



# MEMBER'S MANUAL

## AMENDMENT PAGES

2009: No. 3 October

### Highlights

**Law Society Rules:** Electronic transfers from trust of sums of \$25 million or less are now permitted, but the same conditions apply as previously did for sums over \$25 million (Rule 3-56(3.1): p. 84); lay Benchers are now referred to as “appointed Benchers” (Rules 1, 1-1(1), 1-5, 1-39(8)-(10), 1-48, 3-8(2), 3-9(4) and 4-7(2): pp. 7, 13, 15, 28, 30, 66 and 97); a saving provision will ensure a general meeting would not be invalidated by reason alone of a technical failure (Rule 1-7(7): p. 16); to ensure fairness, the order of candidates on a Bencher election ballot will be determined by lot, rather than alphabetically (Rules 1-26(1), 1-26.1 and 1-31: pp. 23, 24 and 26); some wording from the insurance policy relevant to Special Compensation Fund claims is now spelled out in the Rules, rather than simply referring to the policy (Rule 3-33: p. 74).

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

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

**Updates:** This amendment package updates the *Member's Manual* to **September 25, 2009**. The previous amendment package was 2009: No. 2 July.

To check that your copy of the *Manual* is up to date, consult the contents checklist on the back of this filing 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, telefax 604-646-5913 or email [communications@lsbc.org](mailto: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](http://lawsociety.bc.ca) in both HTML (for online use) and in PDF (for printout, including printout of *Member's Manual* replacement pages).

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*Updated to September 25, 2009*

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## 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;

“**appointed Bencher**” means a person appointed as a Bencher under section 5;

[“appointed Bencher” added 09/2009]

“**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;

“**Bencher**” 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;

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**“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;

## **PART 1 – ORGANIZATION**

### **Division 1 – Law Society**

#### **Benchers**

##### **Term of office**

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

[(1) amended 12/1999; 09/2009]

##### **Life Benchers**

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

##### **President, First Vice-President and Second Vice-President**

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

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

[(8) amended 07/2007]

### **Removal of the President or a Vice-President**

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

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- (b) a statement by the President or Vice-President, as the case may be, stating why he or she should not be removed from office, if that person wishes to have such a statement sent to each member, and
  - (c) voting materials as required in Rule 1-26.
- (5) The President or Vice-President in respect of whom the referendum is conducted may attend personally or by agent during proceedings under this Rule.
- (6) After the counting of the voting papers is completed, the Executive Director must declare whether the President or Vice-President, as the case may be, ceases to hold office.

### **Bencher ceasing to be member**

**1-5** A Bencher, other than an appointed Bencher, must be a member of the Society in good standing to take or hold office as a Bencher.

[amended 09/2009]

## **Meetings**

### **Annual general meeting**

- 1-6** (1) The Benchers must hold an annual general meeting of the members of the Society each year.
- (2) Subject to subrule (3) and Rule 1-7, the Executive Committee may determine the place and time of the annual general meeting.
- (3) Unless the Benchers direct otherwise, the President must preside at the annual general meeting from a location in the City of Vancouver.
- (4) At the annual general meeting, the Benchers must present a report of their proceedings since the last annual general meeting.
- (5) At least 60 days before an annual general meeting, the Executive Director must mail to each member of the Society a notice containing the following information:
- (a) the date and time of the meeting;
  - (b) the text of the resolution recommended by the Benchers to set the practice fee under section 23 of the Act.
- (6) In order to be considered at the annual general meeting, a resolution must be
- (a) signed by at least 2 members of the Society in good standing, and
  - (b) received by the Executive Director at least 40 days before the annual general meeting.
- (7) Subrule (6) applies to amendments to be moved at the annual general meeting that would have the effect of changing the practice fee recommended by the Benchers.
- (8) At least 21 days before an annual general meeting, the Executive Director must mail to each member of the Society a copy of each of the following:
- (a) notice of the locations at which the meeting is to be held;
  - (b) an audited financial statement of the Society covering the last calendar year;
  - (c) each resolution and amendment received in accordance with subrules (6) and (7).

