



MEMBER'S MANUAL

AMENDMENT PAGES

2009: No. 4 December

Highlights

Law Society Rules: Full-time lecturers at Canadian law schools may postpone articles until they leave teaching and go into practice, and may apply for admission in the first year of appointment to a law school faculty (Rule 2-35 rescinded; Rule 2-48.1 new: p. 50.6); mentoring may qualify for credit towards Continuing Professional Development (Rules 3-18.1 and 3-18.31: pp. 68.4 and 70); any ambiguity about “receiving” rather than accepting cash is removed (Rule 3-51.1(3) and (3.1): p. 80.2); the refund-in-cash provision applies even when a cash retainer has been received incrementally (Rule 3-51.1(3.1): p. 80.2); if a lawyer receives cash, there is no breach of the prohibition if the lawyer makes no use of the cash, takes steps to return the money in cash, reports the incident to the Law Society and complies with other trust accounting rules (Rule 3-51.1(3.2) and (3.3) and Rule 3-56(1.3): pp. 80.2 and 83); references to *Professional Conduct Handbook* rules are updated (Rules 9-1 and 9-14: pp. 121 and 125); 2010 fees and assessments are set out in Schedules 1, 2 and 3 (pp. 129-132).

Professional Conduct Handbook: A conveyance is no longer disqualified from being treated as a simple conveyance simply because the lawyer’s vendor client has advised the purchaser that the purchaser need not be separately represented (Appendix 3, paragraph 5: p. 56); the sample joint representation letters have been updated (Appendix 6: pp. 67-69).

Filing: 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 **November 24, 2009**. The previous amendment package was 2009: No. 3 October.

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.

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 November 24, 2009

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PART 2 – MEMBERSHIP AND AUTHORITY TO PRACTISE LAW

Law clerks

- 2-34** (1) An articulated student who has been employed as a law clerk for not less than 8 months may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to 1/2 of the time served as a law clerk.
- (2) An articulated student whose application under this Rule is accepted must articulate to his or her principal for a period of time and according to a schedule approved by the Executive Director.
- (3) An application under this Rule must be accompanied by
- (a) a written report on the student's character and competence from the judge to whom the articulated student clerked, and
 - (b) other documents or information that the Credentials Committee may reasonably require.

2-35 [rescinded 11/2009 – see Rule 2-48.1]

Articles in another Canadian jurisdiction

2-36 An articled student or applicant for enrolment who has served a period of articles in another Canadian jurisdiction immediately before or after the student's period in articles in British Columbia, may apply in writing to the Executive Director for a reduction in the articling term by an amount of time equal to the time served in articles in the other jurisdiction.

Practice experience in a common law jurisdiction outside Canada

2-37 (1) An articled student or applicant for enrolment who holds professional legal qualifications obtained in a common law jurisdiction outside Canada and has been in the active practice of law in that jurisdiction for at least one full year, may apply in writing to the Executive Director for a reduction in the articling term.

(2) An articling term may be reduced under this Rule by up to one month for each full year of active practice of law in another jurisdiction.

Secondment of articles

2-38 (1) A principal may permit his or her articled student to work in the office of another lawyer qualified to act as a principal, for not more than a total of 8 weeks of the student's articling period.

(2) The Executive Director may permit an articled student to work in the office of a lawyer qualified to act as a principal, other than the student's principal for a period or periods exceeding 8 weeks of the student's articling period.

(3) If permission is granted under subrule (2), the Executive Director may set conditions as appropriate.

Assignment of articles

2-39 (1) An articled student may apply for permission to assign his or her articles to another lawyer qualified to act as a principal by filing with the Executive Director, not later than 7 days after commencing employment at the office of the new principal,

- (a) an assignment of articles in a form approved by the Credentials Committee,
 - (b) a declaration of principal in a form approved by the Credentials Committee,
- and

(c) statements from the previous principal and from the articled student setting out the reasons for the assignment.

(2) If the articled student does not apply to the Executive Director within the time specified in subrule (1), the time between the date the student left the previous principal's office and the date the student filed the application for assignment is not part of the articling period, unless the Credentials Committee directs otherwise.

(3) If the previous principal does not execute one or more of the documents referred to in subrule (1), the Executive Director may dispense with the filing of those documents.

First call and admission

- 2-48** (1) An articled student who applies for call and admission must deliver the following to the Executive Director:
- (a) the following in the form approved by the Credentials Committee:
 - (i) a petition for call and admission;
 - (ii) a declaration of the principal;
 - (iii) a declaration of the applicant;
 - (iii.1) a joint report of the principal and the applicant certifying completion of their obligations under the articling agreement;
 - (iv) a completed questionnaire;
 - (v) written consent for the release of relevant information to the Society;
 - (b) [rescinded]
 - (c) an errors and omissions insurance application or exemption form;
 - (d) the following fees:
 - (i) the call and admission fees specified in Schedule 1;
 - (ii) the prorated practice fee specified in Schedule 2;
 - (iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-25;
 - (iv) the prorated Special Compensation Fund assessment specified in Schedule 2;
 - (e) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.
- (2) An application under this Rule may be made at any time.
- (3) If an articled student fails to meet the requirements of this Rule, including the delivery of all documents specified, the Executive Director must summarily
- (a) reject the application for call and admission, and
 - (b) terminate the student's enrolment.
- (4) When the Credentials Committee has initiated a review under Rule 5-13 of a hearing panel's decision to enrol an articled student, the articled student is not eligible for call and admission until the Benchers have issued a final decision on the review or the review is withdrawn by the Credentials Committee.

