "Notary Public" or any similar designation, or
 - (b) in any other way represents to the public that the lawyer is a notary public,must also indicate in the same publication or marketing activity the lawyer's status as a lawyer.

[amended 10/04]

9. [rescinded 05/09]

Designation

10. A lawyer must not list a person not entitled to practise law in British Columbia on any letterhead or in any other marketing activity without making it clear in the marketing activity that the person is not entitled to practise law in British Columbia.

In particular, a person who fits one or more of the following descriptions must not be listed without an appropriate indication of the person's status:

- (a) a retired member,
- (a.1) a non-practising member,
- (b) a deceased member,
- (c) an articled student,
- (d) a legal assistant or paralegal,
- (e) a patent agent, if registered as such under the *Patent Act*,
- (f) a trademark agent, if registered as such under the *Trade-marks Act*, or
- (g) a practitioner of foreign law, if that person holds a valid permit issued under Law Society Rule 2-18.

[amended 03/94; updated 12/99; amended 06/01; 05/09]

11 to 13.1, 14 and 15. [rescinded 05/09]

Preferred areas of practice

16. A lawyer may state in any marketing activity a preference for practice in any one or more fields of law if the lawyer regularly practises in each field of law in respect of which the lawyer wishes to state a preference.

[amended effective 01/00; amended 05/09]

17. [rescinded 05/09]

PROFESSIONAL CONDUCT HANDBOOK

Specialization

18. Unless otherwise authorized by the *Legal Profession Act*, the Rules, or this *Handbook* or by the Benchers, a lawyer must:
- (a) not use the title “specialist” or any similar designation suggesting a recognized special status or accreditation in any marketing activity, and
 - (b) take all reasonable steps to discourage use, in relation to the lawyer by another person, of the title “specialist” or any similar designation suggesting a recognized special status or accreditation in any marketing activity.

[amended effective 01/00; amended 05/09]

19. [moved to Law Society Rule 3-20 05/09]

20 and 21. [rescinded 05/09]

Real estate sales

22. When engaged in marketing of real property for sale or lease, a lawyer must include in any marketing activity:
- (a) the name of the lawyer or the lawyer’s firm, and
 - (b) if a telephone number is used, only the telephone number of the lawyer or the lawyer’s firm.

[added 10/04]

[The next page is page 49.]

ARTICLING

The Law Society receives complaints that some principals use their students as runners and registry clerks to an excessive degree. While it is necessary for a student to have a practical working knowledge of the various registry offices, to occupy more than an average of four hours of the student's working week in this type of activity is inappropriate and the lawyer who requires this is not fulfilling the function of a principal.

A similar criticism can be made of using students to an excessive degree for the preparation of opinions. The preparation of opinions is of course important, but a principal should bear in mind that the student has spent three years studying the law and the purpose of the articling period is to give instruction in the practical application of the law and running a law practice. This cannot be done if a student is spending an excessive amount of time researching law and writing opinions.

Although the Law Society Credentials Committee endeavours to set adequate standards for enrolment as a student, from a practical point of view, it is impossible to conduct a detailed examination of each student. Unfortunately, there will be students who, for one reason or the other, have some defect in either character or personality that may make them unsuitable for call to the Bar. This is a very serious matter and there is an obligation on the principal who observes the student on a day-to-day basis to report to the Law Society if, in the principal's judgement, there is any question about the student's suitability to be called to the Bar.

There have been instances in which a principal has learned that a student has been guilty of untruths or conduct towards a client or lawyer that the principal considered to be unprofessional or unbecoming a lawyer. In a minor matter, the principal must speak to the student and be satisfied that the incident is an isolated one, not likely to be repeated. Unless the principal is satisfied of this, there arises an obligation to report the problem to the Law Society. A principal should not hesitate to do so; in any event, the principal will be asked for mid-term and final progress reports during the articling period.

Assignment of articles

Sometimes a student will ask permission from the principal to assign articles. This may be because of a conflict between the principal and the student or because the student is seeking wider experience, but often it is because the student has an opportunity for employment after call with a firm that would like to employ the student for the balance of the articling period. On occasion, this could pose a problem for the principal who may feel that the student has signed a contract for a fixed period of employment and should fulfil it.

Since the objective of the articling period is to provide training for future members of the Bar, which is in the interests of the Bar as a whole and not just that student, and since it is not the objective to provide relatively inexpensive labour for the principal, no principal should unreasonably withhold a request to assign articles under these circumstances.

To the principal

(a) Students appearing as counsel

Principals should review the list of courts or tribunals listed in Rule 2-43. It is your responsibility to ensure that the counsel experience of your student in front of these courts or tribunals is permitted under Rule 2-43 and is properly supervised.

You are at all times responsible for the conduct and actions of your student, and the following should be particularly noted:

- (i) Except in routine matters, your client must first understand and agree that your student will be handling the matter;
- (ii) You must ensure that your student, on all occasions, advises the judge or presiding official of his or her name and that he or she is an articulated student and articulated to you;
- (iii) You have a responsibility to the court or tribunal to brief your student adequately on all matters on which she or he will be appearing alone. This applies, not only to briefing on the facts and the law, but also on proper etiquette and decorum.

It is the opinion of the Benchers that these responsibilities cannot be adequately fulfilled unless you or another lawyer on your behalf attends with your student until you are completely satisfied as to the student's ability to appear alone.

(b) Range of articling experience

You are asked to familiarize yourself with the Checklist appended to these guidelines. In order for a student to receive a fully rounded set of articles that will properly prepare her or him for the practice of law, it is essential that the student receive practical training and experience in all of the lawyering skills. The Benchers strongly recommend that students obtain practical training and experience in a minimum of three practice areas as described in the Checklist. You should review the student's progress from time to time to ensure that she or he is receiving proper training and that you both will be in a position to declare that the student has completed the items on the Checklist.

At the mid-point of the articling period, you will be asked to submit a brief interim report on the student's progress. The purpose of this report is to identify and hopefully correct any problems that may be developing and that may cast doubt on the student's fitness for call and admission as well as any problems in completing the Checklist requirements.