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- (9) The accidental omission to mail anything required under subrule (5) or (8) to any member of the Society or non-receipt of it does not invalidate anything done at the annual general meeting.

### Telephone connections

- 1-7** (1) The Benchers may conduct a general meeting by joining any number of locations by telephone or by any other means of communication that allows all persons participating in and entitled to vote at the meeting to hear each other.
- (2) The Executive Director may appoint a member of the Society in good standing to act as local chair of a location where the President is not present.
- (3) The local chair must record the names of those in attendance and, unless the Executive Director directs otherwise, may dispense with registration and voting and student cards under Rule 1-11.
- (4) A person participating in a general meeting at any location connected under subrule (1) is present at the meeting for the purpose of Rule 1-11 and the calculation of a quorum.
- (5) The Executive Committee must designate locations to be joined to the annual general meeting , including at least the following locations:
- (a) one in District No. 1, County of Vancouver, or District No. 4, County of Westminster;
  - (b) one in District No. 2, County of Victoria;
  - (c) one in District No. 3, County of Nanaimo;
  - (d) one in District No. 5, County of Kootenay;
  - (e) one in District No. 6, Okanagan;
  - (f) 2 in District No. 7, County of Cariboo;
  - (g) one in District No. 8, County of Prince Rupert;
  - (h) one in District No. 9, Kamloops.
- (6) As an exception to subrule (5), if, 7 days before an annual general meeting, fewer than 15 members of the Society have indicated to the Executive Director an intention to attend the meeting at any location announced under Rule 1-6(8), the Executive Committee may cancel that location.
- (7) A technical failure that prevents any member from participating in or voting at a general meeting does not invalidate anything done at the general meeting, and the meeting may continue if the members continuing to participate and vote adopt a resolution to that effect.

[ (7) added 09/2009 ]

### Auditors

- 1-8** (1) At each annual general meeting, the members of the Society must appoint an auditor.
- (2) The auditor appointed under subrule (1) must be a chartered accountant or a certified general accountant.
- (3) A Bencher, Life Bencher or an employee of the Society is not eligible to be appointed auditor under subrule (1).



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- (5) A member of the Society may apply to the Executive Committee to have his or her name placed on the voter list for a district other than the one required by this Rule, and the Executive Committee may direct the Executive Director to make the change if it is satisfied that the member has a significantly greater connection to the District the member wishes to vote in.

### **Voter list**

- 1-25** (1) By October 10 of each year, the Executive Director must prepare a list of voters for each district in which an election is to be held that year.
- (2) The list of voters for each district must list in alphabetical order the names of all members of the Society entitled to vote in the district.
- (3) A member of the Society may examine the voter list at the Society office during normal office hours of the Society.
- (4) A member of the Society who has reason to believe that a voter list improperly includes or omits a name, or contains an error respecting the district in which a member is entitled to vote may, before the election, report the error to the Executive Director.
- (5) The Executive Director must promptly investigate a report made under subrule (4) and correct any error that exists.
- (6) A member of the Society who is not satisfied with the action taken by the Executive Director under subrule (5) may apply in writing to the Executive Committee for a review.
- (7) The Executive Committee must promptly review an application made under subrule (6), and must
  - (a) confirm the decision of the Executive Director, or
  - (b) order the Executive Director to correct the voter list as the Committee directs.

### **Voting procedure**

- 1-26** (1) By November 1 of each year, the Executive Director must mail to each member of the Society whose name is on the voter list prepared under Rule 1-25
  - (a) a ballot paper containing, in the order determined under Rule 1-26.1, the names of all candidates in the district in which the member is entitled to vote and stating the number of Benchers to be elected in that district,
  - (b) instructions on marking of the ballot paper and returning it to the Society in a way that will preserve the secrecy of the member's vote,
  - (c) a ballot envelope,
  - (d) a declaration,
  - (e) a mailing envelope, and
  - (f) biographical information received from the candidates.
- (2) The accidental omission to mail the material referred to in subrule (1) to any member of the Society or the non-receipt of the material does not invalidate an election.