[(2) amended 11/1999; (4) added 05/2002; (1) amended 03/2003]

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Law school faculty

- 2-48.1** (1) A full-time lecturer in a faculty of law of a university in Canada who has the academic qualifications required under Rule 2-27 may apply for call and admission without completing the admission program.
- (2) On an application under this Rule, the Credentials Committee may approve the application subject to the condition specified in subrule (3).
- (3) A lawyer called and admitted under this Rule who ceases to be a full-time lecturer in a faculty of law of a university in Canada must complete the admission program unless the Credentials Committee otherwise orders.
- (4) The Benchers may require a lawyer who fails to comply with subrule (3) to resign from the Society.

[added 11/2009]

Transfer from another Canadian jurisdiction

- 2-49** (1) An applicant for call and admission on transfer from another jurisdiction in Canada must deliver the following to the Executive Director:
- (a) an application for call and admission on transfer in a form approved by the Credentials Committee, including written consent for the release of relevant information to the Society;
 - (b) a certificate of character;
 - (c) a certificate of standing from each body regulating the legal profession, in any jurisdiction, in which the applicant is or has been a member of the legal profession;
 - (d) an errors and omissions insurance application or exemption form;
 - (e) proof of academic qualification as required of applicants for enrolment under Rule 2-27(4);
 - (f) the following fees:
 - (i) the investigation fees and call and admission fees specified in Schedule 1;
 - (ii) the prorated practice fee specified in Schedule 2;
 - (iii) the prorated annual insurance fee specified in Schedule 2, unless exempt under Rule 3-25;
 - (iv) the prorated Special Compensation Fund assessment specified in Schedule 2;
 - (g) any other information and documents required by the Act or these Rules that are requested by the Credentials Committee or the Benchers.
- (2) An applicant under this Rule must not be called and admitted unless the Executive Director is satisfied that the lawyer is not prohibited from practising law under Rule 2-57.
- (3) Unless Rule 2-49.2 applies, an applicant under this Rule must pass an examination on jurisdiction-specific substantive law, practice and procedure set by the Executive Director.
- (4) An applicant who does not satisfy the Executive Director that he or she has an adequate knowledge of the English language must complete satisfactorily the training required by the Credentials Committee.

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- (5) An applicant required to write an examination under this Rule or Rule 2-57 must pass the required examination within 12 months after the Executive Director's decision to permit the applicant to write the examination.
- (6) At least 30 days before writing the first examination, an applicant who is required to write an examination under this Rule or Rule 2-57 must pay the fee specified for the examination in Schedule 1.
- (7) An applicant who fails the transfer or qualification examination
 - (a) is entitled to a formal re-read of the examination on application to the Executive Director in writing within 30 days of notification of his or her failure,
 - (b) may re-write the examination
 - (i) at any time, provided he or she has not failed the examination before, or
 - (ii) after a period of one year from the date of the failure if he or she has previously failed the examination, or
 - (c) may be permitted to write the examination for a third or subsequent time at any time despite subparagraph (b)(ii) on application to the Credentials Committee in writing stating
 - (i) compassionate grounds, supported by medical or other evidence, or
 - (ii) other grounds based on the applicant's past performance.

[(2) amended 11/1999; (2) and (3) amended effective 07/2003;
(2), (3), (5) and (6) amended 06/2006]

In-house counsel

- 2-49.1** (1) An applicant under Rule 2-49 may apply to the Credentials Committee for call and admission as in-house counsel.
- (2) On an application under this Rule, the Credentials Committee may exempt an applicant from the requirements to write and pass the transfer examination or the qualification examination or complete the requirement under Rule 2-49.2(3).
 - (3) A lawyer who is called and admitted as in-house counsel must practise law in British Columbia only on behalf of the lawyer's employer or one of its subsidiaries or affiliates.
 - (4) On application of a lawyer called and admitted as in-house counsel, the Credentials Committee may relieve the lawyer of the restriction under subrule (3), on the lawyer
 - (a) writing and passing the required examination under Rule 2-49, or

Confidentiality of Practice Standards Committee deliberations

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

[amended, (2) and (3) added 02/2004; (1) amended, (4) and (5) added 06/2005; (3.1) added, (4) and (5) amended 09/2007]

Report to complainant

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

[amended 10/2007]

Costs

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

- (2) A lawyer who is ordered by the Practice Standards Committee, under subrule (1), to pay costs must pay those costs in full by the date set or extended by the Committee.
- (3) A lawyer who has not paid the amount owing under subrule (1) by the date set or extended by the Practice Standards Committee is in breach of these Rules, and if any part of the amount owing remains unpaid by the date set in Rule 2-70, must not engage in the practice of law unless the Benchers order otherwise.