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- (3) For a ballot paper to be valid, the voter must
  - (a) vote in accordance with the instructions enclosed with the ballot paper,
  - (b) not vote for more candidates than the number of Benchers to be elected in the district,
  - (c) place the ballot paper in the ballot envelope and seal the envelope,
  - (d) complete the declaration and sign it,
  - (e) place the ballot envelope in the mailing envelope and seal the envelope, and
  - (f) deliver, or mail postage prepaid, the mailing envelope to the Executive Director.
- (4) The Executive Director may issue a replacement ballot paper to a voter who informs the Executive Director in writing that the original ballot paper has been misplaced or spoiled or was not received.
- (5) The Executive Director may issue a new set of ballot materials to a voter who informs the Executive Director in writing that the original ballot material sent to him or her relates to a district other than the one in which he or she is entitled to vote.

[(1) amended 09/2009]

### **Order of names on ballot determined by lot**

- 1-26.1** (1) The order of names on a ballot under this division must be determined by lot in accordance with this Rule.
- (2) The Executive Director must notify all candidates as to the date, time and place when the determination is to be made.
  - (3) The procedure for the determination is as follows:
    - (a) the name of each candidate is written on a separate piece of paper, as similar as possible to all other pieces prepared for the determination;
    - (b) the pieces of paper are folded in a uniform manner in such a way that the names of the candidates are not visible;
    - (c) the pieces of paper are placed in a container that is sufficiently large to allow them to be shaken for the purpose of making their distribution random, and the container is shaken for this purpose;
    - (d) the Executive Director withdraws the papers one at a time;
    - (e) the name on the first paper drawn is the first name on the ballot, the name on the second paper is the second, and so on until the placing of all candidates' names on the ballot has been determined.

[added 09/2009]

### **Rejection of ballot papers**

- 1-27** (1) A ballot paper must be rejected if it
  - (a) contains, or is enclosed in an envelope that contains, a marking that could identify the voter,
  - (b) contains votes for more candidates than the number to be elected in the district concerned,

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- (c) is dissimilar to those issued by the Executive Director, or
  - (d) is received by the Executive Director on or after the election date.
- (2) A vote is void if it is
- (a) not cast for a candidate whose name appears on the ballot paper as printed by the Society, or
  - (b) ambiguous or unclear as to the candidate voted for.

### **Alternative vote ballot**

- 1-28** (1) In a district in which only one Bencher is to be elected and there are more than 2 candidates, voting must be by an alternative vote ballot on which voters may indicate their preference for candidates.
- (2) When an alternative vote ballot is conducted under subrule (1), the ballots in that election must be counted according to the following procedure:
- (a) on the first count, each voter's first preference is recorded in favour of the candidate preferred;
  - (b) on the second count, the candidate who received the least votes on the first count is eliminated and that candidate's first count ballots are distributed among the remaining candidates according to the second preferences indicated;
  - (c) on each subsequent count, the candidate who received the least votes in the preceding count is eliminated, and that candidate's ballots are distributed among the remaining candidates according to the next preferences indicated;
  - (d) the first candidate to receive a majority of votes on any count is elected.

### **Scrutineers**

- 1-29** (1) The Executive Director is a scrutineer for each election for Benchers.
- (2) The Executive Committee must appoint 2 members of the Society in good standing who are not Benchers or employees of the Society, to be scrutineers of the election.
- (3) The failure of one scrutineer to attend at the time and place set for the vote counting does not prevent the votes from being counted at that time and place.
- (4) The scrutineers must
- (a) ensure that all votes are counted in accordance with the Act and these Rules, and
  - (b) decide whether a vote is void or a ballot paper is rejected, in which case their decision is final.

### **Counting of votes**

- 1-30** The Executive Director or a person appointed by the Executive Director must supervise the counting of votes according to the following procedure:
- (a) the name of each voter who votes is crossed off the voter list, and all the ballot papers of a voter who submits more than one ballot paper must be rejected;

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- (b) each voter declaration is read, and the ballot paper of a voter who has not completed and signed the declaration correctly is rejected;
- (c) the ballot envelopes containing ballot papers are separated by district, and mixed to prevent identification of voters;
- (d) for each district, the ballot envelopes are opened and the ballot papers removed;
- (e) ballot papers that are rejected according to the Act or these Rules are kept separate;
- (f) all votes are counted and recorded unless void or contained in a rejected ballot paper.

### **Attendance of candidate**

**1-31** A candidate may attend personally or by agent during proceedings under Rules 1-26.1, 1-30 and 1-32.

[amended 09/2009]

### **Declaration of candidates elected**

- 1-32** (1) The Executive Director must declare elected the candidates who receive the greatest number of votes, up to the number of Benchers to be elected in each district.
- (2) If, as a result of a tie vote, the Executive Director cannot determine all of the candidates elected in a district, the Executive Director must report to the Executive Committee that the positions affected have not been filled by the election, and Rule 1-36 or 1-38 applies.

### **Election record and disclosure of votes received**

- 1-33** (1) The Executive Director must ensure that a permanent record is kept of the number of votes received by each candidate, and the candidates who are declared elected.
- (2) The information referred to in subrule (1) is public information.

### **Review by Executive Committee**

- 1-34** (1) A candidate who is not elected in an election for Bencher may apply to the Executive Committee for a review of the election.
- (2) An application under subrule (1) can only be made
- (a) in writing, and
  - (b) not more than 10 days after the election date.
- (3) On an application under subrule (1), the Executive Committee must promptly review the election in that district, and must
- (a) confirm the declaration made by the Executive Director under Rule 1-32,
  - (b) rescind the declaration made by the Executive Director under Rule 1-32 and declare that the candidate who applied under subrule (1) or another candidate is elected, or
  - (c) order a new election in the district concerned, and give directions for it.
- (4) The decision of the Executive Committee under subrule (3) is final.

## PART 1 – ORGANIZATION

### Retention of documents

- 1-35** The Executive Director must retain the voting papers and other documents of an election for at least 14 days after the election or, if a review is taken under Rule 1-34, until that review has been completed.

### Bencher by-election

- 1-36** (1) If an elected Bencher ceases to hold office in an even numbered year or before July 1 of an odd numbered year, a by-election must be held to fill the vacancy for the remainder of the term of office.
- (2) When a Bencher by-election is required under subrule (1), the Executive Committee must set a date for the prompt holding of the by-election.
- (3) Rules 1-20 to 1-35 apply to a by-election under subrule (1), except that the Executive Director may change the dates referred to in Rules 1-22(c), 1-25(1) and 1-26(1).

### Referendum ballots

- 1-37** (1) The Benchers may direct the Executive Director to conduct a referendum ballot of all members of the Society or of all members in one or more districts.
- (2) The Rules respecting the election of Benchers apply, with the necessary changes and so far as they are applicable, to a referendum under this Rule, except that the voting paper envelopes need not be separated by districts.

### Appointment of Bencher to represent a district

- 1-38** (1) The Benchers may fill a vacancy by appointment in the following circumstances:
- (a) an elected Bencher ceases to hold office on or after July 1 of an odd-numbered year;
  - (b) an electoral district fails to nominate enough candidates at an election to elect the required number of Benchers;
  - (c) an amendment to Rule 1-20 increases the number of Benchers to be elected from a district.
- (2) A Bencher appointed under subrule (1) takes office on appointment and continues in office until the end of the current term.
- (3) The Benchers may appoint any member of the Society in good standing eligible to be a candidate for Bencher in the district concerned.
- (4) When the Benchers appoint a Bencher under this Rule, they may conduct a non-binding plebiscite of the members of the Society in the district concerned.