Division 2.1 – Education

Definitions

3-18.1 In this Division

“**continuing education**” means activities approved by the Executive Director for credit as professional development;

“**credit as a mentor**” means a credit of a specified maximum number of hours of continuing education for participation in a mentoring relationship under Rule 3-18.31;

“**required professional development**” means a minimum number of hours of continuing education determined by the Benchers under Rule 3-18.3(1);

“**small firm**” includes

- (a) a firm in which not more than 4 lawyers practise law together, and
- (b) a lawyer in an arrangement to share expenses with other lawyers who otherwise practises as an independent practitioner, except when the lawyer relies on a firm that is not a small firm to maintain trust accounting and other financial records on the lawyer’s behalf,

but does not include

- (c) a public body such as government or a Crown corporation, or
- (d) a corporation that is not a law corporation, or other private body;

“**small firm course**” means a course of study designated as such and administered by the Society or its agents and includes any assignment, examinations and remedial work taken during or after the course of study.

[added effective 01/2007; (2) and (3) amended 10/2007; heading and (1) amended, (2) and (3) rescinded 07/2008 – see Rule 3-18.11; amended 11/2009]

Application

3-18.11 (1) Rule 3-18.2 applies to a lawyer who begins practice in a small firm or, while practising in a small firm, becomes a signatory on a trust account, unless the lawyer has done both of the following in a Canadian jurisdiction for a total of 2 years or more in the preceding 5 years:

- (a) engaged in the practice of law in a small firm;
- (b) been a signatory on a trust account.

(2) Despite subrule (1), Rule 3-18.2 applies to a lawyer when the Practice Standards Committee, by resolution, so orders.

[added 07/2008]

Small firm course

- 3-18.2** (1) Within 6 months after and not more than 12 months before the date on which this Rule applies to a lawyer, the lawyer must
- (a) successfully complete the small firm course, and
 - (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has successfully completed the small firm course.
- (2) A lawyer who is in breach of subrule (1) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the Chair of the Discipline Committee.

[added effective 01/2007; (2) amended 07/2007; (1) amended 10/2007; (1) amended 07/2008]

Professional development

- 3-18.3** (1) Before the commencement of each calendar year, the Benchers must determine the minimum number of hours of continuing education that is required of a practising lawyer in the following calendar year.
- (2) When making the determination required under subrule (1), the Benchers may prescribe circumstances in which a class of practising lawyer may be excused from completing all or part of the required professional development.
- (3) In each calendar year, a practising lawyer must
- (a) complete the required professional development, and
 - (b) certify to the Executive Director in a form approved by the Executive Director that the lawyer has completed the required professional development.
- (4) Despite subrule (3), a practising lawyer need not complete the required professional development in a calendar year in which the lawyer has successfully completed the admission program or the equivalent in another Canadian jurisdiction.
- (5) On written application by a practising lawyer who has refrained from the practice of law for a minimum of 60 consecutive days in a calendar year, the Executive Director may reduce the required professional development for that lawyer.
- (6) The Executive Director must not reduce the amount of required professional development under subrule (5)
- (a) by an amount greater than that proportionate to the part of the calendar year in which the lawyer refrained from the practice of law, or
 - (b) by any amount if the lawyer refrained from the practice of law as a result of suspension, disbarment or other disciplinary proceedings.
- (7) A practising lawyer who is in breach of subrule (3) has failed to meet a minimum standard of practice, and the Executive Director may refer the matter to the Discipline Committee or the Chair of the Discipline Committee.

[added 07/2008]

Mentoring

- 3-18.31** (1) The Benchers may allow credit as a mentor, subject to any conditions that the Benchers consider appropriate.
- (2) To qualify to receive credit as a mentor, a lawyer must
- (a) have engaged in the active practice of law in Canada for 7 of the 10 years immediately preceding the calendar year, and
 - (b) not be the subject of an order of the Credentials Committee under subrule (4)(c).
- (3) On a referral by the Executive Director or on the recommendation of the Discipline Committee or the Practice Standards Committee, or on its own motion, the Credentials Committee may inquire into a lawyer's suitability to receive credit as a mentor and may do any of the following:
- (a) conduct or authorize any person to conduct an investigation concerning the fitness of the lawyer to act as a mentor;
 - (b) require the lawyer to appear before the Credentials Committee and to respond to questions of the Committee;
 - (c) order the lawyer to produce any documents, records or files that the Credentials Committee may reasonably require.
- (4) After allowing the lawyer to make submissions, the Credentials Committee may do any of the following:
- (a) permit the lawyer to receive credit as a mentor;
 - (b) permit the lawyer to receive credit as a mentor subject to conditions or limitations;
 - (c) order that the lawyer not receive credit as a mentor.
- (5) The onus is on the lawyer to show cause why an order should not be made under subrule (4)(b) or (c).

[added 11/2009]

Late completion of professional development

- 3-18.4** (1) A practising lawyer who fails to comply with Rule 3-18.3 by December 31 is deemed to have been in compliance with the Rules during the calendar year if the lawyer does all of the following before April 1 of the following year:
- (a) completes the remainder of the required professional development;

Removal of designation

- 3-50** (1) The Executive Committee may declare, by resolution, that a savings institution is not or ceases to be a designated savings institution within the meaning of section 33(3)(b) of the Act.
- (2) A lawyer who holds trust funds in a savings institution that is not or ceases to be a designated savings institution must immediately transfer those funds into a designated savings institution.
- (3) Subrule (2) does not apply if the lawyer has written instructions from the client to the contrary.