[(2) amended 10/2001]

### Election of Executive Committee

- 1-39** (1) The Benchers must elect 3 Benchers to serve as members of the Executive Committee for each calendar year.
- (2) All persons elected as a Bencher for a term that includes the calendar year for which members of the Executive Committee are to be elected are eligible for election under subrule (1).

## LAW SOCIETY RULES

- (3) Nominations for election to the Executive Committee must be made by November 22.
- (4) If more than 3 Benchers are nominated under subrule (3), the Executive Director must conduct a ballot.
- (5) The Executive Director must specify a date no later than December 6 for the return of the ballots, and a ballot returned after that date is not valid.
- (6) All Benchers in office on the date specified under subrule (5) are eligible to vote for the Executive Committee.
- (7) If, because of a tie vote or for any other reason, the Benchers fail to elect 3 members of the Executive Committee under subrules (4) and (5), or if a vacancy occurs, the Benchers must hold an election to fill all resulting vacancies at the next regular meeting of the Benchers.
- (8) At the first regular meeting of the Benchers in each calendar year, the appointed Benchers must elect one appointed Bencher to serve as a member of the Executive Committee for that calendar year and until a new member of the Committee is elected under this subrule in the following calendar year.
- (9) All appointed Benchers are eligible for election to the Executive Committee under subrule (8).
- (10) All appointed Benchers present are entitled to vote for the member of the Executive Committee under subrule (8).
- (11) If a vote is required for an election under this Rule,
  - (a) it must be conducted by secret ballot,
  - (b) a ballot must be rejected unless it contains votes for the same number of candidates as there are positions to be filled, and
  - (c) when more than one Bencher is to be elected, the candidates with the most votes, up to the number of positions to be filled, are elected.

[(2) to (5), (8) and (11) amended 11/2007; (8) to (10) amended 09/2009]

### **Date falling on Saturday, Sunday or other holiday**

- 1-40** If the time for doing an act in this Division falls or expires on a day when the Society office is not open during regular business hours, the time is extended to the next day that the office is open.

### **Interruption of postal service**

- 1-41** If an interruption of postal service makes it impracticable to conduct an election according to the schedule set by this Part, the Executive Committee may
- (a) postpone the election,
  - (b) extend the time for the doing of an act, or
  - (c) make special arrangements for the delivery and receipt of notices and ballots.

### **Extension of dates**

- 1-42** The Executive Committee may, on application by the Executive Director, extend any date stated in Rule 1-18 to 1-42.

## PART 1 – ORGANIZATION

### General

- 1-43** (1) Subject to subrule (2), the seal of the Society may be affixed to a document in the presence of
- (a) 2 persons, one of whom must be the President or a Vice-President, and the other of whom must be an officer of the Society, or
  - (b) one or more persons appointed by resolution of the Executive Committee.
- (2) The seal may be affixed in the presence of any one of the persons referred to in subrule (1) in the case of
- (a) a certificate, or
  - (b) a document that certifies true copies of any document or resolution.
- (3) The person or persons in whose presence the seal is affixed must sign the certificate or document of certification.

[(1) amended 07/2004]

- 1-44** Any information alleging an offence against the Act may be laid in the name of the Society on oath of an officer of the Society or a member of the Executive Committee.

### ***Freedom of Information and Protection of Privacy Act***

- 1-45** The Executive Director is designated as the head of the Society for the purposes of the *Freedom of Information and Protection of Privacy Act*.

[amended 09/2008]

- 1-46** (1) Subject to Rule 1-49(a), the Executive Director may appoint an employee of the Society or retain another lawyer to advise or represent the Society in any legal matter.
- (2) When Rule 1-49(a) applies and it is not practicable to call a meeting of the Executive Committee before the advice of counsel is required, the Executive Director may appoint counsel on an interim basis.

### Division 2 – Committees

- 1-47** Subject to these Rules, the President may
- (a) appoint any person as a member of a committee of the Benchers, and
  - (b) terminate the appointment.

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**1-48** The Executive Committee consists of the following Benchers:

- (a) the President;
- (b) the First and Second Vice-Presidents;
- (c) the Second Vice-President-elect, if not elected under paragraph (d);
- (d) 3 other Benchers elected under Rule 1-39(1);
- (e) one appointed Bencher elected under Rule 1-39(8).

[amended 09/2009]

**1-49** The powers and duties of the Executive Committee are as follows:

- (a) authorizing appointment of counsel to advise or represent the Society when the Society is a plaintiff, petitioner or intervenor in an action or proceeding;
- (b) authorizing the execution of documents relating to the business of the Society;
- (c) approving the remuneration and benefits paid to the Executive Director;
- (d) assisting the President and Executive Director in establishing the agenda for Bencher meetings and the annual general meeting;
- (e) planning of Bencher meetings or retreats held to consider a policy development schedule for the Benchers;
- (f) assisting the Benchers and the Executive Director on establishing relative priorities for the assignment of Society financial, staff and volunteer resources;
- (g) recommending to the appointing bodies on Law Society appointments to outside bodies;
- (h) approving the termination of the appointment of a panel under Rule 5-2(8);
- (i) appointing members of the Board of Governors of the Foundation under section 59 of the Act;
- (j) other functions authorized or assigned by these Rules or the Benchers.

### **Division 3 – Law Society Rules**

#### **Act, Rules and Handbook**

**1-50** The Executive Director must provide each lawyer and each articulated student with a copy of the *Legal Profession Act*, all Rules made by the Benchers, and the *Professional Conduct Handbook*.



## PART 3 – PROTECTION OF THE PUBLIC

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

### **Action after investigation**

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

[(4) added 07/2007]

### **Notifying the parties**

- 3-7** (1) When a decision has been made under Rule 3-6, the Executive Director must notify the complainant and the lawyer in writing of the disposition.

## LAW SOCIETY RULES

- (2) When the Executive Director takes no further action on a complaint under Rule 3-6(1), notice to the complainant under subrule (1) must include
  - (a) the reason for the decision, and
  - (b) instructions on how to apply for a review of the decision under Rule 3-9.

[(1) amended 10/2007]

### **Appointment of Complainants' Review Committee**

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

[(2) amended 09/2009]

### **Review by Complainants' Review Committee**

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

[(7) added 10/2003; (6) amended 10/2007; (4) amended 09/2009]

## PART 3 – PROTECTION OF THE PUBLIC

- (3) The Special Compensation Fund Committee may direct the Executive Director to conduct or authorize further investigations as it considers necessary.
- (4) The Executive Director must give notice in writing to any lawyer the claimant alleges misappropriated or converted funds as soon as practicable and, in any event, before the Special Compensation Fund Committee makes any decision under Rule 3-32.
- (5) The Executive Director may give notice to a lawyer under subrule (4) by mailing it by registered mail to the last known address of the lawyer.
- (6) Despite subrule (4), if the Executive Director considers it necessary for the effective investigation of the claim, the Executive Director may delay notification of the lawyer.