Deposit of trust funds

- 3-51** (1) Subject to subrule (3) and Rule 3-54, a lawyer who receives trust funds must deposit the funds in a pooled trust account as soon as practicable.
- (2) [rescinded]
- (3) Despite subrule (1), a lawyer who receives trust funds with instructions to place the funds otherwise than in a pooled trust account may place the funds in a separate trust account in accordance with section 62(5) of the Act and Rule 3-53.
- (4) Unless the client instructs otherwise in writing, a lawyer must deposit all trust funds in an account in a designated savings institution.
- (5) As soon as it is practicable, a lawyer who deposits into a trust account funds that belong partly to a client and partly to the lawyer or the lawyer's firm must withdraw the lawyer's or firm's funds from the trust account.

[(4) rescinded and replaced 12/2003; (1) and (3) amended, (2) rescinded 02/2006]

Cash transactions

- 3-51.1** (1) This Rule applies to a lawyer when engaged in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:
- (a) receiving or paying funds;
 - (b) purchasing or selling securities, real property or business assets or entities;
 - (c) transferring funds or securities by any means.
- (2) This Rule does not apply to a lawyer when
- (a) engaged in activities referred to in subrule (1) on behalf of his or her employer, or
 - (b) receiving or accepting cash
 - (i) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
 - (ii) pursuant to the order of a court or other tribunal,
 - (iii) to pay a fine or penalty, or
 - (iv) from a savings institution or public body.

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- (3) While engaged in an activity referred to in subrule (1), a lawyer must not accept an aggregate amount in cash of \$7,500 or more in respect of any one client matter or transaction.
- (3.1) Despite subrule (3), a lawyer may accept an aggregate amount in cash of \$7,500 or more in respect of a client matter or transaction for professional fees, disbursements, expenses or bail.
- (3.2) A lawyer who accepts an aggregate amount in cash of \$7,500 or more under subrule (3.1), must make any refund greater than \$1,000 out of such money in cash.
- (3.3) A lawyer who receives cash, unless permitted under this Rule to accept it, must
 - (a) make no use of the cash,
 - (b) return the cash, or if that is not possible, the same amount in cash, to the payor immediately,
 - (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
 - (d) comply with all other Rules pertaining to the receipt of trust funds.
- (4) For the purposes of this Rule, foreign currency is to be converted into Canadian dollars based on
 - (a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time, or
 - (b) if no official conversion rate is published as set out in paragraph (a), the conversion rate that the client would use for that currency in the normal course of business at the relevant time.

[added effective 05/2004; (1) to (4) amended, (3.1) added 06/2005; (3) and (3.1) amended, (3.2) and (3.3) added 11/2009]

Pooled trust account

- 3-52** (1) The following provisions apply to a pooled trust account:
- (a) the account must be kept in a designated savings institution;
 - (b) the account must be readily available for the lawyer to draw on;
 - (c) the lawyer must periodically receive
 - (i) cancelled cheques, and
 - (ii) bank statements for the account covering all transactions on the account;
 - (d) the savings institution must agree with the lawyer to pay interest to the Foundation in accordance with subrule (2);
 - (e) the account must be kept in the name of
 - (i) the lawyer, or
 - (ii) the firm of which the lawyer is a partner, employee, member or voting shareholder;
 - (f) the account must be designated as a “trust” account on the records of the savings institution and of the lawyer.
- (1.1) The cancelled cheques and bank statements referred to in subrule (1)(c) may be received or retained by the lawyer in an electronic form acceptable to the Executive Director.
- (2) A lawyer who opens or maintains a pooled trust account must
- (a) instruct the savings institution in writing to remit the net interest earned on the account to the Foundation at least quarterly, and
 - (b) if the account is opened or maintained at a bank or trust company, notify the institution in writing that the account is a trust account containing the funds of more than one client.
- (3) Subject to subrule (4) and Rule 3-66, a lawyer must not deposit to a pooled trust account any funds other than trust funds.
- (4) A lawyer may maintain in a pooled trust account up to \$300 of the lawyer’s own funds.

[(1) amended, (1.1) added 12/2003]

Separate trust account

- 3-53** (1) A separate trust account must be
- (a) an interest-bearing trust account or a savings, deposit, investment or similar form of account in a savings institution in British Columbia, and
 - (b) designated as a “trust” account on the records of the savings institution and of the lawyer.
- (2) An account referred to in subrule (1) must be
- (a) in the name of
 - (i) the lawyer,
 - (ii) the firm of which the lawyer is a partner, employee, member or voting shareholder, or
 - (iii) the trust, or
 - (b) identified by a number that identifies the client on inspection of the lawyer’s books and accounts.
- (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(3.2) or (3.3).
- (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.
- (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.

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- (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; (1.3) amended 11/2009]

PART 9 – INCORPORATION AND LIMITED LIABILITY PARTNERSHIPS

Division 1 – Law Corporations

Corporate name

9-1 A corporation must not use a name

- (a) under which another corporation holds a valid law corporation permit under this Division,
- (b) that so nearly resembles the name of another corporation holding a valid law corporation permit under this Division that it is likely to confuse or mislead the public, or
- (c) contrary to Chapter 14, Rule 4(e) of the *Professional Conduct Handbook* (“Marketing of Legal Services”).

[amended 09/2004, effective January 17, 2005; amended 11/2009]

Corporate name certificate

9-2 (1) A lawyer may apply to the Executive Director, in a form approved by the Executive Committee, for a certificate that the Society does not object to the incorporation of a company as a law corporation under a proposed name.