### **Committee decision**

- 3-32** (1) The Special Compensation Fund Committee may exercise the authority and discretion of the Benchers under section 31 of the Act with respect to any claim.
- (2) Subject to the Act and these Rules, the Special Compensation Fund Committee may determine the practice and procedure to be followed at a hearing.
  - (3) After its consideration under Rule 3-31, the Special Compensation Fund Committee may
    - (a) authorize payment of all or part of the claim, subject to any conditions the Committee considers desirable,
    - (b) determine that no payment be made on the claim, or
    - (c) order an oral hearing before
      - (i) the Committee, or
      - (ii) a subcommittee established under Rule 3-34.
  - (4) Following an oral hearing, the Special Compensation Fund Committee must do one of the following:
    - (a) authorize payment of all or part of the claim, subject to any conditions the Committee considers desirable;
    - (b) determine that no payment be made on the claim.
  - (5) When an oral hearing has been conducted before a subcommittee, the Special Compensation Fund Committee must consider the report of the subcommittee before making a decision under subrule (4) and may, in its discretion, consider further evidence or submissions.
  - (6) The Special Compensation Fund Committee must provide written reasons for its decision under subrule (3)(a) or (b) or (4) that includes all relevant findings of fact and, if the hearing is conducted by a subcommittee, the subcommittee's recommendation as to the Committee's decision under Rule 3-32(4).
  - (7) The Special Compensation Fund Committee makes any decision by a majority, and the decision of the majority is the decision of the Committee.
  - (8) Despite subrules (3) and (4) and Rule 3-31, the Special Compensation Fund Committee, or the subcommittee with the consent of the Committee, may decline to commence or continue with an oral hearing, or may adjourn its findings of fact

## LAW SOCIETY RULES

and its decision or recommendation until the conclusion of other proceedings, including

- (a) final disposition of any disciplinary action, including review by the Benchers, judicial review or an appeal, taken against or by the lawyer or former lawyer in respect of whom the claim is made,
- (b) final disposition of any criminal prosecution, including appeal, taken against or by the lawyer or former lawyer in respect of whom the claim is made, or
- (c) the claimant obtaining, and assigning to the Society, part or all of a civil judgment or *Criminal Code* compensation order made against the lawyer or former lawyer respecting the money or other property claimed by the claimant.

### Limit on payments from the Fund

**3-33** Despite Rules 3-31 and 3-32, the Special Compensation Fund Committee, or the subcommittee with the consent of the Committee, must not authorize a payment from the Special Compensation Fund in respect of a claim made on or after May 1, 2004 unless

- (a) the claimant has made a claim under Part B of the policy of professional liability insurance and the claim has been denied in whole because
  - (i) the limit of liability described in the policy as the Profession-Wide Aggregate Limit has been exhausted, or
  - (ii) a lawyer or the claimant knew or reasonably ought to have known of circumstances that could form or did form the basis of a claim for compensation prior to May 1, 2004, or
- (b) prior to May 1, 2004, the Society had notice of the possibility of claims to the Special Compensation Fund involving the lawyer against whom the claimant has made the claim.

[rescinded 09/2002; added 03/2005; amended 10/2005; 07/2009]

### Subcommittees

**3-34** (1) The Special Compensation Fund Committee may establish one or more subcommittees and, on matters referred to a subcommittee by the Committee, the subcommittee has the power and authority of the Committee except the power and authority delegated to the Committee under Rule 3-32 to make the final determination on a claim.

- (2) Two or more subcommittees may proceed with separate matters at the same time.
- (3) The Special Compensation Fund Committee may refer a matter that is before it to a subcommittee or a matter that is before a subcommittee to the Committee or to another subcommittee.
- (4) A subcommittee must consist of an odd number of persons and may consist of one person.
- (5) A subcommittee must be chaired by a Bencher who is a lawyer.
- (6) All Benchers and lawyers are eligible to be appointed to a subcommittee.

## PART 3 – PROTECTION OF THE PUBLIC

- (3) Subject to Rule 3-66, a lawyer must not deposit to a separate trust account any funds other than trust funds.

### **Cheque endorsed over**

- 3-54** If a lawyer receives a cheque payable to the lawyer in trust and, in the ordinary course of business, pays the cheque to a client or to a third party on behalf of the client, in the form in which it was received, the lawyer must keep a written record of the transaction and retain a copy of the cheque.

### **Trust account balance**

- 3-55** A lawyer must at all times maintain sufficient funds on deposit in each pooled or separate trust account to meet the lawyer's obligations with respect to funds held in trust for clients.