- (2) On receipt of an application under subrule (1), the Executive Director must either
 - (a) issue a certificate to the lawyer if the Executive Director is satisfied that the intended name complies with Rule 9-1, or
 - (b) reject the application.
- (3) The Executive Director must notify the lawyer in writing of his or her decision under subrule (2).

Review of Executive Director’s decision

9-3 (1) A lawyer whose application is rejected under Rule 9-2 may apply in writing to the Ethics Committee for a review.

- (2) After considering any submissions received from the lawyer and from the Executive Director, the Ethics Committee must
 - (a) direct the Executive Director to issue a certificate to the lawyer if it is satisfied that the intended name complies with Rule 9-1, or
 - (b) reject the application.
- (3) The Ethics Committee must notify the lawyer and the Executive Director in writing of its decision under this Rule.

Law corporation permit

9-4 A company may apply to the Executive Director for a law corporation permit by delivering to the Executive Director

- (a) a completed permit application in a form approved by the Executive Committee,
- (b) a true copy of the certificate of incorporation of the company and any other certificates that reflect a change in name or status, and
- (c) the fee specified in Schedule 1.

[(2) rescinded 09/1999]

Issuance of permit

9-5 (1) Subject to section 82 of the Act, the Executive Director must issue a law corporation permit to a company that has complied with the Act and these Rules.

(2) Subject to subrule (3), a law corporation permit issued under subrule (1) is valid from the effective date shown on it.

(3) A permit issued to a law corporation ceases to be valid if

- (a) it is revoked under Rule 9-11,
- (b) a practising lawyer who is a voting shareholder in the law corporation dies or otherwise ceases to be a practising lawyer, and no provision is made in the articles of the law corporation for the immediate and automatic disposition of that person's shares in that case,
- (c) another law corporation that is a voting shareholder in the law corporation ceases to be registered as a company under the *Business Corporations Act* or ceases to hold a valid law corporation permit and no provision is made in the articles of the law corporation for the immediate and automatic disposition of the other law corporation's shares in that case, or
- (d) it is surrendered by the corporation to the Executive Director.

[(3) amended 05/2004; (2) amended 12/2004]

Change of corporate name

9-6 (1) A law corporation may apply to the Executive Director in a form approved by the Executive Committee for a certificate that the Society does not object to a specific change of name for the law corporation.

(2) Rules 9-1 to 9-3 apply to an application under subrule (1), with the necessary changes and so far as they are applicable.

(3) A law corporation must not apply for a change of name under the *Business Corporations Act* unless it has been granted the certificate referred to in subrule (1).

(4) The Executive Director must issue a new permit to a law corporation that has

- (a) obtained the certificate referred to in subrule (1),

Division 2 – Limited Liability Partnerships

Definition and application

9-12 In this Division “person applying” means a person applying or proposing to apply on behalf of a partnership for registration as a limited liability partnership or extraprovincial limited liability partnership under Part 6 of the *Partnership Act*.

[added 09/2004, effective January 17, 2005]

Practice through a limited liability partnership

9-13 A lawyer or law corporation is authorized to carry on the practice of law through a limited liability partnership, provided that the lawyer or law corporation and the limited liability partnership comply with the provisions of the *Partnership Act* and meet the prerequisites of this Division.

[added 09/2004, effective January 17, 2005; amended 04/2005]

LLP name

9-14 A limited liability partnership must not use a name contrary to Chapter 14, Rule 4(e) of the *Professional Conduct Handbook* (“Marketing of Legal Services”).

[added 09/2004, effective January 17, 2005; amended 11/2009]

Notice of application for registration

9-15 (1) Before an application to register a partnership or an extraprovincial limited liability partnership as a limited liability partnership is made on behalf of the partnership under Part 6 of the *Partnership Act*, the person applying must

- (a) submit to the Executive Director a copy of the registration statement that he or she intends to file under that Act,
- (b) pay the LLP registration fee specified in Schedule 1, and
- (c) receive a statement of approval of LLP registration from the Executive Director.

(2) On receipt of a submission under subrule (1), the Executive Director must issue a statement of approval of LLP registration if the Executive Director is satisfied that

- (a) the intended name complies with Rule 9-14, and
- (b) membership in the partnership complies with subrules (2.1) and (2.2).

(2.1) Each partner in an LLP must be

- (a) a member of the Society,
- (b) a member of a recognized legal profession in another jurisdiction,
- (c) a law corporation holding a valid permit under this Part or the equivalent in the jurisdiction in which it provides legal services, or
- (d) a non-lawyer participating in the partnership in another Canadian jurisdiction as permitted in that jurisdiction.

(2.2) At least one partner in an LLP must be a member of the Society or a law corporation holding a valid permit under this Part.

(2.3) If the Executive Director is not satisfied of the matters referred to in subrule (2), the Executive Director must decline to issue a statement of approval.

- (3) The Executive Director must notify the person applying in writing of the Executive Director's decision under subrule (2).

[added 09/2004, effective January 17, 2005; (2) amended, (2.1) to (2.3) added 04/2005;
(2.1) amended 07/2006]

Review of Executive Director's decision

- 9-16** (1) If the Executive Director declines to issue a statement of approval under Rule 9-15, the person applying may apply in writing to the Ethics Committee for a review.
- (2) After considering any submissions received from the partners and from the Executive Director, the Ethics Committee must
- (a) direct the Executive Director to issue a statement of approval if it is satisfied that
 - (i) the intended name complies with Rule 9-14, and
 - (ii) Rule 9-15(2.1) has been satisfied, or
 - (b) reject the application.
- (3) The Ethics Committee must notify the person applying and the Executive Director in writing of its decision under this Rule.

[added 09/2004, effective January 17, 2005; (2) amended 07/2006]

Disclosure of LLP status

- 9-17** (1) When a firm provides legal services to the public through a limited liability partnership, all advertising for the firm must indicate that the limited liability partnership provides the legal services.
- (2) When a firm is continued as a limited liability partnership, the firm must promptly take reasonable steps to notify in writing each existing client of the firm of the change and the effect of a limited liability partnership in respect of the liability of partners.
- (3) The notice required under subrule (2) must include a statement to the following effect, prominently placed:
- The partners in a limited liability partnership are not personally liable for the negligent acts or omissions of another partner or an employee unless the partner knew of the negligent act or omission and did not take reasonable steps to prevent it. Each partner is personally liable for his or her own actions, and the partnership continues to be liable for the negligence of its partners, associates and employees. Accordingly, there is no reduction or limitation on the liability of the partnership.
- (4) When a firm is registered as an extraprovincial limited liability partnership under Part 6 of the *Partnership Act*, the firm must promptly take reasonable steps to notify in writing each existing client of the firm in British Columbia of the registration and any change, resulting from the registration, in the liability of the partners.
- (5) Subrule (4) does not apply to a client outside of British Columbia if the firm provides legal services to the client primarily through lawyers outside of British Columbia.

SCHEDULE 1 – 2010 LAW SOCIETY FEES AND ASSESSMENTS

A. Annual fee	\$
1. Practice fee set by members (Rule 2-70)	1,633.50
2. Special Compensation Fund assessment (Rule 2-70)	50.00
3. Liability insurance base assessment (which may be increased or decreased in individual cases in accordance with Rule 3-22(1)):	
(a) member in full-time practice	1,600.00
(b) member in part-time practice	800.00
4. Liability insurance surcharge (Rule 3-26(2))	1,000.00
5. Late payment fee for practising members (Rule 2-72(3))	100.00
6. Retired member fee (Rule 2-4(3))	75.00
7. Late payment fee for retired members (Rule 2-72(4)).....	nil
8. Non-practising member fee (Rule 2-3(2))	300.00
9. Late payment fee for non-practising members (Rule 2-72(5))	25.00
10. Administration fee (Rule 2-75(3))	50.00
 A.1 Trust administration fee	
1. Each client matter subject to fee (Rule 2-72.2(1))	10.00
 B. Special assessments	
 C. Articled student fees	
1. Enrolment in admission program (Rules 2-27(3)(e) and 2-33(1)(b))	250.00
2. Temporary articles fee (Rule 2-42(1)(c))	125.00
3. Temporary articles (legal clinic) fee (Rule 2-42(1)(c))	25.00
4. Training course registration (Rule 2-44(4)(a))	2,250.00
5. Remedial work (Rule 2-45(7)):	
(a) for each piece of work	50.00
(b) for repeating the training course	3,500.00
 D. Investigation and examination fees	
1. Transfer from another Canadian province or territory – investigation fee (Rule 2-49(1)(f))	1,125.00
2. Transfer or qualification examination (Rules 2-49(6) and 2-58(2))	300.00
 E. Call and admission fees	
1. After enrolment in admission program (Rule 2-48(1)(d))	200.00
2. After transfer from another Canadian province or territory (Rule 2-49(1)(f))....	200.00
 F. Reinstatement fees	
1. Following disbarment, resignation or other cessation of membership as a result of disciplinary proceedings (Rule 2-52(1)(b))	600.00
1.1 Following 3 years or more as a former member (Rule 2-52(1)(b))	500.00
2. All other cases (Rule 2-52(1)(b))	415.00

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G. Application fees	\$
1. Application to become retired member (Rule 2-4(2)(b))	30.00
2. Application to become non-practising member (Rule 2-3(1)(b))	60.00
3. Non-practising or retired member applying for practising certificate (Rule 2-56(b))	60.00
H. Inter-jurisdictional practice fees	
1. Original application for permit (Rule 2-11(2)(b))	500.00
2. Renewal of permit (Rule 2-11(2)(b))	100.00
I. Corporation and limited liability partnership fees	
1. Permit fee for law corporation (Rule 9-4(c))	300.00
2. New permit on change of name fee (Rule 9-6(4)(c))	75.00
3. LLP registration fee (Rule 9-15(1))	300.00
J. Practitioners of foreign law	
1. Permit fee for practitioners of foreign law (Rule 2-18(1)(b))	600.00
2. Permit renewal fee for practitioners of foreign law (Rule 2-22(2)(c))	125.00
3. Late payment fee (Rule 2-22(6))	100.00
K. Late filing fees	
1. Trust report (Rule 3-74(2))	200.00
2. Professional development (Rule 3-18.4(1)(c))	200.00

Note: The federal goods and services tax applies to Law Society fees and assessments.