### **Withdrawal from trust**

- 3-56** (1) A lawyer must not withdraw or authorize the withdrawal of any trust funds unless the funds are
- (a) properly required for payment to or on behalf of a client or to satisfy a court order,
  - (b) the property of the lawyer,
  - (c) in the account as the result of a mistake,
  - (d) paid to the lawyer to pay a debt of that client to the lawyer,
  - (e) transferred between trust accounts,
  - (f) due to the Foundation under section 62(2)(b) of the Act, or
  - (g) unclaimed trust funds remitted to the Society under Division 8.
- (1.1) The Executive Director may authorize a lawyer to withdraw trust funds for a purpose not specified in subrule (1).
- (1.2) No payment from trust funds may be made unless
- (a) trust accounting records are current, and
  - (b) there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.
- (1.3) A lawyer must not make or authorize the withdrawal of funds from a pooled or separate trust account, except
- (a) by cheque as permitted by subrule (2) or (3),
  - (b) by electronic transfer as permitted by subrule (3.1) or (3.2),
  - (c) by instruction to a savings institution as permitted by subrule (4), or
  - (d) in cash if required under Rule 3-51.1(3.1).
- (2) A lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account by cheque must
- (a) withdraw the funds with a cheque marked "Trust,"
  - (b) not make the cheque payable to "Cash" or "Bearer," and
  - (c) ensure that the cheque is signed by a practising lawyer.

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- (3) A lawyer who withdraws or authorizes the withdrawal of trust funds for the payment of fees must withdraw the funds with a cheque payable to the lawyer's general account.
- (3.1) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer, provided all of the following conditions are met:
- (a) [rescinded]
  - (b) the transfer system is one that will produce, not later than the next banking day, a confirmation form from the financial institution confirming the details of the transfer, which should include the following:
    - (i) the date of the transfer;
    - (ii) source trust account information, including account name, financial institution and account number;
    - (iii) destination account information, including account name, financial institution, financial institution address and account number;
    - (iv) the name of the person authorizing the transfer;
    - (v) amount of the transfer;
  - (c) the lawyer must
    - (i) complete and personally sign a requisition for the transfer in a form approved by the Discipline Committee,
    - (ii) submit the original requisition to the appropriate financial institution,
    - (iii) retain a copy of the requisition in the lawyer's records,
    - (iv) obtain the confirmation referred to in paragraph (b) from the financial institution,
    - (v) retain a hard copy of the confirmation in the lawyer's records, and
    - (vi) immediately on receipt of the confirmation, verify that the money was drawn from the trust account as specified in the requisition.
- (3.2) A lawyer may make or authorize the withdrawal of funds from a pooled or separate trust account by electronic transfer using the Electronic Filing System of the Land Title Branch for the purpose of the payment of Property Transfer Tax on behalf of a client, provided that the lawyer
- (a) retains in the lawyer's records a copy of
    - (i) all Electronic Payment Authorization forms submitted to the Electronic Filing System,
    - (ii) the Property Transfer Tax return, and
    - (iii) the transaction receipt provided by the Electronic Filing System,
  - (b) digitally signs the Property Transfer Tax return in accordance with the requirements of the Electronic Filing System, and
  - (c) verifies that the money was drawn from the trust account as specified in the Property Transfer Tax return.
- (4) A lawyer may instruct a savings institution to pay to the Foundation under Rule 3-52 the net interest earned on a pooled trust account.

[(3.1) amended 07/2009]

## PART 4 – DISCIPLINE

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

[(4) amended 05/2003; (5) amended 02/2004]

### **Conduct letter from the Chair**

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

[added 07/2005]

### **Conduct meeting**

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

[added 07/2005]

### **Conduct Review Subcommittee**

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

[(2) amended 09/2009]

**Conduct review meeting**

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

[(2) amended 09/1999]

**Conduct Review Subcommittee report**

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