SCHEDULES – LAW SOCIETY FEES AND ASSESSMENTS

**SCHEDULE 2 – 2010 PRORATED FEES AND ASSESSMENTS
FOR PRACTISING MEMBERS**

	Law Society fee	Special Com- pensation Fund assessment	Liability insurance assessment	
			Payable prior to call	Payable by June 30
Full-time insurance				
January	1,633.50	50.00	800.00	800.00
February	1,495.09	45.83	666.67	800.00
March	1,361.25	41.67	533.33	800.00
April	1,222.83	37.50	400.00	800.00
May	1,089.00	33.33	266.67	800.00
June	950.58	29.17	133.33	800.00
July	816.75	25.00	800.00	0.00
August	678.34	20.83	666.67	0.00
September	544.50	16.67	533.33	0.00
October	406.08	12.50	400.00	0.00
November	272.25	8.33	266.67	0.00
December	133.83	4.17	133.33	0.00
Part-time insurance				
January	1,633.50	50.00	400.00	400.00
February	1,495.09	45.83	333.33	400.00
March	1,361.25	41.67	266.67	400.00
April	1,222.83	37.50	200.00	400.00
May	1,089.00	33.33	133.33	400.00
June	950.58	29.17	100.00	400.00
July	816.75	25.00	400.00	0.00
August	678.34	20.83	333.33	0.00
September	544.50	16.67	266.67	0.00
October	406.08	12.50	200.00	0.00
November	272.25	8.33	133.33	0.00
December	133.83	4.17	100.00	0.00

Note: The federal goods and services tax applies to Law Society fees and assessments.

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**SCHEDULE 3 – 2010 PRORATED FEES
FOR NON-PRACTISING AND RETIRED MEMBERS**

	Non-practising members fee	Retired members fee
January	300.00	75.00
February	275.00	68.75
March	250.00	62.50
April	225.00	56.25
May	200.00	50.00
June	175.00	43.75
July	150.00	37.50
August	125.00	31.25
September	100.00	25.00
October	75.00	18.75
November	50.00	12.50
December	25.00	6.25

Note: The federal goods and services tax applies to Law Society fees and assessments.

APPENDIX 3

REAL PROPERTY TRANSACTIONS

[Chapter 6, Rule 10]

Application

1. This Appendix does not apply to a real property transaction between corporations, societies, partnerships, trusts, or any of them, that are effectively controlled by the same person or persons or between any of them and such person or persons.

[amended 11/1999]

Acting for parties with different interests

2. A lawyer must not act for more than one party with different interests in a real property transaction unless:
 - (a) because of the remoteness of the location of the lawyer's practice, it is impracticable for the parties to be separately represented,
 - (b) the transaction is a simple conveyance, or
 - (c) paragraph 10 of this Appendix applies.

[renumbered 11/99]

- 2.1 When a lawyer acts jointly for more than one client in a real property transaction, the lawyer must comply with the obligations set out in Chapter 6, Rules 4, 5 and 6.

[added 05/2005]

Simple conveyance

3. In determining whether or not a transaction is a simple conveyance, a lawyer should consider:
 - (a) the value of the property or the amount of money involved,
 - (b) the existence of non-financial charges, and
 - (c) the existence of liens, holdbacks for uncompleted construction and vendor's obligations to complete construction.

[renumbered 11/1999]

4. The following are examples of transactions that may be treated as simple conveyances when paragraph 5 does not apply to exclude them:
 - (a) the payment of all cash for clear title,
 - (b) the discharge of one or more encumbrances and payment of the balance, if any, in cash,

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- (c) the assumption of one or more existing mortgages or agreements for sale and the payment of the balance, if any, in cash,
- (d) a mortgage that does not contain any commercial element, given by a mortgagor to an institutional lender to be registered against the mortgagor's residence, including a mortgage that is
 - (i) a revolving mortgage that can be advanced and re-advanced,
 - (ii) to be advanced in stages, or
 - (iii) given to secure a line of credit.
- (e) transfer of a leasehold interest if there are no changes to the terms of the lease,
- (f) the sale by a developer of a completed residential building lot at any time after the statutory time period for filing claims of builders' liens has expired, or
- (g) any combination of the foregoing.

[amended 11/1999; 05/2001; 03/2006]

5. The following are examples of transactions that must not be treated as simple conveyances:

- (a) a transaction in which there is any commercial element,¹ such as
 - (i) a conveyance included in a sale and purchase of a business,
 - (ii) a transaction involving a building containing more than three residential units, or
 - (iii) a transaction for a commercial purpose involving either a revolving mortgage that can be advanced and re-advanced or a mortgage given to secure a line of credit,
- (b) a lease or transfer of a lease, other than as set out in paragraph 4(e),
- (c) a transaction in which there is a mortgage back from the purchaser to the vendor,
- (d) an agreement for sale,
- (e) a transaction in which the lawyer's client is a vendor who:
 - (i) advertises or holds out directly or by inference through representations of sales staff or otherwise as an inducement to purchasers that a registered transfer or other legal services are included in the purchase price of the property, or
 - (ii) [rescinded 10/2009]

[amended 11/1999; 05/2001; 03/2006; 10/2009]

APPENDIX 6

ACTING FOR TWO OR MORE CLIENTS

[Chapter 6, Rule 6.01]

1. Sample letter from lawyer acting jointly for two clients. Any letter must be tailored to individual circumstances.

Dear Client A and Client B:

Re: [Matter]

We confirm that we agree to act for both of you jointly with respect to this matter. Representing you jointly simply means that we will be engaged by both of you to act on the same matter at the same time. We are allowed to act jointly for clients only when their interests are not in conflict. We believe your interests are currently not in conflict; however, it is possible that your interests could diverge or even conflict in the future.

The rules of the Law Society of British Columbia require that, before we represent you jointly, we must raise certain issues with you and obtain your consent as to the course to be followed in the future if a conflict arises. The following will apply to our joint representation of you:

- (a) We owe each of you a duty of undivided loyalty. This means that we must act in each of your best interests at all times and must not favour the interests of one of you over the interests of another, or allow anything to interfere with our loyalty to each of you or our judgement on your behalf. If we are unable to fulfill this duty of undivided loyalty to each of you, we will have to withdraw.
- (b) No information we receive from one of you or from any other source with respect to this matter can be treated as confidential from either of you. This means that, as long as the joint retainer continues, we must disclose relevant information to both of you. However, should we receive information from any source that makes it clear we are in a conflict by acting for you jointly, we must cease acting for both of you in the matter. In that event, however, we would not be permitted to disclose that information to you.
- (c) If we act for one of you in a matter separate from this one, and we receive confidential information from that separate matter that is relevant to this matter, we will have to withdraw from this matter unless we receive the consent of the client in the separate matter to disclose that information.
- (d) If a conflict arises between you, we may be permitted to assist you in attempting to resolve the conflict if you so desire. If it is resolved, we may continue to represent both of you.

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[Lawyer when drafting letter must choose either (e) or (f) following]

- (e) If a conflict arises between you that is not resolved, then we will cease to represent both of you.

or substitute the following for (e)

- (f) If a conflict arises between you and that conflict is not resolved, we will cease to act for Client A but will continue to act for Client B if the rules permit that in the circumstances. [State reasons why lawyer would continue to act for client B. For example: “We confirm that Client B is a continuing client of this firm and is regularly represented by lawyers in this firm on different matters.”]

Although joint representation of a number of clients by a single lawyer or law firm has some advantages, there are aspects of joint representation that could lead to the potential problems we have outlined above. For that reason, we ask that you consent to the potential course of action we have outlined before we commence acting for both of you jointly. We recommend that you obtain independent legal advice before you give us that consent.

If you are satisfied that you wish us to continue to act for you on the basis outlined above, please sign the enclosed duplicate copy of this letter and return it to us.

Yours very truly,

2. Sample letter from lawyer acting jointly for more than two clients. Any letter must be tailored to individual circumstances.

Dear Client A, Client B and Client C:

Re: [Matter]

We confirm that we agree to act for all of you jointly with respect to this matter. Representing you jointly simply means that we are engaged by all of you to act on the same matter at the same time. We are allowed to act jointly for clients when their interests are not in conflict. We believe your interests are currently not in conflict; however, it is possible that your interests could diverge or even conflict in the future.

The rules of the Law Society of British Columbia require that, before we represent clients jointly, we must raise certain issues with you and obtain your consent as to the course to be followed in the future if a conflict arises. The following will apply to our joint representation of all of you:

- (a) We owe each of you a duty of undivided loyalty. This means that we must act in each of your best interests at all times and must not favour the interests of one of you over the interests of another, or allow anything to interfere with our loyalty to each of you or our judgement on your behalf. If we are unable to fulfill this duty of undivided loyalty to each of you, we will have to withdraw.

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- (b) No information we receive from one of you or from any other source with respect to this matter can be treated as confidential from the others. This means that, as long as the joint retainer continues, we must disclose relevant information to all of you. However, should we receive information from any source that makes it clear we are in a conflict by acting for you jointly, we must cease acting for all of you in the matter. In that event, however, we would not be permitted to disclose that information to you.
- (c) If we act for one of you in a matter separate from this one, and we receive confidential information from that separate matter that is relevant to this matter, we will have to withdraw from this matter unless we receive the consent of the client in the separate matter to disclose that information.
- (d) If a conflict arises among any of you, we may be permitted to assist you in attempting to resolve the conflict if you so desire. If it is resolved, we may continue to represent all of you.

[Lawyer when drafting letter must choose either (e) or (f) following]

- (e) If a conflict arises among any of you that is not resolved, then we will cease to represent any of you.

or substitute the following for (e)

- (f) If a conflict arises among any of you and that conflict is not resolved, we will cease to act for Client A and Client B but will continue to act for Client C if the rules permit that in the circumstances. [State reasons why lawyer would continue to act for client C. For example “We confirm that Client C is a continuing client of this firm and is regularly represented by lawyers in this firm on different matters.”]

Although joint representation of a number of clients by a single lawyer or law firm has some advantages, there are aspects of joint representation that could lead to the potential problems we have outlined above. For that reason, we ask that you consent to the potential course of action we have outlined before we commence acting for all of you jointly. We recommend that you obtain independent legal advice before you give us that consent.

If you are satisfied that you wish us to continue to act for you on the basis outlined above, please sign the enclosed duplicate copy of this letter and return it to us.

Yours very truly,

[Appendix 6 added 04/2000; amended 10/2009]

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